

The Peace Institute, Institute on Statelessness and Inclusion, and European Network on Statelessness

Joint Submission to the Human Rights Council at the 34th Session of the Universal Periodic Review

Slovenia

Introduction

1. The Peace Institute, the Institute on Statelessness and Inclusion (ISI), and European Network on Statelessness (ENS) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Slovenia.
2. This submission focuses on various issues relating to the right to a nationality, the protection of stateless people, prevention and reduction of statelessness in Slovenia. It draws heavily on information and resources presented in ENS's Statelessness Index¹ country profile on Slovenia,² with relevant text from the Slovenia Country Briefing (February 2019)³ being reproduced verbatim, and other sections being paraphrased or summarised from the Index material.
3. The Peace Institute⁴ - Institute for Contemporary Social and Political Studies – is a private, independent, non-profit research institution founded in 1991 by individuals who believed in peaceful conflict resolution, equality and respect for human rights standards. The Institute uses scientific research and advocacy activities aimed at creating and preserving an open society capable of critical thought and based on the principles of equality, responsibility, solidarity, human rights and the rule of law.
4. The Institute on Statelessness and Inclusion⁵ is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 38 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 33rd UPR Sessions.⁶

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

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

3 See:

https://index.statelessness.eu/sites/statelessindex.eu/files/Country%20Briefing%20Slovenia%20ENG_FINAL_0.pdf

4 For more information about The Peace Institute, see: <http://www.mirovni-institut.si/en/>.

5 For more information about the Institute on Statelessness and Inclusion, see: www.institutesi.org.

6 See: <http://www.institutesi.org/ourwork/humanrights.php>.

5. The European Network on Statelessness (ENS)⁷ is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 140 members in 40 European countries, including the Peace Institute in Slovenia. ENS organises its work around three pillars – law and policy development, awareness-raising and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments.

Previous UPR of SLOVENIA under the First and Second Cycle

6. Slovenia was previously reviewed during the 7th session in 2010 (First Cycle) and the 20th session in 2014 (Second Cycle). Slovenia received 12 recommendations relevant to nationality and statelessness under each Cycle. In the second cycle, Slovenia accepted, among others, ten recommendations on acquisition of Slovenian citizenship by so-called erased persons. These recommendations were made by France, India, Ireland, Sierra Leone, Portugal, UK, Uruguay, Venezuela, Australia and Czechia. This was similar to the first cycle, when eight such recommendations were accepted. Despite this being a significant issue, and Slovenia accepting these recommendations, the country has failed to take adequate measures to implement them.
7. Slovenia also ‘noted’ one recommendation under each of the first two cycles. This included a recommendation by Hungary to accede to the 1961 Convention on the Reduction of Statelessness.

Slovenia’s International obligations

8. Slovenia is party to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) to which it acceded in 1992 with its independence from the former Yugoslavia, which acceded to it in 1959.⁸ However, it has not acceded to the 1961 Convention on the Reduction of Statelessness, and noted the Hungarian recommendation to do so during the second cycle in 2014.
9. Slovenia has a good record of accession to core international human rights treaties relevant to the prevention of statelessness and the protection of stateless persons. These include the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of Persons with Disabilities (CRPD).
10. Slovenia has many obligations under these treaties, including protecting the right to a nationality for all, preventing and reducing statelessness, prohibiting discrimination against minorities and stateless persons, and registering the birth of every child. For example, Article 7 of the CRC obligates states to register every child immediately after

⁷ For more information about the European Network on Statelessness, see: www.statelessness.eu.

⁸ Official Records of the Economic and Social Council, Seventeenth Session, Supplement, No. 1 (E/2596), p. 12.

birth and to ensure that no child is left stateless. Similarly, Article 5(d)(iii) of the CERD prohibits racial and ethnic discrimination in relation to the right to nationality. The Committee on the Elimination of Discrimination against Women and the Human Rights Committee both made recommendations to Slovenia on nationality rights, in 2015 and 2016 respectively.⁹ Consequently, these treaty bodies are relevant mechanisms in ensuring that Slovenia upholds its obligations to protect the right to a nationality and protect the rights of stateless persons under international law.

11. Lastly, since 1993, Slovenia has been party to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). However, Slovenia is not party to the 1997 European Convention on Nationality (ECN) or the 2006 Convention of the Council of Europe on the Avoidance of Statelessness in Relation to State Succession.
12. The Constitution of the Republic of Slovenia provides in its Article 8 for the direct application of duly ratified and published treaties.¹⁰ Consequently, the aforementioned international treaties that Slovenia has acceded to, are considered part of Slovenia's legislation. Hence, a number of important international legal provisions which protect the right to a nationality, safeguard against statelessness and protect the basic human rights of stateless persons are subject to direct application in the country.

