

Joint Submission to the Human Rights Council at the 40th Session of the Universal Periodic Review

MOLDOVA

Introduction

1. The Law Center of Advocates (**CDA**), the European Network on Statelessness (**ENS**) and the Institute on Statelessness and Inclusion (**ISI**) make this joint submission to the Universal Periodic Review (**UPR**), on the right to a nationality and human rights challenges pertaining to statelessness in Moldova.
2. The Law Center for Advocates (CDA) is a public association, registered on 24 February 1997 at the Ministry of Justice of the Republic of Moldova. The organisation's mission is to promote the fundamental rights of people in need of international protection (refugees and asylum seekers), stateless persons, people at risk of becoming stateless, and vulnerable immigrants, who are the most marginalised and at risk of human rights violations. The CDA is a partner of the UN Refugee Agency (UNHCR) and an associate member of the European Network on Statelessness (ENS).¹
3. The European Network on Statelessness (ENS)² is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. It currently has over 170 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. This submission partially draws on information and analysis from ENS's Statelessness Index, which covers Moldova.³
4. The Institute on Statelessness and Inclusion (ISI) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI's mission is to promote inclusive societies by realising and protecting everyone's right to a nationality. The Institute has made over 80 country specific UPR submissions on the human rights of stateless persons, of which over 25 have been submitted in collaboration with the European Network on Statelessness. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 38th UPR Sessions.⁴

¹ For more information about CDA, see: <https://cda.md/index.php/en/>.

² For more information about the European Network on Statelessness, see: www.statelessness.eu.

³ The Statelessness Index on Moldova can be accessed at: <https://index.statelessness.eu/country/moldova>.

⁴ For more information see: www.institutesi.org

5. This submission focuses on:
 - I. Children's right to a nationality;
 - II. Facilitated naturalisation;
 - III. Liberty and security of the person and arbitrary detention.

Previous UPR of Moldova under the First and Second Cycle

6. Moldova was previously reviewed during the 12th and 26th sessions of the UPR, in 2011 and 2016, respectively. During the first cycle, Moldova received one recommendation from Brazil to work towards addressing statelessness and protecting the rights of stateless persons, which it accepted.⁵ Moldova did not receive any recommendations related to nationality, statelessness, or birth registration during the second cycle.
7. In 2017, the Committee on the Rights of the Child welcomed Moldova's efforts in expanding the network of civil status offices into remote locations, the establishment of an electronic birth register, and increased monitoring, but recommended that Moldova continue to strengthen efforts to ensure that all births in the territory are registered, including of Roma children, children born at home, children born to adolescent mothers and children born out of wedlock.⁶

International Obligations

8. Moldova has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of international and regional treaties to which it is a party. These include the International Covenant on Civil and Political Rights (**ICCPR**) (see Article 24.3), the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) (see Articles 2.2 and 3), the Convention of the Rights of the Child (**CRC**) (see Articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) (see Article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**) (see Article 5(d)(iii)), the Convention on the Rights of Persons with Disabilities (**CRPD**) (see Article 18), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**). However, it is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
9. Moldova is also party to regional treaties or declarations, including the 1997 European Convention on Nationality (**ECN**), the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, the 1950 European Convention on Human Rights and Fundamental Freedoms (**ECHR**), and the European Social Charter (**ESC**).

⁵ Human Rights Council 19th session, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review – Republic of Moldova, A/HRC/19/18, 14 December 2011, para 73.62.

⁶ Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic report of the Republic of Moldova, CRC/C/MDA/CO/4-5, 20 October 2017, para. 18.

10. Moldova is a party to the 1954 Convention on the Status of Stateless Persons (**1954 Convention**) and to the 1961 Convention on the Reduction of Statelessness (**1961 Convention**).⁷ Moldova retains some reservations to the 1954 Convention, but these no longer have substantive effect as domestic law grants all convention rights to people recognised as stateless.

Stateless Population Data

11. States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.⁸ Disaggregated data on the stateless population in Moldova is limited. The authorities record data on people recognised as stateless in Moldova, but this data is not routinely published. Data on detention is also not published. There are problems with the way official data is collected, including that there are overlapping categories, such as ‘people with USSR passports’ and people with ‘undetermined citizenship’. This and the fact that there is no data available for the disputed Transnistrian region, means that the stateless population is likely to be underreported.
12. Figures provided by the Moldovan Government for the year-end 2020 state that 1904 stateless people (1113 women and 791 men) were registered in the Government’s database, including 1384 stateless people who were recorded as living in Transnistria.⁹ The data is also disaggregated by ethnicity: 854 Russians, 543 Ukrainians, 280 Moldovans, 31 Belarusians, 37 Bulgarians, 10 Tatars, 14 Azerbaijanis, 11 Armenians, and less than 10 from other ethnicities. At the end of 2020, 1501 people were registered in the Government’s database as people ‘with undetermined nationality’.¹⁰ According to UNHCR, at the end of 2020 there were 3405 persons in Moldova under its statelessness mandate.¹¹
13. The Law Centre of Advocates carried out a mapping exercise in 2020 to identify stateless people or those at risk of statelessness in prisons and residential care centres. The National Prisons Administration reported 18 stateless people (recognised or applicants under the statelessness determination procedure) and 58 people with undetermined nationality in prisons. 48 people at risk of statelessness were identified in residential care centres.

