

Contents

Contents.....	1
Country context	2
International and Regional Instruments	3
1954 Convention	3
1961 Convention	3
Other conventions.....	3
Stateless Population Data	7
Availability and sources.....	7
Stateless in detention data.....	8
Statelessness Determination and Status	10
Definition of a stateless person.....	10
Training.....	10
Existence of a dedicated SDP	10
Procedures in which statelessness can be identified and other routes to regularisation (Group 2)	11
Access to procedures (Group 2)	12
Assessment (Group 2)	12
Procedural safeguards (Group 2)	13
Protection (Group 2)	14
Detention	15
Immigration detention	15
Identification of statelessness	16
Procedural safeguards.....	18
Protections on release.....	19
Return and readmission agreements	19
Prevention and Reduction	21
Naturalisation.....	21
Stateless born on territory	22
Foundlings	24
Adoption.....	24
<i>ius sanguinis</i>	24
Birth registration	25
Reducing <i>in situ</i> statelessness	27
Deprivation of nationality	28
Resources	31
Published judgments	31
Pro Bono	31
Literature.....	32

Country context (optional)

Please use this field to provide any relevant contextual or background information about the country's law, policy, and practice, or the stateless population, to help contextualise the information in the survey (optional question).

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?	UN Convention Relating to the Status of Stateless Persons, 1954	Yes	UN Treaty Collection, Status of Treaties, available at: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en
IOB.1.b		If yes, when was ratification/accession?		Malta acceded on 11 December 2019.	UN Treaty Collection, Status of Treaties, available at: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en
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: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en
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?	UN Convention on the Reduction of Statelessness, 1961	No	UNHCR: Mapping Statelessness in Malta, August 2014, available at: https://www.refworld.org/docid/546dae5d4.html
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.	European Convention on Nationality, 1997	Malta is signatory to the convention but has not acceded.	UNHCR: Mapping Statelessness in Malta, August 2014, available at: https://www.refworld.org/docid/546dae5d4.html
IOB.3.b		State Party to European Convention on Human Rights 1950? Please list any relevant reservations.	European Convention on Human Rights, 1950	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: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=y6Zd1mGm
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.	Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006	No	Council of Europe, Chart of Signatures and ratifications, available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/200/signatures?p_auth=BSYqA3lx
IOB.3.d		Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU	Directive 2008/115/EC of the European Parliament and of the Council (EU Return Directive)	Yes, with no reservations.	

		Return Directive)? Please list any relevant reservations.			
IOB.3.e		State Party to Convention on the Rights of the Child 1989? Please list any relevant reservations.	Convention on the Rights of the Child, 1989	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: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec
IOB.3.f		State Party to International Covenant on Civil and Political Rights 1966? Please list any relevant reservations.	International Covenant on Civil and Political Rights, 1966	Yes, with reservations: <ul style="list-style-type: none"> · 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 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; · 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; · 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. · 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; · 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; · 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. · The Government of Malta declares that under Art. 41 of this Covenant it 	United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en

				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.	
IOB.3.g		State Party to International Covenant on Economic, Social and Cultural Rights 1966? Please list any relevant reservations.	International Covenant on Economic, Social and Cultural Rights, 1966	Yes, with reservations: · 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.	United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en
IOB.3.h		State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Please list any relevant reservations.	Convention on the Elimination of all Forms of Discrimination Against Women, 1979 CEDAW, Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness	Yes, with reservations: · 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. · 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 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. · 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. · 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	United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en

				obligation on Malta to legalize abortion.	
IOB.3.i		State Party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984? Please list any relevant reservations.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	Yes, with no reservations.	United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-V-9&chapter=4&clang=en
IOB.3.j		State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1966? Please list any relevant reservations.	International Convention on the Elimination of All Forms of Racial Discrimination, 1965	Yes, with no reservations.	United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-V-2&chapter=4&clang=en
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.	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990	No.	United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-V-13&chapter=4&clang=en
IOB.3.l		State Party to the Convention on the Rights of Persons with Disabilities 2006? Please list any relevant reservations.	Convention on the Rights of Persons with Disabilities, 2006	Yes, with the following interpretative statement and reservations: - 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. - Malta's national legislation considers the termination of pregnancy through induced abortion as illegal. - 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: - 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. - 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.	United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-V-15&chapter=4&clang=en

Stateless Population Data

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
POP.1.a	Availability and sources	Does the State 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>CEDAW, Gen. Rec. 32 (2014): States parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): 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>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>ISI, The World's Stateless (2014): 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: http://www.refworld.org/docid/546dae5d4.html</p> <p>National Statistics Office (Malta), 2011 Questionnaire, available here: https://nso.gov.mt/en/nso/Sources_and_Methods/Unit_01/Methodology_and_Research/Documents/Questionnaires/Census_of_Population_and_Housing_2011.pdf</p> <p>National Statistics Office (Malta), Demographic Review 2014, 2016, available here: https://nso.gov.mt/en/publications/Publications_by_Unit/Documents/C5_Population%20and%20Migration%20Statistics/Demographic_Review_2014.pdf</p>
POP.1.b		Do public 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>UNHCR: Mapping Statelessness in Malta, August 2014, pp.47-48, available at: http://www.refworld.org/docid/546dae5d4.html</p> <p>Data from the International Protection Agency.</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.	
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	According to UNHCR, 94 stateless persons obtained nationality in Malta between the years 1991-2008 and estimates are that this figure has remained stable. UNHCR does not have official statistics for the stateless population in Malta.	UNHCR: Mapping Statelessness in Malta, August 2014, p.48, available at: http://www.refworld.org/docid/546dae5d4.html UNHCR, Statistics on Stateless Persons, available at: http://www.unhcr.org/en-us/protection/statelessness/546e01319/statistics-stateless-persons.html
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: http://www.refworld.org/docid/546dae5d4.html
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: http://www.refworld.org/docid/546dae5d4.html
POP.1.g		Please provide any available figures for stateless refugees and/or asylum-seekers and clarify if the State 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: http://www.unhcr.org/mt/charts/category/17/year/9 aditus foundation: Asylum Information Database, Country Report, Malta, 2020, available at: https://asylumineurope.org/reports/country/malta/
POP.2.a	Stateless in detention data	Does the State record and publish figures on stateless people held in immigration detention? If yes, please provide.	UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Improve quantitative and qualitative data on stateless populations. CEDAW, Gen. Rec. 32 (2014) : State parties should gather, analyse and make available	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, 2020, available at: https://asylumineurope.org/reports/country/malta/

