

Mapping
Statelessness
in Malta



United Nations High Commissioner for Refugees,
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ABBREVIATIONS

Art; Arts	Article; Articles
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
Citizenship Act	Maltese Citizenship Act
CRC	1989 Convention on the Rights of the Child
DCEA	Department for Citizenship and Expatriate Affairs
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECN/1997 Convention	1997 European Convention on Nationality
EU	European Union
EUDO	European Union Observatory on Democracy
ICCPR	1966 International Covenant on Civil and Political Rights
ICESCR	1966 International Covenant on Economic, Social and Cultural Rights
IOM	International Organisation for Migration
NSO	National Statistics Office
RefCom	Office of the Refugee Commissioner
Statelessness conventions	1954 Convention relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness
UNHCR	United Nations High Commissioner for Refugees
UNTS	United Nations Treaty Series
1951 Convention	1951 Convention relating to the Status of Refugees
1954 Convention	1954 Convention relating to the Status of Stateless Persons
1961 Convention	1961 Convention on the Reduction of Statelessness
UK	United Kingdom
UN	United Nations

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EXECUTIVE SUMMARY

1. This report constitutes a first attempt to explore comprehensively the issue of statelessness in the Malta context. Every State and continent is affected by statelessness and although the problem is not at its most acute in Europe, an estimated minimum of 400,000 stateless persons are found within the borders of the European Union. Not surprisingly, the research confirms that stateless persons are also found in Malta, albeit not in large numbers.

2. Arriving irregularly and undocumented in Malta does not make a person stateless. Staying or working irregularly also does not equate to being stateless. By definition, a stateless person is anyone who is not considered as a national by any State under the operation of its law. Solutions for statelessness in the Malta context are not limited to the grant of nationality to stateless persons although, keeping the naturalisation solution open when appropriate does form part of a comprehensive legal and administrative framework for addressing the issue.

3. By way of analysing Malta's legal obligations on statelessness flowing from international human rights law, coupled with assessing the impact of current policy and practice, *Mapping Statelessness in Malta* finds that most of Malta's domestic legislation is in line with international standards on the prevention of statelessness and some safeguards against statelessness already exist. Serious concerns however remain. These mainly relate to the lack of implementation of the safeguard for children born stateless in Malta, the lack of identification procedures of stateless persons in Malta and the lack of a dedicated protection framework for such persons. There are also shortcomings in the availability and fair process for naturalisation of long term residents.

4. Lacking entitlement to a protection status based on their statelessness, stateless persons in Malta can be left in limbo unless they can regularise their stay based on other grounds (such as by meeting the criteria for recognition as a refugee which most stateless persons do not). A stateless person in Malta without the right to identity and residence documentation may find serious obstacles to access their fundamental civil, political, economic, cultural and social rights. In the worst case, he or she could be considered for return to a country which does not recognise him or her as a national and does not grant permanent residence status and related rights. Despite the limited size of the stateless population in Malta, each stateless person inevitably faces particular hardships that should not be disregarded.

5. A framework to address statelessness in Malta would include a statelessness determination procedure which would determine – on the basis of an examination of relevant nationality legislation coupled with its practical implementation – whether a person is stateless or not. In countries which have in place such procedures, relatively low numbers of applications are generally filed, especially in comparison to asylum claims. A protection status should flow from the determination of statelessness with a view to protect the access to rights of stateless persons.

6. Despite the lack of relevant data, this research establishes certain profiles of individuals or groups who are or may be stateless in Malta, at risk of statelessness or of undetermined nationality. This has been done mainly through interviews but also through consultations and a technical roundtable with stakeholders from Government entities and non governmental organisations amongst others. This report also aims to present a human face to the plight of some individuals affected by statelessness in Malta by telling their stories.

7. Maltese nationality law leaves open the possibility for children to be born stateless in the country. Most such cases involve parents who are non-nationals and either stateless themselves or unable to confer their citizenship. In some instances, however, the nationality law

does not safeguard the automatic conferral of citizenship to children of a Maltese national (whether born in Malta or abroad). In order to avoid childhood statelessness in Malta, the authorities are encouraged to strengthen relevant legal safeguards, ideally also by extending their application to stateless children born or found at sea. The authorities are likewise encouraged to ensure universal birth registration in order to avoid exposure to the risk of statelessness.

8. Malta is not party to the 1954 Convention relating to the Status of Stateless Persons nor to the 1961 Convention on the Reduction of Statelessness. Standing in the way of universal adherence to the 1954 Convention within the EU are only Malta together with Cyprus, Estonia and Poland. A few more Member States share Malta's non-adherence to the 1961 Convention. Despite this, Malta holds responsibilities under the 1997 European Convention on Nationality and is party to international human rights instruments from which obligations arise, notably the 1989 Convention on the Rights of the Child.

9. This report makes recommendations with the aim to strengthen Malta's compliance with its current obligations towards preventing and reducing statelessness. It is suggested that statelessness is an issue which should be addressed in a proactive manner by the Maltese authorities. Within the Council of the EU United Nations Working Party (CONUN), Malta agreed – in the context of the September 2012 High-Level Meeting on the Rule of Law – to accede to the 1954 Convention and to consider acceding to the 1961 Convention. By taking the step of accession to these two instruments, Malta would underline its commitment to uphold the human rights of all persons in its territory which would, in addition to strengthening Malta's national human rights framework, further support global efforts to eradicate statelessness.

