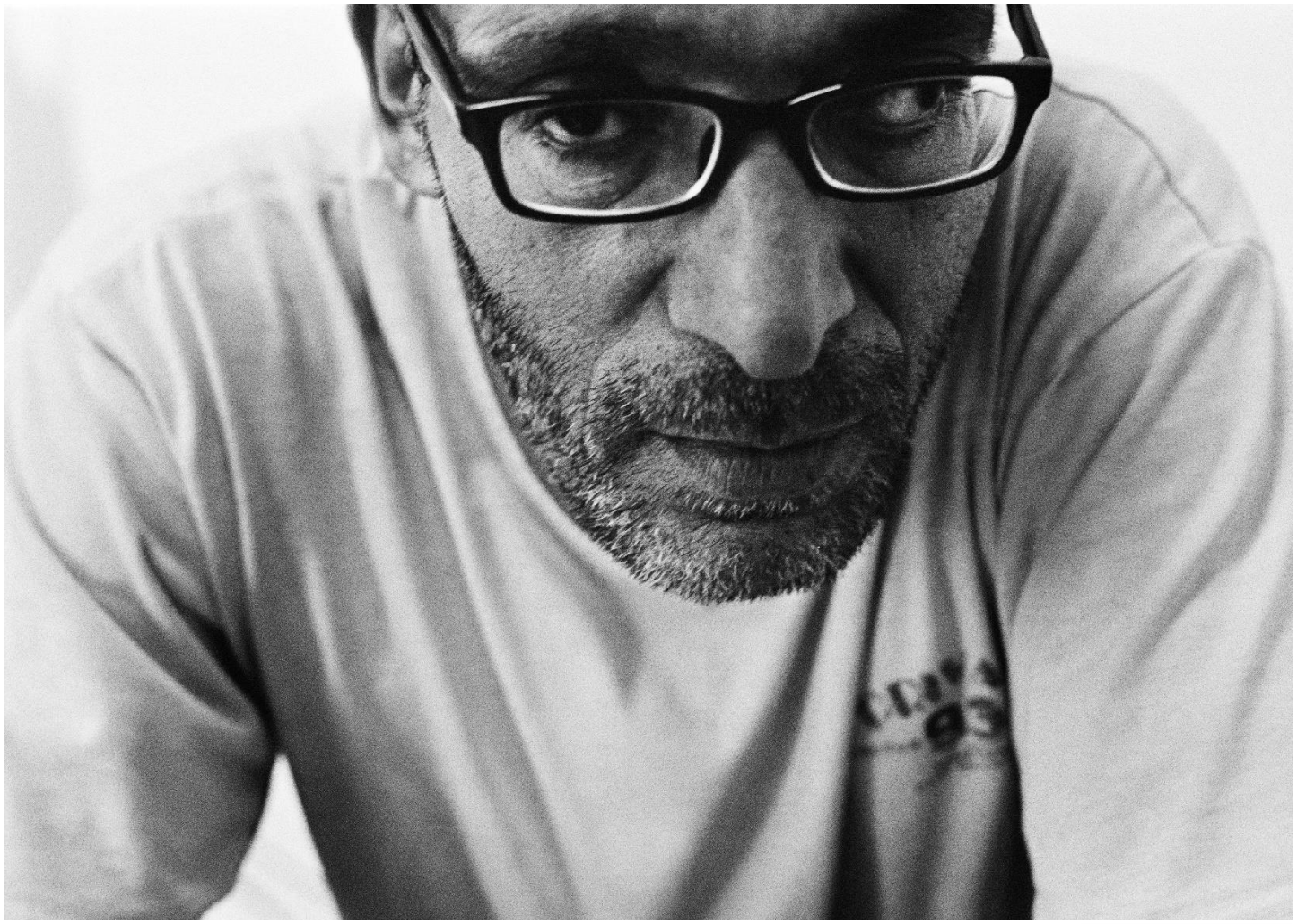
European Network on Statelessness

PROTECTING STATELESS PERSONS FROM ARBITRARY DETENTION



IN UKRAINE

RIGHT to PROTECTION in partnership with HIAS

> I am not a criminal. I am an educated person, I must have more rights. This detention looks like criminal detention but I am not a criminal.

SAHILL ABDULLA FROM AFGHANISTAN, SERVING HIS SECOND 12-MONTH DETENTION

CONTENTS

LIST OF ABBREVIATIONS

ACPC	Administrative Court Procedure Code
1954 Convention	1954 Convention relating to the Status of Stateless Persons
1961 Convention	1961 Convention on the Reduction of Statelessness
CoAO	Code on Administrative Offences
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CTAR	Centre for Temporary Accommodation of Refugees
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
ENS	European Network on Statelessness
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IOM	International Organisation for Migration
MDC	Migrant Detention Centre
NGO	Non-Governmental Organisation
NPM	National Preventive Mechanism
OHCHR	Office of the High Commissioner for Human Rights
Ombudsman	Parliamentary Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention Against Torture
R2P/HIAS	Right to Protection in partnership with HIAS
SBGS	State Border Guard Service of Ukraine
SMSU	State Migration Service of Ukraine
SSU	Security Service of Ukraine
UNHCR	United Nations High Commissioner for Refugees
USSR	Union of Soviet Socialist Republics / Soviet Union

INTRODUCING THE INTERVIEWEES[1]

Irina Ivanova was born in Russia. Her parents brought her to Crimea in the mid 1990s when she was only eight. She has not heard from them since. She was brought up by her grandmother who unexpectedly died when Irina was still a teenager. Irina has lived all her adult life without an identity card or passport. She has been lucky to have the support of her friends and community in Kyiv, where she moved to try and sort out her life and obtain documentation. She has also been lucky to have never been detained as she looks like any average Ukrainian girl. However, she is conscious that the lack of ID makes her everyday life extremely difficult. Without documentation, she cannot continue her education. She cannot marry her Ukrainian partner, because Ukrainian law requires documentation to register a marriage.[2] Irina is not eligible for Ukrainian citizenship or a residence permit as she did not reside in Ukraine at the time of the dissolution of the Union of Soviet Socialist Republics (USSR) and has no valid documents. Due to procedural barriers, she is also unable to obtain a Russian passport although in theory she may be eligible to receive Russian nationality.

David Gelashvili was born in Tbilisi, Georgia. He left the Republic with a USSR passport to what was then the Russian SSR to pursue his university studies, and in 1994 arrived in Ukraine. In the 1990s he was constantly apprehended in the "monkey houses" (the slang term for cells in district police stations) of the Kyiv city as he had no valid document and registration. In 1999, after completing five years of residence in Ukraine, he applied for citizenship. He was issued a Ukrainian passport and felt "the happiest man in the world". But after one year, in 2000, his passport was revoked, allegedly for violating the rules of place of residence registration. During this process, the Ukrainian authorities also lost David's Soviet passport. After a seven long 'undocumented' years David again received a permanent residence permit in 2007. This was annulled in 2015 by the State Migration Service of Ukraine (SMSU), when David applied for naturalisation. As part of the naturalisation process, the authorities verified the legality of the issuance of his residence permit and established that in breach of regulations, his Soviet passport was not submitted along with his previous application for a residence permit. This decision was challenged and a court case is pending. Due to many years in limbo, he and his wife made a conscious decision to not have children. He was also compelled to give up his business. It is only the support of his numerous friends that has kept him from despair. David has not told his elderly parents, who live in Georgia, that he is without any documents. He is unable to visit them even in an emergency.

Vitalii Tsoi was born in the Uzbek Soviet Socialist Republic. A member of the Korean minority and a descendant of formerly deported people,[3] he found it difficult to provide for himself during the turbulent times of Uzbekistan's establishment as an independent state. In 1995 he moved to the south of Ukraine to find work. All his possessions, including his USSR passport with Tashkent registration, were stolen. His interaction with Ukrainian law-enforcement authorities has taught Vitalii to live his life avoiding any contact with them for fear of repeated detention, abuse, harassment, extortion and ill-treatment. His lack of a passport also impaired his access to necessary medical aid, which he requires due to serious chronic illness, and led to further deterioration of his health. His multiple and costly attempts to obtain an ID from the authorities of Uzbekistan only led to them in 2014 officially declaring in writing that he did not have a right to claim Uzbekistani citizenship. Stateless and undocumented, he and his Ukrainian common law wife are unable to even register their marriage due to his lack of ID. However, he does not fall into despair thanks to support from his family and his sense of responsibility to care for them.

Ashyr Berdyyev from Turkmenistan is 46 years old. He left his country in 2010 to find work in Russia. While in Russia, Ashyr lost his passport and due to a lack of funds to cover consular fees, was unable to approach the Embassy of Turkmenistan to get a new one or obtain a 'return certificate'. In 2013, upon entering Ukraine irregularly he was apprehended by the State Border Guard Service of Ukraine (SBGS) and detained for 12 months while efforts to deport him were made to no avail as the Turkmen Embassy did not document him. Following the expiry of the maximum detention period Ashyr was released. While he was entitled to receive a temporary residence permit upon release, the procedure at the time required that a released detainee present his/her passport to obtain this document. Therefore, he (and most other individuals in that situation) did not receive a permit. Due to prolonged separation, he lost contact with his family. At the time of publication, Ashyr has again been detained.

Mohammad Gazrat is a 25-year-old man from Afghanistan who was brought to Ukraine by smugglers en route to the EU. In November 2014, he was apprehended for attempting to illegally cross the border and detained for a year. After being released, Mohammad managed to pass all governmental procedures and obtained a temporary residence permit. It was not easy to start a new life after detention as he could not work or receive money transferred by his relatives. Due to the hardships he faced, Mohammad again tried to leave the country illegally. His residence permit was annulled and at the time of publication he was again in detention.

Abigail Akintola was born in Nigeria 21 years ago. Her family is Muslim and Abigail is Christian. Religion divided them severely. Abigail arrived in Ukraine on a student visa, however she did not sign a contract with her university as the fees were expensive and she felt the facilities she received were poor. She was detained at the European Union (EU) border when she attempted to cross over with an alleged emergency travel document from Belgium that contained false information about her date of birth. Both the Nigerian and Belgian Embassies in Ukraine did not confirm Abigail's identity upon request of the Ukrainian authorities. At the time of publication, she was detained in a Migrant Detention Centre (MDC), after which she hopes she will obtain a temporary residence permit.

Sahill Abdulla from Afghanistan arrived in Ukraine in 2014 when he was 22 years old. He managed to irregularly cross the border to Slovakia in a group and requested asylum. Slovak border guards however, only admitted the families with children. Single men, including Sahil, were readmitted to Ukraine and immediately placed in detention. After one year in immigration detention, Sahill was released as he could not be removed to Afghanistan as he lacked the necessary travel documentation. Upon release, Ukrainian authorities provided him with a temporary residence permit. This document entitled him to remain in Ukraine legally but "was not sufficient to arrange a normal life in Ukraine". It did not give Sahill the right to work or engage in any other gainful activity, nor did it give access to welfare services or medical aid. Sahill was unable to find any informal employment to provide for himself and after some time he dared once more to attempt to cross the border into the EU – again without success. Upon readmission he was automatically subjected to fresh removal proceedings and placed in immigration detention. At the time of publication, he was serving his second term of immigration detention and has lost any hope in law, in humanity and in justice.

Ihor Karas, an ethnic Russian with a remarkably Ukrainian sounding surname, was born in Moscow in 1987. Both his parents were Russian citizens. Ihor's mother died in Moscow when he was only 11 years old. In 2002 his father – a construction worker – took him to Ukraine where he had a work engagement. When in 2004 Ihor's father travelled back to Russia Ihor remained in Ukraine working with his father's construction team. Shortly after, he received a phone call from Russia informing him that his father had passed away. Having settled down in Ukraine, Ihor met Nadiya a Ukrainian national and his common-law wife. He moved to live with her in the Zhytomyr region and they had three sons who, at the time of publication were six, five and three years old. Because he has no passport, Ihor is not officially registered as their father and cannot claim parental rights. His youngest son was born when Ihor was in immigration detention. Despite receiving an official notification from the SBGS that it was impossible to deport Ihor, the MDC administration did not prioritise releasing him. The court, however, ordered his release after nine months in detention. Since the law does not provide for any opportunity for regularisation of an undocumented migrant unless they have served the full 12-month period of immigration detention, Ihor remains undocumented, unable to access basic rights and at risk of repeated administration dentition.

Ahmad Hassan was born in the Al-Bas refugee camp in Lebanon to a family of Palestinian refugees, and has been stateless since his birth. With no prospects for a future in Lebanon where he faced institutionalised discrimination and the dire camp conditions, Ahmad Hassan embarked on a journey to seek refuge in Europe. Most of his siblings had at the time received protection in Germany. When Ahmad Hassan had almost reached his destination in late 2003 he was apprehended by border-guards for attempting to illegally cross the border from Ukraine into the EU. He spent three months in the notorious Pavshyno MDC while attempts to deport him were made.[4] Ahmad Hassan was released from the MDC after applying for asylum with the help of a Non-Governmental Organistion (NGO). With no job or other means of subsistence, he often slept rough and lived a destitute life. In 2005 he was convicted for a mugging and sentenced to four and a half years of imprisonment. In 2011 Ukraine adopted new legislation on international protection, which, in addition to refugee status also provided complementary and temporary protection statuses. Ahmad Hassan applied for protection under this new law but this was rejected too. Following judicial review proceedings Ahmad Hassan remains in Ukraine, undocumented and unreturnable. He and his common-law wife who is a citizen of Ukraine want to get married and start a normal life together, but lack the documents to do so. Ahmad Hassan lives every day of his life under threat of being detained and subject to removal proceedings, and so he takes great care to avoid interaction with authorities.

Oleksandr Chornyya, a Russian by ethnicity, was born in 1971 in Grozny, Chechnia, which was then part of the Soviet Union. He never knew his father. After his mother's death, Oleksandr dropped out of primary school. Having completed only five years of primary schooling he remained in his family house in the village of Isak (close to Grozny) and mastered construction-worker skills to earn his living. When he was 15 he left his house in search of work. Soon after he left, Chechnia entered into an era of wars in which the whole village of Isak was wiped out. In 1992, he travelled to Ukraine irregularly to find work. After a while he met Svitlana who is now his Ukrainian common law wife. They live together as a family in a remote village, where they have a son. However, due to his lack of documentation, Oleksandr is not registered as the father. In 2013 Oleksandr and his colleagues from a construction team were apprehended by authorities at a regular ID check and subjected to deportation proceedings. The authorities believed that Oleksandr intended to irregularly cross Ukrainian border into Russia. The Russian consulate notified Ukrainian authorities that they would not admit Oleksandr to Russia because they were unable to confirm his Russian citizenship or establish his identity as a stateless person who was entitled to permanent residence in Russia. He was released from the MDC after nine months of detention. Oleksandr remains undocumented, unable to access basic rights and at risk of repeated administration detention.