			<p>sex-disaggregated statistical data and trends.</p> <p>ISI, The World's Stateless (2014): States should strengthen measures to count stateless persons on their territory.</p> <p>Equal Rights Trust, Guidelines (2012): 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.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): 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>		
POP.2.b		Does the State 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.	1954 Convention : 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lo&itemid=8702&l=1 Subsidry Legislation 217.04, Immigration Regulations, 1 May 2004, Regulation 17(4), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lo&itemid=9559&l=1
SDS.2.a	Training	Is there training to inform different public authorities about statelessness? If yes, please provide details (e.g. who provides training to whom/how often?)	UNHCR Executive Committee, Conclusion No. 106 (LVII) (2006) : 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.2.b		Is there training for judges and lawyers on statelessness? If yes, please provide details (e.g. provider, frequency).	UNHCR, Good Practices Papers – Action 6 (2020) : 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. UNHCR, Geneva Conclusions (2010) : 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: http://www.um.edu.mt/arts/studyunit/IRL5006
SDS.3.a	Existence of a dedicated SDP	Which of the following best describes the situation in your country? Choose only one and then proceed to question indicated. 1. There is a dedicated statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure, leading to a dedicated stateless status (proceed to Question 4a). 2. 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	UNHCR, Handbook on Protection (2014) : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. UNHCR, Good Practices Papers – Action 6 (2020) : 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: http://www.refworld.org/docid/546dae5d4.html aditus foundation

		and/or access their rights (proceed to Question 10a) . 3. There is a dedicated stateless status but no formal procedure for determining this (proceed to Question 15a) .			
SDS.10. a	Procedures in which statelessnes s can be identified and other routes to regularisation (Group 2)	If there is no dedicated SDP leading to a stateless status , 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.)?	ENS (2013) : For SDPs to be effective, the determination must be a specific objective of the mechanism in question, though not necessarily the only one. ECtHR, Hoti v. Croatia (2018) : [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.	No. The Citizenship Act mentions applications from stateless persons, but it is unclear how eligibility for such applications are determined. It is possible that statelessness may be identified during refugee status determination procedures as a part of a person's claim for international protection.	International Protection Act, CAP. 420 of the Laws of Malta, Article 17A, https://legislation.mt/eli/cap/420/eng/pdf 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, https://homeaffairs.gov.mt/en/media/Policies-Documents/Pages/Specific-Residence-Authorisation-2018.aspx Identity Malta, Updating of the Policy regarding Specific Residence Authorisation, 24 November 2020, https://identitymalta.com/updating-of-the-policy-regarding-specific-residence-authorisation/
SDS.10. b		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?	1954 Convention UNHCR, Handbook on Protection (2014) : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments.	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. THP may be granted to: 1. unaccompanied minors; 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; 3. other humanitarian considerations such as disability. Persons are excluded from THP on similar grounds as exclusion from international protection. 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: 1. Irregular entry to Malta prior to 1 January 2016 and physical presence for a period of 5 years preceding the application; 2. A final rejection of an asylum application;	International Protection Act, CAP. 420 of the Laws of Malta, Article 17A. 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, https://homeaffairs.gov.mt/en/media/Policies-Documents/Pages/Specific-Residence-Authorisation-2018.aspx Identity Malta, Updating of the Policy regarding Specific Residence Authorisation, 24 November 2020, https://identitymalta.com/updating-of-the-policy-regarding-specific-residence-authorisation/ UNHCR: Mapping Statelessness in Malta, August 2014, p.20 & p.65, available at: http://www.refworld.org/docid/546dae5d4.html

				<p>3. Be of good conduct;</p> <p>4. Frequent employment, defined as an aggregate of around 45 months during the 5 years preceding the application;</p> <p>5. Integration efforts.</p> <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>It is also possible for stateless persons to be granted international protection, either due to them being stateless (see SDS.10.a) or for other reasons. UNHCR knows of cases of individuals/families enjoying subsidiary protection who might be stateless.</p>	
SDS.11. a	Access to procedures (Group 2)	Please provide details on how statelessness may be identified in other procedures, which authority is competent to examine and/or identify statelessness and evaluate appropriateness to the national context.	<p>UNHCR, Handbook on Protection (2014): 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.</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): It is important that examiners develop expertise while ensuring that the procedures are accessible. 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 rarely 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?	<p>UNHCR, Good Practices Papers – Action 6 (2020): 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 Convention and/or be identified as stateless?	<p>1954 Convention</p> <p>UNHCR, Handbook on Protection (2014): For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.).</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): Information on the procedure and counselling services must be available to potential applicants in a language they understand.</p>	No.	aditus foundation
SDS.11. d		Is there cooperation between agencies that may have contact with stateless people?	<p>UNHCR, Good Practices Papers – Action 6 (2020): Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice.</p>	No.	aditus foundation
SDS.12. a	Assessment (Group 2)	Who has the burden of proof when determining or identifying statelessness (in law and practice)?	<p>UNHCR, Handbook on Protection (2014): The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts).</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): SDPs must take into consideration the difficulties inherent in proving statelessness.</p> <p>UNHCR, Geneva Conclusions (2010): In statelessness determination procedures, the burden of proof should therefore be shared between the applicant and the authorities</p>	Statelessness is not assessed in any of the procedures available to stateless people to regularise their stay in Malta.	aditus foundation