Definition of a Stateless Person in Slovenian National Law

13. According to Article 2 of the Slovenian '*Aliens Act*', a stateless person is a foreigner who '*is not deemed to be a national of any country in accordance with the legal acts of individual countries*'.¹¹ This definition falls short of the international law definition of a stateless person as someone who is "*not considered as a national by any state under the operation of its law*".¹² The failure to include the phrase "*under the operation of its law*" in the Slovenian law is a significant gap in the definition. It means that those who under the letter of the law should have a nationality but have been denied their nationality due to non-implementation (or discriminatory implementation) of the law, may not be considered to be stateless in the country. In the absence of a procedure to identify and protect stateless persons, the impact of this gap may be less obvious in practice, but it is a significant one nonetheless, as it can result in stateless people not being identified and consequently being denied protection.¹³ The gap in the definition identified above, together with the lack of a statelessness determination procedure, prevents stateless persons from being recognised as such in Slovenia, and from the protection and rights this entails, such as the right to a travel document and legal residence.

⁹ Human Rights Committee, Concluding observations (2016) CCPR/C/SVN/CO/3; Committee on the Elimination of Discrimination against Women, Concluding observations (2015) CEDAW/C/SVN/CO/5-6.

¹⁰ Constitution of the Republic of Slovenia, Article 8: <https://www.us-rs.si/en/about-the-court/legal-basis/>.

¹¹ Article 2, Aliens Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5761>.

¹² United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954, Article 1(1).

¹³ ENS, Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, 2017, p. 11, available here: <http://www.statelessness.eu/resources/protecting-stateless-persons-arbitrary-detention-agenda-change>; UNHCR, Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons, Geneva, 2014. Available at: http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf.

Stateless Population Data

14. As the Council of the European Union has elaborated, states should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.¹⁴ The availability of reliable data is linked to whether procedures to identify and determine statelessness exist. There is little available data on the stateless population in Slovenia. The last census from 2002 recorded 2,527 people as having 'unknown citizenship' status.¹⁵ However, it cannot be determined if no data on citizenship was collected or if respondents self-identified as stateless, meaning that it is unclear who is included in this category. The data is therefore both incomprehensive and unreliable.
15. The Ministry of Interior collects data on people claiming to be stateless during immigration, international protection, and naturalisation procedures. However, there are overlapping categories, as the Ministry uses both 'without citizenship' and 'unknown citizenship' as categories. Between 2009 and 2013, five people acquired Slovenian citizenship through facilitated naturalisation proceedings for stateless persons as prescribed by the Citizenship Act.¹⁶ Under the 'Aliens Act' permanent residence permits were issued to thirteen stateless people and international protection was granted to one stateless person. Slovenia has no statelessness determination procedure and no national mapping study of statelessness has been conducted. This, alongside the existence of groups that have been disproportionately exposed to statelessness - in particular, Roma and Erased populations¹⁷ – means that these existing statistics are likely to be an underrepresentation of the numbers of stateless people in Slovenia.

Statelessness Determination and Status

16. To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation; as well as in more general terms, to protect the human rights of all stateless persons in Slovenia, it is important to be able to identify stateless people in the country. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.¹⁸
17. Slovenia does not have a dedicated statelessness determination procedure (SDP). There are other administrative procedures through which statelessness can be identified (for

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

¹⁵ Annual Report of the Ministry of Interior, 2015:

http://www.mnz.gov.si/si/zakonodaja_in_dokumenti/pomembni_dokumenti/.

¹⁶ *ibid.*

¹⁷ For more information on the Erased, see: <http://www.mirovni-institut.si/izbrisani/en/>.

¹⁸ UNHCR (2014), Handbook on Protection of Stateless Persons,

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

example an application for residence, international protection or naturalisation).¹⁹ However, there is no dedicated stateless protection status and no obligation in law to consider a claim of statelessness, nor clear instructions, guidance or training for officials conducting the assessment.²⁰ Further, in these other procedures, the burden of proof is on the applicant,²¹ the standard of proof is very high²² and legal aid is only available for judicial review.²³ Research also shows that people claiming to be stateless will face the presumption of having another citizenship or being able to apply for one in another country and the public official will refer them to embassies of other countries rather than considering their statelessness as a relevant circumstance.

18. In order to determine statelessness in full accordance with the 1954 Convention, a statelessness determination procedure should, according to the UNHCR Handbook on Protection of Stateless Persons, be simple, accessible to everyone within the territory, and be fair and efficient.²⁴ The procedure should be formalised in law and observe due process guarantees.²⁵ In compliance with these standards, a Slovenian statelessness determination procedure should provide for a shared burden of proof, the standard of proof should be reduced and applicants should be offered an individual interview.²⁶ Moreover, information and counselling about the procedure should be widely disseminated in order to facilitate access to the procedure.²⁷ Additional procedural and evidentiary safeguards for child applicants should be put in place, including 'priority processing of their claims, provision of appropriately trained legal representatives, interviewers and interpreters as well as the assumption of a greater share of the burden of proof by the State'.²⁸ Government officials who may come in contact with stateless persons through their regular work (for example, social services or immigration control) should be trained to identify potential applicants and should refer them to the determination procedure.²⁹ Finally, authorities involved in the identification of stateless persons should be provided with training on statelessness and the human rights of stateless persons.

