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## International and Regional Instruments

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
IOB.1.a	1954 Convention	Is your country party to the 1954 Statelessness Convention?	<a href="#">UN Convention Relating to the Status of Stateless Persons, 1954</a>	Yes	UN Treaty Collection, Status of Treaties, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=V-3&amp;chapter=5&amp;Temp=mtdsg2&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=V-3&amp;chapter=5&amp;Temp=mtdsg2&amp;clang=en</a>
IOB.1.b		If yes, when was ratification/accession?		Malta acceded on 11 December 2019.	UN Treaty Collection, Status of Treaties, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=V-3&amp;chapter=5&amp;Temp=mtdsg2&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=V-3&amp;chapter=5&amp;Temp=mtdsg2&amp;clang=en</a>
IOB.1.c		Are there reservations in place? Please list them.	Best practice is no reservations. If there are, they should have little or no impact on the rights of stateless people.	Reservations were entered to Article 11 and Article 14. Malta has also reserved its position on Article 32.	UN Treaty Collection, Status of Treaties, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=V-3&amp;chapter=5&amp;Temp=mtdsg2&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=V-3&amp;chapter=5&amp;Temp=mtdsg2&amp;clang=en</a>
IOB.1.d		Does the Convention have direct effect?	Best practice is that the Convention has direct effect, though this may depend on the legal regime.	No.	
IOB.2.a	1961 Convention	Is your country party to the 1961 Statelessness Convention?	<a href="#">UN Convention on the Reduction of Statelessness, 1961</a>	No	UNHCR: Mapping Statelessness in Malta, August 2014, available at: <a href="https://www.refworld.org/docid/546dae5d4.html">https://www.refworld.org/docid/546dae5d4.html</a>
IOB.2.b		If yes, when was ratification/accession?		-	
IOB.2.c		Are there reservations in place? Please list them.	As above	-	
IOB.2.d		Does the Convention have direct effect?	As above	-	
IOB.3.a	Other conventions	State party to European Convention on Nationality 1997? Please list any reservations.	<a href="#">European Convention on Nationality, 1997</a>	Malta is signatory to the convention but has not acceded.	UNHCR: Mapping Statelessness in Malta, August 2014, available at: <a href="https://www.refworld.org/docid/546dae5d4.html">https://www.refworld.org/docid/546dae5d4.html</a>
IOB.3.b		State Party to European Convention on Human Rights 1950? Please list any relevant reservations.	<a href="#">European Convention on Human Rights, 1950</a>	Yes, with reservations. The Government of Malta, having regard to Art. 64 of the Convention [Art. 57 since the entry into force of Protocol No 11], and desiring to avoid any uncertainty as regards the application of Art.10 of the Convention, declares that the Constitution of Malta enables such restrictions to be imposed upon public officers with regard to their freedom of expression as are reasonably justifiable in a democratic society. The Code of Conduct of public officers in Malta precludes them from taking active part in political discussions or other political activity during working hours or on official premises.	Council of Europe, Chart of Signatures and ratifications, available at: <a href="https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=y6Zd1mGm">https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=y6Zd1mGm</a>
IOB.3.c		State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Please list any reservations.	<a href="#">Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006</a>	No	Council of Europe, Chart of Signatures and ratifications, available at: <a href="https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/200/signatures?p_auth=BSYqA3lx">https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/200/signatures?p_auth=BSYqA3lx</a>
IOB.3.d		Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive)? Please list any relevant reservations.	<a href="#">Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive)</a>	Yes, with no reservations.	
IOB.3.e		State Party to Convention on the Rights of the Child 1989? Please list any relevant reservations.	<a href="#">Convention on the Rights of the Child 1989</a>	Yes, with no current reservations. On 20 August 2001, the Government of Malta informed the Secretary-General that it had decided to withdraw its reservation to Art. 26 made upon ratification: "The Government of Malta is bound by the obligations arising out of this article to the extent of present social security legislation."	United Nations Treaty Collection, available at: <a href="https://treaties.un.org/pages/ViewDetails.aspx?src=IND&amp;mtdsg_no=IV-11&amp;chapter=4&amp;lang=en#EndDec">https://treaties.un.org/pages/ViewDetails.aspx?src=IND&amp;mtdsg_no=IV-11&amp;chapter=4&amp;lang=en#EndDec</a>
IOB.3.f		State Party to International Covenant on Civil and Political Rights 1966? Please list any relevant reservations.	<a href="#">International Covenant on Civil and Political Rights 1966</a>	Yes, with reservations: · The Government of Malta endorses the principles laid down in Article 13. However, in the present circumstances it cannot comply entirely with the provisions of this article; · Article 14 (2) – The Government of Malta declares that it interprets para. 2 of Art. 14 of	United Nations Treaty Collection, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-11&amp;chapter=4&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-11&amp;chapter=4&amp;clang=en</a>

				<p>the Covenant in the sense that it does not preclude any particular law from imposing upon any person charged under such law the burden of proving particular facts;</p> <ul style="list-style-type: none"> <li>· Article 14 (6) - While the Government of Malta accepts the principle of compensation for wrongful imprisonment, it is not possible at this time to implement such a principle in accordance with Art. 14(6) of the Covenant;</li> <li>· Article 19 - The Government of Malta desiring to avoid any uncertainty as regards the application of Art. 19 of the Covenant declares that the Constitution of Malta allow such restrictions to be imposed upon public officers in regard to their freedom of expression as are reasonably justifiable in a democratic society. The code of Conduct of public officers in Malta precludes them from taking an active part in political discussions or other political activity during working hours or on the premises.</li> <li>· The Government of Malta also reserves the right not to apply Art. 19 to the extent that this may be fully compatible with Act 1 of 1987 entitled "An act to regulate the limitations on the political activities of aliens", and this in accordance with Art. 16 of the Convention of Rome (1950) for the protection of Human Rights and Fundamental Freedoms or with Section 41(2)(a)(ii) of the Constitution of Malta;</li> <li>· Article 20 - The Government of Malta interprets Art. 20 consistently with the rights conferred by Arts. 19 and 21 of the Covenant but reserves the right not to introduce any legislation for the purposes of Art. 20;</li> <li>· Article 22 - The Government of Malta reserves the right not to apply Art. 22 to the extent that existing legislative measures may not be fully compatible with this article.</li> <li>· The Government of Malta declares that under Art. 41 of this Covenant it recognises the competence of the Human Rights Committee to receive and consider communications submitted by another State Party, provided that such other State Party has, not less than 12 months prior to the submission by it of a communication relating to Malta, made a declaration under Art. 41 recognising the competence of the Committee to receive and consider communications relating to itself.</li> </ul>	
IOB.3.g		<p>State Party to International Covenant on Economic, Social and Cultural Rights 1966? Please list any relevant reservations.</p>	<p><a href="#">International Covenant on Economic, Social and Cultural Rights 1966</a></p>	<p>Yes, with reservations:</p> <ul style="list-style-type: none"> <li>· Art. 13 - The Government of Malta declares that it is in favour of upholding the principle affirmed in the words "and to ensure the religious and moral education of their children in conformity with their own convictions". However, having regard to the fact that the population of Malta is overwhelmingly Roman Catholic, it is difficult also in view of limited financial and human resources, to provide such education in accordance with a particular religious or moral belief in cases of small groups, which cases are very exceptional in Malta.</li> </ul>	<p>United Nations Treaty Collection, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-3&amp;chapter=4&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-3&amp;chapter=4&amp;clang=en</a></p>
IOB.3.h		<p>State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Please list any relevant reservations.</p>	<p><a href="#">Convention on the Elimination of all Forms of Discrimination Against Women 1979</a> <a href="#">Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness.</a></p>	<p>Yes, with reservations:</p> <ul style="list-style-type: none"> <li>· Art. 11 - The Government of Malta interprets para. 1 of Art. 11, in the light of provisions of para. 2 of Art. 4, as not precluding prohibitions, restrictions, or conditions on the employment of women in certain areas, or the work done by them, where this is considered necessary or desirable to protect the health and safety of women or the human foetus, including such prohibitions, restrictions or conditions imposed in consequence of other international obligations of Malta.</li> <li>· Art.13 - (i) The Government of Malta reserves the right, notwithstanding anything in the Convention, to continue to apply its tax legislation which deems, in certain circumstances, the income of a married woman to be the income of her husband and taxable as such. (ii) The Government of Malta</li> </ul>	<p>United Nations Treaty Collection, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-8&amp;chapter=4&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-8&amp;chapter=4&amp;clang=en</a></p>

				<p>reserves the right to continue to apply its social security legislation which in certain circumstances makes certain benefits payable to the head of the household which is, by such legislation, presumed to be the husband.</p> <ul style="list-style-type: none"> <li>· Arts. 13, 15, 16 -While the Government of Malta is committed to remove, in as far as possible, all aspects of family and property law which may be considered as discriminatory to females, it reserves the right to continue to apply present legislation in that regard until such time as the law is reformed and during such transitory period until those laws are completely superseded.</li> <li>· Art. 16 - The Government of Malta does not consider itself bound by sub-para. (e) of para. (1) of Art. 16 in so far as the same may be interpreted as imposing an obligation on Malta to legalize abortion.</li> </ul>	
IOB.3.i		State Party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984? Please list any relevant reservations.	<a href="#">Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984</a>	Yes, with no reservations.	United Nations Treaty Collection, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-9&amp;chapter=4&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-9&amp;chapter=4&amp;clang=en</a>
IOB.3.j		State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1966? Please list any relevant reservations.	<a href="#">International Convention on the Elimination of All Forms of Racial Discrimination 1965</a>	Yes, with no reservations.	United Nations Treaty Collection, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-2&amp;chapter=4&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-2&amp;chapter=4&amp;clang=en</a>
IOB.3.k		State Party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990? Please list any relevant reservations.	<a href="#">International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990</a>	No.	United Nations Treaty Collection, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-13&amp;chapter=4&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-13&amp;chapter=4&amp;clang=en</a>
IOB.3.l		State Party to the Convention on the Rights of Persons with Disabilities 2006? Please list any relevant reservations.	<a href="#">Convention on the Rights of Persons with Disabilities 2006</a>	<p>Yes, with the following interpretative statement and reservations:</p> <ul style="list-style-type: none"> <li>- Malta understands that the phrase "sexual and reproductive health" in Art 25 (a) of the Convention does not constitute recognition of any new international law obligation, does not create any abortion rights, and cannot be interpreted to constitute support, endorsement, or promotion of abortion. Malta further understands that the use of this phrase is intended exclusively to underline the point that where health services are provided, they are provided without discrimination on the basis of disability.</li> <li>- Malta's national legislation considers the termination of pregnancy through induced abortion as illegal.</li> <li>- Pursuant to Article 29 a) (i) and (iii) of the Convention, while the Government of Malta is fully committed to ensure the effective and full participation of persons with disabilities in political and public life, including the exercise of their right to vote by secret ballot in elections and referenda, and to stand for elections, Malta makes the following reservations: <ul style="list-style-type: none"> <li>- With regard to (a) (i): At this stage, Malta reserves the right to continue to apply its current electoral legislation in so far as voting procedures, facilities and materials are concerned.</li> <li>- With regard to (a) (iii): Malta reserves the right to continue to apply its current electoral legislation in so far as assistance in voting procedures is concerned.</li> </ul> </li> </ul>	United Nations Treaty Collection, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-15&amp;chapter=4&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtdsg_no=IV-15&amp;chapter=4&amp;clang=en</a>