			responsible for making the determination. 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. ECtHR, Hoti v. Croatia (2018) : State has responsibility to at least share the burden of proof with the applicant when establishing the fact of statelessness.		
SDS.12. b		What is the standard of proof to evidence statelessness?	UNHCR, Handbook on Protection (2014) : States are advised to adopt the same standard of proof as in refugee status determination ('reasonable degree'). UNHCR, Good practices in nationality laws (2018) : 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. ECtHR, Hoti v. Croatia (2018) : 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.)?	ENS (2013) : Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances.	No information is available as to the existence of such guidance.	aditus foundation
SDS.13. a	Procedural safeguards (Group 2)	Is free legal aid available to stateless people generally?	UNHCR, Handbook on Protection (2014) : Applicants should have access to legal counsel; where free legal assistance is available, it should be offered to applicants without financial means. ENS (2013) : 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, https://justice.gov.mt/mt/Pages/justice.aspx
SDS.13. b		Is free interpreting available to stateless people?	UNHCR, Handbook on Protection (2014) : The right to assistance with interpretation/translation [is] essential. ENS (2013) : 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. c		Are there other procedural safeguards in place in procedures through which stateless people may have their statelessness identified or determined, or regularise their stay (e.g., decisions given in writing with reasons, right to an interview, time limit, right of	UNHCR, Handbook on Protection (2014) : States are encouraged to incorporate the safeguard that decisions are made in writing with reasons. It is undesirable for a first instance decision to be issued more than six months from submission of an application. In exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months. An effective right to appeal against a negative first instance decision is an essential safeguard in an SDP.	In the asylum procedure reasons are generally provided. In applications for THP, negative decisions are not reasoned and the law clearly excludes any possibility of appealing. The decision may be subject to judicial review, under the general rules of administrative law. 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. There is no time limit for a person to apply for THP.	aditus foundation Based on the observation that, in 2019, the IPA reported as 'stateless' and 'unknown' a number of asylum applicants.

		appeal, audits in decision-making, etc.)?			
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.	UNHCR, Handbook on Protection (2014) : 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? Please state whether stateless people can access: <ul style="list-style-type: none"> - right to reside - travel document - work - healthcare - social security - education - housing - family reunification - right to vote. [Section complete, proceed to DET]	1954 Convention UNHCR, Handbook on Protection (2014) : 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. States parties are encouraged to facilitate the reunification of those with recognised stateless status with their spouses and dependents. The right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.	<p>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:</p> <ol style="list-style-type: none"> 1. information on the rights/obligations relating to that status; 2. documentation, including a residence permit, for a period of 3 years (renewable); 3. a travel document; 4. access to employment; 5. access to appropriate accommodation; 6. access to integration programmes; 7. access to state education and training; 8. access to state medical care; 9. access to core social welfare benefits; 10. family members who are in Malta at the time of the decision enjoy the same rights and benefits. <p>Persons who are granted SRA are entitled to:</p> <ol style="list-style-type: none"> 1. a residence permit valid for 2 years; 2. access to core welfare benefits to the same extent as beneficiaries of subsidiary protection; 3. an employment licence; 4. access to state education and training; 5. access to state medical care; 6. 6. a travel document. <p>Stateless people are not allowed to vote or to contest elections.</p>	<p>Subsidiary Legislation 420.07, Procedural Standards for Granting and Withdrawing International Protection Regulations, 2015, Regulation 20(4), https://legislation.mt/eli/si/420.7/eng/pdf</p> <p>Ministry for Home Affairs, Law Enforcement and National Security, Policy regarding Specific Residence Authorisation: Updated Policy - October 2020, https://identitymalta.com/wp-content/uploads/2019/10/SRA-updated-policy-Nov2020.pdf</p>

Detention

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
DET.1.a	Immigration detention	<p>Please provide a brief overview of whether immigration detention powers are provided for in law and applied in practice, and whether alternatives to detention are considered.</p> <p>Please provide the legal source(s) and, if available, refer to other publications and sources of information about the law, policy, and practice on immigration detention.</p>	<p>ICCPR: Article 9 ECHR: Article 5 EU Return Directive: Article 15 UNHCR, Handbook on Protection (2014): 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. UN General Assembly (2009): Calls upon all States to adopt alternative measures to detention. HRC, Report of the Special Rapporteur (2012): The obligation to always consider alternatives before resorting to detention should be established by law. International Detention Coalition (2015): 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>	<p>There are powers provided for in law for the detention of:</p> <ol style="list-style-type: none"> 1. Asylum-seekers; 2. Third country nationals (TCN) denied entry at the border; 3. Third country nationals in an irregular situation (including refused asylum-seekers); and 4. People awaiting Dublin transfer. <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. The Reception Regulations specify that where detention is not resorted to, an alternative may be imposed. NGOs criticised this inversion of the decision-making 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. No alternatives are envisioned for persons denied access to territory. 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>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. For persons denied leave to enter, law/policy does not provide that detention should be a last resort.</p> <p>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." Detention was used throughout 2020 to systematically detain the vast majority of asylum-seekers, with reliance on the Covid-19 pandemic as a pretence to do away with procedural guarantees.</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>The relevant source for each group is:</p> <ol style="list-style-type: none"> 1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662 2. Immigration Act, Chapter 217 of the Laws of Malta, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1 3. Subsidiary Legislation 217.12, Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, 2011, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1 4. EU Dublin Regulation, available at: http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604 <p>aditus foundation: Asylum Information Database, Country Report, Malta, 2020, available at: https://asylumineurope.org/reports/country/malta/</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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1</p> <p>Prevention of Disease Ordinance (CAP 36): https://legislation.mt/eli/cap/36/eng</p> <p>Application of Koumari Salif et, 26 November 2020, https://aditus.org.mt/Publications/DecisionofKoumari%20Salifet_26112020.pdf</p> <p>UNHCR Country Office, Malta - These reports have not been published since they are part of ongoing monitoring activities.</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: https://rm.coe.int/1680a1b877</p>

