

Coalition of NGOs on Statelessness in Malta

SUBMISSIONS TO THE UNIVERSAL PERIODIC REVIEW (UPR) OF MALTA, DURING ITS 31ST SESSION (2018)

BY THE FOLLOWING ORGANISATIONS:



aditus foundation (2011) is an independent, voluntary and non-profit NGO established with a view to monitor, act and report on access to fundamental human rights. We believe in the universality, interdependence and indivisibility of all human rights. Established in 2011.

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The **Institute on Statelessness and Inclusion** is an independent non-profit organization committed to promoting the human rights of stateless persons and fostering inclusion to ultimately end statelessness. We believe in the value of research, education, partnership and advocacy as means to promote the inclusion of the stateless and the disenfranchised. We aim to develop and share our skills and expertise with partners in civil society, academia, the UN and governments, and to serve as a catalyst for change. Established in 2014.

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European
Network on
Statelessness

The European Network on Statelessness is a civil society alliance committed to addressing statelessness in Europe. We believe that all human beings have a right to a nationality and that those who lack nationality altogether are entitled to full protection of their human rights. Established in 2012.

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Introduction

1. aditus foundation, the European Network on Statelessness (ENS) and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR) in relation to statelessness, access to nationality and human rights in Malta.
2. **aditus foundation** is an independent, voluntary and non-profit NGO established with a view to monitor, act and report on access to fundamental human rights. We believe in the universality, interdependence and indivisibility of all human rights.¹
3. The **European Network on Statelessness** is a civil society alliance committed to addressing statelessness in Europe. We believe that all human beings have a right to a nationality and that those who lack nationality altogether are entitled to full protection of their human rights.²
4. The **Institute on Statelessness and Inclusion**³ is an independent non-profit organisation committed to an integrated, human rights-based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Since its inception, the Institute has made over 30 country-specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 30th UPR Sessions.⁴
5. This joint submission focuses on the identification and the human rights protection of stateless persons, the prevention and reduction of statelessness, the protection of stateless persons from arbitrary detention in Malta and statelessness related statistics and information. It draws on the combined expertise of the submitting organisations both in Malta and internationally.

STATELESSNESS IN MALTA'S PREVIOUS UPR SESSION (2013)

6. The issue of statelessness in Malta did not arise during Malta's 2013 UPR session.
7. Whilst some of the recommendations received by Malta were indirectly relevant to this theme, such as for example those relating to administrative detention, the specific situation of stateless persons was not directly addressed.

MALTA'S INTERNATIONAL AND REGIONAL OBLIGATIONS

8. Malta is party to most of the core UN human rights treaties (barring the Migrant Workers Convention). Consequently, Malta has obligations to protect the right to a nationality and prevent statelessness (arising for example, out of Article 7 of the Convention on the Rights of the Child). However, it must be noted that Malta retains significant reservations to the

¹ For more information about aditus foundation, please see www.aditus.org.mt

² For more information about ENS, please see www.statelessness.eu

³ For more information about ISI, please see <http://www.institutesi.org/>

⁴ For more on the Institute's UPR advocacy, see <http://www.institutesi.org/ourwork/humanrights.php>

UN treaties it has ratified, including in relation to Article 13 of the ICCPR which protects non-citizens from unlawful expulsion from the territory. Furthermore, Malta has in place several reservations to the Convention on the Elimination of all Forms of Discrimination Against Women impacting on women's equality.

9. Malta is not state party to the 1954 or 1961 Statelessness Conventions.
10. At the regional level, Malta is a state party to the European Convention on Human Rights. It has signed but not acceded to the European Convention on Nationality. It has fully transposed the EU Returns Directive into domestic law.

STATELESSNESS IN MALTA

11. Malta provides very limited protection for stateless people. Although it is party to some relevant international and regional human rights treaties, it is not party to any of the core statelessness conventions.
12. Maltese law provides some protections against arbitrary detention, but rights afforded to people detained for removal purposes, for example, are very limited.
13. Malta has no mechanism to identify and determine statelessness, and no stateless protection status.
14. Data on the stateless population is limited, with figures available only for the very small number of stateless people who acquire Maltese citizenship and refused asylum seekers recorded as 'nationality not known' who cannot be returned and may or may not be stateless.