Key findings

Mapping Statelessness in Malta sheds light on safeguards as well as gaps in Malta's domestic law, policy and practice when it comes to addressing the issue of statelessness. Stateless persons in Malta lack access to basic rights and new cases of statelessness arise within the territory. The key findings of the research are:

Malta has not yet acceded to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.



Malta, like many other European countries (whether or not they are party to the statelessness conventions), has no framework to effectively address the issue of statelessness. This gap leaves stateless persons vulnerable to human rights abuses and allows for persons to become stateless in Malta.

Some safeguards against statelessness exist in Maltese domestic law which is mostly in line with international standards.



Identified safeguards include legal provisions for children born stateless in Malta as well as for foundlings.



There is a lack of implementation of safeguards against statelessness.

A highlighted concern in this respect is the lack of implementation of the safeguard in the Maltese Citizenship Act for these stateless children to be granted citizenship.

The parents or guardians of children born stateless in Malta may in some cases be unaware of the safeguard. The lack of detailed knowledge may extend also to staff among relevant authorities as well as to legal representatives.



There is no procedure in place in Malta to identify stateless persons.

This affects negatively persons who are stateless in Malta. As an example, stateless migrants and asylum seekers in the country are at risk of being incorrectly categorised as a national of a country to which some link exists. The incorrect categorisation in turn leaves it impossible for stateless persons to be recognised as such in national data publications such as population censuses.



Stateless individuals are found in Malta, despite not being very visible.

The lack of identification procedures is reflected through lacking data and statistics of stateless persons in Malta.

Despite the lack of available data, it is possible to point to certain profiles of individuals or groups most likely to be affected by statelessness in Malta. This likely small population of stateless persons inevitably faces particular hardships which merits their situation to be addressed.

The persons who are or may be stateless – whether born here or arrived in Malta later in life – who have been identified through the research include persons of specific ethnic origins. Concerns also arise in the context of children born or found on migrant vessels in international waters and later brought to Malta. Also of concern are persons in Malta born outside their parents' country of origin and for whom no birth registration took place or for whom no registration of nationality (where necessary) took place with the authorities of the parents' country.

Yet another group of affected persons are children born stateless in Malta.



There is no provision in Maltese domestic legislation to facilitate the naturalisation of stateless persons.

The naturalisation procedure in Malta is discretionary, it does not require reasoned decisions and neither does it allow for a review of negative decisions. By considering to ratify the European Convention on Nationality and using its provisions as guidance, Malta could ensure the adoption of an improved naturalisation procedure which would allow decisions to be transparent and introduce the possibility of an administrative or judicial review of negative naturalisation decisions.



Stakeholders generally lack awareness of the issue of statelessness but often have an interest in developing expertise and capacity.

Various authorities in Malta are keen to receive specific training on statelessness issues. There is scope for further awareness raising or information sharing activities in the Malta context among the authorities, civil society and academia as well as among the general public.

Key recommendations

Malta should accede to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.



By standing by the EU pledge to accede to the two statelessness conventions, Malta would be guided in its efforts to establish a legal and administrative protection framework for stateless persons and to fully align its domestic legislation with international standards on statelessness. It would also serve as an opportunity for Malta to strengthen its national human rights framework while at the same time support global efforts to eradicate statelessness.

Malta should consider ratifying the 1997 European Convention on Nationality, having already confirmed its intention to be bound by this Convention through its signature in 2003.

Malta should put in place an effective statelessness determination procedure which would ensure the identification of stateless persons in its territory.



The statelessness determination procedure should adhere to international procedural standards established such as those described in UNHCR's Handbook on Protection of Stateless Persons. Malta could also draw on experiences from other European countries as guidance. Such a procedure should be accessible to any stateless person present in Malta, and not limited to those with lawful residence. There should be no time limit within which a statelessness claim must be lodged following entry in the country. When potential stateless persons are identified during the asylum procedure, they should be referred to the statelessness determination procedure when their application for refugee status is rejected on appeal.

Applicants should be issued a temporary residence permit during a statelessness determination procedure and be accorded the same standards of treatment as asylum-seekers at a minimum. Access to work for applicants with a residence permit of limited duration should be similar to that of asylum seekers in Malta.

Malta should ensure that the definition of “stateless” and “stateless person” found within its domestic law is interpreted in line with the universal definition found in Art 1(1) of the 1954 Convention, especially in the context of a determination procedure.

Malta should ensure the rights of stateless persons are upheld in the country.



In order to uphold Malta's international obligations vis-à-vis stateless persons under international human rights instruments, Malta should ensure the basic rights of stateless persons found within the country.

The recognition of statelessness should in general result in the issuance of a residence permit. This would enable stateless people recognised in Malta to enjoy the rights set out in human rights instruments as well as in the 1954 Convention.

Access to work for recognised stateless persons with a residence permit of limited duration should be similar to that of beneficiaries of international protection in Malta. Travel documents should be made available upon application to all stateless persons lawfully staying in Malta, irrespective of the duration of their residence permit.