					OHCHR, ‘Shocking’ cycle of violence for migrants departing Libya to seek safety in Europe, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26337&LangID=E
DET.1.b		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>ICCPR: Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment (Article 7).</p> <p>ECtHR, Auad v. Bulgaria (2011): In cases detention with a view to deportation, lack of clarity as to the destination country could hamper effective control of the authorities’ diligence in handling the deportation.</p> <p>EU Return Directive: Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.</p>	Detention for purposes of removal is envisaged for TCNs (2 & 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>Subsidiary Legislation 217.12, Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, 2011, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lo m&itemid=11637&l=1</p> <p>European Convention Act, Ch. 319 of the Laws of Malta, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lo m&itemid=8795&l=1</p>
DET.1.c		Is there a clear obligation on authorities to release a person when there is no reasonable prospect of removal?	<p>EU Return Directive: When it appears that a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned shall be released immediately.</p> <p>UN Working Group on Arbitrary Detention (2018): When the obstacle for identifying or removal of persons in an irregular situation from the territory is not attributable to them, the detainee must be released to avoid potentially indefinite detention from occurring, which would be arbitrary.</p> <p>ECtHR, Auad v. Bulgaria (2011)</p> <p>ECtHR, Mikolenko v. Estonia (2009)</p>	Yes. The Returns Regulations permit detention for the purpose of removal only where the removal procedure is in progress and is being conducted with due diligence.	Returns Regulations, First Proviso to Regulation 11(6), https://legislation.mt/eli/sl/217.12/eng
DET.2.a	Identification of statelessness	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>ECtHR, Auad v. Bulgaria (2011)</p> <p>ECtHR, Mikolenko v. Estonia (2009): Detention may only be justified as long as deportation proceedings are being conducted with due diligence.</p> <p>UNHCR, Handbook on Protection (2014): Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary.</p> <p>Equal Rights Trust, Guidelines (2012): 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.</p> <p>ICJ, Migration and International Human Rights Law (2014): The detention of stateless persons can never be justified when there is no active or realistic progress towards transfer to another State.</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.	https://www.timesofmalta.com/articles/view/20170214/local/malians-to-be-released-after-controversial-three-month-detention.639627
DET.2.b		Is there a definition of vulnerability in law? If yes, does it explicitly include statelessness? If not, please note whether statelessness is considered to be a	<p>PICUM, Preventing and Addressing Vulnerabilities in Immigration Enforcement Policies (2021): Statelessness should be explicitly included in the definition of vulnerability. Vulnerability should always be determined and assessed on an individual basis.</p>	<p>Yes. In the Returns Regulations the definition does not include statelessness, and it is probably not included as a factor increasing vulnerability.</p> <p>‘Vulnerable persons’ are also defined in the Reception Regulations, yet statelessness is not included.</p>	<p>Returns Regulations, Regulation 2, https://legislation.mt/eli/sl/217.12/eng.</p> <p>Reception Regulations, Regulation 14, https://legislation.mt/eli/sl/420.6/eng.</p>

		factor increasing vulnerability.			
DET.2.c		Are individual vulnerability assessments carried out before a decision to detain (or soon after)?	<p>ENS, Protecting Stateless Persons From Arbitrary Detention (2015): Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed.</p> <p>EU Return Directive: Article 16(3)</p> <p>EU Return Handbook (2017): Attention should be paid to the specific situation of stateless persons.</p> <p>Council of the European Union, Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons (2013): European entities should assess the situation of LGBTI persons in detention.</p> <p>PICUM, Preventing and Addressing Vulnerabilities in Immigration Enforcement Policies (2021): There should be a clear legal obligation to screen and assess individuals' vulnerability before a decision to detain is taken and before individuals are placed into situations of deprivation or restriction of liberty.</p>	<p>No assessment is carried out prior to a decision to detain, with the exception of those persons who are manifestly vulnerable such as very young children and persons presenting visible vulnerabilities.</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"> · Persons denied access to the territory, even if asylum-seekers, are not assessed for vulnerability before a detention decision is taken. · Persons detained pending removal are not screened for vulnerability before a Detention Order is issued. <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: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662</p> <p>aditus foundation: Asylum Information Database, Country Report, Malta, 2020, available at: https://asylumineurope.org/reports/country/malta/</p>
DET.2.d		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</p>	<p>Prevention of Disease Ordinance (CAP 36)</p> <p>aditus foundation: Asylum Information Database, Country Report, Malta, 2020, available at: https://asylumineurope.org/reports/country/malta/</p>