Hussein Ahmed is a 25-year-old man from Somalia. Having escaped from his country, he arrived in Ukraine in 2009, when he was 18 years old and was soon detained by Ukrainian authorities to enforce his deportation. On the advice of his smugglers, Hussein Ahmed told the authorities a false name. The second and third times he was detained, it was under his real name. He was detained for the maximum allowable term on each occassion (for 30 months in total: six months on the first occasion and 12 months each on the subsequent two).[5] His attempts to leave Ukraine illegally and enter the EU failed. Ukraine rejected his applications for recognition as a refugee. After his last release he was issued a residence permit for one year. Hussein Ahmed has a family: he entered into a religious marriage with a woman from Somalia (they have no documents), they have a two-year-old daughter and are expecting another baby. It is only through support from humanitarian organisations and financial help from relatives abroad that he and his family are able to survive in Ukraine.

1. INTRODUCTION

1.1 STATELESSNESS AND DETENTION

The increasing use of immigration detention, including for punitive purposes, and the criminalisation of irregular migration by a growing number of states, is a concerning global and European trend. This results in increasing numbers of persons being detained for longer than they should, or for reasons that are unlawful. While arbitrary detention is a significant area of concern in general, the unique characteristics associated with stateless persons and those at risk of statelessness make them more likely to be detained arbitrarily, for unduly lengthy periods of time. As the European Court of Human Rights (ECtHR) held in *Kim v Russia*, a stateless person is highly vulnerable to be "left to languish for months and years...without any authority taking an active interest in his fate and well-being".[6] This is mainly because immigration systems and detention regimes do not have appropriate procedures in place to identify statelessness and protect stateless persons.

All stateless persons should enjoy the rights accorded to them by international and regional human rights law. Their rights should be respected, protected and fulfilled at all times, including in the exercise of immigration control. The circumstances faced by persons with no established nationality – including their vulnerability as a result of their statelessness and the inherent difficulty of removing them – are significant factors to be taken into account in determining the lawfulness of immigration detention. The process of ending statelessness and regularising a stateless person's immigration status is

often complex and burdensome. Lawful removal of such persons is generally subject to extensive delays and is often impossible. In many European countries, stateless persons detained for removal purposes are therefore vulnerable to prolonged and repeated detention. These factors in turn make stateless persons especially vulnerable to the negative impacts of detention. The emotional and psychological stress of lengthy, even indefinite periods of detention without hope of release or removal is particularly likely to affect stateless persons throughout Europe.

It is evident that the failure of immigration regimes to comprehend and accommodate the phenomenon of statelessness, identify stateless persons and ensure that they do not directly or indirectly discriminate against them often results in stateless persons being punished for their statelessness. Thus, the European Network on Statelessness has embarked on a two-year project aimed at better understanding the extent and consequences of the detention of stateless persons in Europe, and advocating for protecting stateless persons from arbitrary detention through the application of regional and international standards. Among the outputs of this project are:

- A regional toolkit for practitioners, on protecting stateless persons from arbitrary detention – which sets out regional and international standards which states are required to comply with and practitioners can draw on in their work;[7] and
- A series of country reports investigating the law, policy and practice related to the detention of stateless persons in selected European countries and its impact on stateless persons and those at risk of statelessness. These reports are meant as information resources but also as awareness raising and advocacy resources that we hope will contribute to strengthening protection frameworks in this regard. In year one of the project (2015), three such country reports were published on Malta, the Netherlands and Poland[8]. In year two (2016), this report on Ukraine and two others on Bulgaria and the UK[9] were published.

1.2 RESEARCH OBJECTIVES, METHODOLOGY AND LIMITATIONS

This study employs a varied methodology: a thorough desk review of the existing literature on both statelessness and immigration detention; a statistical review of available quantitative data; interviews with policy makers, legal professionals and NGOs; and in-depth semi-structured interviews with stateless persons and persons at risk of statelessness who have themselves experienced detention. With regard to these interviews, it should be noted that no extensive legal analysis or fact check of each individual case was conducted. These stories and personal experiences are meant to inform and illustrate broader research findings. Due to active legislative amendments and changing practice, the situation described in the report might be different at the time of reading, yet the findings of this report are up-to-date as of 1 August 2016.

This report only looks at administrative detention practices, and not at the criminal detention of stateless persons. The interviewees' accounts shed light on various forms of administrative detention in the context of the haphasard development of Ukrainian legislation pertaining to migration management over its 25+ years of independence. They cast light on short-term administrative detention in police stations that has been permitted under the Code on Administrative Offences (CoAO) since June 18, 2016, and detention for removal purposes under various editions of the migration rules. The report primarily focuses on the current state of affairs pertaining to immigration detention in Ukraine. Moreover, as Ukrainian law creates two drastically different legal regimes for 'detention in view of removal' and 'detention to prevent unauthorised entry',[10] the latter remains beyond the scope of this report.

Finally, this report considers the situation of several groups, although the dividing lines between them may at times be blurred. First and foremost, we concern ourselves with the situation of stateless people, defined in Article 1 of the 1954 Convention relating to the Status of Stateless Persons as "a person who is not considered as a national by any State under the operation of its law".[11] This definition is part of customary international law and has been authoritatively interpreted in the United Nations High Commissioner for Refugees (UNHCR) Handbook on Protection of Stateless Persons. Accordingly, "establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual's case in practice and any review/appeal decisions that may have had an impact on the individual's status. This is a mixed question of fact and law".[12] Thus, it is not always a straightforward process to identify if someone is stateless or not, and there will be people who appear to have a nationality, but actually are stateless, or whose statelessness becomes apparent over a period of time. For this reason, it is also important to consider the situation of persons at risk of statelessness. In the immigration detention context in particular, the protection needs of those at risk of statelessness – which stems from their un-returnability – significantly overlap with the stateless. Other terms often used to describe similar or overlapping groups include the *de facto* stateless, unreturnable persons and those with ineffective nationality. By using the term 'persons at risk of statelessness' this report does not box the individual in a category that is separate to statelessness, but rather shows that the individual is in a place of vulnerability that can escalate into statelessness.

1.3 STATELESSNESS AND DETENTION IN THE UKRAINE

> “This is a problem of legal nihilism. For example, there are Ukrainian people who came to Ukraine in the ‘90s with Soviet passports. They never asked us for paperwork. Only now, when they need to draw a pension, they remembered they need a document.

Ms. Oksana Chornous, SMSU

Ukraine is home to a large population of stateless people and those at risk of statelessness. 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. In 2001, 82,500 people called themselves stateless and almost 40,000 were unable or unwilling to name their citizenship.[13] In 2015, UNHCR estimates of the stateless population in Ukraine ranged from 35,000 to 45,877. According to the SMSU, approximately 6,500 stateless persons had regular or temporary residence permits in Ukraine as of June 30, 2013.[14] More information on data and statistics can be found in section 2.3 of this report.

These discrepancies and gaps clearly demonstrate the lack of credible data on the scale of statelessness in the country.

> “I have a birth certificate which states that I was born in Russia and that both of my parents are Russian citizens. Even more so I have a certificate issued by the Russian authorities in the ‘90s that officially confirms that I am a Russian citizen. Yet the Russian Consulate told me that since I did not have a Ukrainian permanent residence permit I had to go back to where I was registered in Russia to get a passport when I turned 16. How on earth did they imagine a person crossing the border to get a passport without having one?

Irina Ivanova, a young woman who lives in Kyiv region, stateless

Primary causes of statelessness in Ukraine

Anecdotal data available to Right to Protection in their partnership with HIAS (R2P/HIAS), suggests that in the majority of cases people ended up stateless or at risk of statelessness due to deficiencies in nationality laws drawn up by newly independent states after the dissolution of the USSR and due to conflict induced displacement within the region during the first decade of independence.

Many of these people have a right to Ukrainian citizenship due to their Ukrainian origin, including Ukraine-born persons living in other Soviet republics at the time of the dissolution of the USSR or Crimean Tatars and other ethnic minorities who were subject to enforced displacement due to Stalinist ethnic engineering policies that in effect amounted to ethnic cleansing (hereinafter ‘formerly deported people’). Despite certain legal instruments being introduced by the Ukrainian Government to facilitate return and naturalisation of ethnic Ukrainians and formerly deported people, naturalisation procedures have remained burdensome and excessively formalistic. Many found it difficult to formally denounce the nationality they became entitled to, even if just in theory, by virtue of residence in a certain republic at the time of dissolution. Others were unable to comply with excessively burdensome and restrictive registration formalities related to establishing a place of residence, upon which access to naturalisation is dependant. Over time, many also lost a chance to claim the citizenship and administrative or consular support of the country of their residency at the time of dissolution, since the newly established citizenship laws of those countries often required stronger links of ethnic origin, ownership of immovable property, etc.

At present, the majority of these people are undocumented. At best they may still have their old Soviet passports or a Soviet birth certificate that are no longer recognised as proof of identification. Ukrainian authorities seem to be aware of the predicament of these people. However, the measures taken to address their plight remain wholly ineffective. Instead of reaching out to the affected population and removing unnecessary naturalisation requirements such as the procedural link to the place of residence, the authorities often shift the blame to affected people.

There are also newer risks of statelessness which can be witnessed in Ukraine today. For instance, the ongoing conflict in Eastern Ukraine and the Russian occupation of Crimea have placed the affected population in a precarious situation where their belonging and citizenship is disputed, legal status is uncertain, and their legal links to the state of Ukraine and access to rights obscured. This situation is due to deficiencies of the Ukrainian Government’s response to the needs of the conflict-affected and internally displaced population in access to civil registration, identity documents and other administrative services. This in turn stems from the state’s excessive fixation on its inability to cross-check identity and belonging of many conflict-affected individuals with the official population records that have become inaccessible to the Government due to them being left in the territory now beyond the Government’s control.

It is difficult to estimate the extent of this problem at present. However, anecdotal data suggests that it is likely to be very significant. For example, there have been cases in which the Government refused to admit back to Ukrainian territory certain undocumented persons, who credibly claimed to be citizens of Ukraine originating from the territories beyond the Government’s control.

It appears that foreign-born citizens affected by the conflict are at particular risk of statelessness in this context. Crimea-SOS, an NGO working in Kherson (and other places) to assist Crimean residents and internatally displaced persons (IDPs) to access their rights, testifies that the local SMSU introduced a practice whereby Crimean Tatar citizens, the majority of whom were born in Central Asia and returned to Ukraine following independence, who wish to renew or update their passports are required to submit along with their old passports, additional documents confirming their right to Ukrainian citizenship.

According to the Parliamentary Commissioner for Human Rights (Ombudsman) there is a practice of the migration service to annul previous administrative decisions to grant immigration and residence permits and even citizenship, because it was provided to the person in violation of legistlation applicable at the time.[15] These 'cancellations' of previous decisions on acquisition of citizenship were confirmed to researchers by the SMSU (relevant data available in Section 2.3). Such decisions led to persons who were previously recognised as having a legal status, being deemed to have illegally resided in Ukraine for the entire time. Some of them have resultantly faced the risk of statelessness. In early 2015, appeals to the Ombudsman on this matter became more frequent. The Ombudsman's Office is currently working to challenge this negative practice.

Another population at risk of statelessness in Ukraine are irregular migrants. Even though Ukraine is a country of net emigration, it does host several hundred thousand immigrants. The majority originate from neighbouring post-Soviet countries and have close social and family ties with Ukraine. Given the deficiencies of Ukraine's ever changing migration rules that have always linked access to long-term or permanent residence permits as well as naturalisation to compliance with excessively burdensome place of residence registration formalities, many immigrants originating from post-Soviet countries have resided in Ukraine for many years unregistered. Often their unregistered status on the territory of Ukraine barred them from accessing consular services, such as birth registration and receipt or renewal of identity documentation, which are often restricted by diplomatic missions only to officially registered permanent residents of Ukraine. It was only recently that some of the post-Soviet states introduced a system for their citizens who found themselves undocumented and unregistered abroad to obtain a single-use document entitling them to return to their country of origin. Even that procedure, however, is restricted by excessively bureaucratic and formalistic nationality confirmation procedures and substantial consular fees, making it inaccessible to many affected individuals. When such people lose their travel documents, or their documents expire or are invalidated due to changes in the law, they find that their situation has changed into an irregular, undocumented legal limbo overnight. Furthermore, when their children reach the age of majority they become trapped in a foreign country, unable to obtain a valid photo ID which they can only acquire in the place where they were registered – across the border in their country of origin.

The impact of statelessness in Ukraine

> "In Ukraine, since the 1990s, nothing has been done to correct the problem [of statelessness]. On the contrary the situation is worsening and worsening. And we have more and more claims.
>
> **Ms. Olena Smirnova**, Deputy Head of the Secretariat of the Ombudsman's Office

Stateless persons are among the most vulnerable people in Ukraine. It is difficult to give a precise description of the human rights situation they face, since neither the government nor civil society organisations have attempted to systematically address the problem of statelessness in Ukraine or to even study its full scope. It is notable however, that legislation related to the legal status of foreigners and stateless persons has undergone a range of substantial transformations during recent years. These reforms have been mostly aimed at tightening migration controls and imposing stricter punitive measures for non-compliance with restrictive migration rules. Legislative reform has failed to take account of the reality faced by thousands of undocumented stateless persons and those at risk of statelessness, leaving them in a legal limbo. The current legal regime deprives such persons of the right to enter into contracts, own or inherit real estate, work, access healthcare or education, lawfully marry, and register their children. It also treats them as it would foreign nationals who have violated migration regulations, despite many stateless persons being born in Ukraine and never having left its territory.

In addition to their inability to exercise their basic rights, stateless persons in Ukraine are also under the threat of arbitrary detention. As it is often impossible to remove them, stateless detainees face the threat of spending at least six and up to 18 months in detention. Even more so, unlike regular foreign nationals, stateless persons and those who are unable to confirm their nationality have no access to a mechanism that would allow them to regularise and stabilise their status in Ukraine or elsewhere, which makes them particularly vulnerable to labour or other forms exploitation, harassment by police and even repeated detention 'in view of deportation'.[16] Finally, it should be noted that reliable reports suggest the prevalence of racially discriminative practices by Ukrainian authorities enforcing migration controls.[17] Thus it is likely that stateless persons and those at risk of

statelessness who also belong to ethnic minorities find themselves at an even greater disadvantage.

The detention of stateless people

There is one common removal and consequent detention procedure in Ukraine for foreigners and stateless persons. The basic regulation governing this process is the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" No. 3773-VI dated September 22, 2011 (hereinafter the Law).

Article 30 of the Law (Compulsory deportation of Foreigners and Stateless Persons) contains the core provisions concerning removal and detention. Provisions of this Article shall not apply to the foreigners and stateless persons covered by the Law of Ukraine "On Refugees and Persons in Need of Complementary or Temporary Protection".

The following authorities may file a lawsuit on deportation of stateless persons to the court: the SMSU; the SBGS; and the Security Service of Ukraine (SSU). Previously, the SMSU and SBGS would place the person subject to removal into an MDC after they decided to remove them. After legislative amendments, since 18 June 2016 detention is only possible after a court decision to detain has been made. However, while it is our understanding that detention consequently requires a court order "to detain at a MDC", research shows that since the regulations have come into force, numerous people were detained following court decisions to 'expel'.

