



European  
Network on  
Statelessness

**Fundación CEPAIM,  
the European Network on Statelessness  
and  
the Institute on Statelessness and Inclusion**

Joint Submission to the Human Rights Council at the 35<sup>th</sup> Session of the  
Universal Periodic Review

**(Third Cycle, January 2020)**

**Spain**

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### **Spain**

#### **Introduction**

1. Fundación Cepaim, the European Network on Statelessness and the Institute on Statelessness and Inclusion make this joint submission to the Human Rights Council at the 35<sup>th</sup> Session of the Universal Periodic Review on the challenges pertaining to citizenship, statelessness and the enjoyment of fundamental human rights in Spain.
2. Fundación Cepaim<sup>1</sup> is an independent, cohesive and sustainable organisation whose aim is to promote an inclusive and intercultural society, and to ensure that the most vulnerable people, especially migrants, have full access to their rights. Based in Spain, with 34 offices, Cepaim implements actions in the fields of reception and international protection, employment and training, youth and family, development cooperation, rural development, equality and non-discrimination, community-based development, and housing.
3. The European Network on Statelessness (ENS)<sup>2</sup> is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 140 members in 40 European countries, including Cepaim in Spain. ENS organises its work around three pillars – law and policy development, awareness-raising and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments.
4. The Institute on Statelessness and Inclusion<sup>3</sup> 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. The Institute has made over 40 country specific UPR submissions on the human rights of stateless persons, and compiled summaries of the human rights challenges related to statelessness in all countries under review under the 23<sup>rd</sup> to the 34<sup>th</sup> UPR Sessions.
5. This submission focuses on:
  - I. Spanish Nationality Law
  - II. Stateless Population Data
  - III. Statelessness Determination Procedure
  - IV. Stateless Persons in Detention

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<sup>1</sup> For more information about Fundación CEPAIM, see: <http://cepaim.org/>.

<sup>2</sup> For more information about the European Network on Statelessness, see: [www.statelessness.eu](http://www.statelessness.eu).

<sup>3</sup> For more information, see [www.institutesi.org](http://www.institutesi.org). For more information on the Institute's UPR advocacy, see <http://institutesi.org/projects/human-rights-advocacy>.

## Spain's Universal Periodic Review under 8<sup>th</sup> (2010) and 21<sup>st</sup> sessions (2015)

6. Spain's human rights record was reviewed by the United Nations Human Rights Council during the 8<sup>th</sup> and 21<sup>st</sup> UPR sessions, in 2010 and 2015 respectively. In the First Cycle, Spain did not receive any recommendations relating to statelessness or nationality, whereas during the Second Cycle Ecuador, Azerbaijan, Paraguay and Portugal recommended that Spain accede to the 1961 Convention on the Reduction of Statelessness.<sup>4</sup> In addition, Spain received nine recommendations on detention, of which it supported seven.<sup>5</sup>

## Spain's International Obligations

7. Spain is party to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention), to which it acceded in 1997<sup>6</sup>, and to the 1961 Convention on the Reduction of Statelessness (1961 Convention), to which it acceded in 2018,<sup>7</sup> following the aforementioned recommendations during the Second Cycle of the UPR.
8. In relation to the 1954 Convention, Spain made a reservation to "*article 29, paragraph 1, [on fiscal charges upon stateless persons] and considers itself bound by the provisions of that paragraph only in the case of stateless persons residing in the territory of any of the Contracting States*".
9. In relation to the 1961 Convention, Spain made declarations on the "*local nature of the authorities of Gibraltar*", and in relation to deprivation of nationality, stating that "*under article 8 (3) (a), the Government of Spain declares that it reserves the right to deprive a person of Spanish nationality when he enters voluntarily the service of the armed forces, or holds political office, in a foreign State against the express prohibition of the Government.*"
10. Apart from the aforementioned statelessness conventions, Spain is bound by fundamental human rights treaties pertaining to the prevention of statelessness and the protection of stateless persons which work as essential international mechanisms for ensuring the right to a nationality and protecting the rights of stateless persons, including the Convention on the Rights of the Child (Arts. 7 and 8), International Covenant on Civil and Political Rights (Art. 24.3), International Convention on the Elimination of All Forms of Racial Discrimination (Art 5(d)(iii)), Convention on the Elimination of All Forms of Discrimination against Women (Art. 9), and the Convention on the Rights of Persons with Disabilities (Art. 18) . However, on a regional level, Spain is not a party to the 1997 European Convention on Nationality (ECN) nor to the 2006 Convention of the Council of Europe on the Avoidance of Statelessness in Relation to State Succession.
11. All the above treaties are part of Spain's national law. Article 96 of the Spanish Constitution states that "*validly concluded international treaties once officially published in Spain, shall be part of the internal legal system*"<sup>8</sup>. Therefore, they are incorporated into national law without the need for