				remove are actually initiated. Also, persons denied access to the territory and detained could also be stateless.	UNHCR Country Office, Malta.
DET.3.a	Procedural safeguards	Are there adequate procedural safeguards in place for individuals in immigration detention (e.g. maximum period of detention, decisions in writing, regular periodic reviews, judicial oversight, legal aid, etc.)?	<p>ICCPR: Article 9(4) ECHR: Article 5(4) EU Return Directive: Articles 12, 13 and 15(5) HRC, Report of the Working Group on Arbitrary Detention (2010): A maximum period of detention must be established by law and upon expiry the detainee must be automatically released. UNHCR, Detention Guidelines (2012): To guard against arbitrariness, maximum periods of detention should be set in national law. UNHCR, Handbook on Protection (2014): Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means. UNGA, Body of Principles (1988): Anyone who is arrested shall be informed at the time of the reason for his arrest. Equal Rights Trust, Guidelines (2012): Stateless detainees shall receive their order of detention in writing and in a language they understand. 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. Detention should always be for the shortest time possible. ECtHR, Kim v. Russia (2014): 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>Procedural safeguards vary depending on the type of detention.</p> <p>For asylum-seekers (1):</p> <ul style="list-style-type: none"> - time limit of 9 months - must be informed in writing of reasons for detention in a language reasonably supposed to understand - periodic reviews of lawfulness of detention by the Immigration Appeals Board who may order immediate release - applicants may challenge the Detention Order before the IAB within 3 working days, but there are significant barriers to this due to lack of information and limited access to detention by NGOs and lawyers - Legal aid is available for those without sufficient resources <p>For TCNs awaiting return (2):</p> <ul style="list-style-type: none"> - initial maximum period of 6 months extendable by a further 12 months where there is lack of cooperation by the TCN OR delays in obtaining the necessary documents from the third country - periodic review on application or ex officio by Principal Immigration Officer (interval not defined but should not exceed 3 months). This procedure is not clearly defined and is the subject of on-going legal proceedings wherein a Preliminary Reference is being request to the CJEU in order to clarify the meaning and requirements of the term 'review' in the Returns Directive. - TCNs may trigger automatic review by the Principal Immigration Officer by application but access to remedies are severely hampered by speed and lack of monitoring of their situation - no legal aid <p>For persons denied entry:</p> <ul style="list-style-type: none"> - no time limit - no periodic review - no legal aid - may challenge detention as per asylum seekers <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. In practice, accessing a lawyer or legal information whilst detained is extremely difficult.</p>	<p>1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662</p> <p>2. Returns Regulations, Regulation 11 (8), (12) and (13), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1</p> <p>aditus foundation: Asylum Information Database, Country Report, Malta, 2020, available at: https://asylumineurope.org/report/s/country/malta/</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: http://www.refworld.org/cases,EC_HR,52025bb54.html</p> <p>ECtHR, Suso Musa v Malta, Application no. 42337/12, 2013</p> <p>Immigration Act, Section 25(A), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1</p> <p>Criminal Code, Article 409A (http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1).</p> <p>UNHCR Country Office, Malta</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: https://rm.coe.int/1680a1b877</p> <p>OHCHR, 'Shocking' cycle of violence for migrants departing Libya to seek safety in Europe, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26337&LangID=E</p>
DET.3.b		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>Equal Rights Trust, Guidelines (2012): 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</p>	<p>1. In the case of asylum-seekers, the Detention Order contains information on procedures to challenge detention and obtain free legal aid.</p> <p>2. In the case of those denied entry, there is no specific mention of the obligation to provide such information.</p> <p>3. In the case of detention for removal the Regulations state that the detainee shall be provided with information regarding the detention facility rules,</p>	<p>1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, Regulation 6(2), available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662</p> <p>2. N/A</p> <p>3. Returns Regulations, Regulation9(5), available at:</p>

			challenge the legality of their detention and their treatment as detainees.	rights and obligations, and entitlement to contact organisations and other bodies. 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. 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.	http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1 aditus foundation 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: https://rm.coe.int/1680a1b877
DET.3.c		Are there guidelines in place governing the process of re-documentation and ascertaining entitlement to nationality for the purpose of removal?	Equal Rights Trust, Guidelines (2012) : The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation. ENS, Protecting Stateless Persons From Arbitrary Detention (2015) : The detaining state should have rules in place that govern the process of re-documentation and/or ascertaining entitlement to nationality.	No.	
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?	1954 Convention : Article 27 UNHCR, Handbook on Protection (2014) : Being undocumented cannot be used as a general justification for detention. ENS, Protecting Stateless Persons From Arbitrary Detention (2015) : State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention. Equal Rights Trust, Guidelines (2012) : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.	1. Asylum-seekers who have lodged their applications are given on release an Asylum-Seekers Document (ASD) stating that they are asylum-seekers, in accordance with the recast EU Reception Directive. If release occurs before lodging, then no such document is provided. 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: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662 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?	CJEU, Kadzoev, C-357/09 PPU (2009) : 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. Equal Rights Trust, Guidelines (2012) : 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 as such under the Reception Regulations. Following the adoption of a policy in 2021, asylum-seekers coming from any of the countries listed as safe in the International Protection Act are only granted access to employment after 9 months. 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. Following the adoption of a policy in 2021, refused asylum-seekers coming from any of the countries listed as 'safe' in the International Protection Act are not granted access to employment; · 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: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662 2. & 3. Based on aditus foundation practice/casework.
DET.5.a	Return and readmission agreements	Is statelessness considered a juridically relevant fact in any bilateral readmission and/or return agreements?	UNHCR, Handbook on Protection (2014) : 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 foundation 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.
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Prevention and Reduction