Recognition of statelessness should allow for stateless persons to be granted permanent residence after a limited number of years, such as five years like in the UK, and with the subsequent opportunity to naturalise as Maltese citizens thereafter and thereby finally escape statelessness altogether.

Malta should ensure that there is awareness about statelessness among its various Government institutions that may encounter stateless persons, such as immigration and asylum authorities, citizenship authorities and civil registries among others.



The Government could appoint a focal point within Malta's national human rights framework to pay greater attention to the rights of stateless persons and to the right to a nationality.

Accurate data and information about stateless persons in Malta should be collected by the National Statistics Office and other relevant authorities in order to obtain a more complete understanding of the number and profile of persons who are or may be stateless in the country.



In regard to population censuses carried out in Malta, the National Statistics Office should in its census questionnaire include provisions aimed at obtaining specific data for stateless persons. This could be done by expanding its section related to nationality to include explicit options for stateless persons and others with questions on their nationality.

The various agencies which produce relevant statistics – such as the Department for Citizenship and Expatriate Affairs, the Malta Police Force, the National Statistics Office and the Office of the Refugee Commissioner – should develop guidelines on the introduction and use of categories relating to stateless persons and those of undetermined nationality.

The data gathered should also be used to explore and understand better the situation of stateless persons in Malta. Further research should be undertaken in respect of the human rights of stateless persons in Malta, in particular pertaining to the access to public relief and the country's policy of detention of persons arriving irregularly.

Solutions should be found to address the situation of un-returnable persons.



Malta should systematically verify whether a person in a return situation is or may be stateless, perhaps by way of referral to a statelessness determination procedure.

The particular predicaments of this group of persons should be explored further to map out the best way forward for assistance in the interim and long term.



Malta should build on its existing safeguards against statelessness by being proactive in the prevention and reduction of statelessness within its territory.

Malta should amend its nationality legislation to eliminate the distinction between children born in and out of wedlock as highlighted in the European Court of Human Rights judgment of *Genovese v Malta*.

In line with developments in international human rights law, Malta is encouraged to adjust its domestic legislation to ensure that children born stateless in Malta are granted citizenship automatically at birth in line with the 1989 Convention on the Rights of the Child. In the meantime, Malta should implement in practice its safeguard for children born stateless in Malta.

In order to avoid exposing children to the risk of statelessness, Malta should ensure that birth registration is carried out for all children born in Malta, regardless of the migrant status of the parents or their lack of documentation.

With regard to its safeguard against statelessness for foundlings, Malta should adjust its domestic legislation to eliminate any reference to “new-born” and “infant” and substitute it with “child” in order to ensure the inclusion of all children found in the country who are not yet able to communicate their origins.

In line with developments in international human rights law, especially the principle of the best interests of the child, Malta should enact legislative changes to ensure that children born on vessels at sea outside of Malta’s territorial waters and who later disembark in Malta are entitled to birth registration documents so as to avoid exposure to the risk of statelessness.

Along the same lines, Malta should include within the ambit of its foundling safeguard those children who are found on vessels at sea, also in international waters, and who disembark in Malta, as such children are otherwise likely to end up stateless.

Pursuant to international standards including the European Convention on Nationality to which the country is signatory, the Maltese authorities should amend its nationality legislation to facilitate the naturalisation of stateless persons and at the same time make naturalisation decisions transparent and introduce the possibility of an administrative or judicial review of negative decisions.

Please refer to Section 5.2 for further elaboration of these recommendations.

1. INTRODUCTION

“The year 2014 marks the 60th anniversary of the 1954 Convention relating to the Status of Stateless Persons. Building on the momentum generated by the 2011 Ministerial Meeting, commemorating the 50th anniversary of the 1961 Convention on the Reduction of Statelessness, 2014 presents an excellent opportunity to reinforce awareness and increase action to address this overlooked human rights crisis. UNHCR will therefore use 2014 to kick off a *decade-long campaign to eradicate statelessness*. The Office will aim to raise the profile of statelessness and the specific challenges it creates for women, men, boys and girls, and to promote responses by Governments and civil society.”¹

UNHCR, February 2014

10. *Mapping Statelessness in Malta* has been completed as part of UNHCR’s global efforts to combat statelessness. UNHCR – the United Nations High Commissioner for Refugees – is mandated by the United Nations General Assembly to prevent and reduce statelessness around the world, as well as to identify and protect the rights of stateless persons. The decade-long campaign to eradicate statelessness will be officially launched in the final quarter of 2014 following the First Global Forum on Statelessness held at The Hague in September 2014.

