

COUNTRY BRIEFING
JULY 2020

Spain



INTRODUCTION

The Statelessness Index (<https://index.statelessness.eu/>) is an online comparative tool that assesses European countries' laws, policies and practices on the protection of stateless people and the prevention and reduction of statelessness. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#),¹ a civil society alliance of over 150 organisations and individuals in 41 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with its members² to research and compile comparative information on statelessness in Spain. This briefing summarises how Spanish law, policy, and practice performs against international norms and good practice on the protection of stateless people and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the Spanish Government for reform in priority areas.

Stateless people are not considered nationals by any State under the operation of its law. Statelessness is a legal anomaly that prevents more than 10 million people around the world - and more than half a million in Europe - from accessing fundamental civil, political, economic, cultural, and social rights.

INTERNATIONAL AND REGIONAL INSTRUMENTS

Spain is party to the core international conventions on statelessness ([1954 Convention relating to the Status of Stateless Persons](#) and [1961 Convention on the Reduction of Statelessness](#)), and to all international human rights conventions within the United Nations system, except for the [International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#). These instruments all have direct effect, as the Spanish Constitution states that international treaties become part of domestic law upon official publication. Spain has not acceded to either of the regional instruments on statelessness ([European Convention on Nationality](#) and [Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession](#)).

Spain retains a reservation to the 1954 Convention, which limits the scope of the provision on fiscal charges (Article 29) to stateless people residing in the territory of a State party. It also entered a declaration to the 1961 Convention, which reserves the right to deprive a person of their Spanish nationality in specific limited circumstances even if this would result in statelessness. There are no further reservations or declarations to other human rights treaties affecting the right to a nationality.

Spain therefore has international obligations to protect stateless people on its territory and facilitate their naturalisation, as well as to reduce statelessness and uphold the right of every child to a nationality.

The Spanish Government should consider withdrawing its reservations to the 1954 and the 1961 Conventions. Spanish nationality law should be amended to avoid statelessness as a result of deprivation of nationality.

The Spanish Government should consider acceding to the [European Convention on Nationality](#), the [Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession](#), and the [Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#).



STATELESS POPULATION DATA

The effective identification of stateless populations is essential for States to be able to comply with their international obligations to protect stateless people and reduce and prevent statelessness. Statistics are important, but so are the causes and consequences of statelessness within a given country and the characteristics of stateless populations. Therefore, States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless people in their territory.³ In principle, the availability of reliable data is linked to whether procedures to identify and determine statelessness are in place, but an established statelessness determination procedure does not preclude there being data gaps.

The data provided by different sources in Spain is inconsistent. Figures on stateless people are available from the National Statistics Institute (*Instituto Nacional de Estadística* (INE)), Eurostat, UNHCR, and the Office for Asylum and Refuge (*Oficina de Asilo y Refugio* (OAR)), the competent body for processing stateless status applications. The Statelessness Index country survey on Spain details the data available prior to January 2020. The last census suggests that just 160 stateless people were living in private homes in Spain in 2011;⁴ however, UNCHR estimates are significantly higher and tripled in the last year, from 1,596 in 2018 to 4,246 stateless people on the territory in 2019.⁵ INE and Eurostat data for the same population (the number of stateless people habitually residing in Spain) also sometimes produces different figures.

The INE compiles information from the census under categories that may overlap with “stateless”, for example, “countries without diplomatic relations” by geographic region. UNHCR reports data only for stateless people who fall within their mandate, so this excludes Palestinians registered with UNRWA. The OAR publishes annual reports on the number of stateless status applications and recognitions, but stateless people who have not accessed the procedure or those at risk of statelessness are not reflected in government data sets.

The Spanish Government should take concrete steps to collect and publish reliable quantitative and qualitative data on statelessness and to improve the identification and recording of statelessness. This should include:

- harmonising and defining statistical categories to improve the accuracy of data
- conducting a mapping study of statelessness in Spain
- training immigration and asylum authorities to accurately identify and record statelessness.