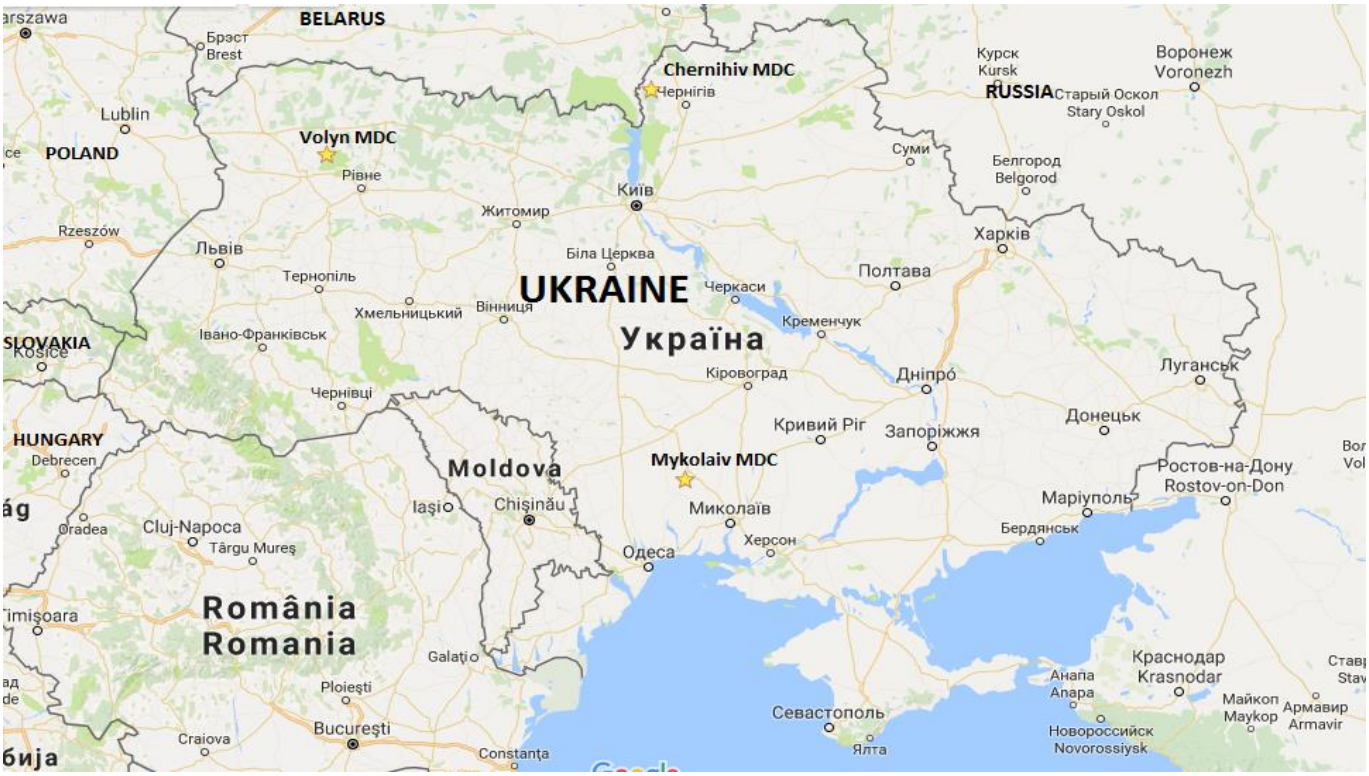
This same law reform increased the maximum time limit for detention to 18 months. Previously, it was one year, and before May 2011 it was six months. This is an alarming trend.

According to the **Instruction on Forcible Return and Deportation,** "deportation provides for: detection of the offender, his or her placement into the MDC, documentation of removal, subsequent convoy of the foreigner to the state border crossing checkpoint of Ukraine to the country of origin".[18]

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.

As set out in the Standard Regulations, the MDC "is a state institution designated for temporary detention of foreigners and stateless persons in case such persons have failed to execute the decision on forcible return without reasonable excuse within the established term, or if there are reasonable grounds to believe that they will avoid execution of this decision, or when the administrative court has adopted a decision on their compulsory deportation from Ukraine, or they have entered Ukraine under international treaties on re-admission, or they have no legal grounds to stay within the territory of Ukraine and shall be subject to deportation from Ukraine".[19]

Figure 1: Map of Ukraine showing MDCs in the country



2. LAW AND POLICY CONTEXT

2.1 INTERNATIONAL AND REGIONAL OBLIGATIONS PERTAINING TO STATELESSNESS AND DETENTION

The right to a nationality, as well as the freedom from arbitrary deprivation of nationality and the right to change nationality are enshrined in Article 15 of the Universal Declaration of Human Rights.[20] Ukraine is a state party to a range of human rights treaties with provisions on the right to nationality which reinforce and develop the provisions of the Universal Declaration: the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR),[21] the 1966 International Covenant on Civil and Political Rights (ICCPR), [22] the 1969 Convention on the Elimination of all Forms of Racial Discrimination,[23] the 1979 Convention on the Elimination of All Forms of Discrimination against Women,[24] and the 1989 Convention on the rights of the Child (CRC).[25]

Since 2014, Ukraine is also a state party of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention)[26] and 1961 Convention on the Reduction of Statelessness (1961 Convention).[27] These are the core international legal instruments relating to statelessness. The 1954 Convention provides the definition of a stateless person and provides important minimum standards of treatment. The 1961 Convention includes key provisions on the prevention and reduction of statelessness, and "sets rules for the conferral and non-withdrawal of citizenship to prevent cases of statelessness from arising".[28] Ukraine is also party to two relevant Council of Europe (CoE) Conventions: the 1997 European Convention on Nationality[29] and the 2006 CoE Convention on the avoidance of statelessness in relation to State succession.[30]

The practice of (administrative) detention is also governed by a variety of human rights instruments. Article 9 of the International Covenant on Civil and Political Rights, paragraph 1, stipulates: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." This general protection applies to all persons in detention, whether administrative (e.g. immigration detention) or criminal detention.

Within the CoE framework, the most influential and relevant instrument is the European Convention on Human Rights (ECHR), to which all CoE member states are party. The Convention was ratified by Ukraine in 1997.[31] Article 5 of the ECHR safeguards the right to liberty and ensures that no-one should be arbitrarily dispossessed of his or her liberty.[32] Within this framework, the ECtHR (based in Strasbourg), which has the power to hear cases in relation to the ECHR and make binding judgments on parties, is the most significant mechanism.

Another relevant mechanism is the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which has investigative powers, carries out visits to any place "where persons are deprived of their liberty by a public authority" and issues reports and standards. The European Convention for the Prevention of Torture was ratified by Ukraine in 1997.[33] The CoE has also issued Twenty Guidelines on Forced Return,[34] which are not legally binding.

As the UN Refugee Agency, UNHCR is responsible for overseeing the implementation of the 1954 and 1961 Statelessness Conventions. The UNHCR Handbook on Protection of Stateless Persons, the UNHCR Guidelines on the Detention of Asylum Seekers as well as various conclusions adopted by its governing body are also relevant to Ukraine.[35] UNHCR Handbook on the Protection of Stateless Persons reflects the position of the Agency on the detention of stateless persons, stating that:

"Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons are often without a legal residence in any country. Thus, being undocumented or lacking the necessary immigration permits cannot be used as a general justification for detention of such persons".[36]

2.2 NATIONAL LAWS, POLICIES AND JURISPRUDENCE PERTAINING TO STATLESSNESS AND DETENTION

> "I cannot guarantee anything because the draft law for 4 months was 'frozen' due to the changes in the Government. I could not predict anything in our country.
>
> **Ms. Oksana Chornous**, from SMSU, answering the question about the prospects of amendments to the law, which will establish the procedure for determining the status of stateless persons

The legal framework in Ukraine is constantly changing. Important legislative changes such as the introduction of alternatives to detention, judicial review of immigration detention, and the decision to detain have been adopted during the research period of this report.

The Constitution of Ukraine (the Fundamental Law) contains some key provisions.[37] Accordingly, "an individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value".

Stateless persons legally residing in Ukraine are entitled to the same rights and freedoms and bear the same duties as citizens of Ukraine, except where they are restricted by the Constitution, laws or international treaties of Ukraine.[38] E.g. they do not have right to vote;[39] they are exempted from military duty;[40] they are not entitled be a civil servant[41] or notary in Ukraine.[42]

The Ukrainian Constitution does not allow dual citizenship.[43] The Law "On Citizenship of Ukraine" establishes the legal content of citizenship, the grounds and procedure for acquisition and termination thereof, powers of government authorities, and the procedure for appealing against decisions on citizenship issues.[44]

At present, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" governs the status of stateless persons in Ukraine. Article 1 of the Law contains a definition of the term 'stateless person' according to which "a stateless person is a person who is not considered to be a citizen of any country in accordance with its laws." This definition was criticised in previous research, conducted by the Representative Office of HIAS in Ukraine in 2014:

"Special attention should be paid to the definition of the very notion of a "stateless person" in Article 1 of the Law of Ukraine on Citizenship of Ukraine and Article 1 of the Law on Legal Status of Foreigners and Stateless Persons. Their conformity with the term "stateless person" defined in Article 1(1) of the Convention relating to the Status of Stateless Persons is questionable. Why? The key element in the definition enshrined in the 1954 Convention is a component that was, unfortunately, missed out from the translation of the definition into Ukrainian and Russian. In particular, in the English version a stateless person is defined by the Convention as follows: "1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law". However, the words "the operation of…" were not given proper attention in the translation into Ukrainian and Russian."[45]

The Law of Ukraine "On Free Legal Aid" defines the right to legal aid, the procedure for exercising this right and state guarantees to provide legal aid. In accordance with this Law, the right to secondary legal aid (defense against prosecution; representation of the interests of persons that have a right to secondary legal aid in the courts against other state agencies, self-governing authorities, and other persons; drafting procedural documents) shall be granted to foreigners and stateless persons detained for the purpose of identification and deportation, from the moment of detention.[46]

With regard to detention and removal, Article 18(6) of **The Administrative Court Procedure Code** (ACPC) (the most recent version of which came into force in June 18, 2016) states that local courts shall have jurisdiction over administrative cases of:

- forcible return of foreigners or stateless persons to the country of origin or third country;
- compulsory deportation of foreigners or stateless persons from Ukraine;
- detention for the purpose of identification and enforcement of compulsory deportation of foreigners or stateless persons;
- detention for the purpose of identification and enforcement of transfer of foreigners or stateless persons in accordance with international treaties of Ukraine on re-admission.

Procedural standards relating to the removal of foreigners and stateless persons are set out in Article 183-7 of the ACPC. Accordingly, if there are reasonable grounds to believe that a foreign national or a stateless person who is subject to deportation, does not possess a document that gives him or her the right to enter another country, is going to evade the enforcement of his deportation, or if there is a risk of absconding, the administrative court may take one of the following decisions:

1. to provide bail for the person to a company, institution or organisation;
2. to oblige a foreigner or a stateless person to deposit surety bail;
3. to apprehend and detain the foreigner or stateless person.

According to the Law on Legal Status of Foreigners and Stateless Persons,[47] foreigners and stateless persons who have no legal grounds to stay in Ukraine, who are subject to forced deportation from Ukraine, including those readmitted under international treaties of Ukraine, are to be placed in an MDC for the period necessary for their identification and to ensure deportation/readmission, but not for longer than 18 months.

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.

Thus, today the maximum length of detention is 18 months. This term corresponds to the maximum term provided for in the Return Directive.[48] These amendments (including the 18-month term) were introduced in line with the Return Directive (which is not legally binding on Ukraine) due to state aspirations to bring its law in line with EU standards, which is a key element of cooperation between Ukraine and the EU.[49]

In order to provide for uniform application of the laws by administrative courts when considering disputes as to the status of asylum seekers, refugees, deportation of a foreigner or a stateless person from Ukraine, and disputes as to the stay of a foreigner or a stateless person in Ukraine, the Plenary Meeting of the High Administrative Court of Ukraine adopted a specific Resolution.[50] The positive provisions of these Resolutions are however not always taken into account by the courts because they are not mandatory.

2.3 DATA ON STATELESSNESS AND DETENTION

> “ The current estimation of the number of stateless persons in Ukraine – this is pure extrapolation.
>
> **Mr. Dmytro Pletchko**, UNHCR Kyiv

The lack of reliable data on the number of stateless persons in Ukraine is a key issue of concern. According to the All-Ukrainian Population Census, 2001,[51] 82,550 persons claimed to be stateless, and a further 40,364 persons did not state their citizenship. The total number of Ukraine's permanent residents at this time was 48 million, with over 11% being born outside Ukraine.[52] Based on these figures and taking into account the estimated number of naturalised residents, UNHCR estimated that by the end of 2004 Ukraine hosted at least 77,000 stateless persons.[53] UNHCR's methodology implied that the number of stateless persons in the country was reducing proportionally to the number of people obtaining citizenship and did not take into account factors such as lack of legal awareness among Ukraine's stateless population. Many may have believed themselves to be citizens of Ukraine or another former-USSR state, but in fact were not able to enforce their right to nationality. Nor did the methodology take into account newly emerging risks of statelessness. In 2015, UNHCR published two different estimates for stateless persons in Ukraine. Its Global Focus reporting on populations estimated the number to be 45,877,[54] whereas its Global Trends report estimated the number to be 35,228.[55] Either figure makes this one of the largest stateless populations in Europe. Anecdotal data available to R2P/HIAS, however, suggests that the actual number of stateless persons residing in Ukraine is likely to be higher. In most cases coming to the attention of R2P/HIAS, people did not know they were at risk of statelessness until they tried to replace their Soviet passports that expired in 2005, or until they tried to obtain a Ukrainian passport after reaching the age of majority.

Still, the Ukrainian government presents considerably lower numbers: according to the SMSU, approximately 6,500 stateless persons had regular or temporary residence permits in Ukraine as of June 30, 2013.[56] The state has no information on the number of undocumented stateless persons in the country. These discrepancies and gaps clearly demonstrate the lack of credible data on the scale of statelessness in Ukraine. This was further confirmed by the failure of state agencies to respond to

requests for data and statistical information on statelessness for this report. However, as stated by an interviewee, "[a] problem of each person is a problem for the state. Even if we have ten people or one thousand of people – they are a problematic category and we have to help them".[57] This perspective clarifies that the lack of statistical data, while a barrier to good planning, cannot be the basis upon which to justify the lack of protection.

The SMSU has been responsible for issues of citizenship since 2012. For the period 2013-2015, 580 prior decisions on acquisition of citizenship were anulled.[58] Information about the legal status of persons who lost their nationality was not provided.

According to the official response of SMSU for 2015:

- 5159 stateless persons permanently reside in Ukraine;
- 574 stateless persons temporary reside in Ukraine;
- 189 stateless persons received a permit for immigration (permanent residence) to Ukraine;
- 200 stateless persons were documented by a temporary residence permit;
- 600 stateless persons received a permanent residence permit.