## Stateless Population Data

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
POP.1.a	Availability and sources	Does the Government have a 'stateless' category in its data collection systems (e.g. census)? Please list available figures for the total stateless population on the territory and describe how data is disaggregated (e.g. by sex, age, residence).	<p><a href="#">Gen. Rec. 32, CEDAW</a>: States parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p><a href="#">Council of the European Union (2015)</a>: Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> <p><a href="#">UNHCR (2014)</a>: Improve quantitative and qualitative data on stateless populations.</p> <p><a href="#">Institute on Statelessness and Inclusion (2014)</a>: States should strengthen measures to count stateless persons on their territory.</p>	<p>In Malta, the possibility to be officially recognised as a stateless person does not exist. Data concerning stateless persons in Malta is nearly inexistent. In the 2011 census, some 200 persons were initially recorded as stateless but prior to publication, the NSO cross-checked the data with other administrative sources (such as the national Common Database) and established that all persons initially recorded as stateless during the 2011 Census had a nationality recorded elsewhere. The only other official reference to stateless persons is found in the annual Demographic Review, which is published by the National Statistics Office and comprises the main demographic events for the year as well as other relevant statistics, such as on migration.</p> <p>Since 2008, the Demographic Review has included 'Stateless' as a category of persons who have obtained Maltese nationality through registration or naturalisation. Between 2008 and 2010, 24 stateless individuals are reported to have obtained nationality this way. In 2014, 1 man indicated as stateless acquired Maltese nationality whilst 3 men and 2 women of 'unspecified' nationality also acquired Maltese nationality in the same year.</p> <p>The questionnaire for the 2011 census asked the following question:          · What is your country of birth? (with the possibility of respondents entering OTHER). If respondents answer NO to the question 'Do you have Maltese nationality?', they are then asked, 'Do you have any foreign nationality?' If they also answer NO to this, then there are no further questions on nationality.</p>	<p>UNHCR: Mapping Statelessness in Malta, August 2014, available at: <a href="http://www.refworld.org/docid/546dae5d4.html">http://www.refworld.org/docid/546dae5d4.html</a></p> <p>National Statistics Office (Malta), 2011 Questionnaire, available here: <a href="https://nso.gov.mt/en/nso/Sources_and_Methods/Unit_01/Methodology_and_Research/Documents/Questionnaires/Census_of_Population_and_Housing_2011.pdf">https://nso.gov.mt/en/nso/Sources_and_Methods/Unit_01/Methodology_and_Research/Documents/Questionnaires/Census_of_Population_and_Housing_2011.pdf</a></p> <p>National Statistics Office (Malta), Demographic Review 2014, 2016, available here: <a href="https://nso.gov.mt/en/publications/Publications_by_Unit/Documents/C5_Population%20and%20Migration%20Statistics/Demographic_Review_2014.pdf">https://nso.gov.mt/en/publications/Publications_by_Unit/Documents/C5_Population%20and%20Migration%20Statistics/Demographic_Review_2014.pdf</a></p>
POP.1.b		Do government authorities define data categories that may overlap (e.g. unknown nationality) or where stateless people might be more highly represented (e.g. Palestinian)? Please explain and provide any available figures.	As above	<p>In 2019, the International Protection Agency (IPA), formerly the Office of the Refugee Commissioner, reported 2 male asylum-seekers as having 'unknown' nationality, 1 woman and 6 men from the 'Palestinian Territory, Occ. (Palestine/West Bank)' and 1 man as 'stateless'.</p> <p>The Immigration Police have data on refused asylum-seekers in respect of whom return has proved impossible or difficult. Statistics are not readily available but may be requested.</p> <p>Through the research carried out for the UNHCR mapping study, it was observed that the stateless category in the Demographic Review and published on the EUDO website consists of a mixture of persons of undetermined nationality but also stateless persons such as Palestinians.</p> <p>The IPA, and the Immigration Police could also act as indirect sources of data, yet this data would need to be analysed for variations and specific elements.</p>	<p>UNHCR: Mapping Statelessness in Malta, August 2014, pp.47-48, available at: <a href="http://www.refworld.org/docid/546dae5d4.html">http://www.refworld.org/docid/546dae5d4.html</a></p> <p>Data from the International Protection Agency.</p>
POP.1.c		What is UNHCR's estimate for the stateless/at risk of statelessness population and what is the source for this estimate?	As above	<p>According to UNHCR, 94 stateless persons obtained nationality in Malta between the years 1991-2008 and estimates are that this figure has remained stable.</p> <p>UNHCR does not have official statistics for the stateless population in Malta.</p>	<p>UNHCR: Mapping Statelessness in Malta, August 2014, p.48, available at: <a href="http://www.refworld.org/docid/546dae5d4.html">http://www.refworld.org/docid/546dae5d4.html</a></p> <p>UNHCR, Statistics on Stateless Persons, available at: <a href="http://www.unhcr.org/en-us/protection/statelessness/546e01319/statistics-stateless-persons.html">http://www.unhcr.org/en-us/protection/statelessness/546e01319/statistics-stateless-persons.html</a></p>
POP.1.d		Have there been any surveys or mapping studies to estimate the stateless population in the country?	As above	Not apart from the UNHCR Mapping Study, 2014.	UNHCR: Mapping Statelessness in Malta, August 2014, available at: <a href="http://www.refworld.org/docid/546dae5d4.html">http://www.refworld.org/docid/546dae5d4.html</a>

POP.1.e		Are there any other sources of estimates for the stateless population not covered by the above? Please list sources and figures.	As above	No.	
POP.1.f		Are there issues with the reliability of data or indications that the stateless population may be over/under reported? If yes, please describe.	As above	Data concerning stateless persons in Malta is very limited. The Mapping Statelessness in Malta study focuses on asylum seekers and former asylum seekers from particular countries of origin since this is the population amongst whom it is most likely that stateless persons can be identified. Other population groups, and therefore other causes of statelessness, have not been explored. The indications are that the stateless population in Malta may be underreported due the fact that there is very limited data, the data collection methods are poor, and there is no mechanism in place to identify and determine statelessness.	UNHCR: Mapping Statelessness in Malta, August 2014, pp. 46-48, available at: <a href="http://www.refworld.org/docid/546dae5d4.html">http://www.refworld.org/docid/546dae5d4.html</a>
POP.1.g		Please provide any available figures for stateless refugees and/or asylum-seekers and clarify if the Government also counts these groups in figures for the stateless population (i.e. to avoid under/over-reporting).	As above	According to UNHCR data on asylum applications in Malta in 2016, of the approximately 1600 people who applied for asylum in Malta, approximately 100 were from an unknown country. The initial question asked by IPA, regarding the nationality of asylum-seekers is: CITIZENSHIP AT BIRTH AND AT PRESENT. It is not known whether NONE or N/A would be an acceptable answer. In 2019, the International Protection Agency (IPA), formerly the Office of the Refugee Commissioner, reported 2 male asylum-seekers as having 'unknown' nationality, 1 woman and 6 men from the 'Palestinian Territory, Occ. (Palestine/West Bank)' and 1 man as 'stateless'.	UNHCR: Malta Asylum Trends 2016, available at: <a href="http://www.unhcr.org/mt/charts/category/17/year/9">http://www.unhcr.org/mt/charts/category/17/year/9</a>  aditus foundation: Asylum Information Database, Country Report, Malta, 2019, available at: <a href="https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf">https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf</a>
POP.2.a	Stateless in detention data	Does the Government record and publish figures on stateless people held in immigration detention? If yes, please provide.	As above and see also norms in Detention section.	Detention data is recorded, but not published. It is not known whether the recorded data includes statelessness as a category.	aditus foundation: Asylum Information Database, Country Report, Malta, 2019, available at: <a href="https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf">https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf</a>
POP.2.b		Does the Government record and publish figures on people released from immigration detention due to un-removability? If yes, please provide.	As above	Detention data is recorded, but not published.	aditus foundation

## Statelessness Determination and Status

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
SDS.1.a	Definition of a stateless person	Is there a definition of a stateless person in national law? Do the definition and exclusion provisions align with the 1954 Convention? Please provide details.	<a href="#">UN Convention Relating to the Status of Stateless Persons, 1954</a> : Articles 1(1) & 1(2).	The Maltese Citizenship Act, defines 'stateless' as "destitute of any nationality". For the purposes of visas to Malta, the Immigration Regulations refers to "stateless persons within the meaning of the New York Convention of 29 September 1954".	Maltese Citizenship Act, Article 2, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>  Subsidry Legislation 217.04, Immigration Regulations, 1 May 2004, Regulation 17(4), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=9559&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=9559&amp;l=1</a>
SDS.1.b	Training	Is there training to inform different government bodies about statelessness? If yes, please provide details (e.g. who provides training to whom/how often?)	<a href="#">UNHCR Executive Committee (2006)</a> : Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons.	No statelessness training is provided to government bodies.	Information provided by UNHCR Malta.
SDS.1.c		Is there training for judges and lawyers on statelessness? If yes, please provide details (e.g. provider, frequency).	<a href="#">UNHCR (2016)</a> : Officials who may be in contact with stateless persons need to be trained to identify potential applicants for stateless status and refer them to appropriate channels. <a href="#">UNHCR (2010)</a> : It is recommended that States provide specialised training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations.	No. Statelessness is not included in the University of Malta law course and no training is organised for judges and lawyers.	UNHCR Country Office, Malta. Refugee Law and Statelessness: Practical Aspects, available at: <a href="http://www.um.edu.mt/arts/studyunit/IRL5006">http://www.um.edu.mt/arts/studyunit/IRL5006</a>
SDS.1.d	Existence of a dedicated SDP	Which of the following best describes the situation in your country? <b>Choose only one and then proceed to question indicated.</b>  <b>1.</b> There is a dedicated statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure, leading to a dedicated stateless status ( <b>proceed to Question 2a</b> ).  <b>2.</b> There is no dedicated SDP leading to a dedicated stateless status, but there are other procedures in which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.), or other routes through which stateless people could regularise their stay and/or access their rights ( <b>proceed to Question 10a</b> ).  <b>3.</b> There is a dedicated stateless status but no formal procedure for determining this ( <b>proceed to Question 16a</b> ).	<a href="#">UNHCR (2014)</a> : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. <a href="#">UNHCR (2016)</a> : Establishing a statelessness determination procedure is the most efficient means for States Parties to identify beneficiaries of the Convention.	#2. There is currently no dedicated SDP leading to a dedicated stateless status in Malta. Statelessness may be identified in the context of international protection procedures and there are other routes to regularisation for some stateless people on the territory.  Since acceding to the 1954 Convention, the Maltese Government has been discussing the introduction of an SDP and some progress has been made towards this goal.	UNHCR: Mapping Statelessness in Malta, August 2014, p.20 & p.65, available at: <a href="http://www.refworld.org/docid/546dae5d4.html">http://www.refworld.org/docid/546dae5d4.html</a>  <a href="#">aditus foundation</a>