STATELESSNESS DETERMINATION AND STATUS

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, 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.⁶

Spain introduced a formal statelessness determination procedure (SDP) in 2001. The procedure leads to a stateless status, which automatically grants a long-term residence permit and the right to work in Spain. Permanent residency affords people the most comprehensive package of rights and entitlements offered by law to non-nationals in Spain. Officially recognised stateless people are also provided with an identification card and a travel document.

However, despite these elements of good practice, there are major protection gaps for applicants during the procedure. Applicants for stateless status do not enjoy the right to stay, as the SDP regulation states merely that applicants *may be granted* temporary residence. Even if granted temporary residence, an applicant may need to wait months before being notified and receiving the relevant documentation. The SDP process should take three months, but this deadline is not complied with in practice. In the meantime, even those applicants that have a right to stay are not permitted to work. Applications under the SDP must be made in writing using a standard form, but there is no right to free legal aid during the procedure nor to free interpretation at the submission stage. UNHCR is not assigned a specific role in the procedure by law but,

in practice, they may access case files when requested by applicants and monitor relevant cases.

The OAR is the competent body to review asylum and stateless status applications, whereas the Minister of the Interior has the power to grant or refuse applications. However, no referral mechanism exists between the asylum and SDP procedures, and although the SDP can be initiated *ex officio* by the OAR, this has been used only exceptionally. Refusals can be challenged before the OAR (administrative review) and before the courts (judicial review). Judicial review is the first point at which free legal aid is available to stateless applicants.

Stateless status affords people socio-economic rights, but it has a major flaw in that it does not facilitate the acquisition of Spanish nationality. Residence-based naturalisation requires a period of 10 years of lawful and continuous residence. This timeframe is reduced for refugees (and some other groups), but not for recognised stateless people, who must abide by the general rule of 10 years.

The Spanish Government should consider introducing screening and a referral mechanism to the SDP within the international protection procedure to enable the OAR to identify people who may be affected by statelessness and initiate SDP applications *ex officio* as mandated by the SDP regulation.

Applicants for stateless status should be granted the right to a temporary residence permit, documented in a timely manner, and have the right to work if no decision has been taken within the three-month deadline in line with asylum seekers. Applicants should also have the right to free legal aid and free interpretation when submitting their claims and during the procedure.

When reforming the law on asylum, the Spanish Government should take the opportunity to introduce a new legal framework covering all forms of protection, including international protection, statelessness, temporary protection and protection on humanitarian grounds in order to equate the rights of people affected to the highest level.

The Spanish Government should consider reducing the timeframe in the Civil Code for residence-based naturalisation for stateless people to two years, to fully meet the requirements of the 1954 Convention.



DETENTION

Stateless people face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.⁷ There are rules and procedures in Spain to protect individuals from arbitrary detention, including remedies to challenge detention decisions with free legal aid. Detention can only be applied to effect removal and there is a maximum duration of 60 days. However, data from the Spanish Ombudsperson suggests an excessive and unjustified use of detention, as only 36% of detainees were expelled from the country. Statelessness is not considered relevant to the decision to detain, nor as a factor increasing vulnerability, and alternatives to detention are rarely used in practice despite being provided for in law.

Applicants for stateless status holding a temporary stay permit cannot be detained, but those without a permit or who have applied for stateless status but are yet to receive documentary proof of their applicant status, may be detained. In practice, support organisations

working in immigration detention have reported cases of stateless detainees.

The Spanish Government should consider statelessness as a situation of vulnerability in all contexts, including detention. A screening mechanism to identify stateless people should be introduced in immigration procedures, including return and removal proceedings. Access to the SDP should be facilitated from within detention centres.

The Spanish Government should ensure that all applicants for stateless status, regardless of their residence status are not subjected to removal proceedings and detention.



PREVENTION AND REDUCTION

As a State party to the 1961 Convention, Spain has positive obligations to prevent and reduce statelessness on its territory. Spanish nationality law is broadly in line with international standards and good practice in this regard. Children born in Spain who would otherwise be stateless acquire Spanish nationality by origin automatically with no further requirements. Foundlings are presumed to have been born in Spain if they are minors and their first known place of residence is on the Spanish territory. If the birthplace of a foundling is known to be another country and the nationality law of that other country does not attribute a nationality to the child, the child is granted Spanish nationality by origin.