11. The campaign builds upon the momentum of the exceptionally successful statelessness conventions Accession Campaign, launched in 2010, to encourage States to accede to the two main international treaties governing statelessness: the 1954 Convention relating to the Status of Stateless Persons² and the 1961 Convention on the Reduction of Statelessness.³ In the first three years since its kick-off, the Accession Campaign saw more States accede to the 1961 Convention than during the first 30 years following its adoption.⁴

12. To be stateless means to be without a nationality. Stateless persons’ lack of nationality forms an obstacle to the enjoyment of their human rights. They do not possess that all important legal bond with any State which is generally considered as the basis for the enjoyment of their rights. The 1954 Convention relating to the Status of Stateless Persons addresses this anomaly by ensuring that stateless persons can enjoy a set of minimum rights. Malta – along with only three other EU member states⁵ – is however neither party to the 1954 Convention nor does it have in place a procedure to determine statelessness and a protection system for stateless persons. Malta is also not party to the 1961 Convention on the Reduction of Statelessness and the Government has only signed, not yet ratified, the 1997 European Convention on Nationality⁶ (ECN) which mirrors to a large extent the 1961 Convention.

¹ UNHCR, “A Campaign to End Statelessness - Launched on the 60th Anniversary of the 1954 Convention relating to the Status of Stateless Persons”, 2014, p. 1, available at: <http://www.unhcr.org/53174df39.html>

² 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://www.unhcr.org/refworld/docid/3ae6b3840.html>

³ UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations Treaty Series, Vol. 989, p. 175, available at: <http://goo.gl/3o0jgu>

⁴ During the first 30 years following the adoption of the 1961 Convention, 15 States became party to it whereas 17 States have acceded to it between October 2010 (which marked the kick-off of the Accession Campaign) and October 2013. Please refer to the United Nations Treaty Collections website for more information about accessions to this Convention, available at: <http://goo.gl/N7eayk>

⁵ The three other EU Member States are Estonia, Poland and Cyprus (all formed part of the 2004 enlargement of the European Union together with Malta).

⁶ *European Convention on Nationality*, 6 November 1997, European Treaty Series (ETS) 166, available at: <http://www.unhcr.org/refworld/docid/3ae6b36618.html>; Malta signed this Convention on 29 October 2003.

13. In short, this seems to preclude any official authority in Malta from adequately identifying and protecting stateless persons and, as shall be seen below, such persons often end up in a state of legal uncertainty. Stateless asylum seekers in Malta, for example, are at risk of being incorrectly categorised as a national of a country to which some link exists.⁷ In turn, such a practice can impact on the assessment of the asylum claim and potentially cause a rejection. Persons affected can then be left in limbo if they cannot be repatriated and they may end up living in destitution in Malta.

14. Malta did not join the significant number of States who committed themselves to various statelessness-related pledges during the 2011 Ministerial Meeting organised by UNHCR in Geneva.⁸ Within the Council of the EU United Nations Working Party (CONUN), Malta has however agreed - in the context of the September 2012 High-Level Meeting on the Rule of Law - to accede to the 1954 Convention and to consider acceding to the 1961 Convention.⁹

15. *Mapping Statelessness in Malta* aims at promoting Malta's accession to the 1954 Convention and the 1961 Convention and facilitating their due implementation into national law. The report is one of a number of country studies commissioned by UNHCR for the purpose of gaining a more in depth understanding of the situation related to statelessness on the national levels.¹⁰ It endeavours to identify individuals and population groups who are or may be stateless within the territory as well as to provide an assessment of the country's current legal obligations in this area.

16. It is important to highlight that the absence of a procedure in place to identify stateless persons in Malta does not exclude the possibility of their presence in the country. Although Malta is not found to host a large-scale stateless population, this report establishes that various groups of people in Malta are or may be stateless or of undetermined nationality. Despite the limited size of the stateless population in Malta, it is important to recognise that each stateless person faces particular hardships that should not be disregarded.

17. UNHCR hopes that *Mapping Statelessness in Malta* will be an accessible and useful tool for the Government of Malta to take the steps necessary to accede to the two statelessness conventions as well as to ensure effective implementation by putting in place a framework to prevent and reduce statelessness and to identify and protect stateless persons by ensuring minimum standards of treatment. This would underline Malta's commitment to uphold the human rights of all persons in the country which would, in addition to strengthening Malta's national human rights framework, further support global efforts to eradicate statelessness. The report is also aimed at supporting advocacy and awareness-raising activities of other stakeholders, including civil society.

⁷ Typical links include country of birth, country of former habitual residence or country of nationality of parents or spouse.

⁸ UN High Commissioner for Refugees (UNHCR), *Draft Overview of Pledges [Extracts Relating to Statelessness]*, 1 August 2013, available at: <http://www.refworld.org/docid/52428fa04.html>; also see UNHCR, *States Party to the Statelessness Conventions and Pledges to Accede - As at 1st July 2014*, 30 June 2014, available at <http://www.unhcr.org/4ff2e44a9.html>

⁹ See also Section 3.1.1(d)(ii) below.

¹⁰ European country reports have been published among others in relation to the Netherlands (UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in the Netherlands*, November 2011, available at: <http://www.refworld.org/docid/4eef65da2.html>); the United Kingdom (UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in The United Kingdom*, 22 November 2011, available at: <http://www.refworld.org/docid/4ecb6a192.html>); and Belgium (UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in Belgium*, October 2012, available at: <http://www.refworld.org/docid/5100f4b22.html>).