SDS.10.a	Procedures in which statelessness can be identified and other routes to regularisation (Group 2)	<p><b>If there is no dedicated SDP leading to a stateless status</b>, are there any procedures in which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.)?</p> <p><b>If yes, please state the relevant procedures and then proceed to question 11a.</b></p> <p><b>If no, proceed to question 10b.</b></p>	<p><a href="#">ENS (2013)</a>: For SDPs to be effective, the determination must be a specific objective of the mechanism in question, though not necessarily the only one.</p> <p><a href="#">Hoti v. Croatia ECtHR (2018)</a>: [the State has a] positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of [their] further stay and status determined.</p>	<p>The International Protection Agency (IPA) may grant Temporary Humanitarian Protection (THP) in cases where a person's claim for international protection has been rejected, but due to certain humanitarian reasons the person may not be returned. In 2020, the THP policy was converted to law by embedding it within the International Protection Act (formerly the Refugees Act).</p> <p>In November 2018, the Specific Residence Authorisation was launched, a form of regularisation for people refused asylum who reached Malta prior to 2016 and were not returned to their countries of origin. Changes to the policy made in November 2020 closed SRA for new applications. Renewals of existing SRA permits are however possible.</p> <p>It is also possible for stateless persons to be granted international protection. UNHCR knows of cases of individuals/families enjoying subsidiary protection who might be stateless.</p>	<p>International Protection Act, CAP. 420 of the Laws of Malta, Article 17A, <a href="https://legislation.mt/eli/cap/420/eng/pdf">https://legislation.mt/eli/cap/420/eng/pdf</a></p> <p>Ministry for Home Affairs and National Security, and Parliamentary Secretariat for Reforms, Citizenship and Simplification of Administrative Processes, Policy regarding Specific Residence Authorisation, November 2018, <a href="https://homeaffairs.gov.mt/en/media/Policies-Documents/Pages/Specific-Residence-Authorisation-2018.aspx">https://homeaffairs.gov.mt/en/media/Policies-Documents/Pages/Specific-Residence-Authorisation-2018.aspx</a></p> <p>Identity Malta, Updating of the Policy regarding Specific Residence Authorisation, 24 November 2020, <a href="https://identitymalta.com/updating-of-the-policy-regarding-specific-residence-authorisation/">https://identitymalta.com/updating-of-the-policy-regarding-specific-residence-authorisation/</a></p> <p>UNHCR: Mapping Statelessness in Malta, August 2014, p.20 &amp; p.65, available at: <a href="http://www.refworld.org/docid/546dae5d4.html">http://www.refworld.org/docid/546dae5d4.html</a></p>
SDS.10.b		<p>Are there any other routes through which stateless people could regularise their stay and/or access their rights without their statelessness being identified or determined?</p> <p><b>If yes, please describe these and then proceed to question 14a.</b></p> <p><b>If no, proceed to question 15a.</b></p>	<p><a href="#">UN Convention Relating to the Status of Stateless Persons, 1954</a></p> <p><a href="#">UNHCR (2014)</a> : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments.</p>	<p>Stateless persons could be eligible for THP. This is granted by the IPA to persons who do not qualify for international protection yet who present humanitarian needs requiring protection. THP may be granted to:</p> <ol style="list-style-type: none"> <li>1. unaccompanied minors;</li> <li>2. persons who are terminally ill or suffering from a life-threatening medical condition that cannot be treated in the country of origin or of former habitual residence or, if treatment is available, the person would not have access to it;</li> <li>3. other humanitarian considerations such as disability.</li> </ol> <p>Persons are excluded from THP on similar grounds as exclusion from international protection.</p> <p>In November 2018 the Specific Residence Authorisation (SRA) was launched for persons entering Malta prior to 2016 and who have been found not to be in need of international protection. To qualify for SRA status, people need to fulfil the following criteria:</p> <ol style="list-style-type: none"> <li>1. Irregular entry to Malta prior to 1 January 2016 and physical presence for a period of 5 years preceding the application;</li> <li>2. A final rejection of an asylum application;</li> <li>3. Be of good conduct;</li> <li>4. Frequent employment, defined as an aggregate of around 45 months during the 5 years preceding the application;</li> <li>5. Integration efforts.</li> </ol> <p>SRA was closed to new applications on 31 December 2020 by virtue of policy amendments made in October 2020. SRA permit holders are able to renew if they meet the renewal criteria.</p>	<p>International Protection Act, CAP. 420 of the Laws of Malta, Article 17A.</p> <p>Ministry for Home Affairs and National Security, and Parliamentary Secretariat for Reforms, Citizenship and Simplification of Administrative Processes, Policy regarding Specific Residence Authorisation, November 2018, <a href="https://homeaffairs.gov.mt/en/media/Policies-Documents/Pages/Specific-Residence-Authorisation-2018.aspx">https://homeaffairs.gov.mt/en/media/Policies-Documents/Pages/Specific-Residence-Authorisation-2018.aspx</a></p> <p>Identity Malta, Updating of the Policy regarding Specific Residence Authorisation, 24 November 2020, <a href="https://identitymalta.com/updating-of-the-policy-regarding-specific-residence-authorisation/">https://identitymalta.com/updating-of-the-policy-regarding-specific-residence-authorisation/</a></p>
SDS.11.a	Access to procedures (Group 2)	Please provide details on how statelessness may be identified in other procedures.	<p><a href="#">UNHCR (2016)</a>: Efficient referral mechanisms should be established, while officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels.</p>	Statelessness is not identified in any of the procedures available to stateless people to regularise their stay in Malta.	aditus foundation
SDS.11.b		Are there obligations in law on authorities to consider a claim of statelessness made within another procedure?	<p><a href="#">UNHCR (2016)</a>: Access to the procedure must be guaranteed.</p>	No.	aditus foundation
SDS.11.c		Are there clear, accessible instructions for stateless people on how to claim their rights under the 1954	<p><a href="#">UNHCR (2014)</a>: For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.).</p>	No.	aditus foundation



		Convention and/or be identified as stateless?	<a href="#">UNHCR (2016)</a> : Information on the procedure and counselling services must be available to potential applicants in a language they understand. <a href="#">UN Convention Relating to the Status of Stateless Persons, 1954</a>		
SDS.11.d		Is the examination and/or identification of statelessness conducted by a centralised body with relevant expertise? Please note the competent authority and evaluate appropriateness to national context.	<a href="#">UNHCR (2014)</a> : States may choose between a centralised procedure or one that is conducted by local authorities. Centralised procedures are preferable as they are more likely to develop the necessary expertise. <a href="#">UNHCR (2016)</a> : It is important that examiners develop expertise while ensuring that the procedures are accessible.	Statelessness is not identified in any of the procedures available to stateless people to regularise their stay in Malta.	aditus foundation
SDS.11.e		Is there cooperation between agencies that may have contact with stateless people?	<a href="#">UNHCR (2016)</a> : Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice.	No.	aditus foundation
SDS.12.a	Assessment (Group 2)	Who has the burden of proof when determining or identifying statelessness (in law and practice)?	<a href="#">UNHCR (2014)</a> : The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts). <a href="#">UNHCR (2016)</a> : SDPs must take into consideration the difficulties inherent in proving statelessness. <a href="#">UNHCR Expert Meeting (2010)</a> : Individuals must cooperate to establish relevant facts. The burden should shift to the State if an individual can demonstrate they are not a national, on the basis of reasonably available evidence. <a href="#">Hoti v. Croatia ECtHR (2018)</a> : State has responsibility to at least share the burden of proof with the applicant when establishing the fact of statelessness.	Statelessness is not assessed in any of the procedures available to stateless people to regularise their stay in Malta.	aditus foundation
SDS.12.b		What is the standard of proof to evidence statelessness?	<a href="#">UNHCR (2014)</a> : States are advised to adopt the same standard of proof as in refugee status determination ('reasonable degree'). <a href="#">Inter-Parliamentary Union (2018)</a> The standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving statelessness in the likely absence of documentary evidence. <a href="#">Hoti v. Croatia ECtHR (2018)</a> : If statelessness is a relevant factor in the context of access to human rights, the standard of proof when determining the status of statelessness cannot be too high.	Statelessness is not assessed in any of the procedures available to stateless people to regularise their stay in Malta.	aditus foundation
SDS.12.c		Is there clear guidance for decision makers on how to identify or determine statelessness (including e.g. sources of evidence and procedures for evidence gathering, etc.)?	<a href="#">ENS (2013)</a> : Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances.	No.	aditus foundation
SDS.13.a	Procedural safeguards (Group 2)	Is free legal aid available to stateless people?	<a href="#">UNHCR (2014)</a> : Applicants should have access to legal counsel; where free legal assistance is available, it should be offered to applicants without financial means. <a href="#">ENS (2013)</a> : If state funded legal aid is available, it should be provided to stateless claimants. If there is no state funded legal aid but asylum claimants can access free legal aid free of charge, the same level of access should be provided to stateless people.	Access to free legal aid is regulated by specific regulations (e.g. detention, asylum procedure, immigration matters, etc.). Free legal aid is accessible to all persons who fulfil the relevant eligibility criteria, without discrimination. In criminal matters, no means or merits tests is undertaken, whilst for civil matters the Legal Aid Agency undertakes a means and merits test to assess eligibility.	Legal Aid Malta, <a href="https://justice.gov.mt/mt/Pages/justice.aspx">https://justice.gov.mt/mt/Pages/justice.aspx</a>
SDS.13.b		Do stateless people always have an opportunity to claim their statelessness in an interview (whether the purpose of the interview is to identify statelessness or not?)	<a href="#">UNHCR (2014)</a> : The right to an individual interview [is] essential.	In asylum procedures and in applications for THP, stateless people always have access to an interview and may declare themselves to be stateless during the interview.	Based on the observation that, in 2019, the IPA reported as 'stateless' and 'unknown' a number of asylum applicants.

SDS.13.c		Is free interpreting available to stateless people?	<a href="#">UNHCR (2014)</a> : The right to assistance with interpretation/translation [is] essential. <a href="#">ENS (2013)</a> : Assistance should be available for translation and interpretation.	Yes, in the asylum procedure before the International Protection Appeals Tribunal and also before the Immigration Appeals Board. Court proceedings are also conducted with interpreters where needed.	aditus foundation
SDS.13.d		Are decisions (refusals and grants) given in writing with reasons?	<a href="#">UNHCR (2014)</a> : States are encouraged to incorporate the safeguard that decisions are made in writing with reasons.	In the asylum procedure reasons are generally provided. In applications for THP, reasons should also be provided in writing although there is no information available about how rejections are implemented in practice. The decision may be subject to judicial review, under the general rules of administrative law.	aditus foundation
SDS.14.a	Protection (Group 2)	Are there any rights granted to stateless people on the basis of their statelessness? If yes, please provide details.	<a href="#">UNHCR (2014)</a> : The status granted to a stateless person in a State Party must reflect international standards. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty.	No, the identification of statelessness does not result in the acquisition of any rights.	aditus foundation
SDS.14.b		Are stateless people otherwise able to access their rights under the 1954 Convention? (e.g. right to reside, travel document, work, healthcare, social security, education, housing, family reunification, right to vote, etc.)? Please provide details.	<a href="#">UN Convention Relating to the Status of Stateless Persons, 1954</a> <a href="#">UNHCR (2014)</a> : The status granted to a stateless person in a State Party must reflect international standards. It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable.	THP holders are entitled to the same rights as beneficiaries of subsidiary protection, with the difference being that THP is a 2-year status whilst subsidiary protection is granted for 3 years. Both are renewable. These rights include the following:  <ol style="list-style-type: none"> <li>1. information on the rights/obligations relating to that status;</li> <li>2. documentation, including a residence permit, for a period of 3 years (renewable);</li> <li>3. a travel document;</li> <li>4. access to employment;</li> <li>5. access to appropriate accommodation;</li> <li>6. access to integration programmes;</li> <li>7. access to state education and training;</li> <li>8. access to state medical care;</li> <li>9. access to core social welfare benefits;</li> <li>10. family members who are in Malta at the time of the decision enjoy the same rights and benefits.</li> </ol> Persons who are granted SRA are entitled to: <ol style="list-style-type: none"> <li>1. a residence permit valid for 2 years;</li> <li>2. access to core welfare benefits to the same extent as beneficiaries of subsidiary protection;</li> <li>3. an employment licence;</li> <li>4. access to state education and training;</li> <li>5. access to state medical care;</li> <li>6. a travel document.</li> </ol> Stateless people are not allowed to vote or to contest elections.	Subsidiary Legislation 420.07, Procedural Standards for Granting and Withdrawing International Protection Regulations, 2015, Regulation 20(4), <a href="https://legislation.mt/eli/si/420.7/eng/pdf">https://legislation.mt/eli/si/420.7/eng/pdf</a>  Ministry for Home Affairs, Law Enforcement and National Security, Policy regarding Specific Residence Authorisation: Updated Policy - October 2020, <a href="https://identitymalta.com/wp-content/uploads/2019/10/SRA-updated-policy-Nov2020.pdf">https://identitymalta.com/wp-content/uploads/2019/10/SRA-updated-policy-Nov2020.pdf</a>
SDS.15.a	Access to nationality (Group 2)	In what timeframe do stateless people acquire the right to apply for naturalisation and how does this compare to others with a foreign nationality? Please describe the procedure and note whether this is facilitated for stateless people (e.g. exemption from nationality/language tests, fee waiver).	<a href="#">UN Convention Relating to the Status of Stateless Persons, 1954</a> : Article 32 <a href="#">UNHCR (2016)</a> : It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons. <a href="#">Council of Europe Committee of Ministers (1999)</a> : Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory. <a href="#">ENS (2013)</a> : The main benchmark is if there is any preferential treatment for stateless people compared to the general rules applied to those with a foreign nationality.	Stateless foundlings born in Malta are deemed Maltese from the moment of their birth, and until any other nationality is established.  A stateless person may apply for naturalisation under the same conditions as other non-Maltese nationals, under Article 10(1): <ul style="list-style-type: none"> <li>- over 18 years of age and of sound mind;</li> <li>- Residence in Malta throughout the 12 months prior to the application;</li> <li>- At least four years' residence in the six years preceding the 12 months;</li> <li>- Adequate knowledge of Maltese or English;</li> <li>- Good character;</li> <li>- 'would be a suitable citizen of Malta'</li> </ul> Stateless persons may also apply for naturalisation under Article 10(6) (based on birth on the territory or Maltese parentage), subject to fulfilment of certain conditions. No timeframe is mentioned in the Article, yet it is assumed that this procedure may be resorted to once the person reaches 18 years of age, or through a parent/legal guardian if at a younger age.	Maltese Citizenship Act, CAP. 188 of the Laws of Malta, Article 5(1), <a href="https://legislation.mt/eli/cap/188/eng/pdf">https://legislation.mt/eli/cap/188/eng/pdf</a>  Article 10(1).  Article 10(6).