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<sup>4</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Spain*, 13 April 2015, A/HRC/29/8, paras. 131.4 and 131.9, available at: <http://cort.as/-Kz5n> [accessed 8 July 2019].

<sup>5</sup> UN Human Rights Council, *Addendum: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review*, 2 November 2015, A/HRC/29/8/Add.1/Corr.1, available at: <http://cort.as/-Kz5o> [accessed 8 July 2019].

<sup>6</sup> UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://cort.as/-Kz5g> [accessed 8 July 2019].

<sup>7</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <http://cort.as/-Kz5t> [accessed 8 July 2019].

<sup>8</sup> Spanish Constitution (1978): <http://cort.as/4DRJ> [accessed 8 July 2019].

implementing legislation, which means that several important international legal safeguards against statelessness are subject to direct application in the country.

12. In 2018, the Committee on the Rights of the Child recommended Spain to consider acceding to the 2006 Convention of the Council of Europe on the Avoidance of Statelessness in Relation to State Succession.<sup>9</sup>

## Spanish Nationality Law

13. The Spanish Civil Code (article 17.1) grants Spanish citizenship to every person “born to a Spanish father or mother”; to those “born in Spain to foreign parents if, at least, one of them was also born in Spain”; to those “born in Spain to foreign parents if they both lack a nationality or if the legislation of any of them does not transfer a nationality to the child”; and to those born in Spain “whose parentage cannot be determined”.<sup>10</sup> If the child’s birthplace is unknown, but their first country of stay or residence is known to be Spain, they are “presumed to have been born on Spanish territory”.<sup>11</sup> The combined effect of these two prohibitions, is to serve as a safeguard against childhood statelessness and protect the child’s right to acquire a nationality.
14. The law mandates that births occurring in the national territory must be registered,<sup>12</sup> and imposes this obligation on hospitals or health centres; the medical staff who performed the delivery; the parents; and the closest relative, or in their absence, any person of legal age who was present at birth.

## Definition of a Stateless Person

15. Spanish national law defines a stateless person in an almost identical way to the 1954 Convention. Royal Decree 865/2001, which regulates the statelessness determination procedure, states that a stateless person is “every person who is not considered as a national by any State, under the operation of its law, and who expresses their lack of nationality” (article 1).<sup>13</sup>
16. The clause ‘who expresses their lack of nationality’ was reviewed by a Supreme Court landmark decision on statelessness.<sup>14</sup> It defined nationality as “the legal bond between a person and a state, according to its law, which comprises political, social, economic rights and responsibilities on their part, within a framework of mutual acceptance and voluntariness”, and it also added that “it is enough that the applicant manifests their lack of nationality”, arguing that the standard of proof set forth in the Royal Decree (article 1)<sup>15</sup> and the Aliens Act (article 34)<sup>16</sup> does not require further evidence.

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<sup>9</sup> Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Spain* (2018), CRC/C/ESP/CO/5-6, para 18.