According to SBGS, 948 foreigners and stateless persons were detained in MDCs by the SBGS's units on the basis of court decisions over a five-year period (2011- 2015) as follows:

Table 1: Number and nationality status of detainees in MDCs across Ukraine per year for the period 2011-2015

Year	Number and nationality
2015	215 persons (2 stateless, 3 Somalis)
2014	236 persons (1 stateless, 11 Somalis, 1 Palestinian)
2013	134 persons (1 stateless, 8 Somalis. 3 Palestinians)
2012	149 persons (6 stateless, 21 Somalis, 3 Palestinians)
2011	214 persons (1 stateless, 53 Somalis)

It has been HIAS/R2P's experience that Somalis cannot be deported from Ukraine, due to a lack of diplomatic relations and direct transport links between the two countries.[59] Nevertheless, the practice of detaining Somalis continues, even though it is decreasing. Smugglers sometimes instruct third-country nationals to say they are Somali, to prevent their deportation. As a counterpoint, we are aware of one situation of a Somali national who – upon learning he would be detained for 12 months – managed to obtain the passport of a neighbouring country to Somalia, to which he was removed.

During this five-year period, 439 persons (46.3%) were released after being detained for the maximum period as they could not be deported. In 2015, this percentage decreased to 27.90%. Below, is the data for each year separately:

Table 2: Number of persons released from MDCs in Ukraine per year for the period 2011-2015

Year	Number and nationality
2015	60 persons (including 1 Somali)
2014	138 persons (1 stateless, 10 Somalis, 8 Palestinians)
2013	54 persons (1 stateless, 6 Somalis)
2012	76 persons (4 stateless, 18 Somalis)
2011	111 persons (53 Somalis)

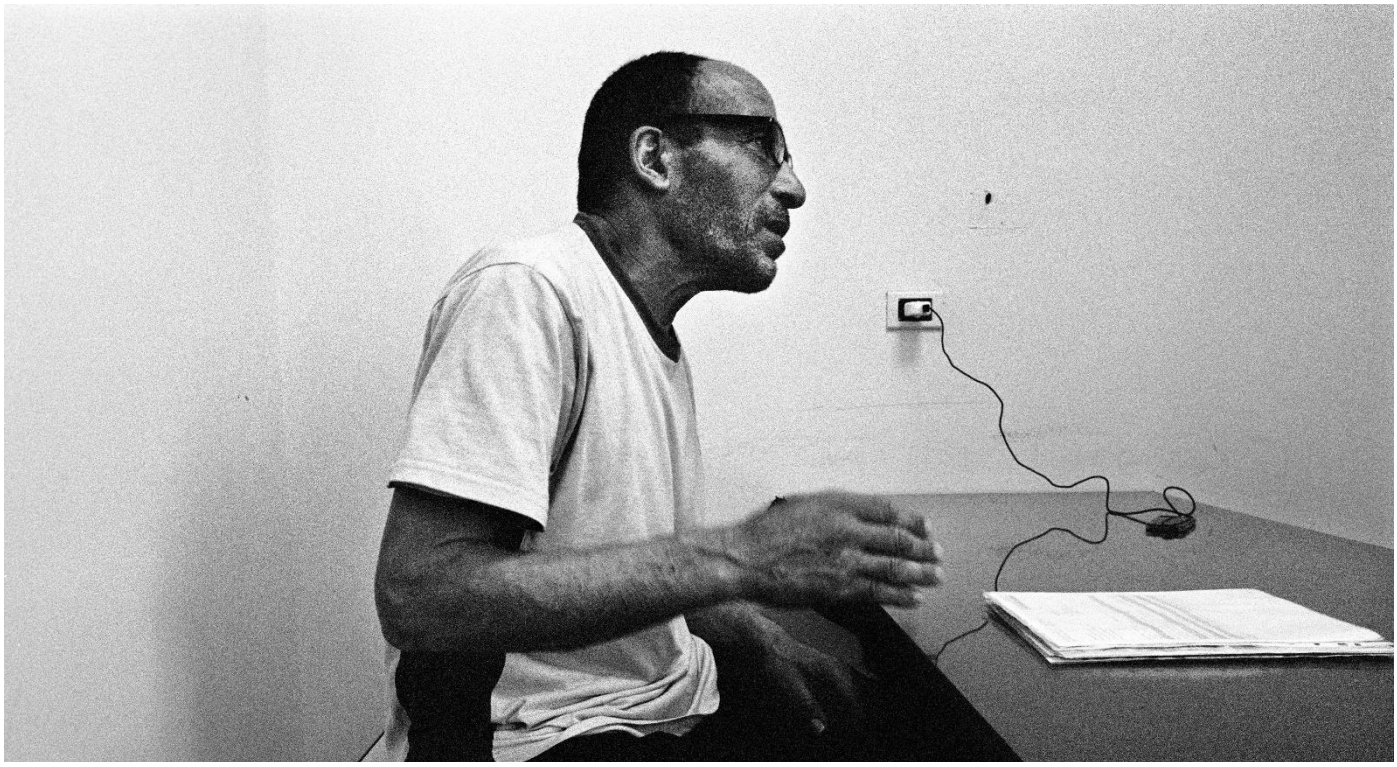
Additionally, a considerably higher number of stateless persons were detained in places of short term temporary detention, for periods of up to three days:

Table 3: Number of stateless persons detained in short term temporary detention per year for the period 2011 – 2015

Year	Number
2015	43 stateless persons
2014	41 stateless persons
2013	87 stateless persons
2012	55 stateless persons
2011	270 stateless persons

These figures show that very few persons whose statelessness has been identified are placed in immigration detention. The SMSU explained that "they are looking for other ways to solve the problems of such people". R2P/HIAS is aware of some stateless persons who recently applied to SMSU with requests to provide them with identification documents. All of them were instructed to wait for the changes to the law that would introduce a status determination procedure for stateless persons.[60] Receiving such a letter does not solve the everyday problems of people and does not serve as a protection from arbitrary immigration detention in the interim.

3. KEY ISSUES OF CONCERN



3.1 IDENTIFICATION & DETERMINATION PROCEDURES

> “I am aware of the fact that I am registered as stateless here but no one conducted a specific interview regarding that with me.

Abigail Akintola, 25-year-old woman serving her immigration detention

The obligation of the state to identify stateless persons within its territory or subject to its jurisdiction is implicit in international human rights law. For state parties to the 1954 Convention, this obligation is well established. According to UNHCR's Handbook on Protection of Stateless Persons,[61] the 1954 Convention obligates states to take measures to identify stateless persons in their territory and to provide them at least a minimum standard of treatment prescribed by the Convention. Despite Ukraine having ratified the two UN Statelessness Conventions in 2014, the country's legal framework does not include a statelessness determination procedure. This prevents stateless persons and persons at risk of statelessness from accessing their basic rights and freedoms.

Even for states that are not party to the Convention, the obligation stands to the extent that it is necessary to identify stateless persons in order to fulfil other human rights obligations. This is partriculary important in relation to decisions to remove and to detain migrants. Failure to identify statelessness as part of the decision to detain can result in discriminatory and arbitrary detention of persons who cannot be removed within a reasonable period.[62] Unfortunately, in addition to not having a dedicated statelessness determination procedure, as will be set out in section 3.2 below, statelessness is also not determined in relation to decisions to remove and to detain.

As has been mentioned above, SMSU has developed a draft law that aims to introduce a statelessness determination procedure and which was discussed by the working group of the National Migration Forum.[63] During this discussion, participants noted positive provisions of the draft (the right of any person, regardless of legality of stay, to access the procedure, the right to access statelessness determination for children; the six-month timeframe for a final decision on the application, etc.). The main conclusion was that despite such positive features, the draft is not perfect and needs improvement, including in relation to:

- amending the definition of a 'stateless person' to bring it in line with the international law definition of Article 1 of the 1954 Convention;
- eliminating the requirement that those who have been recognised as stateless under the statelessness determination procedure, still need to show a valid passport to receive a residence permit;
- reducing the burden of proof on the applicant;
- providing temporary documentation and status until a final decision is made; and
- clearly defining the form in which the application should be filed (written, oral, etc.).

Again, we should indicate that the prospects for the adoption of the bill and its final content currently are not clear.

In a somewhat better position are asylum seekers in Ukraine. If the person who submits an asylum application is missing any identification documents, this information is recorded according to the applicant's statement. Therefore, if an asylum seeker identifies themself as stateless, they receive a certificate of asylum seeker from the migration service indicating this information. During the course of the asylum procedure, migration authorities do not verify the nationality of the applicant. While this information potentially could be detected during routine checks by law enforcement agencies upon the request of the migration service, we are not aware of such cases. Furthermore, the SMSU takes relevant court decisions into account. So, if a person is mentioned as stateless in a court ruling, the SMSU considers this as a ground to consider them stateless. However, such cases are rare and cannot in any way compensate for the lack of a dedicated statelessness determination procedure.

3.2 DECISION TO DETAIN AND PROCEDURAL GUARANTEES

> "All courts hearings were a mere formality.
>
> **Hussein Ahmed** from Somalia, who on three separate occasions served the maximum detention term

Decision to detain

The circumstances stateless persons face, including their vulnerability due to statelessness and the difficulty to remove them from the territory of Ukraine, are important factors that should be taken into account when deciding to detain and determining the legality of detention. In order for this to be done, statelessness should be determined as part of the detention decision-making process. The failure to do so, can result in detention which is unnecessary, arbitrary and unlawful. In the absence of a dedicated statelessness determination procedure, the failure of immigration detention authorities to routinely assess whether the persons they intend to remove are indeed removable, and the subsequent detention of such persons is a matter of serious concern.

Section 3 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" clearly defines the categories of foreign citizens who are deemed to have violated immigration rules of Ukraine and the procedure for their removal. Accordingly, 'illegal' migrants, foreigners and stateless persons who have committed a crime, an administrative or another offence shall be liable as prescribed by law. Contrary to wide-spread opinion in Ukraine, detention is not a punishment for an offence committed, but a preventive administrative measure. The MDC is meant as temporary accommodation of foreigners and stateless persons in case:

- they have failed to return with no reasonable excuse, or there are grounds to believe that they will avoid the execution of a decision to return;
- the administrative court has adopted a decision to deport them;
- they have entered Ukraine in accordance with the international treaties on re-admission;
- they have no legal grounds to stay in Ukraine and are subject to compulsory removal.[64]

A person is detained for the period sufficient for the removing authority to take all necessary steps to remove the person. Detention of more than 18 months is prohibited. In practice though, the situation is more complicated and MDCs in effect often serve a punitive purpose. In 2015, 65–70% of detained foreigners were not removed, and the detaining authority did not even attempt to send them to their country of origin. Moreover, persons who cannot be removed due to the absence of consular offices, direct transport links with their countries, absence of documents, or their statelessness, are often detained. The courts are eager to adopt decisions to remove, even when they know in advance that removal is not possible.

This points to a system in which the decision to detain is not based on relevant legal principles of legitimate purpose, necessity, non-discrimination, proportionality, non-arbitrariness etc. rather, the purpose of detaining some persons appears to be punitive.

In accordance with the data from the R2P/HIAS for 2015, two stateless persons were placed in the Chernihiv MDC (three persons were actually detained there). Following a meeting with the stateless detainees, it was found that both had been born in Moldova, had entered Ukraine irregularly, and had been living with no documents for a long time. After examining their personal files, it was clear that the representatives of the SBGS who had detained the applicants had been doubtful of their status for a long time. There were several corrections in the Citizenship columns of their detention reports. Initially the officers

decided to register the persons as citizens of the Republic of Moldova, then as stateless persons and finally as belonging to unrecognised Transnistria.[65] Their cases were eventually considered by the courts, and in one case the court established that the person was stateless,[66] whereas in the other, the court ordered removal to Transnistria.[67]

This is an example of how detaining authorities deal with statelessness, with significant ignorance of the issues at hand and related challenges.

The above example was one in which border guards and subsequently the court confirmed that a detainee was indeed stateless. However, in most cases that R2P/HIAS is aware of, stateless persons are incorrectly categorised as citizens of other countries, in particular citizens from Russia, Belarus, Georgia and Kazakhstan.

For example, **Oleksandr Chornyy**, a stateless person from Chechnya, lived in Ukraine for more than 20 years without documents. He worked unofficially in the border area and once during a regular documents check, police found he was undocumented and transferred him to the SBGS. He was then detained in the MDC, without any assessment of his removability or his possible statelessness having been conducted. After seven months in detention, SBGS issued a written confirmation that Oleksandr could not be deported as the Russian Federation had not confirmed his citizenship. The MDC's administration continued his detention and only after the court decision, which recognised his further detention to be illegal, was he released.

Procedural guarantees

> "There are no sufficient measures of protection. It is a global problem in Ukraine. There is no way for human rights here. Everything is just a show. They take people to court just to complete the procedure. The judge is always on the side of border guards or other governmental officials. I requested a lawyer for myself when the border guards detained me. They didn't allow me to meet with any lawyers. Many people are limited in legal protection even if they have money or relevant documents. I had a resident permit at the time of my second detention. I should have had to pay a fine only. However, they decided to punish me by imprisonment. They always make me feel deprived of any rights. Why is Ukraine punishing me so hard for my desire to live in this country if I am not able to do anything here except breathing its air?
>
> R., 24 y.o. male from Afghanistan, serving the third month of his second time in detention.

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.[68] Thus this law has not been harmonised with the legislative amendments on detention applicable from 18.06.2016, which requires a court order for such detention.[69]

In accordance with the provisions of the Law of Ukraine "On Enforcement of Decisions and Application of the Case Law of the European Court of Human Rights",[70] courts shall also apply the case law of the ECtHR as a source of law and take into consideration provisions of the ACPC.

The positive provisions introduced concerning immigration detention procedures of foreigners and stateless persons are: mandatory participation of the person in a court hearing and exemption of plaintiffs from paying court fees for the appeal against their deportation in all instances. The term to appeal the decision of the first instance court is only five days. Given the vulnerable position of persons subject to immigration detention, appeal within this timeframe is often impossible. The right to be personally present at the court hearing is not always respected. For example, in a case considered by the Chernihiv District Administrative Court concerning the expulsion of an individual to Tajikistan, the court stated that "[t]he defendant did not appear at the trial, a statement on the case's consideration in his absence was received, he did not deny the lawsuit."[71] An appeal by the foreigner in this case was rejected because he missed the deadline. This case confirms the general trend of national courts failing to carefully study each case and instead, siding with state agencies in deportation cases.

Legal aid is provided by Ukrainian law for persons of concern from the moment of arrest. Implementation of the right to free legal assistance in practice is not always smooth. 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. UNHCR executive partners and International Organisation for Migration (IOM) advisors hold weekly meetings with detainees to monitor general conditions of detention and provide legal aid to mandated groups of persons.

From 1 July 2015, the right to secondary legal aid was granted to asylum seekers to challenge the rejection of their claims. Recently (since June 18, 2016) this right was also granted to foreigners and stateless persons detained for identification and removal, from the moment of arrest. However, state legal aid centres did not have a budget for interpretation until July 2016.[72] Thus, even a simple call to arrange an appointment with a lawyer was a great challenge for foreigners. Given how recent this development is, there still is not an adequate record of providing legal aid to persons covered by this research, to judge its effectiveness. In 2016, UNHCR provided Legal Aid Centres in key provinces with training on the amendments to detention legislation. They also provided the Centres with leaflets for asylum seekers on Ukrainian asylum procedures as well as application forms in different languages.[73] Assistance in filing such application forms is a primary legal aid, which advocates are supposed to provide to all applicants who are to be officially admitted to refugee status determination procedures.