				<p>Stateless persons, as any other non-Maltese nationals, may be granted Maltese nationality if deemed to have rendered 'exceptional services' to Malta, including scientific, artistic, sports, cultural or financial.</p> <p>There is a fee of 450 EUR to apply for naturalisation and a further 50 EUR, if the application is approved and a certificate issued.</p> <p>In all of the above, no information is available as to whether the process is in any way facilitated for stateless persons.</p>	<p>Article 10(9), Subsidiary Legislation 188.06, Granting of Citizenship for Exceptional Services Regulations, 2020, <a href="https://legislation.mt/eli/sl/188.6/eng/pdf">https://legislation.mt/eli/sl/188.6/eng/pdf</a></p> <p>Community Malta Agency, Acquisition of Citizenship by Naturalisation, <a href="https://komunita.gov.mt/en/services/acquisition-of-citizenship/#ByNaturalisation">https://komunita.gov.mt/en/services/acquisition-of-citizenship/#ByNaturalisation</a></p>
SDS.15.b		Are there requirements relating to 'good character' or previous criminal convictions that could prevent some stateless people from accessing nationality? If yes, please describe.	<a href="#">Council of Europe Committee of Ministers (1999)</a> : States should ensure that offences, when relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a state.	Yes. For all above-mentioned procedures, the Act requires either good character, no previous conviction, or a public interest element.	Articles 5(8), 10(1)(d) and (e), 10(7) of the Maltese Citizenship Act, and Regulation 6 of the Granting of Citizenship for Exceptional Services Regulations.

## Detention

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
DET.1.a	Detention screening	Are immigration detention powers provided for in law? Please provide the legal source(s).	<a href="#">ICCPR Article 9(1)</a> <a href="#">ECHR Article 5 (1)</a>	<p>Yes, these are powers provided for in law for the detention of:</p> <ol style="list-style-type: none"> <li>1. Asylum-seekers;</li> <li>2. Third country nationals (TCN) denied entry at the border;</li> <li>3. Third country nationals in an irregular situation (including refused asylum-seekers); and</li> <li>4. People awaiting Dublin transfer.</li> </ol>	<p>The relevant source for each group is:</p> <ol style="list-style-type: none"> <li>1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a></li> <li>2. Immigration Act, Chapter 217 of the Laws of Malta, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8722&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8722&amp;l=1</a></li> <li>3. Subsidiary Legislation 217.12, Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, 2011, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1</a></li> <li>4. EU Dublin Regulation, available at: <a href="http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604">http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604</a></li> </ol>
DET.1.b		Does domestic law allow immigration detention for purposes other than those listed under ECHR 5(1)(f)?	<a href="#">ECHR Article 5(1)(f)</a>	<p>Detention is permitted:</p> <ol style="list-style-type: none"> <li>1. On the same grounds found in the recast EU Reception Directive;</li> <li>2. When a TCN is refused entry to the territory;</li> <li>3. When a TCN is subject to return procedures and: <ul style="list-style-type: none"> <li>· Other sufficient and less coercive measures are inapplicable;</li> <li>· Detention is necessary to carry out the return and removal procedure, in particular where: (i) there is a risk of absconding; OR (ii) the TCN avoids or hinders return or removal procedure. However, despite above criteria, the law states that “detention shall be a consequence of the removal order”, so the relevance of the criteria is questionable.</li> </ul> </li> </ol> <p>Throughout 2020, newly-arrived asylum-seekers were detained under additional regimes. Some were taken to an Initial Reception Centre (IRC), yet the basis for these allocation decisions is not too clear. According to the Ministry’s policy, the aim of the IRC is to provide accommodation “in a contained environment in order for such migrants to be medically screened and processed by the pertinent authorities.” The policy states that the maximum duration of time spent at the IRC is of 7 days, with the possibility of extending this if health-considerations so require, yet practice has shown that persons remain for a number of weeks, usually depending on the number of people arriving and the arrival timeframes. Although not expressly stated, the IRC is a form of de facto detention on health grounds, yet none of procedural safeguards seem to apply.</p> <p>Furthermore, from mid-2018 through 2020, asylum-seekers were also detained under the Prevention of Disease Ordinance (CAP 36). On the basis of this public health law, the national health authorities may limit the free movement of any person where there is reasonable suspicion that a contagious disease may be spread. Immigration detention under this legal regime was pronounced to be illegal by Maltese Courts in several cases brought by detained men in 2019 and 2020. There are no procedural guarantees in relation to this form of detention, saving the habeas corpus process. The specific provision under which asylum-seekers are being detained (Article 13) grants the health authorities the power to “restrict the movements” of persons and not to</p>	<p>As above, but specifically:</p> <ol style="list-style-type: none"> <li>1. Section 6;</li> <li>2. Section 10</li> <li>3. Regulation 11(6).</li> </ol> <p>Ministry for Home Affairs and National Security, Strategy for the Reception of Asylum-Seekers and Irregular Migrants, December 2015, <a href="https://homeaffairs.gov.mt/en/MHAS-Information/Documents/Migration%20Policy%20181215.docx">https://homeaffairs.gov.mt/en/MHAS-Information/Documents/Migration%20Policy%20181215.docx</a></p> <p>Prevention of Disease Ordinance (CAP 36)</p> <p>Criminal Code, Article 409A (<a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8574&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8574&amp;l=1</a>).</p> <p>Court of Magistrates (Malta) as a Court of Criminal Inquiry, <i>Application of Zeeshan Saleem</i>, 9 October 2019;</p>

				<p>detain. Where this specific law does authorise detention, not being the provision relied upon by the authorities, procedural guarantees do exist such as involvement of judicial authorities.</p> <p>Persons detained under Article 13 are provided with a document stating that, due to the existence of a reasonable suspicion that they might have a contagious disease, restriction of movement is being applied. The document refers to the law and specific article but there is no reference to any challenge procedure.</p> <p>As mentioned above, the clause under which persons are being detained doesn't actually allow detention, but just restriction of movement for up to 4 weeks, extendable to 10 weeks where further microbiological tests need to be finalised.</p> <p>Furthermore, in 2020 hundreds of asylum-seekers were detained under no pretence of a legal basis. They were placed in detention centres with no information as to the reasons in fact or in law. No procedural guarantees existed, except access to Courts under <i>habeas corpus</i> procedures. In the course of cases filed before the Courts, it transpired that people were detained in this manner since no space was available in the open reception centres.</p>	<p>Court of Magistrates (Malta) as a Court of Criminal Inquiry, <a href="#">Application of Mohammed Abdallah Mohammed</a>, 8 October 2019;</p> <p><a href="#">Court of Magistrates (Malta), Application of Frank Kouadioane</a>, 29 October 2020, also <a href="#">here</a>;</p> <p>Court of Magistrates (Malta) as a Court of Criminal Judicature, <a href="#">Application of Koumari Salif et</a>, 26 November 2020.</p> <p>aditus foundation</p> <p>Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 22 September 2020, available at: <a href="https://rm.coe.int/1680a1b877">https://rm.coe.int/1680a1b877</a></p>
DET.1.c	Does a proposed country of removal need to be identified before a person is detained for removal? Please describe the situation in law and in practice.	<p><a href="#">ICCPR Article 7</a>: Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment. <a href="#">Auad v Bulgaria ECtHR (2011)</a>: The only issue is whether the authorities were sufficiently diligent in their efforts to deport the applicant. <a href="#">EU Returns Directive</a>: Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.</p>	<p>Detention for purposes of removal is envisaged for TCNs (2 &amp; 3 above). The relevant laws do not specify the need for a country of removal to be identified. However, the Returns Regulations (and not the Immigration Act), contain the requirements of necessity, proportionality and due diligence. These may be interpreted as requiring an identified country of removal. Also, Regulation 11(11) states that the TCN will be released immediately where removal cannot take place due to legal or other considerations. Also, Regulation 11(14) states that where “a reasonable prospect of removal no longer exists for legal or other considerations...detention ceases to be justified...” Furthermore, the inclusion of the ECHR into Maltese law is also relevant due to the guarantees of Article 5(1)(f).</p>	<p>Subsidiary Legislation 217.12, Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, 2011, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1</a></p> <p>European Convention Act, Ch. 319 of the Laws of Malta, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8795&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8795&amp;l=1</a></p>	
DET.1.d	Is statelessness juridically relevant in decisions to detain? Please describe how (risk of) statelessness is identified and whether referral to an SDP is possible from detention.	<p><a href="#">Auad v Bulgaria ECtHR (2011)</a> <a href="#">Mikolenko v. Estonia ECtHR (2009)</a>: Detention may only be justified as long as deportation proceedings are being conducted with due diligence. <a href="#">UNHCR (2014)</a>: Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. <a href="#">Equal Rights Trust (2012)</a>: States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights. <a href="#">International Commission of Jurists (2014)</a>: The detention of stateless persons can never be justified when there is no active or realistic progress towards transfer to another State.</p>	<p>Statelessness is not considered in any decision to detain. The decision to release a detainee is not based on potential statelessness. There is no procedure to identify or determine statelessness in Malta. Nonetheless, there have been instances of people being released from detention when it was clear that their removal would not be possible due to lack of cooperation from the country of origin or failure to confirm nationality.</p>	<p><a href="https://www.timesofmalta.com/articles/view/20170214/local/malians-to-be-released-after-controversial-three-month-detention.639627">https://www.timesofmalta.com/articles/view/20170214/local/malians-to-be-released-after-controversial-three-month-detention.639627</a></p>	
DET.1.e	Are stateless people detained in practice?		<p>Yes, since the health regime relied upon since mid-2018 detains all asylum-seekers arriving by sea, this potentially also affects stateless persons. The (im)possibility of return is not taken into account at the moment of taking a decision to detain, as this becomes a relevant fact once concrete attempts to remove are actually initiated. Also, persons denied access to the territory and detained could also be stateless.</p>	<p>Prevention of Disease Ordinance (CAP 36)</p> <p>aditus foundation: Asylum Information Database, Country Report, Malta, 2019, available at: <a href="https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf">https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf</a></p> <p>UNHCR Country Office, Malta.</p>	

DET.1.f		Does law (and/or policy) provide that immigration detention should be used only as a last resort, after all alternatives have been exhausted in each individual case?	<p><a href="#">UNHCR (2014)</a>: Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient.</p> <p><a href="#">EU Returns Directive</a>: Article 15(1)</p>	<p>In the case of asylum-seekers, the law (and/or policy) does not provide that detention should be a last resort. The authorities have discretion as to whether to consider less coercive measures. Rather than alternatives being use first, as an alternative, they are being used after the person has been detained as a form of ‘temporary early release’. In fact, ATDs are not referenced in the legislation, instead it is referred to as temporary early release.</p> <p>For persons detained pre-removal it does. Furthermore, detention of Unaccompanied Asylum-Seeking Minors and families with minor children is specifically singled out as requiring the last resort and shortest time possible tests.</p> <p>For persons denied leave to enter, law/policy does not provide that detention should be a last resort.</p>	<p>UNHCR Country Office, Malta.</p> <p>Regulation 11(6), Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, Legal Notice 81 of 2011, 11 March 2011. Regulation 10, for UAMs and families with minor children. Available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1</a></p>
DET.1.g		Are individual vulnerability assessments carried out before a decision to detain (or soon after)? Please note whether statelessness is considered to be a factor increasing vulnerability.	<p><a href="#">ENS (2015)</a>: Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed.</p> <p><a href="#">EU Returns Directive</a>: Article 16(3)</p> <p><a href="#">EU Returns Handbook (2017)</a>: Attention should be paid to the specific situation of stateless persons.</p> <p><a href="#">Council of the European Union (2013)</a>: European entities should assess the situation of LGBTI persons in detention.</p>	<p>With regard to vulnerable asylum-seekers, including minors and unaccompanied minors, the amended legislation and policy prohibit their detention. Reception Regulations state that “whenever the vulnerability of an applicant is ascertained, no detention order shall be issued or, if such an order has already been issued, it shall be revoked with immediate effect.”</p> <p>The policy also states that, upon arrival at the border, unaccompanied minors, family groups with children and other manifestly vulnerable persons would be prioritised during the preliminary screening. When an asylum seeker is deemed vulnerable, following a vulnerability assessment, they should not be detained and should be accommodated immediately in a reception centre and assisted according to his or her vulnerability... According to the Regulations, whenever the vulnerability becomes apparent at a later stage, assistance and support would be provided from that point onwards. In order to give effect to this policy, two procedures are in place to assess ‘vulnerability’ in individual cases. These procedures are known as the Age Assessment Procedure and the VAAP (see section on Identification). Both of these procedures are officially implemented by the Agency for the Welfare of Asylum-Seekers (AWAS). This procedure was established with boat arrivals in mind and is not used for all asylum-seekers reaching Malta. In the case of asylum-seekers arriving by plane:</p> <ul style="list-style-type: none"> <li>· Persons denied access to the territory, even if asylum-seekers, are not assessed for vulnerability before a detention decision is taken.</li> <li>· Persons detained pending removal are not screened for vulnerability before a Detention Order is issued.</li> </ul> <p>In 2020 all persons rescued or intercepted at sea were detained. Their release seemed to be dependant on availability of space in the open reception centres, with priority being given to vulnerable persons and families.</p> <p>In all situations, statelessness is not considered to be a factor affecting vulnerability.</p>	<p>Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a></p> <p>aditus foundation: Asylum Information Database, Country Report, Malta, 2019, available at: <a href="https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf">https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf</a></p>
DET.2.a	Alternatives to detention	Are alternatives to detention established in law and considered prior to any decision to detain?	<p><a href="#">ICCPR Article 9</a></p> <p><a href="#">FKAG v Australia HRC (2013)</a>: Any decision relating to detention must consider less invasive means of achieving the same ends.</p> <p><a href="#">UN General Assembly (2009)</a>: Calls upon all States to adopt alternative measures to detention.</p> <p><a href="#">UNHCR (2014)</a>: Detention can only be justified where other less invasive or coercive measures have been considered and found insufficient.</p>	<p>In the case of asylum-seekers, alternatives are not considered, although the Reception Regulations specify that where detention is not resorted to, an alternative may be imposed. NGOs criticised this inversion of the decision-naming sequence, insisting that if no ground to detain exists, no alternative can be imposed. A list of conditions of ‘temporary release from detention’ are set in the Regulations and subject to a time limit of nine months:</p> <ul style="list-style-type: none"> <li>· regular report at a police station;</li> </ul>	<p>aditus foundation: Asylum Information Database, Country Report, Malta, 2019, available at: <a href="https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf">https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf</a></p> <p>Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a></p>