National Law

14. The definition of a stateless person in Moldovan law is consistent with the 1954 Convention.¹² According to Article 1 of the 1954 Convention, “a ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law”. To be able to provide the protection and rights enshrined in the 1954

⁷ Both conventions entered into force in Moldova in 2012.

⁸ 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/>.

⁹ Figures provided to UNHCR Moldova by the Bureau for Migration and Asylum.

¹⁰ Figures provided to UNHCR Moldova by the Bureau for Migration and Asylum.

¹¹ UNHCR, ‘Persons under UNHCR’s statelessness mandate, 2020’. Data available at: <https://www.unhcr.org/refugee-statistics/download/?url=MZy2ku>. The figure includes persons determined to be stateless following the statelessness determination procedure and persons with undetermined nationality who hold expired Soviet passports.

¹² Law 200/2010 on foreigners in the Republic of Moldova, available in English at: <http://www.refworld.org/docid/3ae6b4f520.html>. The original version in Romanian is available at: <http://lex.justice.md/md/336056/>.

Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure (SDP).¹³

15. Moldova established a dedicated SDP in law in 2011, which in many ways is an example of good practice.¹⁴ The procedure is accessible, with no fee or residence requirement, and can be initiated ex officio, in person, orally or in writing. The dedicated Statelessness Unit must examine claims within six months (with the possibility to extend to 12 months), and whilst free legal aid during the administrative procedure is provided for in law, in practice it is provided by NGOs. An interview is mandatory, interpreters are made available, and training is provided by UNHCR. The burden of proof is shared, and although not established in law, the standard of proof is the same as in the asylum procedure, and cross-referral between procedures is established. Applicants are protected from expulsion and have access to some basic rights, including the right to work. People recognised as stateless are granted permanent residence and rights (except political rights) in line with nationals.¹⁵ Persons recognised as stateless have facilitated access to Moldovan nationality by way of naturalisation, but must still wait eight years before being eligible for naturalisation (see Issue 2 below).
16. Moldovan nationality law contains partial safeguards to prevent statelessness. There are full safeguards for foundlings and children born to nationals abroad, but since 2018, children born on the territory who would otherwise be stateless may only acquire nationality automatically at birth if at least one of their parents has legal residence (see Issue 1 below). Grounds for the deprivation of Moldovan nationality are established in law and include where a person acquired nationality by fraud, enlisted in a foreign army, or committed particularly serious deeds damaging the State. There is a safeguard against statelessness in all cases of deprivation and renunciation of nationality except for fraudulent acquisition of nationality.¹⁶

ISSUE 1 – Children’s right to a nationality

17. The right to a nationality is a right that is ‘essential for the protection of every child’.¹⁷ As signatory to the Convention on the Rights of the Child (CRC), Moldova must implement Article 7 to provide for the right of every child to be registered immediately after birth and acquire a nationality, and Article 8 to respect the right of the child to preserve his or her identity, including nationality, in compliance with its obligations under relevant international instruments. As a State party to the 1961 Convention, Moldova has further obligations to prevent and reduce statelessness on

¹³ UNHCR (2014), Handbook on Protection of Stateless Persons, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

¹⁴ Law 200/2010 on foreigners in the Republic of Moldova, available at: <http://www.refworld.org/docid/3ae6b4f520.html>. More information about the SDP is available at: <https://index.statelessness.eu/country/moldova>.

¹⁵ Ibid.

¹⁶ Law 1024/2000 on Citizenship of the Republic of Moldova, Art.23, available at: <http://www.refworld.org/docid/3ae6b60ba.html> (English) and the original at: <http://lex.justice.md/md/311522/> (Romanian).

¹⁷ UNHCR (2018) Ensuring the right of all children to acquire a nationality: Connecting the Dots between the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness: <https://www.refworld.org/docid/52206aa54.html>

its territory.¹⁸ Obligations deriving from the 1961 Convention on the Reduction of Statelessness require Moldova to grant nationality to children who would otherwise be stateless and must be interpreted in light of the CRC.¹⁹ This includes the underlying principles of non-discrimination (Article 2 of the CRC), and that all actions concerning children, including in the area of nationality, must be undertaken with the best interests of the child as a primary consideration (Article 3).