3.3 REMOVAL AND RE-DOCUMENTATION

> "I am not aware of rights and power of my Embassy in Ukraine. They have very symbolic work in Ukraine. I am almost two years in Ukraine but they never tried to contact or speak with me. When I was in a detention centre for the first time or at the border, they never tried to find out about my problems.
>
> **Sahill Abdulla,** from Afghanistan, serving his second 12-month detention in a MDC

The legislation currently in force in Ukraine provides for various forms of removal proceedings. Removal directions automatically follow from the authorities' decision to reject an individual's application for leave to remain, decision to terminate a temporary residence permit or a decision to revoke a permanent residence permit. Previously, Ukrainian legislation regulated the removal process and some aspects of re-documentation only in the context of 'voluntary return', 'enforced return' and the so called 'enforced deportation' proceedings.

Rejection of leave to remain

Article 17(3) of the Law "On Legal Status of Foreigners and Stateless Persons" and complementing legislation including by-laws, stipulates that an individual whose application for leave to remain was not granted by the authorities must leave the territory of Ukraine immediately. A rejection may be due to the lack of full compliance of an application with all the formal eligibility requirements or a lack of maintenance. The by-law establishing the implementation procedure for this provision, substantially extends the list of grounds to reject an application: public health, national security considerations, authorities suspicion that the real reasons for remaining in Ukraine differ from those declared in the application and even failure to comply with a judicial decision or pay a fine at any given time in the past.[74]

Ukrainian legislation does not provide for any form of leave outside these rules, which means that a mere formality may render a foreign national or a stateless person without legal stay rights, despite his or her personal connection to Ukraine. A foreigner applying for any form of residence permit must submit his/her valid travel document with the application as well as the full set of documents necessary for 'place of residence registration' (formerly known as 'propiska'). In practice, if an application for leave to remain does not satisfy all requirements stipulated by the regulations, it simply will not be considered and the foreigner will sooner or later find himself in an irregular situation. Undocumented stateless persons and those at risk of statelessness who face problems in accessing administrative and/or consular services of their countries of origin would be automatically barred from accessing any of the regularisation procedures, except for the international protection status determination.

David testifies that in the 1990s when he still had his Soviet passport, which was at the time recognised as a valid ID and could serve as a travel document within the former USSR, he could not regularise his stay in Ukraine because he did not own a house and there was no one who could provide the full set of documents required to meet the requirement of the place of residence registration. The lack of a place of residence registration stamp in his passport led to him being regarded by the police as an offender infringing migration rules. He recalls that virtually every time police officers asked for his ID on the street he ended up in police custody: "In the 90s I must have visited every monkey house[75] in Kyiv". Ukrainian law no longer allows for migration rules' transgressors to be detained in police custody. David may now be able to fulfil the residence registration requirements to obtain a temporary residence permit as he was able to buy a house in Kyiv. However, he no longer has a valid passport to submit with his application, as Soviet passports are no longer recognised in Ukraine.

National legislation does not specify any formal procedure for the removal of individuals in such cases: it does not provide a timeframe within which such person must leave the territory, nor does it envisage any formal removal directions. In some cases that have come to attention of R2P/HIAS, immigration authorities simultaneously issued a separate 'enforced return'

decision alongside the rejection of their leave to remain application. In other cases, unsuccessful applicants were simply orally informed that they must leave Ukraine within five days.

The cited five-day period, stems from the timeframes that were set for another form of removal proceedings by the previous (1994) edition of the Law, which was superseded by the current edition. Article 32(6) of the previous edition of the Law stipulated that state agencies authorised to issue 'deportation' orders (the procedure corresponding to the current 'enforced return' that was informally referred to by local officials as 'voluntary deportation') against non-nationals may allow individuals subject to such decisions to remain in Ukraine while their departure is arranged for a period not exceeding five days. Anecdotal data available to R2P/HIAS from various testimonies suggests that in practice the authorities may continue to apply the five-day rule long after it was abolished because the current legislation does not regulate the status of a person whose application for leave to remain is refused, including departure arrangements, nor does it regulate these issues with regard to the so called 'enforced return procedure'.

Cancellation of residence permits

Persons released from the MDC due to termination of detention are entitled to apply to the SMSU and receive temporary residence in Ukraine. A temporary residence permit is issued for a period for one year and is renewable for one year periods.[76] A temporary residence permit does not preclude the possibility of re-detention of the person, because it can be canceled by the SMSU unit that issued it, in particular if:

- it obtains information that the permit was issued on the basis of false information, forged or invalid documents;
- the actions of the person threaten national security, public order, health, rights or the lawful interests of Ukrainian citizens and other persons residing in Ukraine;
- the competent authority decides to forcibly return or deport the foreigner/stateless persons;
- on another grounds provided by law.[77]

In 2015 SMSU widely used the practice of cancellation and withdrawal of the temporary residence permits.[78] The cancellation of residence permits and re-detention is further addressed in section 3.8. of this report.

Voluntary return

The law provides that rejected asylum seekers and other foreigners and stateless persons who have no legal grounds to stay in Ukraine or who cannot depart from Ukraine due to lack of funds or loss of a passport, may voluntarily return to their country of origin or a third country, including with the assistance of international organisations.[79] The decision on voluntary return shall be made by the SMSU, after receiving applications of foreigners or stateless persons. Once the decision on voluntary return has been made, the person receives a certificate which provides for temporary stay on the territory of Ukraine for the period – not exceeding 60 days – necessary to implement the voluntary return procedure.

Voluntary return is not possible if there is a decision for forcible return or deportation. A person who is in detention, can assist authorities in the enforcement of deportation (to buy tickets, get documents to return). Such actions, however, do not alter the legal status and do not eliminate the negative effects of deportation, such as an entry ban. According to official statistics, 26 decisions on voluntary return were taken by SMSU in 2015.[80]

Forced return

Foreigners and stateless persons may be forcibly returned to their country of origin or a third country if their actions violate the law on legal status of foreigners and stateless persons or are contrary to the interests of Ukraine's national security or public order, or if it is necessary for safeguarding public health, rights and lawful interests of the citizens of Ukraine.[81]

The SMSU, SBGS and SSU are authorised to take decisions on enforced return, but are obligated to notify the state proscecutor within 24 hours of the reasons for the decision. The decision to enforce return shall indicate the period during which a person must leave Ukraine (not exceeding 30 days). The decision to enforce return may be accompanied by an entry ban to Ukraine for three years, and may be appealed in court. The foreigner or stateless person is solely responsible for leaving the territory of Ukraine within the period specified in the decision. When the decision on forced return is made, visas are revoked and documents proving lawful stay in Ukraine are seized. Forced return does not apply to under-aged foreigners, stateless persons and those covered by the asylum law. In practice however, given the lack of a statelessness determination procedure, there may be stateless persons who are affected.

Deportation

Deportation envisages a chain of actions: identification of the offender, placing him/her in an MDC, documenting the expulsion, and escorting the person to the border or to the country of origin.[82]

If a person who is to be deported does not possess an identification document (which is the norm), the relevant authority which initiated a procedure should take measures for the person's identification and documentation. In practice the authorities send requests

to diplomatic missions or consulates with two colour photos for each person who is to be identified.[83] 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 country of origin, the requests are sent repeatedly. Instructions in relation to this process are included in the Instruction on Forcible Return and Deportation.

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. Because of overload or lack of organisation, authorities often 'forget' about a detainee as soon as they are transferred to an MDC. Such oversight and negligence is unfortunately not monitored or checked by the courts. This is not in line with Ukraine's obligations under the ECHR, which demands that the state carries out active efforts in due diligence to secure a detainee's deportation.

3.4 ALTERNATIVES TO DETENTION

Detention is a last resort to be applied only in exceptional circumstances established by law; it shall comply with human rights standards and be subject to regular judicial control. Consequently, the decision to detain must comply with the principles of necessity, reasonableness and proportionality (among others). These principles require the state to exhaust all less restrictive alternatives before finally resorting to detention. However, in practice, alternatives are seldom considered first.[84]

In accordance with the Law of Ukraine "On amendments to some legislative acts of Ukraine as to improvement of provisions of judicial protection of foreigners and stateless persons and regulation of some issues related to counteraction of illegal migration" which came into force on 18 June 2016, some alternatives to immigration detention were introduced. During a panel discussion of the Draft Law, a large number of alternatives were proposed, but only the following two were included in the final Act:

1. Posting of bail for the person by an enterprise, institution or organisation (which according to the ACPC are considered by the court as "those that deserve special trust". Failure of the guarantor to meet the obligations imposed by the court, entails an administrative fine);
2. Imposition of the obligation to post bail on the foreigner or the stateless person (the bail amount is determined by the court in each case on the basis of property and family status of the foreigner/stateless person).

By comparison, in criminal proceedings there are four alternatives to imprisonment.[85]

Moreover, the Law establishes that posting of bail may not be applied to foreigners and stateless persons on whom such measures have already been imposed, or who – according to available information – have participated in preparation and/or execution of terrorist attacks. In accordance with the Law, the listed alternatives to immigration detention may also not be applied to foreigners and stateless persons who have committed any offence under the laws of Ukraine on border control.

Under the existing bail provisions, foreigners or stateless persons are obliged to regularly report to designated officials according to a schedule established by the court, to obtain official permission to leave the place of their temporary residence, and to notify the designated official of any change regarding their place of residence immediately.

It must be noted that the very limited availability of alternatives to detention is 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. The list of 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 suspects in criminal proceedings.

3.5 CHILDREN, FAMILIES AND OTHER VULNERABLE GROUPS

Article 3 of the EU Returns Directive defines the following groups as vulnerable: "minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence" and Article 14(1)(d) states that removal proceedings should take into account the "special needs of vulnerable persons." By contrast, Ukrainian law does not identify any groups as vulnerable.

Children and families

Pursuant to Article 3 of the CRC, "the best interests of the child shall be a primary consideration" in all actions concerning children. The failure of immigration authorities to comply with this principle is of significant concern. According to MDC monitoring data, 41 children were detained for migration reasons in 2015.

Clause 1, Article 17 of Directive 2008/115/EC[86] provides that "families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time". However, 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.[87] However, in practice the principle of separate accommodation of the persons detained on a gender basis prevails. In this respect, 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.

Article 27 of the CRC sets out that "State Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual and social development". Furthermore, Article 31 CRC protects the right of the child to rest, play and participate in cultural life. While the MDC administration provides access to basic school education, the language barrier, the absence of adaptive programmes for children (as the main purpose of detention is removal rather than local integration) and the conditions of detention undermine such actions. Furthermore, detained children have much fewer opportunities to play and participate in cultural life than children of their age who are free.

In R2P/HIAS's experience, immigration detention causes children to feel highly anxious, guilty, angry, inferior, and fearful; their contact with adult family members is broken; there are cases of neurotic personality development and impaired concentration. High school children may develop severe depression with a feeling of inferiority. Children fall behind in their emotional and cognitive development, have communication difficulties and lower chances to gain full-scale education. Detained children often develop somatic, sleep and appetite disorders.[88]

Another challenging issue is the nutrition of infants – those born in detention as well as those detained with their parents. If a mother is able to breast-feed her baby, the baby's nutritional needs are addressed. But if this is not possible, the child's nutrition needs are undermined, as MDCs do not stock formula for infants. In 2014, the Volyn MDC failed to provide formula for a newborn baby for ten months. UNHCR's Kyiv office finally took responsibility for providing the infant with formula, at the request of the MDC. When field research was being conducted for this report, the MDC was again looking for charitable assistance to provide formula to a two-month old baby in detention. The problem is one of bureaucracy with payments and gaps in legislation.[89] Furthermore, baby diapers are not included on the list of necessary items for detainees, set out in the Standards on Housing and Medical Provision for migrants in MDCs.[90] This is contrary to the obligations of the state to ensure that detention conditions are compatible with respect for human dignity and that "health and well-being are adequately secured."[91]

Special attention should be paid to the issue of children's age identification. In accordance with the Instruction on detention in the MDC,[92] foreign children separated from their families shall not be detained. However, in accordance with the national laws,[93] the procedure for the child's age identification may be initiated by the migration service only following receipt of the asylum application in accordance with the prescribed procedure. The situation with the unaccompanied foreign or stateless minors who do not intend to seek refuge in Ukraine is even more complicated, as they are not covered in the legal framework of 'age identification'. In 2014, as a result of this gap, five people detained for a long time complained that they had been mistakenly identified as adults by the SBGS. On the basis of documentary evidence, the court of appeal confirmed two of the detainees were minors from Afghanistan.[94] In 2015, the court of appeal confirmed the erroneous age identification by the SBGS of an unaccompanied minor citizen of Somalia. Furthermore, also in 2015, three citizens of Vietnam, two of whom were evidently minors, complained against the officers of the SGBS who wrongly identified them as members of the same family, a father and two sons. In the same year, there was a case of erroneous identification of two citizens of Afghanistan as brothers, when one of them was an unaccompanied minor. A key concern with the legal framework is that, after the first-instance court adopts a decision on compulsory deportation from Ukraine, there is no opportunity for persons claiming erroneous age identification to initiate an age identification procedure by means of psychological and physiological age assessment if there is no proper documentary evidence. Consequently, there are regular violations in the form of long-term immigration detention of unaccompanied minors.

Other vulnerable groups

The disabled, elderly, pregnant women and those with special medical needs and vulnerabilities face similar difficulties and challenges, which are further elaborated on in the ENS Toolkit.[95]

In Ukraine, immigration detention of people with mental or physical disabilities is all too frequent, and MDCs often lack the resources to provide detainees with adequate medical attention and care. Immigration detention exacerbates existing mental and physical health issues and may cause additional widespread and serious damage to the mental and physical health of detainees.[96] For this reason, persons who suffer from mental disability should not be detained. In some cases, the continued immigration detention and failure to seek alternatives to detention for asylum-seekers and migrants with mental

or physical disability may amount to torture and cruel, inhuman or degrading treatment or punishment.[97] While basic medical care is free for detainees, any additional medical services and medical examinations are provided for a fee. Detainees, who have no money, can only rely on humanitarian aid. However, if the medical facilities near the MDC cannot provide the necessary medical care, the prospects for the detainee are poor. Such detainees are not transferred so they may access treatment, and it is up to the management to find solutions to such situations on a case-by-case basis.

The Law of Ukraine on Fundamentals of Ukraine on Health Care sets the main principles of national healthcare. Accordingly, patients have the right for qualified medical help, which includes the right to choose a doctor (and seek second opinion) and the right to choose their method of treatment.[98] However, detainees are not able to enjoy these rights due to restrictions on their freedom of movement combined with the limited resources available at MDCs to cater to their needs. Thus, many vulnerable detainees in need of additional or specialised medical care go without it. As an example of the bureaucratic barriers to healthcare, in 2012, a pregnant woman who needed specialised healthcare was only transferred from an MDC (where she was not receiving healthcare) to an open temporary accommodation centre for refugees after a joint monitoring visit of international organisations, NGOs and relevant authorities.[99] However, there have been no cases of transferring detainees out of the administrative region (oblast) of the MDC due to the medical needs of detainees. Furthermore, detention centres are not disability friendly and have no facilities that are designed for disabled or elderly people to use.