			<p><a href="#">Human Rights Council (2012)</a> : The obligation to always consider alternatives before resorting to detention should be established by law.</p> <p><a href="#">EU Returns Directive</a>: Article 15(1)</p> <p><a href="#">Equal Rights Trust (2012)</a>: States have an obligation to consider and apply appropriate and viable alternatives to immigration detention that are less coercive and intrusive.</p> <p><a href="#">International Detention Coalition (2015)</a> : Immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case.</p>	<ul style="list-style-type: none"> <li>· residing at an assigned place;</li> <li>· depositing or surrendering documents;</li> <li>· placing a one-time guarantee or surety.</li> </ul> <p>No alternatives are envisioned for persons denied access to territory.</p> <p>Alternatives are envisioned for persons detained for removal, but they are not set out in the law, and there is no provision for their regular review.</p>	<p><a href="#">dDocument.aspx?app=lom&amp;itemid=10662</a></p>
DET.2.b		Is there evidence that immigration detention is used in practice prior to all alternatives being considered?	As above.	<p>Yes. In 2020 all asylum-seekers entering Malta in an irregular manner (the vast majority) were immediately automatically detained without any individualised process. Most people were detained with no legal basis, whilst others were illegally detained under Malta's public health legislation. A number of habeas corpus applications were filed in 2020, with the Courts describing the practice as "abuse and farcical behaviour."</p> <p>There is evidence from aditus foundation, UNHCR and JRS Malta monitoring reports that immigration detention is used in practice prior to all alternatives being considered.</p>	<p>Prevention of Disease Ordinance (CAP 36)</p> <p>Application of Koumari Salif et, 26 November 2020, <a href="https://aditus.org.mt/Publications/DecisionofKoumari%20Salifet_26112020.pdf">https://aditus.org.mt/Publications/DecisionofKoumari%20Salifet_26112020.pdf</a></p> <p>UNHCR Country Office, Malta -These reports have not been published since they are part of ongoing monitoring activities.</p>
DET.3.a	Procedural safeguards	Is there a maximum time period for immigration detention set in law? What is it?	<p><a href="#">UN Human Rights Council (2010)</a> : A maximum period of detention must be established by law and upon expiry the detainee must be automatically released.</p> <p><a href="#">UNHCR (2012)</a> : To guard against arbitrariness, maximum periods of detention should be set in national law.</p> <p><a href="#">EU Returns Directive</a>: Article 15(5)</p> <p><a href="#">Equal Rights Trust (2012)</a> : Detention should always be for the shortest time possible.</p>	<ol style="list-style-type: none"> <li>1. 9 months maximum for asylum-seekers;</li> <li>2. TCNs awaiting return – “for a short period”, initial period of 6 months extendable by a further 12 months where there is lack of cooperation by the TCN OR there are delays in obtaining the necessary documents from the third country in question;</li> <li>3. No time limit for persons denied entry.</li> </ol>	<ol style="list-style-type: none"> <li>1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a></li> <li>2. Returns Regulations, Regulation 11(12) and (13), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1</a></li> </ol>
DET.3.b		Does law/policy provide that individuals must be informed in writing of the reasons for their immigration detention?	<p><a href="#">UN General Assembly (1988)</a> : Anyone who is arrested shall be informed at the time of the reason for his arrest.</p> <p><a href="#">EU Returns Directive</a>: Detention shall be ordered in writing with reasons being given in fact and in law.</p> <p><a href="#">Equal Rights Trust (2012)</a> : Stateless detainees shall receive their order of detention in writing and in a language they understand.</p> <p><a href="#">International Commission of Jurists (2014)</a>: The authorities shall ensure that sufficient information is available to detained persons in a language they understand on the nature of their detention and reasons for it.</p>	<ol style="list-style-type: none"> <li>1. Asylum-seekers – YES, in a language the applicant is reasonable supposed to understand;</li> <li>2. Pending removal – NO</li> <li>3. Denied entry - NO</li> </ol> <p>Additionally, detention orders, if given, are always in English. UNHCR staff have never come across a detention order written in any other language.</p>	<ol style="list-style-type: none"> <li>1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, Regulation 6(2), available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a></li> </ol> <p>UNHCR Country Office, Malta</p>
DET.3.c		Are detainees provided with information on their rights, contact details of legal advice and support providers, and guidance on how to access an SDP?	<p><a href="#">Equal Rights Trust (2012)</a> : Detaining authorities are urged to provide stateless detainees with a handbook in a language and terms they understand, containing information on all their rights and entitlements, contact details of organisations which are mandated to protect them, NGOs and visiting groups and advice on how to challenge the legality of their detention and their treatment as detainees.</p>	<ol style="list-style-type: none"> <li>1. In the case of asylum-seekers, the Detention Order contains information on procedures to challenge detention and obtain free legal aid.</li> <li>2. In the case of those denied entry, there is no specific mention of the obligation to provide such information.</li> <li>3. In the case of detention for removal the Regulations state that the detainee shall be provided with information regarding the detention facility rules, rights and obligations, and entitlement to contact organisations and other bodies.</li> </ol> <p>In practice, it is not clear if information on rights/obligations in detention is actually provided, since visiting NGOs (JRS Malta and aditus foundation) have not come across this.</p> <p>Persons who in 2020 were detained on public health grounds or with no legal basis were not provided with any information about their situation, access to remedies, nor availability of legal assistance.</p>	<ol style="list-style-type: none"> <li>1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, Regulation 6(2), available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a></li> <li>2. N/A</li> <li>3. Returns Regulations, Regulation9(5), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1</a></li> </ol> <p>aditus foundation</p> <p>Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 22 September 2020, available at: <a href="https://rm.coe.int/1680a1b877">https://rm.coe.int/1680a1b877</a></p>

DET.3.d		Are there regular periodic reviews of detention before a court or independent body, which can order release?	<p><a href="#">Kim v Russia ECtHR (2014)</a> : The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure.</p> <p><a href="#">Equal Rights Trust (ERT) (2012)</a> : To avoid arbitrariness, detention should be subject to automatic, regular and periodic review throughout the period of detention, before a judicial body independent of the detaining authorities.</p>	<p>1. Asylum-seekers: YES. The Immigration Appeals Board reviews the lawfulness of their detention within 7 working days from the Detention Order, extendable for another 7 working days for duly justified reasons. It is unclear if the extension refers to the timeframe within which the review must happen, or to the additional period for which a person may be detained following the first review. After this first period, reviews are held by the IAB every 2 months. If detention is not legal, the Board shall order immediate release. From practice observed in 2016, a review of detention is not usually carried out after the first 7 days but after a few weeks. Furthermore, due to the unclear wording of the law, the IAB, NGOs and legal practitioners fail to agree on the precise detention review schedule required by the Regulations.</p> <p>2. Denied entry: NO.</p> <p>3. Pending removal: YES, either on application or ex officio by the Principal Immigration Officer at reasonable intervals of time. These intervals are not defined by the law, but they should not exceed 3 months. If detention is for 6 months or more, the PIO shall conduct the review and notify the IAB to supervise and, where necessary, revise such review.</p> <p>Detention imposed throughout 2020 on public health grounds or no legal grounds was not subject to any regular periodic review.</p>	<p>aditus foundation: Asylum Information Database, Country Report, Malta, 2019, available at: <a href="https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf">https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf</a></p> <p>1. Reception Regulations, Regulation 6(3)&amp;(4), available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a></p> <p>2. N/A</p> <p>3. Returns Regulations, Regulation 11(8), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1</a></p>
DET.3.e		What remedies are available to challenge detention? Please mention any obstacles to accessing effective remedies in practice.	<p><a href="#">ICCPR Article 9(4)</a> <a href="#">ECHR: Article 5(4)</a> <a href="#">Kim v Russia ECtHR (2014)</a> : The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure.</p> <p><a href="#">Alimuradov v. Russia ECtHR (2019)</a>: The individual must have at their disposal a procedure for judicial review of the lawfulness of detention capable of leading to release.</p>	<p>1. Asylum-seekers: applicants may challenge the Detention Order before the IAB within 3 working days. Legal aid is available for those without sufficient resources. In practice, it is very difficult to challenge the Detention Order as there is a lack of expertise among legal aid lawyers and the IAB, which meets only once a week, and a lack of understanding among detainees of their rights. These difficulties were also highlighted by ECtHR in cases brought against Malta by detained asylum seekers (Louled Massoud, Aden Ahmed, and Ibrahim Suso).</p> <p>2. Denied entry: same as above.</p> <p>3. Pending Removal: the TCN can trigger automatic review by the Principal Immigration Officer, by application. In practice, it is difficult for NGOs to access this group as they may be detained for only a short time (hours/days), as they await the return flight to their country of origin. Whilst we do come across some people, particularly if detained for days, we know that we miss many individuals because they are returned too quickly. Their access to remedies is severely hampered by the speed and lack of monitoring of their situation.</p> <p>4. No specific remedies exist for persons detained under the health regime.</p> <p>All detained persons may file a habeas corpus application before the Magistrates Court under Article 409A of the Criminal Code. Access to a lawyer is needed for this application to be filed.</p> <p>In practice, accessing a lawyer or legal information whilst detained is extremely difficult.</p>	<p>Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, Regulation 16, available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a></p> <p>ECtHR, LOULED MASSOUD v. MALTA, Application no. 24340/08, 2010, para 69</p> <p>Aden Ahmed v. Malta, Application No. 55352/12, Council of Europe: European Court of Human Rights, 23 July 2013, available at: <a href="http://www.refworld.org/cases,ECHR,52025bb54.html">http://www.refworld.org/cases,ECHR,52025bb54.html</a></p> <p>ECtHR, Suso Musa v Malta, Application no. 42337/12, 2013</p> <p>Immigration Act, Section 25(A), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8722&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8722&amp;l=1</a></p> <p>Return Regulations, Regulation 11(8), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=11637&amp;l=1</a></p> <p>Aditus foundation casework practice.</p> <p>Criminal Code, Article 409A (<a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8574&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8574&amp;l=1</a>).</p>
DET.3.f		Are there guidelines in place governing the process of re-documentation and ascertaining entitlement to nationality for the purpose of removal?	<p><a href="#">Equal Rights Trust (2012)</a> : The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation.</p> <p><a href="#">ENS (2015)</a> : The detaining state should have rules in place that govern the process of re-documentation and/</p>	No.	