18. Until recently, Moldovan law contained a full safeguard for all children born on the territory who would otherwise be stateless to acquire nationality automatically at birth. However, following amendments to the Law on Citizenship that entered into force in 2018, children born on the territory who would otherwise be stateless may only acquire nationality automatically at birth if at least one of their parents has the right to reside, benefits from international protection, or is a recognised stateless person by the authorities of Moldova.²⁰ There are currently two appeals pending before the Constitutional Court to challenge the constitutionality of this provision. The new provisions increase the risk of children being born stateless in Moldova, contrary to its international obligations.
19. Positively, in the case of foundlings, adopted children, children born abroad to Moldovan nationals and children born in Moldova where one parent has legal residence, provisions are in place to ensure children acquire a nationality.
20. Every child's right to legal identity and nationality is not only essential to the prevention and reduction of statelessness but is a core principle of international law. Article 7 CRC applies irrespective of the nationality, statelessness, or residence status of the parents,²¹ and States should register the birth of all children born on their territory even if they are born to a foreign parent with an irregular immigration status or the parents are unknown.²² Birth registration must be free and take place immediately after birth without delay.
21. Although Moldovan law provides for free birth registration and stipulates that all children must be registered, efforts to prevent statelessness are hindered by barriers to universal free birth registration. Parents must be documented for the child to be registered and issued a birth certificate,²³ which means that some parents face barriers to registering births without any other safeguards in place to protect the child's right to a nationality. There are credible reports from the Ombudsperson and NGOs of barriers to birth registration for undocumented parents and children

¹⁸ 1961 Convention; UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>; and also European Network on Statelessness, *No Child Should Be Stateless*, 2015, available at https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf.

¹⁹ UNHCR Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness: <https://www.refworld.org/docid/50d460c72.html>.

²⁰ Law 1024/2000 on Citizenship of the Republic of Moldova, Article 11, available at: <http://www.refworld.org/docid/3ae6b60ba.html> (English) and the original at: <http://lex.justice.md/md/311522/> (Romanian); Law 132/2017 amending and completing the Law on Citizenship of the Republic of Moldova 1024/2000, available at: <http://lex.justice.md/md/373813%20/> (Romanian).

²¹ UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04.

²² See also, at the regional level, Council of Europe: Committee of Ministers, Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children, 9 May 2009, CM/Rec(2009)13.

²³ Law 100/2001 on acts of civil status of the Republic of Moldova, available at: <http://www.law-moldova.com/laws/rom/actah-grazhdanskogo-sostoeanie-ro.txt> (Romanian); Public Services Agency order nr. 1, 19 July 2017: http://asp.gov.md/sites/default/files/pdf/acte-institutionale/Anexa4_Lista_serviciilor_SSC_07_06_2018.pdf (Romanian).

remaining unregistered as a result.²⁴ Romani communities are disproportionately impacted and many face challenges due to parents' lack of documentation. Positively, an amendment to the law which came into force in January 2018 recognises Transnistrian civil status acts, making it easier for parents of Transnistrian origin to register the births of their children in Moldova and for children born to Transnistrian parents to acquire Moldovan nationality.

ISSUE 3 – Facilitated naturalisation

22. According to its obligations under the 1954 Convention, Moldova should as far as possible facilitate the naturalisation of recognised stateless persons. In particular, it should make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.²⁵
23. There are accelerated naturalisation procedures for recognised stateless people and refugees in Moldova, who can apply for naturalisation after eight years instead of the standard 10 years. However, eight years is still a long residence requirement in comparison to other countries in Europe, and a long time for people recognised as stateless to wait to resolve their lack of any nationality.²⁶ There is no fee exemption nor waiver of language, citizenship test or minimum income level requirements. Some persons recognised as stateless may be refused access to Moldovan nationality, including if it is considered that the person has been “involved in activities that endanger the [...] health and morality of the population”, which may unreasonably prevent stateless persons from acquiring a nationality.²⁷

ISSUE 2 – Liberty and security of the person and arbitrary detention

24. Undocumented stateless people face a heightened risk of arbitrary immigration detention (‘public custody’) particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.²⁸ Moreover, arbitrary and disproportionately lengthy immigration detention can ensue when the particular vulnerabilities of stateless people are not addressed.²⁹
25. There are several gaps in immigration detention law, policy, and practice in Moldova. There are some protections against the arbitrary detention of undocumented stateless people, including provisions establishing that detention should be a measure of last resort and a country of removal must be identified prior to detaining.³⁰

²⁴ Ombudsperson of Moldova, Raport Tematic: Analiza situației pe țară privind documentarea copiilor cu adeverințe de Naștere (Analysis of the situation regarding children’s rights to a name and nationality), 2013: http://ombudsman.md/wp-content/uploads/2018/10/raport_tematic_-_copii_nedocumentati_red_0.pdf (Romanian); Ombudsperson of Moldova, Report Observing Child Rights in the Republic of Moldova in 2017, page 91, right to name and nationality. Available at: http://ombudsman.md/wp-content/uploads/2019/05/Raport_2018_INTEGRAL-1.pdf.