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
PRS.1.a	Naturalisation	In what timeframe do stateless people who are residing on the territory acquire the right to apply for naturalisation, and how does this compare to others with a foreign nationality?	<p>1954 Convention: Article 32</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons.</p> <p>CoE Committee of Ministers, Recommendation No. R (99) 18 (1999): Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory.</p> <p>ENS (2013): 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.</p>	<p>A stateless person may apply for naturalisation under the same conditions as other non-Maltese nationals, under Article 10(1):</p> <ul style="list-style-type: none"> - over 18 years of age and of sound mind; - Residence in Malta throughout the 12 months prior to the application; - At least four years' residence in the six years preceding the 12 months; - Adequate knowledge of Maltese or English; - Good character; - 'would be a suitable citizen of Malta' <p>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.</p> <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 and no information is available as to the assessment of statelessness in this context.</p>	<p>Maltese Citizenship Act, CAP. 188 of the Laws of Malta, Article 5(1), https://legislation.mt/eli/cap/188/eng/pdf</p> <p>Article 10(1).</p> <p>Article 10(6).</p> <p>Article 10(9), Subsidiary Legislation 188.06, Granting of Citizenship for Exceptional Services Regulations, 2020, https://legislation.mt/eli/sl/188.6/eng/pdf</p> <p>Community Malta Agency, Acquisition of Citizenship by Naturalisation, https://komunita.gov.mt/en/services/acquisition-of-citizenship/#ByNaturalisation</p>
PRS.1.b		Are there requirements relating to 'good character' or previous criminal convictions that could prevent some stateless people from naturalising? If yes, please describe.	<p>CoE Committee of Ministers, Recommendation No. R (99) 18 (1999): 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.</p>	<p>Yes. For all above-mentioned procedures, the Act requires either good character, no previous conviction, or a public interest element.</p>	<p>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.</p>
PRS.1.c		Are there exemptions for stateless people from any nationality or integration test, language, income or fee requirements for naturalisation? Please describe the requirements and cost of the procedure for stateless adults and children.	<p>1954 Convention: Article 32</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons.</p> <p>CoE Committee of Ministers, Recommendation No. R (99) 18 (1999): Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory.</p>	<p>In all of the above (PRS 1a), no information is available as to whether the process is in any way facilitated for stateless persons.</p>	

PRS.2.a	Stateless born on territory	Is there a provision in law for stateless children born on the territory to acquire nationality? [If yes, continue to PRS2b. If no, proceed to PRS2i]	1961 Convention : Article 1 ECN : Article 2 CRC : Article 7 Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless. HRC, CCPR General comment No. 17 (1989) : States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. European Parliament resolution (2018) : 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. they have been ordinarily resident in Malta for 5 years immediately preceding the application; AND 2. they have 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1 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: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&Lang=en
PRS.2.b		Is the provision for otherwise stateless children to acquire nationality automatic or non-automatic (i.e. by application)?	UNHCR, Guidelines on Statelessness No. 4 (2012) : 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. ENS, No Child Should Be Stateless (2015) : The 1961 Convention and the European Convention on Nationality 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.2.c		Are parents provided with information about their child's nationality rights and relevant procedures, including where the child would otherwise be stateless or has undetermined nationality?	UNHCR, Guidelines on Statelessness No. 4 (2012) : Contracting States are obliged to provide detailed information to parents of children who would otherwise be stateless or of undetermined nationality about the possibility of acquiring the nationality, how to apply and about the conditions which must be fulfilled. If the child concerned can acquire the nationality of a parent immediately after birth, States that opt to not grant nationality to children in these circumstances must assist parents in initiating the relevant procedure with the authorities of their State or States of nationality.	We are not aware of such information being provided at any stage.	aditus foundation
PRS.2.d		Is it a requirement that the parents are also stateless for the otherwise stateless child to acquire nationality?	UNHCR, Guidelines on Statelessness No. 4 (2012) : The test is not an inquiry into whether a child's parents are stateless. ENS, No Child Should Be Stateless (2015) : 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.	Maltese Citizenship Act, Chapter 188 Section 10(6)&(7), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.2.e		Are stateless children required to prove they cannot access another nationality to acquire the nationality of the	UNHCR, Guidelines on Statelessness No. 4 (2012) : 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	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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1

		country of birth? If yes, please describe how this is determined in practice.	nationality laws. The burden of proof must be shared between the claimant and the authorities, but in the case of children the State assumes a greater share of the burden of proof. 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.		
PRS.2.f		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.	1961 Convention : Article 1(2) UNHCR, Guidelines on Statelessness No. 4 (2012) : 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. CRC : Articles 3 & 7 Committee on the Rights of the Child, Concluding observations on the Netherlands (2015) : Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions. ECN : 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.2.g		Are the parents of a stateless child required to fulfil a period of residence for the child to be granted nationality? If yes, please specify length and if this must be legal residence.	Committee on the Rights of the Child, Concluding observations on Czech Republic (2011) : The outcome of an application by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State. ENS, No Child Should Be Stateless (2015) : Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention.	Not explicitly, although there is a residence requirement for the child applicant.	Maltese Citizenship Act, Chapter 188 Section 10, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.2.h		What are the age limits (if any) for making an application for nationality for a stateless person born on the territory?	1961 Convention : Article 1(2) UNHCR, Guidelines on Statelessness No. 4 (2012) : 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. ENS, No Child Should Be Stateless (2015) : 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, but the minimum age is 5 years.	Maltese Citizenship Act, Chapter 188 Section 10, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.2.i		Are there specific provisions to protect the right to a nationality of children born to refugees?	UNHCR, Guidelines on Statelessness No. 4 (2012) : 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.	