¹⁹ Aliens Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5761>; Citizenship Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5130>.

²⁰ <https://index.statelessness.eu/country/slovenia>.

²¹ Bajt, Veronika, Kogovšek Šalomon, Neža (2014). *Brezdržavljanost v Sloveniji (Statelessness in Slovenia)*. Dve domovini / Two Homelands 39, p. 15.

²² Article 8, General Administrative Procedure Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603>.

²³ Article 7, Legal Aid Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1265>.

²⁴ UNHCR, *Statelessness Handbook*, paras. 63, 68 and 69.

²⁵ *Ibid*, para 71.

²⁶ *Ibid*, paras. 71, 89-93.

²⁷ *Ibid*, para 68; UNHCR, *Good Practices Paper – Action 6*, p. 5.

²⁸ UNHCR, *Statelessness Handbook*, para 119.

²⁹ UNHCR, *Good Practices Paper – Action 6*, p. 4.

Risk of Arbitrary Detention of Stateless Persons

19. Stateless persons face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.³⁰ Such arbitrary detention would be in violation of Article 9 of the ICCPR, which protects the right to liberty and security of the person. The Human Rights Committee has emphasised that “the inability of a State party to carry out the expulsion of an individual because of statelessness or other obstacles does not justify indefinite detention”.³¹ Slovenia is bound by the EU Returns Directive,³² which requires particular attention to be paid to the situation of vulnerable persons; and the revised EU Returns Handbook requires attention to be paid to the specific situation of stateless persons, ensuring that there is a reasonable prospect of removal prior to detaining or prolonging a person’s detention.³³ In Slovenia, there are few protections against the arbitrary detention of stateless people. Under the Constitution,³⁴ a proportionality test must be carried out when deciding to detain, but in practice, a country of removal may not be identified prior to detaining, and alternatives to detention are not routinely considered, though they are set out in law as ‘more lenient measures’.³⁵ Detention is only subject to independent review after the first three-month extension,³⁶ and there are very limited remedies for an individual to challenge their detention.³⁷ Legal aid is not available. Statelessness is not considered a juridically relevant fact in decisions to detain and stateless people are detained in practice.³⁸

The Right to a Nationality, Prevention and Reduction of Statelessness

20. There are safeguards in Slovenian law to prevent statelessness in the case of foundlings,³⁹ most adopted children⁴⁰ and children born abroad to Slovenian parents.⁴¹ However, there are also significant gaps in existing safeguards. The safeguard in nationality law to prevent statelessness among children born in Slovenia relies on the status of the parents rather than the child.⁴² The parents of a stateless child born on the territory must also be stateless (or unknown) for the child to acquire Slovenian nationality.⁴³ If the parents are

³⁰ ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeinLimbo_Detention_Agenda_online.pdf

³¹ General comment No.35 on Article 9, International Covenant on Civil and Political Rights.

³² <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>

³³ European Commission (2017) ANNEX to the COMMISSION RECOMMENDATION establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf

³⁴ Constitution of the Republic of Slovenia, Article 20 : <https://www.us-rs.si/en/about-the-court/legal-basis/>.

³⁵ Articles 76 & 81, Aliens Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5761>.

³⁶ Article 79(a), Aliens Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5761>.

³⁷ Article 78, Aliens Act : <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5761>.

³⁸ <https://index.statelessness.eu/country/slovenia>.

³⁹ Article 9, Citizenship Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO13>.

⁴⁰ Articles 18 & 23, Citizenship Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO13>.

⁴¹ Articles 4 & 5, Citizenship Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO13>.

⁴² Article 9, Citizenship Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO13>.

⁴³ Ibid.

not nationals of the Republic of Slovenia but have citizenship of another state which they cannot confer to the child, said child is not protected from statelessness by Slovenian law.