			or ascertaining entitlement to nationality.		
DET.3.g		Is free legal aid available to challenge detention? Please describe any barriers to accessing legal aid in practice.	<a href="#">UNHCR (2014)</a> : Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means. <a href="#">EU Returns Directive</a> : Article 13(3)	1. Asylum-seekers: yes, there is a right to legal aid if they are of insufficient means. Free legal assistance and representation is defined as “the preparation of the required procedural documents and participation in the hearing before the Immigration Appeals Board.” In practice, although the law envisages a series of review sessions to be conducted by the IAB, legal aid is only provided for the first session.  2. Denied entry: legal aid not available.  3. Pending removal: legal aid not available.  Free legal aid would be available to persons wishing to use the <i>habeas corpus</i> procedures, yet this is not accessible in practice.	aditus foundation: Asylum Information Database, Country Report, Malta, 2019, available at: <a href="https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf">https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_mt_2019update.pdf</a>  1. Reception Regulations, Regulation 16, available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a>
DET.4.a	Protections on release	Are people released from detention issued with identification documents (including confirmation of their stateless status) and protected from re-detention?	<a href="#">UN Convention Relating to the Status of Stateless Persons, 1954</a> : Article 27 <a href="#">UNHCR (2014)</a> : Being undocumented cannot be used as a general justification for detention. <a href="#">ENS (2015)</a> : State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention. <a href="#">Equal Rights Trust (2012)</a> : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.	1. Asylum-seekers: are given on release a document stating that they are asylum-seekers, in accordance with the recast EU Reception Directive.  2. & 3. In the case of those denied entry or detained pending removal, if they do not have their own identification documents, or if these are found to be false, the Immigration Police will issue a document showing basic bio details, together with an Immigration Number. This is not an official identification document but merely an administrative tool for recording the presence of the TCN in Malta.	1. Regulation 5(1), Reception Regulations, available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a>  2. & 3. Information based on aditus foundation practice/casework.
DET.4.b		If the purpose of detention cannot be fulfilled and the person is released, what legal status and rights are provided to them in law?	<a href="#">Said Shamilovich Kadzoev v Direksia Migratsia’ pri Ministerstvo na vatreshnite raboti ECJ (2009)</a> : After the maximum period of detention has expired, the person must be released immediately. A lack of valid documentation or inability to support themselves should not be a deterrent to release. <a href="#">Equal Rights Trust (2012)</a> : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.	1. If released, asylum-seekers are entitled to enjoy rights under the Reception Regulations.  2. & 3. For those detained pending removal or on being denied entry, in practice, they would live in the community with tolerated stay, with few recognised rights. They would have: · Access to the labour market, with a work permit issued in the name of the employer; · Access to public health system if they can show payment of a relatively small number of security contribution in the past 3 months.	1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: <a href="http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662">http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=10662</a>  2. & 3. Based on aditus foundation practice/casework.
DET.4.c		If re-detention occurs, is the cumulative time spent in detention counted towards any maximum time limits?	<a href="#">Equal Rights Trust (2012)</a> : When calculating the total time spent by an individual in detention, it is highly desirable that time spent in detention on previous occasions is taken into consideration.	It is unclear whether cumulative time spent in detention counts towards the maximum time limit.	
DET.5.a	Return and readmission agreements	Is statelessness considered a juridically relevant fact in any bilateral readmission and/or return agreements?	<a href="#">UNHCR (2014)</a> : Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness.	Official information is not available, though it is understood that Malta’s readmission agreements are all based on the EU template.	aditus casework/practice.
DET.5.b		Are you aware of cases of cases of stateless people being returned under such agreements?		In 2020, persons were returned to the following countries (this list does not include Assisted Voluntary Returns): Albania, Bangladesh, Bosnia & Herz., Brazil, Canada, Colombia, Egypt, Georgia, Guinea-Bissau, India, Iraq, Jamaica, Korea, Republic of, Libya, Macedonia, Moldova, Morocco, Nepal, Nigeria, Pakistan, Peru, Philippines, Serbia, Syria, Thailand, Tunisia, Turkey, Ukraine	Information provided in writing by the Malta Police Force.

## Prevention and Reduction

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
PRS.1.a	Stateless born on territory	Is there a provision in law for stateless children born on the territory to be granted nationality? <b>[If yes, continue to PRS1b. If no, proceed to PRS1h]</b>	<a href="#">UN Convention on the Reduction of Statelessness, 1961</a> : Article 1 <a href="#">European Convention on Nationality, 1997</a> : Article 2 <a href="#">Convention on the Rights of the Child 1989</a> : Article 7 <a href="#">Committee on the Rights of Migrant Workers and Members of their Families &amp; Committee on the Rights of the Child (2017)</a> : States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless. <a href="#">European Parliament (2018)</a> : The EU and its MS should ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 CRC.	Yes. A stateless person (who is and has always been stateless) born in Malta is entitled to be naturalised if: 1. he has been ordinarily resident in Malta for 5 years immediately preceding the application; AND 2. he has not been convicted in any country of an offence against the security of the State or sentenced in any country to a punishment restrictive of personal liberty for a term of not less than 5 years. However, the CRC Committee has expressed concern about the application of the safeguard.	Maltese Citizenship Act, Chapter 188 Section 10(6)&(7), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>  Committee on the Rights of the Child, Concluding Observations on the second periodic report of Malta, adopted by the Committee at its sixty-second session (14 January–1 February 2013), 18 June 2013, CRC/C/MLT/CO/2, para. 34-35, available at: <a href="http://tbinternet.ohchr.org/_layouts/reatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/reatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&amp;Lang=en</a>
PRS.1.b		Is the provision for otherwise stateless children to acquire nationality automatic or non-automatic (i.e. by application)?	<a href="#">UNHCR (2012)</a> : The 1961 Convention provides Contracting States with two alternatives for granting nationality to otherwise stateless children born in their territory: either automatic acquisition upon birth or upon application. <a href="#">ENS (2015)</a> : The 1961 Convention and the ECN oblige the conferral of nationality to otherwise stateless children born on the territory. The optimal method is to grant nationality automatically at birth.	The provision is non-automatic, by application.	Maltese Citizenship Act, Chapter 188 Section 10(6)&(7), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>
PRS.1.c		Is it a requirement that the parents are also stateless for the otherwise stateless child to acquire nationality?	<a href="#">UNHCR (2012)</a> : The test is not an inquiry into whether a child's parents are stateless. <a href="#">ENS (2015)</a> : Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the parents hold a nationality but are unable to pass this on.	No.	
PRS.1.d		Are stateless children required to prove they cannot access another nationality to acquire the nationality of the country of birth? If yes, please describe how this is determined in practice.	<a href="#">UNHCR (2012)</a> : A Contracting State cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless based on its own interpretation of another State's nationality laws. The burden of proof must be shared between the claimant and the authorities. Decision-makers must consider Articles 3 & 7 CRC and adopt an appropriate standard of proof. Special procedural considerations to address the acute challenges faced by children in communicating basic facts about their nationality should be respected.	The Act says that stateless persons born in Malta must be and must have always been stateless. The practice of this is unknown as the safeguard has not been implemented in practice.	Maltese Citizenship Act, Chapter 188 Section 10(6), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>
PRS.1.e		Is a stateless child born on the territory required to fulfil a period of residence to be granted nationality? If yes, please specify length and if this must be legal residence.	<a href="#">UN Convention on the Reduction of Statelessness, 1961</a> : Article 1(2) <a href="#">UNHCR (2012)</a> : States may stipulate that an otherwise stateless individual born in its territory fulfils a period of 'habitual residence' (understood as stable, factual residence, not legal or formal residence) not exceeding five years preceding an application nor ten years in all. <a href="#">Convention on the Rights of the Child, 1989</a> : Articles 3 & 7 <a href="#">Committee on the Rights of the Child (2015)</a> : Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions. <a href="#">European Convention on Nationality, 1997</a> : Article 6(2)(b)	Yes, a person shall not be entitled to be granted a certificate of naturalisation as a national of Malta under the provisions of that sub-article if the Minister is satisfied that they have not been ordinarily legally resident in Malta throughout the period of five years ending with the date of their application.	Maltese Citizenship Act, Chapter 188 Section 10(6)&(7), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>
PRS.1.f		Are the parents of a stateless child required to fulfil a period of residence for the child to be granted nationality? If	<a href="#">Committee on the Rights of the Child (2011)</a> : The outcome of an application by the parents of a child born on the territory should not prejudice the right	No.	Maltese Citizenship Act, Chapter 188 Section 10, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>

		yes, please specify length and if this must be legal residence.	of the child to acquire the nationality of the State. <a href="#">ENS (2015)</a> : Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention.		
PRS.1.g		What are the age limits (if any) for making an application for nationality for a stateless person born on the territory?	<a href="#">UN Convention on the Reduction of Statelessness, 1961</a> : Article 1(2) <a href="#">UNHCR (2012)</a> : Contracting States need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21. <a href="#">ENS (2015)</a> : Closing the window of opportunity to apply for a nationality has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child.	There are no specific age limits for making an application for nationality for a stateless person born on the territory.	
PRS.1.h		Are there specific provisions to protect the right to a nationality of children born to refugees?	<a href="#">UNHCR (2012)</a> : Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities.	No.	Maltese Citizenship Act, Chapter 188 Section 10, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>
PRS.2.a	Foundlings	Are foundlings granted nationality automatically by law? If not automatic, please describe the procedure.	<a href="#">UN Convention on the Reduction of Statelessness, 1961</a> : Article 2 <a href="#">European Convention on Nationality, 1997</a> : Article 6(1)(b)	Yes, foundlings are deemed to have been born in Malta and to have Maltese nationality by origin.	Maltese Citizenship Act, Chapter 188 Section 17(3), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>
PRS.2.b		Is there an age limit (e.g. 'new-born' or 'infant') in law or practice specifying when a foundling would qualify for nationality?	<a href="#">UNHCR (2012)</a> : At a minimum, the safeguard should apply to all young children who are not yet able to communicate information about the identity of their parents or their place of birth.	The law states that the "new-born infant" shall be a national of Malta at the date of birth. It is unclear whether this provision would apply to a foundling approaching the authorities at a later age.	Maltese Citizenship Act, Chapter 188 Section 17(3) & 5(1)(3), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>
PRS.2.c		Can nationality be withdrawn from foundlings if this leads to statelessness?	<a href="#">UNHCR (2012)</a> : Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality.	The provision says, 'until their right to any other nationality is established'. So, it might be that if parents are identified and if they are nationals of a country which might give rise to the infant to have a 'right' to their nationality, Maltese nationality would cease, making the child potentially stateless until they apply for nationality in the identified country.	Maltese Citizenship Act, Chapter 188 Part VI, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>
PRS.3.a	Adoption	Where a child national is adopted by foreign parent(s), does the child lose their original nationality before the new nationality is acquired?	<a href="#">UN Convention on the Reduction of Statelessness, 1961</a> : Article 5 <a href="#">ENS (2015)</a> : Children may be exposed to a (temporary) risk of statelessness during the adoption process due to the nationality law of the child's country of origin.	No, under the Maltese Citizenship Act it shall be lawful for any person to be a national of Malta and at the same time a national of another country.	Maltese Citizenship Act, Chapter 188 Part IV, Section 7, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>
PRS.3.b		Does a foreign child adopted by national parents acquire nationality? Please specify any age limits and/or risk of statelessness during the adoption process.	<a href="#">European Convention on Nationality, 1997</a> : Article 6(4)(d) <a href="#">Committee on the Rights of the Child (2015)</a> : Ensure that the child is not stateless or discriminated against during the waiting period between arrival and formal adoption.	The acquisition of Maltese nationality by foreign adopted children is regulated by a mix of law and policy. The Maltese Citizenship Act distinguishes between foreign adopted children aged below and above 10 years. In the case of the former, all references in the Act to 'parents' are taken to also include the adoptive parents. Maltese nationality is therefore automatic, and not subject to the Minister's discretion, upon registration of the child. Since Article 5(3) requires birth in Malta of an ascendant of a parent likewise born in Malta, the situation of a foreign adopted child whose ascendant was not born in Malta, is unclear and could give rise to a risk of statelessness. In the case of the latter scenario, where the foreign adopted child is over ten years of age on the date of the adoption, two procedures are envisaged. Firstly, the child may rely on the above-mentioned provisions of Article 5(3), although the reading of the biological child to also include the adopted child seems not to be based on any legal provision but, rather, on a policy decision. Alternatively, an application for nationality may be submitted under Article 11(1), providing for acquisition of nationality through naturalisation. It is national policy to accede to these requests, but pending the procedure there could be a risk of statelessness.	Maltese Citizenship Act, Article 17, Cap. 188 of the Laws of Malta, <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>