PRS.3.a	Foundlings	Are foundlings granted nationality automatically by law? If not automatic, please describe the procedure.	1961 Convention : Article 2 ECN : 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.3.b		Is there an age limit (e.g. 'new-born' or 'infant') in law or practice specifying when a foundling would qualify for nationality?	UNHCR, Guidelines on Statelessness No. 4 (2012) : 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.3.c		Can nationality be withdrawn from foundlings if this leads to statelessness?	UNHCR, Guidelines on Statelessness No. 4 (2012) : Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality.	Yes. 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.4.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?	1961 Convention : Article 5 ENS, No Child Should Be Stateless (2015) : 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.4.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.	ECN : Article 6(4)(d) Committee on the Rights of the Child, Concluding Observations on Switzerland (2015) : 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, http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.5.a	<i>Ius sanguinis</i>	Can children born to nationals abroad acquire nationality by descent (<i>ius sanguinis</i>) in general and/or if they would otherwise be stateless?	1961 Convention : Article 4 UNHCR, Guidelines on Statelessness No. 4 (2012) : 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1 UNHCR: Mapping Statelessness in Malta, August 2014, pp. 36-38, available at:

PRS.6.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 information on both parents is recorded etc.)	CRC : 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 identification document, place of birth and residence of the parents, where known.	The Civil Code, in Article 278, lists the particulars to be entered on acts of birth, http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580&l=1 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.
PRS.6.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.	CRC : Articles 3 & 7 1961 Convention : Articles 1 & 4 UNHCR, Guidelines on Statelessness No. 4 (2012) : 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. HRC, CCPR General comment No. 17 (1989) : States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. HRC, D.Z. v. Netherlands (2021)	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 legal presumption is that the child is born to the married couple and, therefore, 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, in the case of unmarried parents, 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. In the case of same-sex parents, if they are married the above-mentioned presumption of parenthood and Malta's legal and policy recognition of same-sex couples is also applied.	aditus foundation
PRS.6.e	Are there credible reports to suggest that children are prevented from registering in practice because of parents' migration or residence status, sexual orientation or gender identity, or other reasons (please specify)?	Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : 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. Global Compact for Safe, Orderly and Regular Migration : 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. Global Compact on Refugees : States commit to fulfil the right of all individuals to a legal identity and ensure that migrants are issued documentation and civil registry documents. European Parliament Resolution (2018) : Calls on Member States to take immediate corrective	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. There is no evidence of refusal to register children on the basis of the parents' sexual orientation or gender identity.	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: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&Lang=en UNHCR Country Office, Malta. aditus foundation

			measures to stop discriminatory birth registration.		
PRS.6.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)? If not, is there a clear firewall to prohibit the sharing of information by other entities with immigration authorities?	Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC and Joint General Comment No. 3 (2017) CMW and No. 22 (2017) CRC : 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. CoE, ECRI General Policy Recommendation No. 16(2016) : 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. This issue was flagged in the context of access to the Covid-19 vaccine, and the immigration and health authorities both confirmed that sharing of information does not occur.	
PRS.6.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.	Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration. HRC, Resolution A/HRC/RES/20/4 (2012) : 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580
PRS.6.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.	aditus foundation
PRS.7.a	Reducing <i>in situ</i> statelessness	Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details.	UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : 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, https://www.gov.mt/en/Life%20Events/Pregnancy%20and%20Birth/Pages/Birth-And-Life.aspx TVM, Identity Malta office at Mater Dei for registration of births and deaths, 23 April 2018, https://www.tvm.com.mt/en/news/identity-malta-office-at-mater-dei-for-registration-of-births-and-deaths/
PRS.7.b		Are there particular sections of the population - such as minority groups or	1961 Convention : Article 9 UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 4	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	aditus foundation casework/practice

		people affected by conflict - believed to be stateless/at risk of statelessness? Please provide details and source of information.	HRC, Recommendations of the Forum on Minority Issues (2019) : States should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities.	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.	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: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=_CRC%2fC%2fMLT%2fCO%2f2&Lang=en UNHCR, Mapping Statelessness in Malta, 2014, available at: http://www.refworld.org/docid/546dae5d4.html
PRS.7.c		Has the State 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.)	1961 Convention UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Actions 1 & 8 UNHCR, Good Practices Paper - Action 1 (2015) : 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: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtsg_no=V-3&chapter=5&Temp=mtsg2&clang=en
PRS.8.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.).	1961 Convention : Article 8 & 9 ECN : Article 7(3) UDHR : Article 15(2) Principles on Deprivation of Nationality and the Draft Commentary : 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 HRC, Report of the Secretary-General on Human Rights and Arbitrary Deprivation of Nationality (2009) : para. 23 UNHCR Guidelines on Statelessness No.5 (2020) : the prohibition of arbitrary deprivation of nationality also includes situations where there is no formal act by a State but where the 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). ILEC Guidelines (2015) : Deprivation of nationality must have a firm legal basis, should not be interpreted extensively or applied by analogy and deprivation-provisions must be predictable.	Yes. 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: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS.8.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, decision in	1961 Convention : Article 8(4) ECN : Articles 10 to 13 Principles on Deprivation of Nationality : 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	The competent authority is the Minister responsible for Maltese nationality and any persons authorised to act on their behalf. 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	Maltese Citizenship Act, Article 2 & Part VI, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1 Deprivation of Maltese Citizenship (Committee of Inquiry) Rules, Subsidiary Legislation 188.02, 5 April 1991, http://www.justiceservices.gov.mt/