STATELESSNESS POPULATION DATA

15. There is very limited disaggregated population data on statelessness in Malta.
16. There is no 'stateless' category in the census, although the question of whether someone has Maltese or 'any foreign citizenship' was asked in the last census in 2011. The Annual Demographic Review has a 'stateless' category in its data on acquisition of Maltese citizenship and the Office of the Refugee Commissioner reports on those with 'nationality not known' among refused asylum seekers who cannot be returned.
17. The Government does not publish data on stateless people in detention and statelessness is not systematically recorded across government agencies. A 2014 UNHCR mapping study provides detailed commentary on the legislative framework relating to statelessness in Malta.

STATELESSNESS DETERMINATION AND STATUS

18. There is no mechanism to identify or determine statelessness in Malta nor any dedicated protection status for stateless people.

19. The identification of stateless persons is of utmost importance in guaranteeing the rights of stateless persons living in the country. A formal statelessness determination procedure would offer the most effective means to protect the human rights of stateless persons,⁵ including rights such as liberty and security of the person. Such a procedure would also allow the state to gain a better understanding of the extent of statelessness and to better monitor the status and treatment of stateless persons in Malta.⁶
20. In order to determine statelessness, a statelessness determination procedure should be simple, accessible to everyone within Maltese territory, fair and efficient.⁷ The procedure should be formalised in law and observe due process guarantees.⁸
21. The Office of the Refugee Commissioner can recommend a form of temporary humanitarian protection, usually where someone has been refused asylum but cannot be removed or there are exceptional humanitarian grounds. However, applicants have no rights during the procedure and it is completely discretionary. A person granted this form of protection can access a renewable residence permit for one year, healthcare, and the labour market. However, no rights are granted to stateless people in Malta purely based on their statelessness.
22. Although there is a possibility in law for anyone resident in Malta for five years to apply for naturalisation, this is at the discretion of the Minister and almost never granted in practice.

DETENTION

23. In Malta, stateless people may be detained under different legal regimes, each with its own criteria, rights and guarantees. There are some protections against arbitrary detention relevant to statelessness, such as the requirement that someone is immediately released if removal is impossible. However, the law states that detention ‘shall be a consequence of the removal order’, a country of removal does not explicitly need to be identified prior to detaining, and statelessness is not considered juridically relevant.
24. Limited procedural safeguards depend on the type of detention: if denied entry to the territory a person has very few rights and there is no time limit; if detained for removal there is a periodic review, and access to legal aid to challenge detention; detained asylum seekers have a right to legal aid, periodic review, and information on rights and remedies. Asylum seekers released from detention are issued with documentation and rights under EU law, but people detained for removal are issued with an administrative record and tolerated stay, which permits access to the labour market and healthcare only if they can show social security contributions from the preceding three months.
25. Consequently, stateless persons in Malta are vulnerable to arbitrary detention, depending on which type of detention they may be subject to. The lack of a dedicated statelessness

⁵ UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, 11 July 2016, available at: <http://www.refworld.org/docid/57836cff4.html>, p. 2.

⁶ UNHCR, *Global Action Plan to End Statelessness, Action 6*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>; UNHCR, *Mapping Statelessness in Austria*, January 2017, available at: <http://www.refworld.org/docid/58b6e5b14.html>, para 125.

⁷ UNHCR, *Statelessness Handbook* (note 12), paras 63, 68 and 69.

⁸ *Ibid*, para. 71.

determination procedure further exacerbates this risk, which can be avoided through law and policy reform which takes on board Malta's obligations to protect the human rights of all persons including those who are stateless.

PREVENTION AND REDUCTION

26. There are some safeguards in Maltese law to prevent statelessness, but implementation is problematic and there are some gaps.
27. There is a provision for children born stateless in Malta to acquire citizenship after five years' residence, but this provision is little-known and there are no reports of it ever having been used. There also is a safeguard against statelessness in adoption cases.
28. Foundlings are deemed to be Maltese from birth, but the wording of the provision does not explicitly prevent statelessness, stating that the child will be deemed Maltese "*until his right to any other citizenship is established*" leaving open the possibility of statelessness arising later in life or if their parents are identified and a legal 'right' to nationality is established, irrespective of whether there are practical barriers to the child actually acquiring another nationality.⁹
29. The differential treatment of children born in and out of wedlock to Maltese parents abroad was ruled to be discriminatory by the European Court of Human Rights (ECtHR) in 2011 (*Genovese v. Malta*), but this discriminatory provision remains in force in Maltese law. Birth registration is not problematic in law, but there are reports of barriers to undocumented parents registering births in practice.
30. Whilst the Civil Code was amended in 2015 to allow the Director of the Public Registry to register births of children born at sea on board unregistered vessels (Article 285A), births of babies born aboard registered vessels are refused registration in Malta, despite Malta being the first harbour of disembarkation, the parent's habitual place of residence and – in some cases – where international protection is recognised.