PRS.4.a	ius sanguinis	Can children born to nationals abroad acquire nationality by descent ( <i>ius sanguinis</i> ) in general and/or if they would otherwise be stateless?	<a href="#">UN Convention on the Reduction of Statelessness, 1961</a> : Article 4 <a href="#">UNHCR (2012)</a> : Where a child who would otherwise be stateless is born to parents of another Contracting State but does not acquire the nationality of the State of birth responsibility falls to the Contracting State of the parents to grant its nationality to the child.	Under the Maltese Citizenship Act, Maltese nationality is automatically conferred to children born to Maltese nationals either in Malta or abroad, but there are discriminatory limitations in Section 17 of the Act, which exclude children born out of wedlock to a Maltese father.	Maltese Citizenship Act, Chapter 188 Section 5(2)&(3) in conjunction with Section 17(1)(a), available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>  UNHCR: Mapping Statelessness in Malta, August 2014, pp. 36-38, available at: <a href="http://www.refworld.org/docid/546dae5d4.html">http://www.refworld.org/docid/546dae5d4.html</a>  Genovese v. Malta (ECtHR) Application No. 53124/09, 11 October 2011
PRS.4.b		Are there any discriminatory conditions in law and/or practice for the acquisition of nationality by descent (e.g. differential treatment of children born out of wedlock, rights of father/mother/same-sex parents to confer nationality, etc.)?	<a href="#">Genovese v. Malta ECtHR (2011)</a> : The state must ensure that the right to nationality is secured without discrimination. <a href="#">CEDAW Gen. rec. No. 32, 2014</a> : Requires States parties to ensure that women and men have equal rights to confer their nationality to their children and that any obstacles to practical implementation of such laws are removed. <a href="#">UNHCR (2014)</a> : Action 4	Yes, there are discriminatory limitations in Section 17 of the Maltese Citizenship Act, which exclude children born out of wedlock to a Maltese father. Under the limitations, in the case of unmarried parents, a child born in Malta on or after 1 August 1989 shall only become Maltese if the mother is a Maltese national, which leaves a risk of statelessness if only the father is Maltese and the mother cannot confer her nationality to the child, as long as the safeguard against children born stateless on the territory is not implemented in practice. Under these same limitations, children born abroad to a Maltese father and foreign mother out of wedlock on or after 1 August 1989 would also fail to acquire Maltese nationality, even if rendered stateless. Despite being ruled discriminatory by the ECtHR in 2011, the law still contains these limitations.  There are also cases reported of Maltese fathers being required by the authorities to undergo paternity testing for their child's Maltese nationality to be recognised, even where they are married to the foreign mother of the child.	Genovese v. Malta (ECtHR) Application No. 53124/09, 11 October 2011  Aditus foundation casework/practice
PRS.5.a	Birth registration	Does the law provide that all children are registered immediately upon birth regardless of the legal status and/or documentation of parents?	<a href="#">Convention on the Rights of the Child, 1989</a> : Article 7 <a href="#">International Covenant on Civil and Political Rights, 1966</a> : Article 24(2) <a href="#">Council of Europe (2009)</a> : Member 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. <a href="#">UNHCR (2012)</a> : Article 7 CRC applies irrespective of the nationality, statelessness or residence status of the parents. <a href="#">UNHCR (2014)</a> : Action 7 <a href="#">UN Sustainable Development Goal 16.9</a>	It is compulsory for all parents, irrespective of nationality or legal status, to register the birth of their child within fifteen days of the birth. In default of both parents, the duty falls on the physician, surgeon, midwife or any other person in attendance of the birth or in whose house the baby was born.  The obligation to register is however not well enforced, with a number of births remaining unregistered until action is taken. Examples include where the parents fail/refuse to register the birth.	Civil Code, Chapter 16, Section 272, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8580">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8580</a>  aditus foundation
PRS.5.b		Are all children issued with birth certificates upon registration? If no, please describe legal status of documentation issued.	<a href="#">UN Human Rights Council, Resolution A/HRC/RES/20/4</a> : Underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of immigration status and that of parents or family members. <a href="#">Committee on the Rights of Migrant Workers and Members of their Families &amp; Committee on the Rights of the Child (2017)</a> : Take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents.	Yes.	
PRS.5.c		Is the child's nationality determined or recorded upon birth registration? If yes, please describe how and by whom (e.g. if the mother/father's nationality is recorded and/or automatically attributed to the child, if there's a formal procedure, if	<a href="#">Convention on the Rights of the Child, 1989</a> : Articles 3 & 7	No. The document provided after birth registration, the birth certificate, does not contain any information about the child's nationality. It does contain information about the place of birth of the mother and father, where known.	The Civil Code, in Article 278, lists the particulars to be entered on acts of birth, <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8580&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8580&amp;l=1</a> No nationality of the child is listed, and for parents the following is needed: name, surname, legally valid identification document, age, place of birth and residence.

		information on both parents is recorded etc.)			
PRS.5.d		If a child's nationality is not determined or recorded upon birth registration, is there a legal framework to determine the child's nationality later? If yes, please describe the procedure, including the legal grounds, deadlines and competent authority.	<a href="#">Convention on the Rights of the Child, 1989</a> : Articles 3 & 7 <a href="#">UN Convention on the Reduction of Statelessness, 1961</a> : Articles 1 & 4 <a href="#">UNHCR (2012)</a> : States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child's status of undetermined nationality. Such a period should not exceed five years.	There is no clear legal framework. Practice suggests that there is no automatic assessment procedure, yet this is dependent on some considerations, which are all very informal and unclear. When the parents are married and both Maltese, the assumption is that the child is Maltese so that when passport applications are made, no further information is requested since the passport office has access to all personal information of the child and parents. This is also the case in situations of unmarried couples where the mother is Maltese. However, where the father is Maltese but the mother is not, a procedure needs to be triggered requiring the father to present evidence of fatherhood. If the process is not triggered, Maltese nationality is not automatically recognised for the child. Where none of the parents has Maltese nationality, there is no procedure to determine a child's nationality.	aditus foundation
PRS.5.e		Are there credible reports to suggest that children are prevented from registering in practice because of parents' legal status or other reasons (please specify)?	<a href="#">Committee on the Rights of Migrant Workers and Members of their Families &amp; Committee on the Rights of the Child (2017)</a> : Urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed. <a href="#">Global Compact for Safe, Orderly and Regular Migration</a> : States will contribute resources and expertise to strengthen the capacity of national civil registries to facilitate timely access by refugees and stateless persons to civil and birth registration. <a href="#">Global Compact on Refugees</a> : States commit to fulfil the right of all individuals to a legal identity and ensure that migrants are issued documentation and civil registry documents. <a href="#">European Parliament Resolution (2019)</a> : Calls on Member States to take immediate corrective measures to stop discriminatory birth registration.	No such information is available.  The Committee on the Rights of the Child noted in 2013 its concern "that there continue to be cases of children, including those in irregular migration situations, who are not provided with birth registration" and "urge[d] [Malta] to ensure that all children born in its territory are registered at birth, regardless of the status of their parents, with particular attention to children in single parent families and/or irregular migration situations".  UNHCR is not aware of any cases where the authorities prevented children from being registered in practice because of lack of documentation.	UN Committee on the Rights of the Child, Concluding Observations on the second periodic report of Malta, adopted by the Committee at its sixty-second session (14 January–1 February 2013), 18 June 2013, CRC/C/MLT/CO/2, paras. 34-35, available at: <a href="http://tbinternet.ohchr.org/_layouts/reatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/reatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&amp;Lang=en</a>  UNHCR Country Office, Malta.
PRS.5.f		Are there mandatory reporting requirements that would deter undocumented parents from coming forward to register their children (e.g. health or civil registry authorities required to report undocumented migrants)?	<a href="#">Committee on the Rights of Migrant Workers and Members of their Families &amp; Committee on the Rights of the Child, JGC No. 4 (2017)</a> and <a href="#">JGC No. 3 (2017)</a> : Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. Children's personal data, in particular biometric data, should only be used for child protection purposes. <a href="#">Council of Europe: ECRI General Policy Recommendation No. 16(2016) on safeguarding irregularly present migrants from discrimination</a> : States should clearly prohibit the sharing of information about migrants suspected of irregular presence with immigration authorities. These firewalls must be binding on state authorities and the private sector.	No. There is no information as to the existence or use of firewalls prohibiting data sharing.	

PRS.5.g		Is there a statutory deadline for birth registration? If yes, please state the deadline and whether late birth registration is possible in law and practice.	<a href="#">Committee on the Rights of Migrant Workers and Members of their Families &amp; Committee on the Rights of the Child (2017)</a> : Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration. <a href="#">UN Human Rights Council, Resolution A/HRC/RES/20/4</a> : Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child.	Yes, in Malta, it is compulsory for parents to register the birth of their child within 15 days of the birth with the Public Registry Office. Since this obligation may at times be difficult to meet, in practice the timeframe is relaxed, and no penalties are incurred within the first weeks past the deadline. Later registration is allowed, with no cut-off date. Problems could occur in situations of erroneous details entered upon the registration of the child since amendment procedures may require institution of formal procedures, with related expenses.	Civil Code, Chapter 16, Subtitle II, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8580">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8580</a>
PRS.5.h		Are there additional requirements for late birth registration (e.g. fees, documents, court procedure)? Please describe the procedure including the competent authority and procedural deadlines.	As above	No, and this is problematic since there is no monitoring system to ensure that births are actually registered.	
PRS.6.a	Reduction	Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details.	<a href="#">UNHCR (2014)</a> : Action 7	Information on the procedure is available on the Government of Malta website. There is no dedicated campaign, but in 2018, Identity Malta – the public Agency responsible to for civil registrations – opened an office at Mater Dei, the public hospital.	Birth and Life with Your New-Born, <a href="https://www.gov.mt/en/Life%20Events/Pregnancy%20and%20Birth/Pages/Birth-And-Life.aspx">https://www.gov.mt/en/Life%20Events/Pregnancy%20and%20Birth/Pages/Birth-And-Life.aspx</a>  TVM, Identity Malta office at Mater Dei for registration of births and deaths, 23 April 2018, <a href="https://www.tvm.com.mt/en/news/identity-malta-office-at-mater-dei-for-registration-of-births-and-deaths/">https://www.tvm.com.mt/en/news/identity-malta-office-at-mater-dei-for-registration-of-births-and-deaths/</a>
PRS.6.b		Are there particular sections of the population - such as minority groups or people affected by conflict - believed to be stateless/at risk of statelessness? Please provide details and source of information.	<a href="#">UN Convention on the Reduction of Statelessness, 1961</a> : Article 9 <a href="#">UNHCR (2014)</a> : Action 4 <a href="#">UN Human Rights Council (2019)</a> : States should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities.	Some undocumented migrants might be stateless or at risk of statelessness due to barriers to birth registration or their possible un-returnability e.g. due to lack of recognition by the claimed country of origin.  Within the refugee population, it is probable that some persons are actually stateless but not identified or recorded as such.	aditus foundation casework/practice  UN Committee on the Rights of the Child, Concluding Observations on the second periodic report of Malta, adopted by the Committee at its sixty-second session (14 January–1 February 2013), 18 June 2013, CRC/C/MLT/CO/2, paras. 34-35, available at: <a href="http://tbinternet.ohchr.org/_layouts/reatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&amp;Lang=en">http://tbinternet.ohchr.org/_layouts/reatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&amp;Lang=en</a>  UNHCR, Mapping Statelessness in Malta, 2014, available at: <a href="http://www.refworld.org/docid/546dae5d4.html">http://www.refworld.org/docid/546dae5d4.html</a>
PRS.6.c		Has the Government implemented any other measures specifically aimed at reducing (risk of) statelessness? (e.g. identification, registration or naturalisation campaigns, removal of treaty reservations, reform of discriminatory laws, etc.)	<a href="#">UN Convention on the Reduction of Statelessness, 1961</a> <a href="#">UNHCR (2014)</a> : Actions 1 & 8 <a href="#">UNHCR (2015)</a> : States parties to the 1954 Convention are required to help stateless persons become naturalised nationals.	Malta acceded to the 1954 Convention in 2019, but it did so with a number of reservations.	UN Treaty Collection, Status of Treaties, available at: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtmsg_no=V-3&amp;chapter=5&amp;Temp=mtmsg2&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtmsg_no=V-3&amp;chapter=5&amp;Temp=mtmsg2&amp;clang=en</a>
PRS.7.a	Deprivation of nationality	Are there any provisions on deprivation of nationality that could render a person stateless? Please state whether there is a safeguard against statelessness established in law and on what grounds deprivation of nationality may result in statelessness (e.g. national security, fraud, etc.).	<a href="#">UN Convention on the Reduction of Statelessness, 1961</a> : Article 8 & 9 <a href="#">European Convention on Nationality, 1997</a> : Article 7(3) <a href="#">Universal Declaration of Human Rights</a> : Article 15(2) <a href="#">Principles on Deprivation of Nationality</a> and the <a href="#">Draft Commentary</a> : Principle 2.2: Deprivation of nationality refers to any loss, withdrawal or denial of nationality that was not voluntarily requested by the individual; Principles 4, 5 & 6 <a href="#">Report of the Secretary-General on Human Rights and Arbitrary Deprivation of Nationality (2009)</a> : para. 23 <a href="#">UNHCR Guidelines on Statelessness No.5 (2020)</a> : the prohibition of arbitrary deprivation of nationality also includes situations where there is no formal act by a State but where the	Deprivation of nationality acquired through registration or naturalisation may occur in situations of fraudulent acquisition of nationality (fraud, false representation or concealment of any material fact); disloyalty towards the President/Government; assisting the enemy during wartime; conviction for certain criminal offences within seven years of acquiring nationality; residing overseas for a continuous period of seven years without notice.  Deprivation (in all cases) will not be ordered unless the Minister is satisfied that continued nationality is not conducive to the public good. There is an explicit safeguard against statelessness only where deprivation is as a result of being sentenced for a criminal offence within seven years of acquiring Maltese nationality.	Maltese Citizenship Act, Part VI Renunciation and Deprivation of Citizenship, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a>