1.1 Structure of the report

18. *Mapping Statelessness in Malta* is divided into five chapters of which the first is an introductory section that seeks to present the background to this report as well as to introduce the subject matter. This chapter also outlines the structure and methodology utilised. Chapter 2 looks at the wider context of statelessness around the world, such as causes and consequences of statelessness. It touches upon the international legal framework relevant to the protection of stateless persons, and to the reduction and prevention of statelessness, including the role of UNCHR in addressing statelessness.

19. In Chapter three, an analysis of the legal framework in relation to statelessness in Malta examines Malta's obligations within the international, regional and national sphere and conducts an assessment as to how Malta currently meets these obligations. Chapter 4 attempts to map individuals and groups that are or may be stateless in Malta, focusing particularly on data obtained in the process of identifying irregular arrivals to the country. This Chapter also provides an overview of the official statistical data available.

20. The final chapter - 5 - sets out the conclusions reached and puts forward a set of recommendations. At the end of the report, lists of participants interviewed and stakeholders consulted can be found together with the bibliography.

1.2 Definitions and scope

21. For the purposes of this report, nationality will be defined as a legal bond between an individual and a State. The terms 'nationality' and 'citizenship' will be used interchangeably. A stateless person, according to Art 1(1) of the 1954 Convention relating to the Status of Stateless Persons, is someone "who is not considered as a national by any State under the operation of its law". This definition forms part of international customary law.¹¹

22. In the absence of a procedure in place to identify stateless persons in Malta and the associated difficulties to be officially recognised as stateless in the country, this report will focus on individuals or groups who are or may be stateless according to the definition of Art 1(1) of the 1954 Convention.

23. *Mapping Statelessness in Malta* also includes references to persons of undetermined nationality. This category of persons is distinct from that of stateless persons. UNHCR sees persons of undetermined nationality to be those for whom a preliminary review has shown that it is not yet known whether they possess a nationality or are stateless. This could be because they lack proof of possession of any nationality and have links to more than one State on the basis of birth, descent, marriage or habitual residence; or are perceived and treated by authorities in the State of residence as possessing links which give rise to a claim of nationality of another State on the basis of such elements as historic ties, race, ethnicity, language or religion.¹²

¹¹ See also UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, paragraph 13, available at: <http://www.refworld.org/docid/53b676aa4.html>

¹² This category of persons does not include individuals who are not cooperating with efforts to establish their identity or nationality.

24. Refugees are often classified as *de facto* stateless since they are outside their country of nationality and lack the protection of that country. This does not however mean that all refugees are stateless under the universal definition found in the 1954 Convention. However, some refugees can also be stateless and this acknowledgement is important in order that an appropriate solution is sought from the outset.

25. Being 'at risk of statelessness' simply means that there is a heightened risk of becoming stateless. This could be due to the lack of a birth certificate, especially in the migration context.¹³

26. References to persons who can be categorised as 'un-returnable' are furthermore included. This category is related to statelessness since it, in the Malta context, mostly consists of persons who have had their asylum claim rejected and been refused any form of protection or regular residence status, yet are unable to be returned to their country of origin. As highlighted in other statelessness studies, "[d]emonstrated unreturnability thus points to the absence of several, inter-linked functions of an individual's presumed nationality" which accordingly merits its inclusion in this report.¹⁴

27. Withdrawal of nationality will be used in a broad sense to refer to both loss and deprivation of nationality.¹⁵

28. Finally, an important distinction to keep in mind when mapping the presence of stateless persons is the difference between stateless persons who have arrived to the country in a migration context and *in situ* stateless persons.¹⁶ However small, any *in situ* creation of statelessness, for example of children being born stateless in a country, is important to highlight since any country's nationality legislation could easily eliminate this occurrence.

¹³ UN High Commissioner for Refugees (UNHCR), *Under the Radar and Under Protected: The Urgent Need to Address Stateless Children's Rights*, June 2012, p. 12, available at: <http://www.refworld.org/docid/514acd3e2.html>

¹⁴ UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in the Netherlands*, November 2011, paragraph 11, available at: <http://www.refworld.org/docid/4eef65da2.html>; See also UN High Commissioner for Refugees (UNHCR), *Mapping Statelessness in The United Kingdom*, 22 November 2011, Section 1.2, available at: <http://www.refworld.org/docid/4ecb6a192.html>

¹⁵ UN High Commissioner for Refugees (UNHCR), *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, March 2014, paragraph 10, available at: <http://www.refworld.org/docid/533a754b4.html>

¹⁶ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, paragraph 1, available at: <http://www.refworld.org/docid/53b676aa4.html>

1.3 Methodology

29. The research for this report was commenced in 2013, by a consultant engaged with UNHCR Malta. The consultant benefitted from significant supervision and guidance from UNHCR colleagues. The consultant continued to work on this project until August 2014 up until which date developments are included.

30. The research included a desk-based review of quantitative data obtained from Government institutions and other individual stakeholders coupled with information obtained through interviews with persons who are or may be stateless in Malta. Together with an analysis of the legal framework in relation to statelessness in Malta, this research forms the basis of the recommendations put forth as a result of the mapping.