<sup>10</sup> Código Civil, article 17.1.c), available at: <http://cort.as/7T42> (Spanish) [accessed 8 July 2019].

<sup>11</sup> If the foreign country is known, authorities take into account its nationality law and its application, and in the case where no citizenship is granted to that minor, article 17.1 applies.

<sup>12</sup> Ley 20/2011, de 21 de julio, del Registro Civil, article 45, available at: <http://cort.as/-Kmx3> (Spanish) [accessed 8 July 2019].

<sup>13</sup> Real Decreto 865/2001, de 20 de julio, por el que se aprueba el Reglamento de reconocimiento del estatuto de apátrida, article 1, available at: [http://cort.as/-K\\_ZY](http://cort.as/-K_ZY) (Spanish) [accessed 8 July 2019].

<sup>14</sup> Sentencia del Tribunal Supremo nº 8948/2007 (recurso 10503/2003), Sala de lo Contencioso-Administrativo, Sección Quinta, de 20 de noviembre: <http://cort.as/-Kmaa> (Spanish) [accessed 8 July 2019].

<sup>15</sup> Real Decreto 865/2001, article 1, available at: [http://cort.as/-K\\_ZY](http://cort.as/-K_ZY) (Spanish) [accessed 8 July 2019].

<sup>16</sup> Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, article 34, available at: <http://cort.as/ZhSP> (Spanish) [accessed 8 July 2019].

## Stateless Population Data

17. Both UNCHR<sup>17</sup> and the European Union<sup>18</sup> have highlighted the importance of improving the collection of reliable data on stateless persons and on the procedures for determining statelessness. CEDAW General Recommendation no. 32 further added that States should gather, analyse and publish sex-disaggregated statistics on stateless persons within their respective territories.<sup>19</sup> The adequate and improved collection of quantitative and qualitative data is a necessary precursor to the adoption of measures which better match stateless persons' needs.
18. The nationality section of the 2011 Population and Housing Census form,<sup>20</sup> includes both "Spanish" and "other country" boxes. The latter is followed by an empty field where respondents can write down their citizenship or their statelessness. A census question for people who do not live in regular housing,<sup>21</sup> but in collective accommodation establishments, such as centres for elderly people, convents, barracks, hospitals, prisons, etc., also includes a box "Stateless" within the nationality category. The statistics shown in "Basic demographic data" are disaggregated by "Sex", "Age", "Civil status", "Nationality", and "Birthplace". 160 people self-identified as stateless.<sup>22</sup> Persons also self-identified as being from "African countries without diplomatic relations" (47 men and 19 women), "American countries without diplomatic relations" (3 men and 7 women), "Asian countries without diplomatic relations" (256 men and 104 women), "European countries without diplomatic relations" (23 men and 13 women) and "Oceanic countries without diplomatic relations" (21 men and 11 women).<sup>23</sup> In the 2011 census, the term 'without diplomatic relations' was used to mean states which are not recognised by Spain. The lack of state recognition and consular protection means that many people who self-identified as such, would be at risk of statelessness.
19. While the census statistics on statelessness are very low, according to UNCHR, there were 2,455 stateless people in Spain in 2018.<sup>24</sup> Further, between 2008 and 2016, the Ministry of the Interior published annual reports on the number of applications and recognition rate for the status of stateless person. According to the last report, between 2003 and 2016, a total of 6,969 applications were submitted. The same report notes that, in 2016, 2,151 applications were decided upon, with 1,871 positive decisions (granting statelessness status) and 280 negative decisions.<sup>25</sup> The latest official statistics published by the Ministry of the Interior relating to 2016 show 399 international protection applications submitted by citizens of States unrecognised by Spain, which include Palestine, Kosovo, Western Sahara and Tibet, and 13 applications made by people with unknown nationality. According to the same report, during 2016, Spain granted international protection to

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<sup>17</sup> UN High Commissioner for Refugees (UNCHR), *Global Action Plan to End Statelessness*, 4 November 2014, available at: <http://cort.as/-Kz7X> [accessed 8 July 2019].