		writing with reasoning, judicial oversight, appeal, time limit, subject to prior sentencing)?	<p>hearing and to an effective remedy and reparation.</p> <p>ILEC Guidelines (2015): The consequences of a decision to deprive somebody of his nationality must be assessed against the principle of proportionality. Adequate procedural safeguards are essential. Decisions should only take effect when the (judicial) decision cannot be challenged anymore.</p>	<p>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>DownloadDocument.aspx?app=lom&itemid=9537&l=1</p> <p>Inquiries Act, Cap 273 of the Laws of Malta, 3 June 1977, http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8763&l=1</p> <p>aditus foundation casework/practice</p>
PRS.8.c		Are provisions on deprivation of nationality applied in practice? Have they been applied even where it results in (risk of) statelessness? If available, please provide any sources of data or information on cases that resulted in statelessness.		<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> <p>A family challenged the deprivation procedure before the courts, alleging violations of ECHR Articles 6 and 8. In 2021, the First Hall Civil Court (Constitutional Jurisdiction), concluded that deprivation of nationality does not trigger the application of Article 6 ECHR and is not relevant for Article 8 considerations, saying that insufficient evidence was brought in support of the claim that the man would be rendered stateless. The Maltese Government also confirmed that the children would not be</p>	<p>aditus foundation casework/practice</p> <p>First Hall Civil Court (Constitutional Jurisdiction), Ashraf Khalil Mohammed Khalil et vs State Advocate et, Application No. 149/2020 GM, 30 November 2021, https://ecourts.gov.mt/online-services/Judgements/Details?JudgementId=0&CaseJudgementId=129381</p>

				deprived of their Maltese nationality. In its judgement, the Court referred to national and ECtHR jurisprudence as well as the European Convention on Nationality.	
PRS.8.d		Are there safeguards in law and practice to prevent renunciation or other forms of voluntary loss of nationality from resulting in statelessness?	1961 Convention : Article 7 ECN : Articles 7 and 8	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.	Maltese Citizenship Act, CAP. 188, Article 13(1), https://legislation.mt/eli/cap/188/eng/pdf
PRS.8.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.	Principles on Deprivation of Nationality 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. UNHCR Guidelines on Statelessness No.5 (2020) : Laws that permit deprivation of nationality on the grounds of terrorism should be publicly available and precise enough to enable individuals to understand the scope of impermissible conduct.	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), https://legislation.mt/eli/cap/188/eng/pdf
PRS.8.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.	ICCPR : Article 26 1961 Convention : Article 9 ECN : Article 5 Principles on Deprivation of Nationality : Principle 6. 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.
PRS.8.g		Are there safeguards to prevent derivative loss of nationality (i.e., loss of nationality on the basis that a parent or a spouse has been deprived of that nationality)? Please describe the potential impact of deprivation on children and spouses.	CRC : Articles 2(2), 7 and 8 CEDAW : Article 9(1) Principles on Deprivation of Nationality : States must take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members (Principle 9.7). The derivative loss of nationality is prohibited (Principle 9.8).	No, there are no such specific safeguards. The Act states that a Maltese national will not be deprived of nationality where such deprivation would lead to statelessness, but only in situations where the deprivation is consequential to a sentence of imprisonment of over 12 months decreed by a non-Maltese court. In a recent court judgment in which a family challenged the deprivation procedure, the Maltese Government confirmed that the children in the case would not be deprived of their Maltese nationality.	Maltese Citizenship Act, Article 14(3), https://legislation.mt/eli/cap/188/eng First Hall Civil Court (Constitutional Jurisdiction), Ashraf Khalil Mohammed Khalil et vs State Advocate et, Application No. 149/2020 GM, 30 November 2021, https://ecourts.gov.mt/online/services/Judgements/Details?JudgementId=0&CaseJudgementId=129381

Resources

Item	Subtheme	Question	International Norms & Good Practice	Answer	Source
RES.1.a	Published judgments	Please list the most relevant judgments relating to statelessness and include links to the cases (where available).		<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 http://www.justiceservices.gov.mt/courtservices/default.aspx</p> <p>First Hall Civil Court (Constitutional Jurisdiction), Ashraf Khalil Mohammed Khalil et vs State Advocate et, Application No. 149/2020 GM, 30 November 2021, https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=129381</p> <p>Constitutional Court, Anne Miller pro et noe vs Avukat Generali et, 19/2002/2, 27 March 2009, https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=54171</p> <p>Genovese v. Malta, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, available at: http://www.refworld.org/cases,EC_HR,509ea0852.html</p> <p>Khalaf Ayman vs. The Prime Minister of Malta et, Civil Court, First Hall, 26 November 2020, Ref. 1232/2019, https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=124205</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, https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=101174</p> <p>Khallouf Fatiha vs. Minister for Foreign Affairs et, Civil Court, First Hall (Constitutional Jurisdiction), 14 March 2014, Ref. 69/2011, https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=86766</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, https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=74510.</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.	UNHCR, Handbook on Protection (2014) : 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: http://www.jrsmalta.org/</p> <p>aditus foundation: https://aditus.org.mt/</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: http://aditus.org.mt/Publications/ENS_reports.zip</p> <p>UNHCR Refworld: Mapping Statelessness in Malta, 2014, available at: http://www.refworld.org/docid/546dae5d4.html</p> <p>University of Malta, Faculty of Laws, Jonathan Muscat, The legal implication of Malta's accession to the UN statelessness conventions, Masters dissertation, 2018, https://www.um.edu.mt/library/oar/handle/123456789/38692. 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 incorporated 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> <p>Statelessness Briefing Note, aditus foundation, 2021, https://aditus.org.mt/Publications/statelessnessbriefingnote_122021.pdf.</p>
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