31. Preliminary findings were shared and discussed with stakeholders at a Technical Roundtable on Statelessness which was organised by UNHCR in Valletta on 15 January 2014.¹⁷

1.3.1 Consultations with stakeholders

32. A comprehensive number of stakeholders were consulted for the specific purpose of collecting information on current practices and procedures concerning statelessness. The report greatly benefits from the cooperation of the stakeholders as it was often their specific knowledge of relevant background information and cases which were important to understand the phenomenon in Malta.

33. Consultations took place with relevant Government departments: the Department for Citizenship and Expatriate Affairs; Malta Police Force; the National Statistics Office; the Office of the Refugee Commissioner; the Passport Office; the Prison Authorities and the Public Registry. Furthermore, data was obtained from the Global Issues Directorate of the Ministry for Foreign Affairs and the legal aid pool at the Ministry for Home Affairs and National Security was consulted.

34. Non governmental organisations consulted were primarily aditus, Jesuit Refugee Services Malta and Malta Emigrants Commission as well as one inter-Governmental organisation, the International Organization for Migration. Information was obtained from the European Union's European External Action Service as well as from Tonio Azzopardi Advocate.

35. Nearly all previously consulted stakeholders attended the UNHCR organised Technical Roundtable on Statelessness held in Valletta on 15 January 2014 with the addition of the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties; the Office of the Commissioner for Children; as well as an independent academic. The Roundtable was convened in order to provide participants with an insight into statelessness from regional and national perspectives and to present the preliminary findings of the statelessness mapping conducted in Malta. It also served as an opportunity to discuss and assess jointly these preliminary findings and to ensure that all perspectives were included prior to the finalisation of the report.

¹⁷ See also the European Network on Statelessness blog entry (by Zamwa Mastaw) of 5 February 2014: "Statelessness in Malta", available at: <http://www.statelessness.eu/blog/statelessness-malta>

1.3.2 Quantitative methodology

36. The statistical data included in this report is primarily sourced from the Department for Citizenship and Expatriate Affairs (naturalisations of beneficiaries of protection); the EUDO Observatory on Citizenship¹⁸ (naturalisations in general); the Malta Police Force (irregular arrivals); the National Statistics Office (census results and naturalisations in general); and, the Office of the Refugee Commissioner (asylum claims).

37. Based on data collected by the consultant on persons who are or may be stateless in Malta, a database was created so that pertinent information could be extracted for the purposes of clarifying and establishing which are the individuals and main population groups concerned in Malta.

1.3.3 Qualitative methodology

38. A number of persons who are or may be stateless in Malta were identified and interviewed individually. A semi-structured questionnaire was developed for this purpose in order to capture every important element of each individual's story.

39. The consultant depended partly on referrals by stakeholders but mostly on UNHCR's internal records of its population of concern in Malta. It nevertheless remains possible that other individuals or groups of stateless persons remain unknown to UNHCR and were thus not consulted for this research.

40. The profile boxes included throughout this report of persons who are or may be stateless in Malta are based on the interviews conducted by the consultant and purport to illustrate cases from a variety of affected groups.

1.3.4 Legal research

41. In order to gain an overview of the current situation of statelessness in Malta, the consultant analysed relevant international and regional legislation and policy, to determine Malta's responsibilities and in turn assess the compatibility of domestic law and practices observed in Malta.

42. The main sources of relevant national legislation include the Constitution of Malta¹⁹ as well as the Citizenship Act,²⁰ the Refugees Act²¹ and the Immigration Act.²²

43. Legal research was also carried out vis-à-vis nationality legislation of the countries with which the majority of persons who are or may be stateless in Malta possessed a relevant link such as country of birth or parents' country of origin. This was done in order to determine whether the participants interviewed would potentially have a claim to a nationality.

¹⁸ EUDO Observatory on Citizenship is an observatory within the European Union Observatory on Democracy (EUDO) web platform hosted at the Robert Schuman Centre of the European University Institute in Florence, further information available at: <http://eudo-citizenship.eu/about>

¹⁹ The Constitution of Malta was adopted in 1964, available at: <http://goo.gl/1jmCTm>

²⁰ Citizenship Act (Chapter 188 of the Laws of Malta) and related subsidiary legislation.

²¹ Refugees Act (Chapter 420 of the Laws of Malta) and related subsidiary legislation.

²² Immigration Act (Chapter 217 of the Laws of Malta) and related subsidiary legislation.

2. STATELESSNESS AROUND THE WORLD AND THE ROLE OF UNHCR

44. Statelessness was recognised as a global challenge during the first half of the twentieth century when an increased incidence of statelessness became apparent.²³ Unfortunately, statelessness is not disappearing with time. Large scale statelessness situations are being addressed in a number of countries worldwide. Despite this, statelessness is still being transmitted over generations and new situations are still created, even in Europe.²⁴

45. Today there are an estimated 10 million stateless persons worldwide.²⁵ The scale of the problem has fluctuated over the years, with improvements in some regions offset by new problems in others. The large numbers at the beginning of the 1990s were gradually reduced as the States of the former Soviet Union granted citizenship to several hundreds of thousands of people.