In addition, children born to refugees may naturalise as Spanish after one year of residence.

A person cannot be deprived of Spanish nationality by origin. Although Spanish nationality may be lost or withdrawn in certain circumstances, there are explicit safeguards to prevent statelessness in all cases. Deprivation of nationality resulting in statelessness is only possible in the case of naturalised persons and in specific circumstances (when a person enters the army or holds public office in a foreign country against the explicit prohibition of the Spanish Government or when Spanish nationality is acquired through fraudulent means).

All births are registered in Spain and it is incumbent on the hospital or health centre management and staff, the parents, the closest relatives or, (if none of the above are available) any adult present at the birth to register the birth. All children are issued with birth certificates upon registration. Late registration is possible without any fee or penalty being incurred.

The Spanish Government should consider amending the provision on foundlings to fully comply with the 1961 Convention, as the Spanish nationality law currently presumes that foundlings whose first known place of stay is Spain have been born in Spain (*ius soli*), whereas the 1961 Convention states that they should be considered born on the territory to parents possessing the nationality of that State, applying both *ius soli* and *ius sanguinis*.

SUMMARY OF RECOMMENDATIONS

The Spanish Government should:

- Consider withdrawing its reservations to the 1954 Convention and to the 1961 Convention.
- Consider acceding to the European Convention on Nationality, the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- Collect and publish reliable quantitative and qualitative data on statelessness and improve the identification and recording of statelessness, including by harmonising and defining the statistical categories used in data sets, training immigration authorities and conducting a mapping study of statelessness in Spain.
- Introduce screening mechanisms in immigration procedures, including international protection, to identify people who may be affected by statelessness, as well as a referral mechanism allowing the OAR to initiate applications *ex officio*.
- Improve the legal situation and protection of applicants for stateless status, including by granting them a temporary stay permit while they await the outcome of their claim, providing them with identification documents in a timely manner, offering free legal aid and free interpretation when accessing the SDP and during the procedure, and allowing them to work.
- Create a new legal framework on international protection which includes statelessness in order to improve the rights of applicants for stateless status and recognised stateless persons.
- Consider statelessness as a situation of vulnerability in all contexts, including detention.
- Ensure that applicants, whether or not they are granted a temporary stay permit, are not subject to deportation proceedings and detention, and allow people affected by statelessness to access the SDP from within detention facilities.
- Reduce the time frame set by the Civil Code for residence-based naturalisation in the case of stateless persons to two years.
- Amend the provision on foundlings so that those minors whose first known place of stay is Spain are presumed to have been born in Spain to Spanish parents.

ENDNOTES

¹ European Network on Statelessness' webpage: <http://www.statelessness.eu/>.

² Jesús Tolmo García and Nacho Hernández Moreno, from Fundación Cepaim, led the research for the Statelessness Index in Spain in 2019, with contributions from Spanish ENS members CCAR, Arsenio G. Cores and Aleksandra Semeriak. Nacho Hernández Moreno prepared this briefing.

³ Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015. Available at: <https://bit.ly/31s3tyA>.

⁴ 2011 Census data. Available at <https://bit.ly/31vjB2r>. In order for the information on stateless persons to show, the following steps must be taken: Step 1 – Create tables; Step 2 – National; Step 3 – Persons (Resident in main dwellings); Step 4 – Choose desired filters.

⁵ UNHCR (2020). Global Trends: Forced Displacement in 2019, p. 75. Available at: <https://bit.ly/2Bnsn87>.

⁶ UNHCR (2014). Handbook on Protection of Stateless Persons, p. 25-27. Available at: <https://bit.ly/3ibPRO6>.

⁷ ENS (2017). Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change. Available at: <https://bit.ly/2NGPcpG>.

CONTACT

Nacho Hernández Moreno

Lawyer at the International Affairs Department, Fundación Cepaim
ignaciohernandez@cepaim.org

Nina Murray

Head of Policy & Research, European Network on Statelessness
nina.murray@statelessness.eu