The Office of the High Commissioner for Human Rights (OHCHR), in its Recommended Principles and Guidelines on Human Rights and Human Trafficking recommends under principle 2(6) that trafficking victims should under no circumstances be ever held in detention.[100] Accordingly, an Order of the Ministry of Home Affairs instructs MDCs to release victims of trafficking from detention after verification of their status and obtaining proper confirmation from a court or relevant governmental authority.[101] However MDC staff are not obliged by internal regulations to identify victims of trafficking among all detained migrants and do not have the skills to do so. At present, NGOs and UNHCR can only provide legal consultation to such people during joint monitoring visits. This is insufficient, given that many victims of trafficking are mentally and physically traumatised by their experience.

The Practical Manual issued by Association for the Prevention of Torture (APT), International Detention Coalition (IDC) and UNHCR on monitoring immigration detention states that any monitoring mechanism should be "aware that asylum seeker and migrant detainees may have been subjected to various forms of ill-treatment before their departure from their home country and/or before detention, during arrest or transfer." This makes them vulnerable to further victimisation, and requires "special care and attention from the authorities but also from monitors in the course of their interaction with them." Re-victimisation – such as further torture while in detention – and secondary victimisation – such as being aggressively interrogated about their previous torture – should be avoided at all costs.[102] Detaining authorities have shown no vision or intent to identify and protect victims of ill-treatment. The experience of trauma of such persons is seen as irrelevant to the fulfilment of expulsion orders.

3.6 CONDITIONS OF DETENTION

> "I am not a criminal. I am an educated person, I must have more rights. This detention looks like criminal detention but I am not a criminal.
>
> **Sahill Abdulla** from Afghanistan, serving his second 12-month detention

While stateless persons are not detained in separate immigration detention facilities and thus face the exact same conditions as other detainees, the fact that they are more likely to be unreturnable and therefore detained for the maximum term, means they are detained unnecessarily and are likely to endure the conditions that do prevail for longer periods of time.

Article 10(1) ICCPR provides that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Article 4(1) of the Optional Protocol to the Convention Against Torture (OPCAT) requires state parties to allow visits to detention facilities in order to ensure the protection of detainees against torture or any other form of inhuman or degrading treatment while they are detained.[103] Article 19, on national preventive mechanisms (NPMs), requires states to examine the treatment of detainees regularly, in order to strengthen their protection against torture and other forms of cruel, inhuman or degrading treatment.

Ukraine became a state party to the OPCAT in 2006,[104] and designated its Ombudsman as NPM in 2012.[105] A specific NPM Unit has since been established. The NPM Unit carries out its functions in collaboration with civil society activists.

According to MDC rules, detainees are provided separate accommodation on grounds of gender, age and, as the case may require, religious, ethnic and other bases. There are also rules in place on compliance with behaviour codes, such as ensuring necessary living conditions,

medical care, meals and the enjoyment of legal rights and freedoms.

Detainees should enjoy free movement within the limits established by the MDC administration, usually in living quarters and yards only. The Chernihiv MDC yard for males is entirely asphalted, making it unsuitable for use on hot summer days. The Volyn MDC has many green zones and is more suited for leisure activities. Detainees are followed by the security guards when going to another MDC building. Men require a permit of the senior security guard to enter the women's building. The laws establish that detainees may leave the centre with permission of the MDC administration and accompanied by security guards. However, such permission is usually granted only in emergencies (for instance, a visit to a specialised medical treatment facility).

> "In Zhuravychi [MDC] there were good conditions. In Rozsudiv [MDC] – poor conditions. There the guards could prohibit us watching TV. They could hit us with a baton. We were not allowed to sleep during the day. If someone complained to the head – he could face problems with the guards.
>
> **Hussein Ahmed** from Somalia, speaking about his experience in detention

Every MDC has a sports ground with elementary training equipment, some of which has been improvised by detainees (for example they use soda bottles filled with sand as free weights). Every morning, the MDC security guards and administration check the persons detained in accordance with a list, inspect their clothes, shoes and personal items. They also check the condition of the rooms, alarm system, etc.

> "Most of all I do not like the regular check-up of the guard. A few times per day, they open my room and shout our names. They do not knock on the door. They do not care for my sleep or rest at all. I am not allowed to leave the centre; it looks like a cage. The second problem is that I simply waste my life here. There is nothing to make myself busy, no study, no work.
>
> **Mohammad Gazrat** from Afghanistan, second time in detention

Detainees are provided with individual beds, bed clothing, underwear, personal hygiene products and, if required, seasonal clothes. International organisations such as IOM and Red Cross also provide detainees with such needs. The period of use for some items is unrealistically long (for example each pair of gloves had to be used for 3 years, winter shoes – 4 years, jacket – 5 years, etc.)[106]

The MDC provides permanent access to toilets and showers, however the usage of hot water may be limited.

Detainees live in rooms of three to eight people. They have the right to undisturbed sleep between 10 p.m. and 6 a.m. (11 p.m and 7 a.m. during public holidays). One MDC has separate rooms for religious practises. While MDC Instructions require that premises are equipped with a computer room with internet access, there are no such rooms.

Detainees have right to have and use their own cellphones, only if they do not have cameras. However, as internet connectivity is a problem, detainees do not benefit from free or cheap calling services such as Viber and Skype. While each MDC also has landlines for detainees to use, they are usually in a state of disrepair. MDCs have libraries, but only few books in foreign languages.

The most recent report of the NPM on their visit to the Chernihiv MDC (April 2016) recorded a number of violations of sanitary norms, including stench and fungus growth on walls. Violations to the right to privacy were also reported.[107] This information confirms the crucial importance of independent monitoring of the detention facilities.

Detainees are entitled to three hot meals a day.[108] However, this regulation was adopted without consulting with the MDC and the centres for temporary accommodation of refugees (CTAR). Consequently, no alternative meals are provided, in violation of certain religious traditions. For instance, the daily ration for children includes bacon, and for adults — sausage products which also usually contain pork. In addition, the total daily ration for detained adults has been decreased from 2,846.73 kcal[109] (as prescribed by the previous regulation) to 2,537 kcal, which is lower than what those serving criminal sentences are entitled to. On April 16, 2015, there was a strike of detainees of the Volyn MDC due to their strong dissatisfaction with the new food standards.[110] Meals are one of the most contentious issues during each monitoring visit to the MDC. As different national, ethnic and religious groups are detained, their food preferences vary substantially. Detainees emphasise that they need more rice, spices and vegetables. On the other hand, the shared households in the MDC are equipped with small kitchens. Detainees can cook food using products they buy themselves. However, migrants often complain that these kitchens are locked or run to a very strict schedule. According to the MDC administration, their efforts to grant full access to kitchens failed, as detainees mostly did not clean after themselves. There were also cases of kitchen utensils not being used as intended.

There are, however, some positive aspects to note. Parents are granted unhindered access to the kitchen to prepare their children's meals. Furthermore, MDC administrations adapt the meal plan to the needs of the

detained Muslims during the fasting period by giving them additional meals at night and more freedom in cooking.[111]

As stated above, detainees receive free basic medical assistance. Before they are detained, all persons undergo primary medical examinations and fluorography (for tuberculosis identification). In case infectious diseases are detected in the MDC, patients are placed in isolation wards. If specialised diagnostic procedures are necessary, the detainees are taken to outside clinical facilities.[112] However, as the MDC is a state institution, it may purchase only certified medicinal products of Ukrainian origin. All other medical products have to be bought by detainees. Secondly, detainees often complain that it is impossible to undergo complete medical examination or receive medical aid in the MDCs.[113] They are usually sent to public medical facilities for diagnosis and treatment, and have to pay for these services. As is evident from the above, state policy presumes that detainees can pay for certain essential services. However, foreigners who lack documents are not allowed to get money transfers and can not legally work.

3.7 LENGTH OF DETENTION

> “It was really hard psychologically to be detained, especially for the third time.
>
> **Hussein Ahmed,** 25-year-old man from Somalia, who was detained for the maximum allowable term three times (first for six months, and then twice for 12 months each)

Table 4: Evolution of immigration detention regulations in Ukraine over the period 2003 – 2016

	2003 – 2011	2011 – 2016	Since 18 June 2016
Detention Procedure	On basis of administrative decision of the Ministry of Interior, Security Service of Ukraine and State Committee for State Border Protection of Ukraine	By decision of the Administrative Court	By decision of the Administrative Court
Maximum term	6 months	12 months	18 months (for 6 months initially with possible extension)
Periodical judicial control of the lawfulness of detention	No	No	Yes (every 3 months after initial 6-month period)

Recent amendments (in June 2016) to the migration law substantially reform certain aspects of detention, including its duration.[114] Accordingly, the initial detention term may not exceed six months. If there are conditions, under which deportation of the person cannot be provided for within six months, or the decision on the application for granting refugee or complementary protection status cannot be adopted, this term may be extended up to a maximum 18 months. In 2003, the maximum period was just six months and this increased to 12 months in 2011. These provisions take the reasons for extention of detention directly from the text of the EU Return Directive[115] and were clearly inspired by the Directive. The impact of this reform is yet to be assessed.

To extend the detention term beyond the initial six months, the detaining authority is required to file an administrative claim at least five days before the expiration of the period. Further extension has to be filed for every three months. These claims must state the actions or measures which have been taken by the authority (subdivision) to enforce the decision on deportation or to examine the application for granting refugee or complementary protection status. The conditions under which removal of the person cannot be performed include:

1. Non-cooperation of the detainee in the course of their identification procedure
2. Failure to receive information from the country of citizenship of the foreigner or the country of origin of the stateless person or the documents necessary for the person’s identification

When a removal decision is taken, the court defines the duration of detention within the legal framework on a case-by-case basis. However, in 2015, the court only once set a maximum term of detention which was shorter than twelve months (before the law was amended).

This process means that initially after six months and subsequently every three months, the necessity (and legality) of detention as well as removal efforts are assessed. However, at the time of writing, this has not yet

happened and so it is unclear how the courts would approach this important process. R2P/HIAS staff continues monitoring the implementation of new legal provisions in practice.

3.8 CONDITIONS OF RELEASE AND RE-DETENTION

At any point during the detention, if it becomes evident that detention is no longer non-arbitrary – for example because the legitimate objective is not being pursued with due diligence, or because the legitimate objective cannot be achieved within a reasonable time period, or detention is no longer necessary to pursue the legitimate objective, or the conditions of detention amount to inflicting cruel, inhuman or degrading treatment on the detainee, – the detainee should be released. Such release may result from proceedings initiated by the detainee, or by the periodical review of detention by the state.[116]

In 2015, 126 persons were released from detention on the ground of expiration of the maximum detention term, which is 35% of the total number of the persons released. IOM claims that at least one in five cases of immigration detention do not conform to the supposed purpose of removal.[117] Such cases can be considered as ungrounded deprivation of liberty in violation of Article 5 of the ECHR, which has been emphasised through ECtHR cases such as *Mikolenko v Estonia*[118] and *M. and Others v Bulgaria*.[119]

The principal grounds for release from detention in Ukraine are set out in Table 5:

Table 5: Principal grounds for release from detention in Ukraine for 2015[120]

1.	enforcement of the decision to remove	55% of releases
2.	expiration of the maximum term of detention	35%
3.	court decision on release or rejection of removal	7%
4.	acquisition of refugee or complementary protection status	2%
5.	legalisation of foreigners and stateless persons in another manner prescribed by law	0.3%[121]
6.	other cases (extradition, transfer to the penitentiary facility, etc.)	0.7%

Under the amended law, from 10 June 2016, release will only be carried out on the basis of a decision of the Appeal court, with the notification for release being sent by the detaining authority to the MDC. Failure to comply with this procedure (if for example, the court order is directly delivered to the MDC by the advocate or by post) means the MDC cannot release the detainee.[122] This amendment contradicts the general principles of Ukrainian law and unnecessarily prolongs the term of detention, as the detaining authority has little interest in monitoring cases that it lost in appeal court.

Additionally, detainees shall be released from the MDC following receipt of a notice of impossibility of removal from Ukraine, due to the absence of a travel document, transport links with the country of origin or for other reasons beyond the scope of control of detainees and the detaining authority. However, this ground for release is ambiguously governed by the national laws. As stated above, today there are two effective regulations which contradict each other as to release from detention upon notice of impossibility to remove. The first, provides for release at any time before expiration of the maximum detention term,[123] whereas the second only provides for release upon expiration of the maximum term of detention.[124] This issue has been subject to judicial proceedings in a case concerning two stateless persons,[125] when the court upheld the opinion that release may occur at any time and shall not depend on expiration of the maximum detention term. However, practice remains divided on this issue.

The 1954 Convention (article 27) requires state parties to "issue identity papers to any stateless person in their territory who does not possess a valid travel document." This provision applies to all stateless persons, including those not staying legally in the country. Furthermore, The Equal Rights Trust (ERT) Detention Guidelines 55 provides: "State obligations towards stateless persons do not cease after release from detention or alternatives to detention. Special care should be taken to address the vulnerabilities of stateless persons who are released from detention and to ensure that they enjoy all human rights which they are entitled to under international law."[126] Therefore, state parties to the 1954 Convention have an obligation to provide documentation and stay rights to stateless persons who have been released from detention.[127]

The persons released from detention upon expiration of the maximum detention term are entitled to apply to the SMSU for a temporary residence permit. However, it is not easy to exercise this right, as one of the conditions for receipt of the residence permit is compulsory registration of the place of residence or stay, which is rather difficult for released detainees. Furthermore, this law makes those released before the termination of the maximum period (e.g. on the ground a notification of impossibility to remove) ineligible to receive a residence permit. 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.

Temporary residence permits are granted for a fixed term of up to one year. However, if the interested authority overcomes the obstacles related to removal, the person may be removed within the term of the permit. Permit holders cannot study or work legally, as they need a long-term visa for this purpose. However, despite these clear

shortcomings, many former detainees prefer applying for this, as it is more accessible with applications being examined within fifteen days and requires only a few documents.

Furthermore, according to the new draft statelessness determination procedure, persons recognised as 'stateless' will only be eligible to obtain temporary residence permits if they already have passports. This requirement – which is unrealistic for most stateless persons – undermines the entire purpose of the statelessness determination procedure, and places stateless detainees at heightened risk of being released into a state of irregularity and consequently being re-detained.

In 2014–2015, those who could have been re-detained because they attempted to cross the border illegally or were transferred to the territory of Ukraine under the re-admission procedure, were not placed in MDCs if they had a valid temporary residence permit. Administrative penalties have been applied to such persons.[128] However, in March 2016, the practice of the SBGS's individual subdivisions changed, so the temporary residence permit for three citizens of Afghanistan was cancelled, and a new decision on their compulsory removal was adopted, followed by their detention.

In general, the cases of re-detention for the first time are rather frequent, though less frequent for the second time. Released detainees whose applications for protection have not been examined or who are not deemed to be the victims of human trafficking, have no rights in Ukraine at all, including the right to stay within its territory.