46. Putting precise figures on the number of stateless people is inherently difficult because few countries have procedures to identify the stateless and collect comprehensive and reliable data in this field. The population data that UNHCR produces every June include available official statistics or estimates.²⁶

47. While some regions have larger stateless populations than others, every State and continent is affected by statelessness. With the full scope of statelessness across the globe only just becoming known, the problem is particularly acute in South East Asia, Central Asia, Eastern Europe, the Middle East and various countries in Africa. Because most of the countries of the American continents grant citizenship to all born on their territory, that region has the lowest incidence of people with no nationality.

48. Countries with the greatest numbers of stateless people, for which estimates are known, are Iraq, Kenya, Myanmar, Nepal, Syria, Thailand, Estonia and Latvia. However, situations and rights of stateless persons in each country vary significantly and are not always easily compared.²⁷

²³ UN High Commissioner for Refugees (UNHCR), *Nationality and Statelessness: Handbook for Parliamentarians N° 22*, July 2014, ISBN 078-92-9142-599-0 (IPU), p. 5, available at: <http://www.refworld.org/docid/53d0a0974.html>

²⁴ On the creation of new situations of statelessness in Europe, see also European Network on Statelessness, *Childhood Statelessness In Europe: Issues, Gaps and Good Practices*, April 2014, available at: <http://www.refworld.org/docid/5343a45f4.html>; See also Council of Europe: Parliamentary Assembly, *Access to nationality and the effective implementation of the European Convention on Nationality*, 9 April 2014, Resolution 1989 (2014), available at: <http://www.refworld.org/docid/5346951a4.html>

²⁵ UN High Commissioner for Refugees (UNHCR), *UNHCR Global Trends 2013: War's Human Cost*, 20 June 2014, available at: <http://www.refworld.org/docid/53a3df694.html>

²⁶ UNHCR data is based on census counts, surveys and other Government data and estimates, as well as data from UNHCR or NGOs.

²⁷ See also a map of persons under UNHCR's statelessness mandate in UN High Commissioner for Refugees (UNHCR), *UNHCR Global Trends 2013: War's Human Cost*, 20 June 2014, p. 9, available at: <http://www.refworld.org/docid/53a3df694.html>

2.1 Causes of statelessness

49. Before elaborating on the consequences of statelessness, it is useful to understand how people become stateless.

50. Statelessness occurs for a variety of reasons which can largely be grouped into three categories:

- i. causes linked to dissolution and separation of States and transfer of territory between States, sometimes shortened to ‘State succession’;
- ii. causes linked to the technical operation of citizenship laws or administrative practices; and
- iii. causes linked to discrimination, for instance, on account of gender, age, ethnicity and/or race, or to the arbitrary withdrawal of nationality.²⁸

2.1.1 Dissolution and separation of States and transfer of territory between States

51. Firstly, statelessness often arises in the context of State dissolution: after the dissolution of the Soviet Union and the Federal Republic of Yugoslavia, millions were left stateless throughout Eastern Europe and Central Asia when they failed to acquire a nationality under the new nationality legislations. Twenty years later, hundreds of thousands of people in the region remain stateless.

52. A more recent example is the secession of South Sudan from Sudan in 2011. Parts of the population in the newly independent state of South Sudan remain at high risk of becoming stateless by virtue of being of mixed Sudanese-South Sudanese parentage, originating from border areas, or having resided in Sudan or in other countries for an extended period of time.²⁹

2.1.2 Technical causes

53. Secondly, people may become stateless as a result of the technical operation of citizenship laws or administrative practices. States have the right to determine whom they consider to be a citizen and have adopted a wide range of approaches in this field. Within this complex international maze of citizenship laws, many people find that they fall through the cracks. An individual can, for example, become the victim of a conflict of laws, in which no State takes responsibility for the bestowal of nationality.

54. This can in particular affect children. When they cannot acquire the nationality of one of the parents and they do not acquire the nationality of the country of birth, they are stateless. In addition, some States employ a mechanism whereby citizens may lose or be deprived of nationality without the guarantee of another nationality, which thereby leads to statelessness.

²⁸ UN High Commissioner for Refugees (UNHCR), *Nationality and Statelessness: Handbook for Parliamentarians N° 22*, July 2014, ISBN 078-92-9142-599-0 (IPU), pp. 29-42, available at: <http://www.refworld.org/docid/53d0a0974.html>

²⁹ 2014 UNHCR country operations profile - South Sudan, available at: <http://www.unhcr.org/pages/4e43cb466.html>; See also Manby, B., *The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws*, The Open Society Initiative for Eastern Africa, 16 April 2012, available at: <http://goo.gl/yGnDRR>



Name: **Kadija*** (*Not her real name)

Country of birth: **Eritrea**

Arrival in Malta: **November 2012**

Time in detention: **A few days**

Current status: **Beneficiary of international protection (Subsidiary)**

Kadija's birth in the mid-1980's to Eritrean parents in Masawa, Eritrea, was never registered. When Kadija was one year old, her father left to work as a soldier with the Eritrean army who was at war with Ethiopia. One year on, the rest of the family went to Gondor in Ethiopia where her father had somehow settled. Kadija is unaware of the details, all she is certain of is that during her early teens, her father 'disappeared'.