<sup>18</sup> European Union: Council of the European Union, *Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness*, 4 December 2019, available at: <http://cort.as/-Kz7Z> [accessed 8 July 2019].

<sup>19</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, available at: <http://cort.as/-Kz7c> [accessed 8 July 2019].

<sup>20</sup> Spain's 2011 Population and Housing Census form: <http://cort.as/-KmW> (Spanish) [accessed 8 July 2019].

<sup>21</sup> Spain's 2011 Population and Housing Census (Collective accommodation establishments) form: <http://cort.as/-KmWG> (Spanish) [accessed 8 July 2019].

<sup>22</sup> Spain's 2011 Census data: <http://cort.as/-KmWU> [Step 1 – Create tables; Step 2 – National; Step 3 – Persons (Resident in main dwellings); Step 4 – Choose desired filters] (Spanish) [accessed 8 July 2019].

<sup>23</sup> *Ibid.*

<sup>24</sup> UN High Commissioner for Refugees (UNCHR), *Global Trends - Forced Displacement in 2018*, available at <https://www.unhcr.org/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html> [accessed 11 July 2019].

<sup>25</sup> Ministerio del Interior. *Asilo en cifras 2016*, page 67, available at: <http://cort.as/-KmYB> (Spanish) [accessed 8 July 2019].

93 people from “unrecognised States” (Palestine and Western Sahara), and four people of unknown nationality. The publication includes data related to rejections and judicial decisions which reviewed appeals against them. However, the information does not show whether the asylum seekers or beneficiaries of international protection from “unrecognised States” or of unknown nationality were also recognised as stateless under the statelessness determination procedure.

## Statelessness Determination Procedure

20. It is implicit to the 1954 Convention and a juridically relevant fact under human rights law, that States must identify stateless persons to protect their human rights and protection.<sup>26</sup> Establishing a statelessness determination procedure (SDP) is the most efficient way to do so.<sup>27</sup>
21. Spain has a dedicated SDP established by national law.<sup>28</sup> While such a procedure is a big step in the right direction, it does contain a number of possible obstacles for applicants. The procedure can be initiated at the request of a party or *ex officio*, although this is rather exceptional in practice. Applications must be submitted through a standardised written form found on the Ministry of the Interior’s website, which require basic computer and internet skills.<sup>29</sup> The form is available only in Spanish and applicants are provided with only four lines on the form to report their story and reasons for applying. Legal aid is only available at appeals stage, and not when submitting the initial application. Although there is a 3-month deadline for deciding upon applications, in reality, the Ministry of the Interior, takes much longer to do so. In the meantime, applicants do not have the right to work. Further, temporary stay authorisation when a decision is pending is discretionary. While in practice, such authorisation is usually provided, it often takes a number of months before the authorities issue identity cards. Further, there is no specific protection against deportation during the process.
22. The burden of proof in the SDP is shared. The law mandates that “*during the proceedings, the party can produce as much evidence and complementary information it considers relevant*” (article 8.1). It also establishes that the procedure can incorporate “*reports from legally constituted associations whose objectives, among others, are helping and giving advice to stateless people*” (article 8.2), and that, “*within its investigating powers, the Office of Asylum and Refuge can collect, both from the state administration bodies and from other national or international entities, as many reports as it deems necessary*”. The Supreme Court decision no. 8948/2007 (appeal no. 10530/2007)<sup>30</sup> stated that the burden of proof is shared, in the sense that there is an “*obvious obligation of cooperation on the part of the Administration*” as the law mandates that the competent body shall, *ex officio*, collect any evidence and reports it deems necessary.
23. Applicants are denied access to the “first reception” stage of protection and benefits for refugees, asylum seekers and the beneficiaries of subsidiary protection. This first stage, which lasts up to three months, is only available to those who have documentation – thereby excluding many stateless persons. Further, the Ministry’s Management Handbook explicitly states that

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<sup>26</sup> UN High Commissioner for Refugees (UNCHR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://cort.as/-Kz95> [accessed 8 July 2019].