RECOMMENDATIONS

31. In light of the fact that statelessness was not focused on under the First and Second Cycle of review, the co-submitting organisations urge reviewing states to make the following recommendations to Malta:
 - I. Accede to and fully implement the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
 - II. Implement a Statelessness Determination Procedure in order to comply with the 1954 Convention, and ensure that the procedure is fair, effective and accessible to all persons in Malta regardless of their legal status. The procedure should comply with international standards of due process and follow the procedural safeguards outlined in UNHCR's Handbook on Protection of Stateless Persons; and should

⁹ Article 17(3) read in conjunction with the third proviso of Article 5(1), Maltese Citizenship Act, Chapter 188 of the Laws of Malta, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1>.

result in a dedicated protection status associated with clear rights and support mechanisms.

- III. Withdraw the reservation to Article 13 of the International Covenant on Civil and Political Rights.
- IV. Withdraw the reservations to Articles 11, 13, 15, and 16 of the Convention on the Elimination of All Forms of Discrimination against Women.
- V. Add the categories 'stateless' and 'unknown nationality' in national census exercises.
- VI. Ensure that stateless persons or persons at risk of statelessness are not subjected to arbitrary detention because of their status. Instead, statelessness should be considered as a juridically relevant fact to be assessed when deciding whether to remove and/or detain persons. In this regard, establish clear standard operating procedures on the detention of migrants, addressed primarily to the Immigration Police and in line with international and regional human rights standards.
- VII. Maintain and publish data relating to migrants released from administrative detention due to the impossibility of returning them.
- VIII. Refrain from detaining migrants in respect of whom a returnable country of origin has not, or cannot, be established.
- IX. Include in legislation and fully implement non-coercive alternatives to the administrative detention of migrants pending removal, which are subject to procedural safeguards, including a time limit and periodic review.
- X. Provide access to an effective remedy for migrants detained following their denied entry into Malta, including access to free legal aid, as well as procedural safeguards, including a time limit on their detention.
- XI. Ensure that all children born in the territory of Malta, or to a Maltese parent, are guaranteed without discrimination their right to a nationality as enshrined in Article 7 of the Convention on the Rights of the Child, including by:
 - a. Removing the five-year legal residence requirement and putting concrete measures in place to fully implement the legal safeguard so that no child is born stateless in Malta.
 - b. Removing the discriminatory limitations in Article 17 of the Maltese Citizenship Act, ruled unlawful by the European Court of Human Rights (*Genovese v. Malta*, 2011), so that no child is discriminated against in the acquisition of nationality due to their parents' status.
- XII. Modify the Civil Code to ensure the birth registration of children born in international waters where their registration in another country is impossible due to legal or other considerations.
- XIII. Implement an information campaign or other awareness-raising activity on the importance of birth registration, ensuring that the campaign/activity reaches

marginalised groups.

SOURCES

32. The information presented in this joint submission is based on research conducted by aditus foundation for the European Network on Statelessness Statelessness Index, available here: <https://index.statelessness.eu/>
33. The Statelessness Index is a comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness, against international norms and good practice. It is a tool created for civil society, government, researchers, the media and other interested individuals.
34. The country data presented in the Index was gathered through a detailed survey, structured around five themes and a series of subthemes. The surveys were completed by country experts (researchers, lawyers, NGOs and other civil society actors), referenced with links to sources, reviewed by a second country expert, and then returned to the ENS Secretariat for analysis.
35. For transparency, the raw data (country survey) is available to download from each country page. This is not intended for dissemination as a standalone document and should always be read in conjunction with the country profile. For each question answered, country experts were asked to provide a reliable source ranging from national legislation, government policy and guidance, official statistics, reports from human rights bodies, NGO reports and studies, media reports, and internal casework or monitoring information from NGO practice. The data was then checked for accuracy with second country experts, who included civil society actors, as well as UNHCR country offices and government officials in some cases.
36. The Malta country survey is available here: <https://index.statelessness.eu/file/66/download?token=5bds4Hm3>.
37. Specific information on the heightened risk of arbitrary detention faced by statelessness persons is also published by the European Network on Statelessness and aditus foundation, in *Protecting Stateless Persons from Arbitrary Detention*, 2015, available at http://aditus.org.mt/Publications/ENS_reports.zip.