The current Ukraininan law does not distinguish between foreign nationals and stateless persons who were released from detention because they could not be removed. However, there is a material difference. Foreign nationals who could not be removed may become removeable in the future due to a change in circumstances. But this is highly unlikely for stateless persons. When stateless persons are released, they either receive a temporary residence permit with no attached rights such as to work or study, or they are considered to be 'illegal migrants'. Both options are unsustainable and in violation of the rights to non-discrimination and a host of other rights of stateless persons.

Indeed, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" establishes the exact list of legal grounds for stateless persons' stay within the territory of Ukraine, but these are mostly for those who entered Ukraine legally. For those who have entered illegally and cannot be removed, Article 4 of the Law states that they shall be considered to be legally staying within the territory of Ukraine on a temporary basis for the duration of the circumstances which make it impossible to remove them from Ukraine. These persons shall be issued a temporary residence permit. Thus it is evident that 'temporary residence permits' are part of the 'removal' process and not tools for protection and integration. This makes them not fit for purpose to deal with stateless and non-removeable persons.

4. CONCLUSION AND RECOMMENDATIONS

"Ukraine must change its treatment to foreigners. We can be useful for Ukraine. I know how to do many kinds of work. Or, they must give us documents and allow us to leave Ukraine and go where we want.

Mohammad Gazrat from Afghanistan, second time in detention after attempting an illegal border crossing to the EU

The issue of statelessness in Ukraine has not been paid sufficient attention by government authorities, who have an obligation to identify and protect stateless persons and those at risk of statelessness, including from arbitrary detention. The SMSU, and its regional bodies in particular, has a significant role to play.

In the absence of effective action by state authorities and past experiences of discrimination and harassment by state authorities, stateless persons are often driven by fear to avoid contact with the state, further obscuring the full extent of the problem and its impact. A combination of the failure to identify stateless persons and a lack of awareness of the extent of the problem as well as discriminatory and indifferent attitudes, means stateless persons are likely to be subject to removal proceedings – even when they cannot be removed – and consequently detained for a maximum 18 months, during which the purpose of detention, i.e. removal, is not achieved.

Furthermore, even if the impossibility of removal of the person from Ukraine is established, he or she may be left undocumented by the state, or be issued a temporary residence permit which does not allow the bearer to work, study or otherwise access the rights available to nationals or those with more a permanent status. This makes it impossible for stateless persons to enjoy their rights and increases the risk of them being re-detained. Additionally, the lack of a legal status or right to work means that statelessness pushes people into the margins of society, where they are compelled to take on informal and exploitative work, and face significant financial and other challenges which in turn can push them to committing petty offences.

The European integration course of Ukraine is aimed at achieving "Copenhagen" or EU Accession criteria, in particular, conditions such as stability of institutions, guarantees of democracy, supremacy of law, respect for human rights, respect and protection of national minorities, refugees, and stateless persons.[129] These

targets cannot be reached without the formation of a democratic model of rights based state policy. The priority political task with regard to stateless persons in Ukraine should be to strengthen and systemise the legislative framework, bringing it completely in line with international human rights standards. This includes implementing a statelessness determination procedure – based on the international law definition of statelessness – which will grant status and protection to stateless persons, and ensuring that stateless persons are protected from arbitrary detention. In addition to protecting individual rights, such steps will also help Ukraine achieve its EU integration targets by realising the implementation of international legal standards and adherance to international obligations.

This report has revealed that prevention of arbitrary detention of stateless persons in Ukraine requires various interrelated overhauls to the system and how it is implemented, regarding recognition of the status of a stateless person, issuance of return and removal decisions and imposition of immigration detention. Concrete recommendations for improvement are listed below:

Recommendations related to identifying statelessness

1. The definition of a stateless person in the Law On the Legal Status of Foreigners and Stateless Persons should be amended in line with the 1954 Statelessness Convention, according to which, "a person who is not considered as a national by any State under the operation of its law" is stateless.
2. The draft law, that aims to introduce a statelessness determination procedure should be further improved before being enacted. In particular, the law should ensure that the determination procedure is accessible to all, including those who are subject to removal and detention proceedings; eliminate the requirement that those who have been recognised as stateless, still need to show a valid passport to receive a residence permit; reduce the burden of proof of the applicant; and provide applicants with temporary documentation and status until a final decision is made.
3. Those identified as stateless in Ukraine should be treated in accordance with the provisions of the 1954 Statelessness Convention and international human rights law.
4. The state should take adequate measures to quantify the scale of statelessness in Ukraine and assess the risk of statelessness among particularly vulnerable populations.
5. Existing legislation should be amended to ensure adequate procedural safeguards for those deprived of Ukrainian citizenship, and to regulate the legal status of individuals who successfully challenge these decisions in court.

Recommendations related to decisions to remove and to detain, ongoing detention and procedural guarantees

6. Statelessness is a juridically relevant fact in any decision to remove or detain and the implementation of such decision. Failure to adequately assess and consider statelessness, can render such a decision arbitrary and disproportionate. Therefore, statelessness must be identified at the point of the decision to detain and on a continued basis. In removal proceedings, where there is lack of clarity around the nationality of an individual, or there is reason to believe that an individual may be stateless or at risk of statelessness, they should be immediately directed to a dedicated statelessness determination procedure. Failure to do so is likely to render detention arbitrary.
7. 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 is unlawful and must end.
8. Detention should always be implemented a last resort, only when necessary, after all alternatives (starting with the least restrictive) have been exhausted. The initial decision to detain should motivate explicitly why an alternative is not being applied. The current alternatives to detention – of bail – are inadequate and not fit for purpose. Furthermore, the financial sanctions imposed on guarantors and high cost of bail further limit the use of these alternatives. Ukraine should therefore introduce new alternatives to detention that are fit for purpose, in line with respect for human rights, and which are considered and exhausted first, before, in exceptional cases, detention is resorted to.
9. The procedural guarantees in place to protect persons from arbitrary detention are inadequate. Inconsistencies between the law and Constitutionally protected rights must be addressed. Furthermore, the right to be heard in court must be fully respected at all times. While reforms to legal aid provision are welcome, all stateless persons, including undocumented persons should be entitled to legal aid. Steps should be taken to ensure that legal aid is not denied and free interpretation is provided to all persons subject to removal and detention proceedings. Finally, the timeframe to appeal decisions should be extended well beyond the present five day limit.
10. Vulnerable persons should not be detained and alternatives to detention should be explored instead. To that end, identification of vulnerability is crucial, at the outset and on an ongoing basis. Victims of torture and trafficking and mentally and physically disabled persons should be identified and protected, including by not detaining them. Children – unaccompanied and accompanied – should not be detained, nor should children be separated from their families. Age

assessments should be open to all persons subject to detention and not only to asylum seekers. Furthermore, age determination should be carried out with due diligence and detainees should have the right to challenge the assessment of their age.

11. Detention conditions for all, including the stateless, must be improved. In particular, the quality of medical facilities for detainees – including ensuring that they have access to facilities outside of detention centres, nutrition for babies, the state of detention facilities and the provision of culturally appropriate meals must be guaranteed. Detainees should not have to pay for essential services including medicine and culturally appropriate food.

Recommendations related to removal, release from detention and re-detention

12. Law reforms which require judicial oversight to assess the necessity and legality of detention and to extend detention beyond the first six months and subsequently in three month blocks (for a total of no more than 18 months) should be implemented in line with principles of international human rights law. If at any point, it becomes evident that detention is no longer non-arbitrary – for example because the legitimate objective is not being pursued with due diligence, or because the legitimate objective cannot be achieved within a reasonable time period, or detention is no longer necessary to pursue the legitimate objective, or the conditions of detention amount to inflicting cruel, inhuman or degrading treatment on the detainee – the detainee should be released immediately.
13. The June 2016 amendment to the law, according to which release from detention is only to be carried out on the basis of a decision of the Appeal court, with the notification for release being sent by the detaining authority to the MDC should be revisited, as it prolongs the term of detention unnecessarily, until the detaining authority implements the court order. Instead, court orders should be directly communicated to the MDC for implementation.
14. Ambiguities in the grounds for release of detainees who cannot be removed should be addressed through law reform. The proportionate position which is compliant with the right to liberty, is that release should be sanctioned at any time before expiration of the maximum detention term. This position, which has also been upheld by the courts, should be consistently implemented in practice.
15. The issuance of temporary residence permits to former detainees who cannot be removed, while a positive step, must be reviewed against Ukraine's international obligations. In the first place, the barriers to obtaining temporary residence permits – 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 – should be abolished. Furthermore, temporary residence permits should be granted for longer than one year, and should give permit holders stay rights including the right to study and to work. Until these steps are taken, temporary residence permits will not serve to protect vulnerable persons but rather, to maintain their vulnerability with a view to their unlikely removal.
16. The draft law, according to which, persons recognised as 'stateless' will only be eligible to obtain temporary residence permits if they have passports must be amended. To protect released stateless detainees from redetention, all persons recognised as being stateless should be eligible to receive a residence permit, regardless of whether they have a passport or not.
17. Immigration detention can only be used as a proportionate means of achieving a legitimate objective. Otherwise, it is an unjust punishment of the detained person. The Ukrainian authorities should take actions to implement the above listed measures so that the arbitrary detention of stateless persons is avoided.

Recommendations related awareness raising on statelessness in Ukraine

18. Government officials (detaining authorities, judges, border guards etc.) should receive adequate training on statelessness, the right of stateless persons and state obligations to protect them from arbitrary detention and other human rights violations. Such trainings may also be opened to other professionals (including lawyers and social workers).
19. The state is encouraged to conduct an extensive information campaign to highlight the issue of statelessness in Ukraine.

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APPENDIX

Appendix Table 1: Indicators of the State Migration Service of Ukraine activities for 2015[130]

	Indicator	Units	
1.	Citizenship of Ukraine established on the basis of court decisions	Persons	182
2.	Established belonging to the citizenship of Ukraine on the basis of records "Citizen of Ukraine" (under p. 3 of Art. 3)	Persons	46
3.	Persons who have acquired the citizenship of Ukraine by birth (Art. 7)	Persons	6597
4.	Persons who have acquired citizenship of Ukraine by territorial origin	Persons	3745
5.	Persons who have acquired the citizenship of Ukraine on the basis of agreements on a simplified procedure for change of citizenship	Persons	84
6.	The citizenship of Ukraine granted by the Decree of President of Ukraine	Persons	978
7.	Resumption of the citizenship of Ukraine (Art. 10)	Persons	6
8	Acquiring the citizenship of Ukraine, namely:	Persons	952
8.1.	Children due to adoption (Art. 11)	Persons	12
8.2.	Due to the establishment of the child care or foster care, placement in a children's institution or health care facility, the family-type orphanage or foster family (Art. 11)	Persons	166
8.3.	Recognized by the court as incapable, due to the establishment of guardianship by a citizen Ukraine (Art. 13)	Persons	3
8.4.	Child due to citizenship of Ukraine of the parents or one of them (Art. 14)	Persons	764
8.5.	Due to the recognition of parentage or establishment of paternity or maternity (Art. 15)	Persons	7
9.	Certificates of registration of the citizenship of Ukraine issued	Pcs	12779
10.	Temporary certificates of the citizen of Ukraine issued	Pcs	427
11.	Citizenship suspended by Decree of President of Ukraine	Persons	49
12.	Place of residence registered	Persons	1539512

	Indicator	Units	
13.	Place of residence registration discontinued	Persons	1136401
14.	Place of residency registered	Persons	326462
15.	Certificates on registration of place of residence /residency issued	Pcs	185341
16.	National passports of Ukraine issued	Pcs	947847
17.	Permits to leave abroad for permanent residence for citizens of Ukraine issued	Persons	11345
18.	Returned to Ukraine	Persons	1687
19.	According to the Code on Administrative Offences for the 2015 administrative charges brought against persons, including:	Persons	387499
19.1.	Art. 197 "Living in Ukraine without a passport or without registration of residence"	Persons	273677
19.2.	Art. 198 "Deliberate destruction or loss of the passport through negligence"	Persons	84293
19.3.	Art. 199 "Admission of residence without a passport"	Persons	8736
19.4.	Art. 200 "Hiring without a passport"	Persons	2
19.5.	Art. 201 "The illegal seizure of the passports and acceptance the passports of a pledge"	Persons	9
19.6.	P.1 of Art. 203 "Violation of the rules of stay in Ukraine and transit via the territory of Ukraine by foreigners and stateless persons"	Persons	16017
19.7.	Art. 204 "Violation of the procedures of job placement, admission for education, provision of habitation, registration or de-registration of foreigners and stateless persons, and of execution of documents for them"	Persons	221
19.8.	Art. 205 "Failure to ensure timely registration of foreigners and stateless persons"	Persons	4410
19.9.	Art. 206 "Violation of the procedures of providing foreigners and stateless persons with habitation, means of transport, and promotion in provision of other services"	Persons	134
20.	Violators of the migration law fined	UAH	21,127,434
21.	Foreigners and stateless persons with refugee status in Ukraine as of 01 January 2016, including:	Persons	2487
21.1.	Male	Persons	1717
21.2	Female	Persons	770
22.	Foreigners and stateless persons with complementary protection status in Ukraine as of 01 January 2016, including:	Persons	598
22.1.	Male	Persons	465
22.2	Female	Persons	133
23.	Requests for readmission in Ukraine received	Persons	452
24.	Requests for readmission approved	Persons	342
25.	Requests for readmission from Ukraine sent	Persons	1
26.	Readmitted from Ukraine	Persons	0
27.	Immigrants registered	Persons	250933
28.	Permanent residence permits issued	Pcs	28111
29.	Denials in issuance of the permanent residence permit	Pcs	114
30.	Permanent residence permits withdrawn	Pcs	4293
31.	Registered foreigners and stateless persons (temporary) as of 01.01.2016	Persons	75252
32.	Temporary residence permits issued	Pcs	24241
33.	Temporary residence permits prolonged	Pcs	31084
34.	Denials in issuance of the temporary residence permit	Pcs	33

Indicator	Units	
35. Temporary residence permits cancelled	Pcs	11424
36. Temporary residence permits withdrawn	Pcs	4980
37. Period of stay for foreign nationals and stateless persons prolonged	Persons	13724
38. Denials in prolongation of period of stay	Persons	24
39. Shortened temporary stay term for foreigners and stateless persons	Persons	61
40. Immigration permits issued	Pcs	16662
41. Immigration permits cancelled	Pcs	3155
42. Children separated from their families, who announced their intention to apply for recognition as a refugee or a person in need of complementary protection in Ukraine identified	Persons	16
43. Persons placed in open Temporary Accommodation Centers since the beginning of 2015	Persons	63
44. Persons residing in open Temporary Accommodation Centers since the beginning of 2015	Persons	231
45. Persons placed in the Migrant Detention Centers since the beginning of 2015	Persons	358
46. Persons detained in the Migrant Detention Centers since the beginning of 2015	Persons	530
47. Persons deported from the Migrant Detention Centers since the beginning of 2015	Persons	198
48. Decisions on asylum applications adopted, including:	Pcs	920
48.1. Refugee status granted	Persons	49
48.2. Complementary protection granted	Persons	118
48.3. Rejected in recognition	Persons	599
48.4. Loss of status	Persons	143
48.5. Deprivation of status	Persons	7
48.6 Cancellation the decision on recognition	Persons	4
49. Asylum seeker certificates issued	Pcs	1495
50. Asylum seeker certificates prolonged	Pcs	5485
51. Irregular migrants apprehended, including	Persons	5111
51.1. Male	Persons	3489
51.2. Female	Persons	1622
52. Decisions taken concerning apprehended irregular migrants, including:	Persons	5142
52.1. Voluntary return	Persons	26
52.2. Forced return	Persons	4202
52.3. Forced expulsion (deportation)	Persons	209
52.4. Entry ban	Persons	576
52.5. Placed to the Migrant Detention Centers	Persons	129
53. Irregular migrants deported		66

ENDNOTES

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73 Available at http://unhcr.org.ua/en/publications-3/legal-assistance-m

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75 Police ward; slammer. In Ukrainian and Russian there is a very descriptive term that literally translates as 'monkey house' and seems very appropriate for the conditions in those places.