<sup>27</sup> UN High Commissioner for Refugees (UNCHR), *Establishing statelessness determination procedures to protect persons*, available at: <http://cort.as/-Kz93> [accessed 8 July 2019].

<sup>28</sup> Real Decreto 865/2001, article 1, available at: [http://cort.as/-K\\_ZY](http://cort.as/-K_ZY) (Spanish) [accessed 8 July 2019].

<sup>29</sup> Stateless status application form, available at: <http://cort.as/-KmZr> (Spanish) [accessed 8 July 2019].

<sup>30</sup> Sentencia del Tribunal Supremo nº 8948/2007 (recurso 10503/2003), Sala de lo Contencioso-Administrativo, Sección Quinta, de 20 de noviembre: <http://cort.as/-Kmaa> (Spanish) [accessed 8 July 2019].

*“Statelessness Statute beneficiaries and applicants are excluded”* from first reception, thus denying those seeking recognition of their stateless status.

24. Stateless persons as well as applicants of the statelessness statute are denied access to the “first reception” stage of the integration and reception system for beneficiaries and applicants of international protection. The Ministry’s Management Handbook explicitly states that *“Stateless Statute beneficiaries and applicants are excluded”* from this stage, which lasts up to three months; thus denying early reception to those seeking recognition of their stateless status.
25. Despite this shortcoming, stateless persons are eligible to benefit from subsequent (and longer-term) stages of Spain’s reception system for asylum seekers, refugees and stateless people, whereby they are provided with support for 18 months (renewable up to 24 months in cases of extreme vulnerability), assisted, free of charge, by lawyers, psychologists, employment consultants, trainers and tutors, and accommodated in regular housing facilities overseen by social workers and mediators. During their first six months in the system, they are offered accommodation, food, clothing, and cash assistance in order to cover their most basic needs. From the seventh month onwards and up until the eighteenth, individuals receive economic grants for basic needs (€350 per month) and a further maximum of €376 per month for rent. Family units receive higher amounts, based on the number of family members.<sup>31</sup> They all have an individual pathway of integration and they are supported by the staff during their stay.
26. Rejected applications can be appealed to the National High Court, whose judgments can be reviewed by way of cassation appeal, by the Supreme Court. Applicants without financial means can access legal aid. Court decisions tend to be more lenient and demonstrate that the Ministry of the Interior is yet to completely incorporate the Supreme Court and National High Court’s criteria, especially regarding Saharawi people. In this regard, it is important to note that court judgments still overturn decisions by the Ministry, due to the Ministry having failed to follow criteria established under previous case law.<sup>32</sup>
27. Once their stateless status is granted, stateless people in Spain are granted a long-term residence permit for an indefinite period (renewable every five years),<sup>33</sup> travel documents,<sup>34</sup> and enjoy the rights to work,<sup>35</sup> family reunification,<sup>36</sup> education,<sup>37</sup> social security,<sup>38</sup> and health care.<sup>39</sup> However, stateless persons do not benefit from facilitated naturalisation. The same timeframe of 10 years

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<sup>31</sup> Ministerio de Trabajo, Migraciones y Seguridad Social, *Manual de Gestión. Sistema de acogida de protección internacional* (versión 3.3), November 2018, available at: <http://cort.as/-Kmi6> (Spanish) [accessed 8 July 2019].

<sup>32</sup> See for example: Sentencia de la Audiencia Nacional 350/2019, 18 January 2019 (<http://cort.as/-LJ2a>), Sentencia de la Audiencia Nacional 3789/2018, 27 September 2018 (<http://cort.as/-LJ2w>), Sentencia de la Audiencia Nacional 2227/2018, 17 May 2018 (<http://cort.as/-LJ3B>), Sentencia de la Audiencia Nacional 4989/2017, 29 November 2017 (<http://cort.as/-LJ3R>).