21. Every child has a right to a legal identity and nationality, which is entrenched under Article 7 of the CRC and other instruments. This is a core principle of international law, which if applied in a comprehensive and non-discriminatory manner, would result in the prevention and reduction of statelessness. In Slovenia, birth registration law and practice are generally positive and late birth registration is possible, though it is subject to a fine.⁴⁴ In cases of withdrawal of nationality, the Citizenship Act requires that the individual has another citizenship so there is a safeguard against statelessness in all cases.⁴⁵

Slovenia's Erased People

22. Slovenia's Erased People are the 25,671 individuals (1 per cent of the population of Slovenia) who were on 26 February 1992 removed or erased from Slovenia's registry of permanent residents. This illegal measure was carried out due to the legal vacuum created by the legislation adopted after Slovenia declared independence from former SFRY in 1991. Citizens of the former Socialist Republic of Slovenia automatically became citizens of the new country, the Republic of Slovenia. According to the Citizenship of the Republic of Slovenia Act, all citizens of other republics of the former SFRY with permanent addresses in the Socialist Republic of Slovenia had the right to apply for Slovenian citizenship within six months of the date of independence. Those who failed to apply, whose application was refused, or where the procedure was terminated, lost their permanent residence status. This erasure of permanent residents did not have any basis in law. It was an arbitrary measure, carried out by local authorities in accordance with instructions from the Ministry of the Interior. With the loss of status, they also lost all economic and social rights tied to permanent resident status, and their right to remain in Slovenia.⁴⁶
23. Despite receiving and accepting numerous recommendations to address this situation, Slovenia has not taken any measures to implement recommendations from the previous Cycles for facilitating access of the erased to citizenship. Since the erasure, only around 11,000 erased persons managed to regain their status in Slovenia, out of which around 7,000 gained Slovenian citizenship.⁴⁷ The situation of the rest of the erased persons remains unclear. While some still live in Slovenia without any status or rights, it is believed that the majority are now residing in other countries, as they were forced to leave the country after the erasure. In 2010, a special law was adopted to facilitate the erased who lived abroad to acquire permanent residence in Slovenia.⁴⁸ Due to an unreasonably short deadline to apply (3 years since the law's adoption) and discriminatory conditions, only around 240 permanent residence permits were issued and over 1300 applications were

⁴⁴ Article 8, Civil Register Act; <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3354>.

⁴⁵ Articles 18, 22, 25, 26 of the Citizenship Act: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO13>.

⁴⁶ For more information, see: <http://www.mirovni-institut.si/izbrisani/en/>

⁴⁷ Information published by the Ministry of the Interior of the Republic of Slovenia, January 2009.

⁴⁸ Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ZUSDDD-B), 2010.

refused.⁴⁹ The law specifically prohibited any effects of its measures on the right to acquire Slovenian citizenship. In 2013, as a measure to implement the ECtHR judgement in the case of *Kurić and Others v. Slovenia*, a law on compensations was adopted.⁵⁰ The compensations awarded were low and the law completely excluded the erased who were still left without a permanent status in Slovenia or its citizenship. Slovenia never adopted any measures to facilitate the acquisition of Slovenian citizenship by the erased, denying any responsibility towards the erased that remained stateless.⁵¹

Recommendations

24. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Slovenia:
- I. Amend the law to bring the definition of a stateless person in national law in line with the definition provided in the 1954 Convention definition.
 - II. Take concrete steps to improve the recording of statelessness by harmonising and defining statistical categories used by different agencies; include the recording and counting of stateless individuals in the census and consider conducting a comprehensive national mapping study to provide a reliable estimate of the statelessness population in Slovenia.
 - III. Establish a dedicated statelessness determination procedure in law and in line with UNHCR Guidance and good practice and fulfil its obligations to stateless persons under the 1954 Convention, including to grant them a residence permit, right to work, study and facilitated naturalisation; treat stateless children without legal residence the same as those with residence rights in line with the best interests of the child; and ensure that public officials and registration officials are trained to accurately identify statelessness and consider it as a relevant circumstance.
 - IV. Take steps to protect stateless persons from arbitrary detention by introducing a statelessness determination procedure and protection status, as well as embedding consideration of statelessness as a juridically relevant fact in all decisions to detain; introduce periodic judicial review in law; and improve access to effective remedies for detainees.

⁴⁹ Information provided by the Ministry of the Interior of the Republic of Slovenia, 31 August 2015.

⁵⁰ Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents, 21 November 2013.

⁵¹ It is important to note that the erasure itself did not cause statelessness. The erasure was a deprivation of permanent residence status in Slovenia and the erased people in most cases had the nationality of another successor state of the former Yugoslavia. Nevertheless, a smaller group within this population was left stateless due to the inconsistent nationality policies within the former Yugoslavia and of the successor states. The erasure significantly then deteriorated the situation of these stateless individuals as they also lost their tie to the country in which they have lived (some of them for decades).

- V. Amend the law to ensure that all children born on Slovenian territory who would otherwise be stateless acquire a nationality at birth, regardless of the status of their parents.
- VI. Take all necessary steps to resolve the 'Erased Persons' issue, including by facilitating access to citizenship without any further delay, to all erased persons who have been left stateless.
- VII. Accede to the 1961 Convention on the Reduction of Statelessness, the European Convention on Nationality and the Convention on the Avoidance of Statelessness in Relation to State Succession and commit to upholding international standards to protect stateless people and prevent and reduce statelessness.