76 Resolution of the Cabinet of Ministers of Ukraine No. 251 dated March, 28, 2012 available at www.rada.gov.ua [accessed 26 July 2016]

77 Ibid.

78 See table 1 in the Appendix.

79 Art. 25 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", dated September 22, 2011 available at www.zakon.rada.gov.ua [accessed 26 July 2016]

80 See table 1 in the Appendix.

81 Art. 26 of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", dated September 22, 2011 available at www.rada.gov.ua [accessed 26 July 2016]

82 Instruction on Forcible Return and Deportation of Foreigners and Stateless Persons from Ukraine was approved by the joint order of the MIA, Administration of the SBGS and SSU No. 353/271/150 dated 23.04.2012, available at www.rada.gov.ua [accessed 26 July 2016]

83 Ibid.

84 European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners* (2015). Further information is available on the European Network on Statelessness website, available at www.statelessness.eu

85 The Criminal Procedural Code of Ukraine dated April 13, 2012, available at www.rada.gov.ua [accessed 26 July 2016]

86 Directive 2008/115/EC of the European Parliament and of the Council of December 16, 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals provides that "families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time".

87 Order of the Ministry of Internal Affairs of Ukraine No. 141 dated February, 29, 2016 "On Approval of the Instruction on detention of foreigners and stateless persons in temporary stay of foreigners and stateless persons who illegally stay in Ukraine" available at www.rada.gov.ua [accessed 26 July 2016]. See also, Resolution of the Cabinet of Ministers of Ukraine No. 1110 dated July, 17, 2003 (as amended on 08.02.2012) "On Approval of the Standard Regulations on the Centre for Temporary Accommodation of Foreigners and Stateless Persons Staying in Ukraine Illegally" available at www.rada.gov.ua [accessed 26 July 2016].

88 These conclusions are based on R2P/HIAS's previous case work with children in immigration detention in Ukraine.

89 Resolution of the Cabinet of Ministers of Ukraine No. 144 dated March 11, 2015 "On Approval of Food Standards for Foreigners and Stateless Persons Detained in Centres for Temporary Accommodation of Foreigners and Stateless Persons Staying in Ukraine Illegally, Centres for Temporary Accommodation of Refugees of the State Migration Service" available at www.rada.gov.ua [accessed 26 July 2016]

90 Order of the Ministry of Internal Affairs, Ministry of Health and Administration of the State Border Guard Service of Ukraine No. 336/268/254 dated 17.04.2012 "On Housing and Medical Provision of Foreigners and Stateless Persons Detained in Centres for Temporary Accommodation of Foreigners and Stateless Persons Staying in Ukraine Illegally, and Centres for Temporary Detention and Specially Equipped Premises" available at www.rada.gov.ua [accessed 26 July 2016]

91 *MSS v Belgium and Greece* [2011] Application no 30696/09 (ECtHR), para 221

92 Order of the Ministry of Internal Affairs of Ukraine No. 141 dated February, 29, 2016 "On Approval of the Instruction on detention of foreigners and stateless persons in temporary stay of foreigners and stateless persons who illegally stay in Ukraine" available at www.rada.gov.ua [accessed 26 July 2016]

93 Order of the Ministry of Health of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Social Policy of Ukraine No. 903/1464/711 dated October 23, 2013 "On Examination for Identification of Age of the Child Left without Parental Supervision and in Need of Social Protection" available at www.rada.gov.ua [accessed 26 July 2016]

94 Case # 8837/14/876 available at The Unified State Register of Court Decisions www.reyestr.court.gov.ua [accessed 26 July 2016]; and Case # 308/3431/14a available at The Unified State Register of Court Decisions www.reyestr.court.gov.ua [accessed 26 July 2016].

95 European Network on Statelessness (ENS), Protecting Stateless Persons from Arbitrary Detention in Europe. A regional toolkit for practitioners 2015, available at http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf

96 IDC, There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention, 2011.

97 In communication C. v. Australia, No. 900/1999, the Human Rights Committee (CCPR) held that the continued detention of a migrant when the state was aware of his mental condition and failed to take the steps necessary to ameliorate his mental deterioration constituted a violation of his rights under Art. 7 of the Covenant (the prohibition of torture and cruel, inhuman or degrading treatment or punishment) (§8.4).

98 Law of Ukraine "Fundamentals of Ukraine on Health Care" dated on 19 November 1992 available at www.rada.gov.ua [accessed 26 July 2016]

99 This case was observed by HIAS during regular activity with clients in immigration detention.

100 Office of the High Commissioner for Human Rights (OHCHR), Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) E/2002/68/ Add.1

101 Order of the Ministry of Internal Affairs of Ukraine No. 141 dated February 29, 2016 "On Approval of the Instruction on detention of foreigners and stateless persons in temporary stay of foreigners and stateless persons who illegally stay in Ukraine" available at www.rada.gov.ua [accessed 26 July 2016]

102 Association for the Prevention of Torture (APT), International Detention Coalition (IDC) and UN High Commissioner for Refugees (UNHCR), Monitoring Immigration Detention, Practical Manual (2014)

103 United Nations General Assembly (UNGA), Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 2002) A/RES/57/199, available at www.ohchr.org

104 The Law of Ukraine "On the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" dated 21.07.2006, available at www.rada.gov.ua [accessed 26 July 2016]

105 Law of Ukraine " On amendment of the Law "On the Ukrainian Parliament Commissioner for Human Rights" concerning the national preventive mechanism" dated 02.10.2012, available at www.rada.gov.ua [accessed 26 July 2016]

106 Order of the Ministry of Internal Affairs, Ministry of Health and Administration of the State Border Guard Service of Ukraine No. 336/268/254 dated 17.04.2012 "On Housing and Medical Provision of Foreigners and Stateless Persons Detained in Centres for Temporary Accommodation of Foreigners and Stateless Persons Staying in Ukraine Illegally, and Centres for Temporary Detention

and Specially Equipped Premises" available at www.rada.gov.ua [accessed 26 July 2016]

[107] Information available at www.npm.org.ua/ua/news/v-punkti-timchasovogo-utrimannja-nelegalnih-migrantiv-na-chernigivshini-antisanitarni-umovi.htm [accessed 26 July 2016]

[108] Resolution of the Cabinet of Ministers of Ukraine No. 144 dated March 11, 2015 "On Approval of Food Standards for Foreigners and Stateless Persons Detained in Centres for Temporary Accommodation of Foreigners and Stateless Persons Staying in Ukraine Illegally, Centres for Temporary Accommodation of Refugees of the State Migration Service" available at www.rada.gov.ua [accessed 26 July 2016]

[109] Resolution of the Cabinet of Ministers of Ukraine No. 336 dated June 16, 1992 "On Food Standards for the Persons Detained in Penitentiary Facilities, Pre-Trial Detention Facilities of the State Penal Enforcement Service, Temporary Detention Facilities, Reception and Other Centres of the Ministry of Internal Affairs" available at www.rada.gov.ua [accessed 26 July 2016]

[110] Consequences of Introduction of New Food Standards in MDC and CTAR. — 20.05.2015. — Advocacy and Increase in the Government Capability in the Migration Sphere available at www.migrants.org.ua [accessed 26 July 2016]

[111] Article 16 — Annual Report on Re-Admission for Ukraine 2014 "Pilot Initiative to Monitor Re-Admission in Ukraine and Pakistan (MONITOR)"

[112] Order of the Ministry of Internal Affairs, Ministry of Health and Administration of the State Border Guard Service of Ukraine No. 336/268/254 dated 17.04.2012 "On Housing and Medical Provision of Foreigners and Stateless Persons Detained in Centres for Temporary Accommodation of Foreigners and Stateless Persons Staying in Ukraine Illegally, and Centres for Temporary Detention and Specially Equipped Premises" available at www.rada.gov.ua [accessed 26 July 2016]

[113] Clause 22 of Resolution of the Cabinet of Ministers of Ukraine No. 1138 dated September 17, 1996 "On Approval of the List of Paid Services Provided in State Health Care Facilities and Higher Medical Education Establishments" available at www.rada.gov.ua [accessed 26 July 2016]

[114] 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" No. 3159 dated 21.09.2015 available at www.rada.gov.ua [accessed 26 July 2016]

[115] Directive 2008/115/EC of the European Parliament and of the Council of December 16, 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

[116] European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners* (2015). Further information is available on the European Network on Statelessness website, available at www.statelessness.eu [accessed 26 May 2016]

[117] Article 22— Annual Report on Re-Admission for Ukraine 2014 "Pilot Initiative to Monitor Re-Admission in Ukraine and Pakistan (MONITOR)"

[118] *Mikolenko v Estonia* [2010] Application no 10664/05 (ECtHR)

[119] *M and Others v Bulgaria* [2011] Application no 41416/08 (ECtHR)

[120] In accordance with the data from the R2P/HIAS for 2015

[121] This refers to the people who at the time of arrest and detention had legal grounds to stay in Ukraine. They did not have their documents at the time of apprehension and their explanations were not taken into consideration by the relevant authorities during the placement in MDCs. They were released after their relatives or friends presented the appropriate documents (residence permit or passport with the valid visa). Such cases confirm the possibility of detention without a dilligent verification of the all relevant information about the person.

[122] Order of the Ministry of Internal Affairs of Ukraine No. 141 dated February 29, 2016 "On Approval of the Instruction on detention of foreigners and stateless persons in temporary stay of foreigners and stateless persons who illegally stay in Ukraine" available at www.rada.gov.ua [accessed 26 July 2016]

[123] Resolution of the Cabinet of Ministers of Ukraine No. 1110 dated July 17, 2003 (as amended on 08.02.2012) "On Approval of the Standard Regulations on the Centre for Temporary Accommodation of Foreigners and Stateless Persons Staying in Ukraine Illegally" available at www.rada.gov.ua [accessed 26 July 2016]

[124] Order of the Ministry of Internal Affairs of Ukraine No. 141 dated February 29, 2016 "On Approval of the Instruction on detention of foreigners and stateless persons in temporary stay of foreigners and stateless persons who illegally stay in Ukraine" available at www.rada.gov.ua [accessed 26 July 2016]

[125] Case # 803/2121/13-a available at The Unified State Register of Court Decisions, www.reyestr.court.gov.ua [accessed 26 July 2016]

[126] The Equal Rights Trust (ERT), *ERT Guidelines to Protect Stateless Personsfrom Arbitrary Detention* (2012) available at www.equalrightstrust.org [accessed 26 July 2016]

[127] European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners* (2015). Further information is available on the European Network on Statelessness website, available at www.statelessness.eu [accessed 26 May 2016]

[128] Based on R2P/HIAS' experience.

[129] European Commission - Enlargement - Accession criteria, available at www.ec.europa.eu [accessed 26 July 2016]

[130] Statistics on the core activities of the State Migration Service of Ukraine. Statistics for the 12 months of 2015. Available at www.dmsu.gov.ua [accessed 01 September 2016]. All articles cited in this table are from the Law of Ukraine "On Citizenship of Ukraine".

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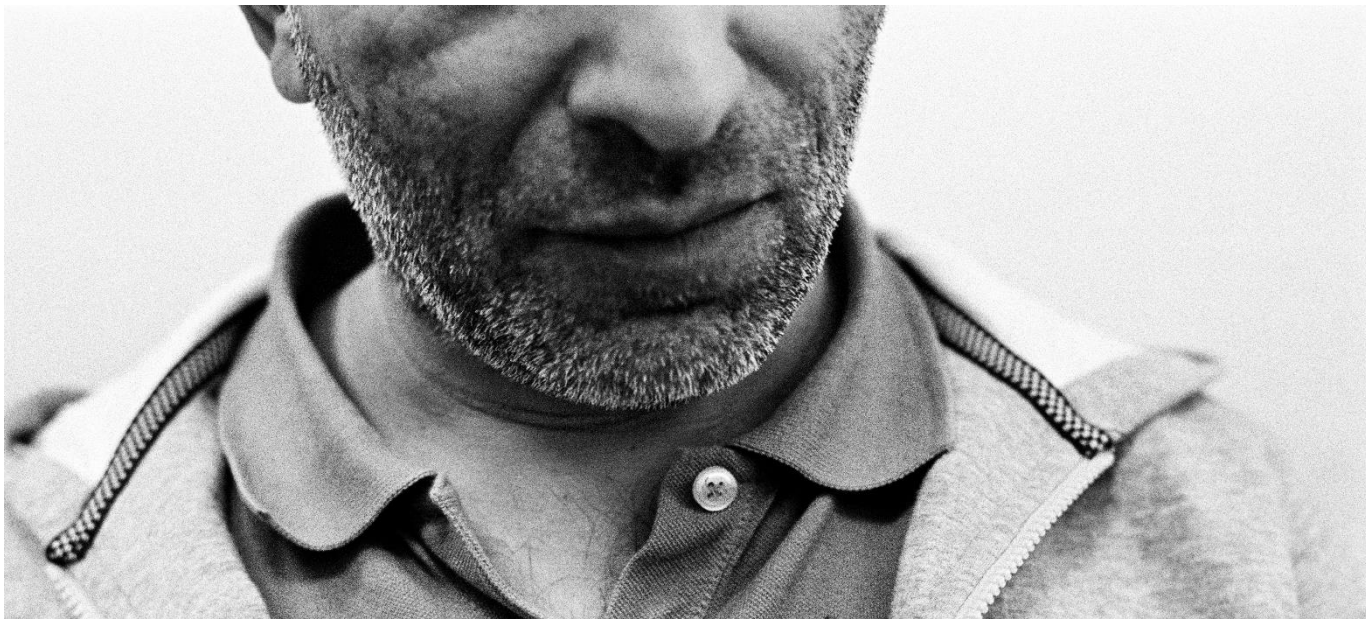

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Our Network has developed rapidly since we launched in 2012, attracting over 100 members in 39 European countries (see shaded area of map). Our London-based Secretariat coordinates ENS's law & policy, awareness-raising and capacity-building activities. For information about Network activities or membership enquiries contact ENS Director Chris Nash (chris.nash@statelessness.eu).

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