²⁵ Article 32 of the 1954 Convention.

²⁶ Law 1024/2000 on Citizenship of the Republic of Moldova, Art. 17, available at: <http://www.refworld.org/docid/3ae6b60ba.html> (English) and the original at: <http://lex.justice.md/md/311522/> (Romanian). For a comparison with other European countries, see: <https://index.statelessness.eu/>

²⁷ Ibid.

²⁸ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, 2017 https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockInLimbo_Detention_Agenda_online.pdf.

²⁹ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A regional toolkit for practitioners*, 2017 https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf.

³⁰ Law 200/2010 on foreigners in the Republic of Moldova, available at: <http://www.refworld.org/docid/3ae6b4f520.html>.

However, in practice, it is unclear how these principles are implemented.

26. No alternatives for immigration detention exist in law or in practice, and such alternatives are not considered during decisions to detain. Vulnerability assessments are carried out prior to the decision to detain, but statelessness is not considered during the assessment.³¹ Referral to the SDP is possible from detention, though someone who applies from detention may remain detained until the proposed country of removal confirms they are not a national. Between 2012-2020, 49 people were released from detention into the SDP following confirmation they were not a national by the proposed country of removal.
27. Moldova also has shortcomings in its procedural safeguards for immigration detainees. The maximum time limit differs for different types of detention,³² but there is no time limit for detention pending expulsion following a criminal conviction. The provision of information to detainees on their rights is not set out in law and is provided by UNHCR's NGO partners at the discretion of the Government. Until December 2016, monthly judicial reviews of the necessity of immigration detention were carried out but, following changes to legislation, the provision for regular periodic review of detention no longer exists in law. However, a 2018 Advisory Opinion of the Supreme Court of Justice requires this to be reinstated.³³ This judicial oversight has not yet been reinstated in law, but in practice courts apply detention for not more than 30 days and renewal of the detention period requires a new court decision.

Recommendations

28. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Moldova:
 - I. Fully promote, respect, protect and fulfil its obligations towards stateless persons and the right to a nationality under international human rights law.
 - II. Amend the law to reinstate the full safeguard to ensure that all children born on the territory who would otherwise be stateless acquire Moldovan nationality automatically at birth, regardless of the residence status of their parents.
 - III. Ensure that policies and practices relating to birth registration take into account UNHCR guidelines and good practice,³⁴ to remove all practical barriers to birth registration with a particular focus on minority groups including Romani communities, so that all children born in Moldova are registered immediately regardless of their parents' documentation status.
 - IV. Amend the law to further facilitate the naturalisation of stateless persons, by reducing the residence requirement and waiving the requirement to pay fees,

³¹ Government Decision 492/2011, available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=339318>.

³² 12 months for 'undesirable persons' (person whose resident permit has been cancelled with no right of return for five to 15 years); six months for people subject to removal procedures; no time limit for people subject to a deportation order following a criminal conviction.

³³ Supreme Court of Justice, Advisory Opinion nr. 102: http://jurisprudenta.csj.md/search_rec_csj.php?%20id=158 (Romanian).

³⁴ 1961 Convention; UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>.

have a minimum income and pass language tests for stateless applicants.

- V. Take concrete steps to improve the recording of statelessness, namely by harmonising quantitative data on stateless persons, and publish annual reliable, transparent and comparable statistics on statelessness determination, immigration detention and removal procedures.
- VI. Take concrete steps to protect undocumented stateless people from arbitrary immigration detention ('public custody'), including considering statelessness as a juridically relevant fact in return and detention decisions and ensuring that identification of statelessness is included in individual vulnerability assessments.
- VII. Establish alternatives to immigration detention in law and in practice to protect against arbitrary detention in all circumstances and apply the international norm of detention only ever being used as a last resort after all possible alternatives have been examined in each individual case.
- VIII. Ensure that the Supreme Court of Justice Advisory Opinion no. 102 on the Term of Detention of Foreigners is implemented in practice to ensure judicial control over the necessity for the continuation of immigration detention in each individual case.