			practice of its competent authorities clearly shows that they have ceased to consider a particular individual/group as national(s) (e.g. where authorities persistently refuse to issue or renew documents without providing an explanation or justification).		
PRS.7.b		Who is the competent authority for deprivation of nationality and what procedural safeguards are in place (e.g. due process, fair trial, participation in the proceedings, legal aid, judicial oversight, appeal, time limit, subject to prior sentencing)?	<p><a href="#">UN Convention on the Reduction of Statelessness, 1961</a>: Article 8(4)</p> <p><a href="#">European Convention on Nationality, 1997</a>: Article 11</p> <p><a href="#">Principles on Deprivation of Nationality</a>: Principle 7. Deprivation of nationality must be carried out in pursuance of a legitimate purpose, provided for by law, necessary, proportionate and in accordance with procedural safeguards; Principle 8: Everyone has the right to a fair trial or hearing and to an effective remedy and reparation.</p>	<p>The competent authority is the Minister responsible for Maltese nationality and any persons authorised to act on their behalf.</p> <p>Prior to making the deprivation order, the Minister must inform the person in writing of the ground on which the proposed deprivation is based, and of their right to an inquiry. If the person applies for an inquiry, the Minister will appoint a committee composed of a chairperson and two other members. The chairperson is appointed from among judges (or former judges) of the Superior Courts; the other two members should be persons qualified to be appointed as Magistrates. All committee members are appointed by the Minister for a renewable term of three years. The Minister is empowered to make rules of procedure for the committee.</p> <p>The Committee enjoys the powers vested under the Inquiries Act, namely to summon witnesses and to administer oaths. Cases are referred to the Committee by the Minister, following the person's application. The person may be assisted by a legal practitioner but there is no provision for legal aid nor for appeals against Committee decisions.</p> <p>A Constitutional case was filed in 2020 challenging the proceedings of this Committee. A Maltese national was deprived of his nationality on the basis that his marriage to a Maltese woman was fraudulently contracted. The Committee confirmed the Minister's decision, commenting that 'such simulated marriages were commonplace with Arab men'.</p>	<p>Maltese Citizenship Act, Article 2 &amp; Part VI, available at: <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8702&amp;l=1</a></p> <p>Deprivation of Maltese Citizenship (Committee of Inquiry) Rules, Subsidiary Legislation 188.02, 5 April 1991, <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=9537&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=9537&amp;l=1</a></p> <p>Inquiries Act, Cap 273 of the Laws of Malta, 3 June 1977, <a href="http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8763&amp;l=1">http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&amp;itemid=8763&amp;l=1</a></p> <p>aditus foundation casework/practice</p>
PRS.7.c		Are provisions on deprivation of nationality that may render a person stateless applied in practice?		<p>Yes. No extensive research is available but in practice NGOs have encountered recent cases of deprivation of Maltese nationality with little due process e.g. where the authorities allege marriage fraud; and where nationality has been withdrawn without due process/informing affected individuals.</p> <p>In 2019 a group of men who had been naturalised in the 1980's were deprived of their Maltese nationality. This was done on the basis of a decision declaring fraudulent their marriage to Maltese women. Following the dissolution of their marriages, also in the 1980's, many of these men remarried and established new families. Upon applying for naturalisation of their second wives, they were informed that this was not possible since their Maltese nationality was being immediately revoked. The men were given little or no opportunity to explain themselves or to challenge the decisions. The decisions have left most of these men stateless, who in the 1980's were forced to renounce their birth nationality in order to be naturalised as Maltese. Furthermore, these men's children, having acquired Maltese nationality at birth, are also left potentially stateless in those situations where they are unable to acquire their mother's nationality.</p>	aditus foundation casework/practice
PRS.7.d		Are there safeguards in law and practice to prevent renunciation or other forms of voluntary loss of nationality from resulting in statelessness?	<p><a href="#">UN Convention on the Reduction of Statelessness, 1961</a>: Article 7</p> <p><a href="#">European Convention on Nationality, 1997</a>: Articles 7 and 8</p>	<p>Yes. The Citizenship Act only permits renunciation of nationality where the person also has another nationality. Furthermore, the Act also authorises the Minister to refuse a renunciation if this is deemed to be contrary to public policy.</p>	<p>Maltese Citizenship Act, CAP. 188, Article 13(1), <a href="https://legislation.mt/eli/cap/188/eng/pdf">https://legislation.mt/eli/cap/188/eng/pdf</a></p>

PRS.7.e		Are there any provisions on deprivation of nationality in a national security context (regardless of whether they could render a person stateless)? Please describe these provisions and if/how they are applied in practice.	<a href="#">Principles on Deprivation of Nationality</a> Principle 4: States shall not deprive persons of nationality for the purpose of safeguarding national security. Where provisions exist, these should be interpreted narrowly and in accordance with international law standards.	Yes. A person may be deprived of Maltese nationality if, within seven years of being naturalised or registered as a Maltese national, (1) they are sentenced in any country to a punishment of imprisonment of more than 1 year, (2) it is in the public interest to do so, and (3) they would not be rendered stateless.  A person may also be deprived of Maltese nationality if it was acquired through registration or naturalisation if (1) it is in the public interest to do so; (2) the person is a resident of a foreign country for a continuous period of 7 years (not related to service to the State or to an international organisation); (3) they conducted themselves in a way prejudicial to the vital interests of Malta or is considered a threat to public policy or security.	Maltese Citizenship Act, CAP. 188, Article 14(2) and (3), <a href="https://legislation.mt/eli/cap/188/eng/pdf">https://legislation.mt/eli/cap/188/eng/pdf</a>
PRS.7.f		Are there any provisions on deprivation of nationality that directly or indirectly discriminate a person or group of persons on any ground prohibited under international law or that discriminate between nationals? Please describe these provisions and if/how they are applied in practice.	<a href="#">ICCPR: Article 26</a> <a href="#">UN Convention on the Reduction of Statelessness, 1961: Article 9</a> <a href="#">European Convention on Nationality, 1997: Article 5</a> <a href="#">Principles on Deprivation of Nationality: Principle 6</a> . Prohibited grounds for discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation. Each State is also bound by the principle of non-discrimination between its nationals.	Yes. The provisions on deprivation only apply to persons acquiring nationality through registration or naturalisation.  As mentioned above, in 2019 a group of men were deprived of their nationality on the basis that the Minister believed their marriage to Maltese women to be fraudulent. When one of these men challenged the decision before the Committee, the Committee stated that 'such marriages were common amongst Arabs'.	aditus foundation observation.



## Resources

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
RES.1.a	Published judgments	Number of published judgments adjudicating statelessness (broken down by level of jurisdiction). Please list the most relevant ones.		<p>There are no judgments adjudicating statelessness in Malta.</p> <p>There are several judgments on the question of discriminatory application of the right to nationality of children born to Maltese fathers.</p>	<p>Database of the Courts of Law, available at: <a href="http://www.justiceservices.gov.mt/courtservices/default.aspx">http://www.justiceservices.gov.mt/courtservices/default.aspx</a></p> <p>Constitutional Court, Anne Miller pro et noe vs Avukat Generali et, 19/2002/2, 27 March 2009, <a href="https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&amp;CaseJudgementId=54171">https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&amp;CaseJudgementId=54171</a></p> <p>Genovese v. Malta, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, available at: <a href="http://www.refworld.org/cases,ECHR,509ea0852.html">http://www.refworld.org/cases,ECHR,509ea0852.html</a></p>
RES.1.b		Number of published judgments mentioning statelessness (broken down by level of jurisdiction). Please list the most relevant ones.		Listed.	<p>Database of the Courts of Law, available at <a href="http://www.justiceservices.gov.mt/courtservices/default.aspx">http://www.justiceservices.gov.mt/courtservices/default.aspx</a></p> <p>Khalaf Ayman vs. The Prime Minister of Malta et, Civil Court, First Hall, 26 November 2020, Ref. 1232/2019, <a href="https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&amp;CaseJudgementId=124205">https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&amp;CaseJudgementId=124205</a></p> <p>Tarek Mohamed Ibrahim vs. The Deputy Prime Minister and Minister for Justice and Home Affairs et, Constitutional Court, 13 June 2016, Ref. 33/2006/2, <a href="https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&amp;CaseJudgementId=101174">https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&amp;CaseJudgementId=101174</a></p> <p>Khallouf Fatiha vs. Minister for Foreign Affairs et, Civil Court, First Hall (Constitutional Jurisdiction), 14 March 2014, Ref. 69/2011, <a href="https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&amp;CaseJudgementId=86766">https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&amp;CaseJudgementId=86766</a></p> <p>Ramadan Wahba Mabrouk Louay vs L-Onorevoli Vici Prim Ministru u Ministru ghall-Gustizzja u l-Intern, id-Direttur tad-Dipertiment tac-Cittadinanza u tal-Expatriates, l-Avukat Generali, Constitutional Court, 25 May 2012, <a href="https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&amp;CaseJudgementId=74510">https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&amp;CaseJudgementId=74510</a>.</p>
RES.2.a	Pro Bono	Are there specialised lawyers or organisations providing free advice to stateless people or those at risk of statelessness? If yes, please describe.	<a href="#">UNHCR (2014)</a> : Applicants must have access to legal counsel.	<p>No, however, NGOs offering legal advice to asylum-seekers and refugees also represent clients who are either stateless or at risk thereof.</p> <p>It is also possible that, following a request from one of these NGOs, lawyers or law firms could offer free advice.</p>	<p>JRS Malta: <a href="http://www.jrsmalta.org/">http://www.jrsmalta.org/</a></p> <p>aditus foundation: <a href="https://aditus.org.mt/">https://aditus.org.mt/</a></p>
RES.3.a	Literature	Is there domestic academic literature on statelessness? Please list and provide references and hyperlinks (where available).		Yes.	<p>Protecting Statelessness Persons from Arbitrary detention, report on detention and Stateless Persons: ENS and aditus foundation, 2015, available at: <a href="http://aditus.org.mt/Publications/ENS_reports.zip">http://aditus.org.mt/Publications/ENS_reports.zip</a></p> <p>UNHCR Refworld: Mapping Statelessness in Malta, 2014, available at: <a href="http://www.refworld.org/docid/546dae5d4.html">http://www.refworld.org/docid/546dae5d4.html</a></p> <p>University of Malt, Faculty of Laws, Jonathan Muscat, The legal implication of Malta's accession to the UN</p>

				<p>statelessness conventions, Masters dissertation, 2018, <a href="https://www.um.edu.mt/library/oar//handle/123456789/38692">https://www.um.edu.mt/library/oar//handle/123456789/38692</a>. The document is only available to subscribed users.</p> <p>University of Malta, Faculty of Laws, Clara Grech, The lack of a legal framework with regard to statelessness: should this be incorporate in Maltese domestic law?, LL.B. Term Paper, 2017. The document is only available to subscribed users.</p> <p>University of Malta, Faculty of Laws, Antoine Saliba Haig, The Modes of Acquisition and Loss of Citizenship under Maltese Law, LL.D. thesis, 2015. The document is only available to subscribed users.</p>
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