<sup>33</sup> Real Decreto 865/2001, article 13, available at: [http://cort.as/-K\\_ZY](http://cort.as/-K_ZY) (Spanish) [accessed 8 July 2019]; Real Decreto 557/2011, de 20 de abril, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009, articles 147 148.3, available at: <http://cort.as/-KBlu> (Spanish) [accessed 8 July 2019].

<sup>34</sup> Real Decreto 865/2001, article 13, available at: [http://cort.as/-K\\_ZY](http://cort.as/-K_ZY) (Spanish) [accessed 8 July 2019].

<sup>35</sup> Real Decreto 865/2001, article 13, available at: [http://cort.as/-K\\_ZY](http://cort.as/-K_ZY) (Spanish) [accessed 8 July 2019]; Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, articles 32.1 and 36.1, available at: <http://cort.as/ZhSP> (Spanish) [accessed 8 July 2019].

<sup>36</sup> Real Decreto 865/2001, article 14, available at: [http://cort.as/-K\\_ZY](http://cort.as/-K_ZY) (Spanish) [accessed 8 July 2019].

<sup>37</sup> Ley Orgánica 4/2000, article 9, available at: <http://cort.as/ZhSP> (Spanish) [accessed 8 July 2019].

<sup>38</sup> Ley Orgánica 4/2000, articles 10.1 and 14.1, available at: <http://cort.as/ZhSP> (Spanish) [accessed 8 July 2019].

<sup>39</sup> Ley Orgánica 4/2000, article 12, available at: <http://cort.as/ZhSP> (Spanish) [accessed 8 July 2019].

that applies to foreigners, applies to them as well.<sup>40</sup> By contrast, refugees are eligible to naturalise after five years and applicants from countries with historical ties with Spain (i.e. former colonies) after two years of lawful and continued residence.

28. In 2018, the Working Group of Experts on People of African Descent recommended to Spain that *“the Aliens Law be reviewed, with a view of making more respectful of the rights of the asylum seekers and migrants, the overly long period of 10 years to qualify for citizenship could be shortened. Pathways to citizenship for migrants, including those in irregular situation, should be created and strengthened”*.<sup>41</sup>

## The Detention of Stateless Persons

29. The Aliens Act<sup>42</sup> allows for the detention of third country nationals, only where this is necessary to ensure compliance with a deportation order. The law explicitly bans the expulsion and, therefore, the detention, of pregnant women, asylum seekers, unaccompanied minors<sup>43</sup> and migrants with dependent children who are attending school until they reach legal age.<sup>44</sup> However, there are no procedural safeguards in place that prevent stateless persons from being detained for removal. Statelessness (and being at risk of statelessness) is not taken into account in vulnerability assessments, and the law does not mandate the identification of a proposed country of removal before a person is detained, so the unrealistic likelihood of removing a stateless person is not taken into consideration by the competent authorities.
30. In practice, detention is not always used for its stated purpose (ensuring a deportation order). For instance, the Spanish Ombudsman reported that undocumented migrants arriving at the coast are placed in detention almost automatically, which means that stateless persons are at risk of being arbitrarily detained without taking into account the unrealistic likelihood of their removal.<sup>45</sup> Also, Immigration Detention Centres (CIE) do not follow a specific protocol to identify stateless persons detained in their facilities, and the law does not regulate the possibility of lodging an SDP application from within such centres.
31. There is information available suggesting that Spain does not always use detention as a measure of last resort. A European Commission report found that, in practice, some alternatives to detention, such as the deposit of adequate financial guarantees were not implemented, whereas other alternatives, such as residence restrictions, regular reporting to authorities and obligation to surrender passport and documents, lacked data on their implementation, with NGOs holding that they were not adequately implemented, and government stakeholders taking the position that they were.<sup>46</sup>

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<sup>40</sup> Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil, article 22, available at: <http://cort.as/7T42> (Spanish) [accessed 8 July 2019].

<sup>41</sup> *Report of the Working Group of Experts on People of African Descent on its mission to Spain* (2018), A/HRC/39/69/Add.2, para 67.

<sup>42</sup> Ley Orgánica 4/2000, article 62, available at: <http://cort.as/ZhSP> (Spanish) [accessed 8 July 2019].

<sup>43</sup> Ley Orgánica 4/2000, articles 57.6, 62.1 and 62.4, available at: <http://cort.as/ZhSP> (Spanish) [accessed 8 July 2019].

<sup>44</sup> Real Decreto 557/2011, article 246.1, available at: <http://cort.as/-KBlu> (Spanish) [accessed 8 July 2019].

<sup>45</sup> Defensor del Pueblo: Mecanismo Nacional de Prevención de la Tortura, *Informe anual 2017*, pages 123 – 127, available at: <http://cort.as/-KzDf> (Spanish) [accessed 8 July 2019].

<sup>46</sup> European Commission (DG Home Affairs), *Evaluation on the application of the Return Directive (2008/115/EC)*, 22 October 2013, pages. 29-34, available at: <http://cort.as/-KBmG> [accessed 8 July 2019].

32. Although no official data is published on the detention of stateless people, there have been reported cases of stateless people being detained.<sup>47</sup>

## Recommendations

33. Based on the above analysis, the co-submitting organisations urge reviewing States to make the following recommendations to Spain:

- I. Publish data on the SDP and on the stateless population in the country on a regular basis, disaggregated and bearing in mind the possible overlap with other categories such as “unknown nationality” or “people from countries without diplomatic relations”.
- II. Remove all possible barriers, such as language, computer literacy, absence of legal aid and lack of information, and encourage the *ex officio* initiation of the Statelessness Determination Procedure, including an effective referral mechanism from the asylum procedure, to ensure that the SDP is easily accessible for every person.
- III. Ensure that the 3-month deadline set forth in the law for the Ministry of the Interior to decide upon applications in the Statelessness Determination Procedure is adhered to in all instances.
- IV. Ensure that applicants are granted stay rights, work rights and documentation as soon as they lodge their applications to the Statelessness Determination Procedure, and ensure that they are guaranteed “first reception” support, on an equal basis as refugees, asylum seekers and beneficiaries of subsidiary protection.
- V. Allow for the facilitated naturalisation of stateless persons, with a reduced timeframe of 5 years as applied to refugees, and the removal of other possible barriers, such as strict language requirements, fees and citizenship tests, in line with Spain’s obligations to facilitate access to a nationality for stateless persons under Article 32 of the 1954 Convention.
- VI. Strengthen legal and policy measures, including alternatives to detention, to protect stateless persons or those at risk of statelessness from arbitrary detention, and ensure that all persons in immigration detention have access to the statelessness determination procedure.
- VII. Establish specific provisions in the law ensuring that statelessness, and risk of statelessness, is taken into consideration when assessing vulnerabilities.
- VIII. Consider acceding to the 1997 European Convention on Nationality and the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.

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<sup>47</sup> Servicio Jesuita a Migrantes-España (SJM-E), *Informe CIE 2016*, page 50, available at: <http://cort.as/-KBIO> (Spanish) [accessed 8 July 2019].

Servicio Jesuita a Migrantes-España (SJM-E), *Informe CIE 2018*, page 12, available at: <http://cort.as/-KzE> (Spanish) [accessed 8 July 2019].

Fundació Migra Studium, *Informe 2016 Centre d'internament d'estrangers (CIE) Zona Franca*, pages 6-7, available at: <http://cort.as/-KzE7> (Spanish) [accessed 8 July 2019].