“ He just vanished. No one knew what had happened but it was not unusual for Eritreans to be arrested in Ethiopia at the time. My mother was unable to leave the house due to her sickness and the fact that she was blind. Without the support of my parents, growing up as an Eritrean in Ethiopia without documents was difficult. Like mine, my mother's birth was not registered so I did not have any evidence of my origins.”

Without identification documentation, Kadija could not attend school or access free medical services. The local administration in her village persistently refused to issue her family with identity documents.

“ The only chance to be recognised by Eritrea was with my father's help but there was no way for me to find out if he was alive and where he was. All I wanted was to have some recognition as a person, I did not want to be undocumented anymore. When I was about 20 years old, I attempted to enter Eritrea. But it was to no avail. After having walked through the desert towards Eritrea with my brother for 3 days, other Eritreans told us that we would be arrested upon entry since we did not have any documentation so we were forced to turn back.”

Kadija started working in a restaurant in Gondor where she met a Somali man who was fleeing from persecution in his own country. They married and had a daughter together while still in Ethiopia. During this time the Ethiopian police came to their house and arrested Kadija's older brother in an attempt to make the family understand that being refugees in Ethiopia, they should be careful not to allow anymore refugees to join them (referring to Kadija's husband).

“ While my brother was being arrested, the police threatened to arrest my husband as well. For each of the following 10 nights, the police returned to our house asking for my father's whereabouts and when we did not have any answers, they would beat my husband and threaten the rest of us.”

Not feeling safe in Ethiopia, Kadija and her husband were forced to flee the country, leaving behind their daughter and the rest of Kadija's family who she has not been able to communicate with since her flight. In Sudan, the couple was forced to flee again to avoid the round up of undocumented foreigners. Kadija was too afraid to ask for documentation from either the Eritrean or the Ethiopian consular authorities in Sudan since she feared detention in either country. Once in Libya, Kadija was imprisoned for being an illegal immigrant but eventually released because she was due to give birth. The family managed to board a boat which was rescued and brought to Malta where they were granted international protection (Subsidiary).

“ The Eritreans see me as being Ethiopian and the Ethiopians think I am Eritrean. My husband's Somali acquaintances see me as mixed ethnicity so I end up spending most of my time alone at our home.”

In Malta, Kadija is safe but she feels excluded by all of the migrant communities to which she would have normally been linked.

Kadija's future in Malta remains uncertain since she has no real prospect of confirming her claim to Eritrean or Ethiopian nationality or ever being granted Maltese nationality.

55. Failure or inability to undertake what might be considered a simple administrative endeavour can also lead to statelessness. Lack of registration of children at birth – a pervasive problem in many developing countries – leaves a large number of children without proof of where they were born, who their parents were or where their parents were from. Not having a birth certificate does not automatically indicate a lack of citizenship, but in many countries, and in today’s increasingly mobile world of migrants, not having proof of birth, origins or legal identity increases the risk of statelessness.

2.1.3 Discrimination and arbitrary withdrawal of nationality

56. Thirdly, underlying causes in most situations of statelessness are discrimination and arbitrary withdrawal of nationality. Ethnic and racial discrimination as well as discrimination affecting women are particularly topical.

57. Exclusionary policies are at the root of many statelessness situations. In the Middle East and other parts of the world gender-discriminatory legislation continues to create risks of statelessness.³⁰ In some countries, marriage or the dissolution of marriage may constitute a ground for automatic loss of citizenship.

58. Additionally, while a number of countries in sub-Saharan and North Africa, the Middle East and Asia have started to introduce legislation to address this, 27 countries still retain provisions which do not grant women the same rights as men to confer nationality to their children. Children who are born of women who are unable to pass on their nationality and married to foreigners, or who are born out of wedlock, may end up stateless if their father is stateless, if he cannot confer nationality under the nationality law of his State or is unable or refuses to take the necessary administrative steps with the authorities of his country on behalf of his children.³¹

59. In many of the Gulf States, populations who were left out at independence are now referred to as ‘*Bidoon*’, which literally means ‘without’ in Arabic. Under the Saddam Hussein regime in Iraq, many Feili Kurds were stripped of their nationality, but this Decree was repealed in 2006 once Saddam Hussein was no longer in power.³² In 1962, a discriminatory census stripped some 120,000 Syrian Kurds of their Syrian citizenship overnight. They were left stateless and with no claim to another nationality. Since that time stateless Syrian Kurds have been referred to as ‘foreigners’ (*ajanib*, in Arabic) in their own country or as ‘*maktumin*’ if left completely undocumented.³³

60. There have been some success stories in recent years in Asia, where millions have received nationality in Bangladesh and Nepal. But even though Nepal achieved in 2007 the largest reduction of statelessness the world has seen, the Himalayan nation still hosts about 800,000 people whose nationality is not confirmed and who cannot access important Government services without a citizenship certificate.³⁴

³⁰ UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*, 8 March 2014, available at: <http://www.refworld.org/docid/532075964.html>

³¹ *Ibid.*

³² UNHCR, “Who is Stateless and Where?”, available at: <http://www.unhcr.org/pages/49c3646c15e.html>

³³ Thomas McGee, *The Stateless Kurds of Syria*, *Tilburg Law Review*, Volume 19 (2014), Issue 1-2, pp 171-181, p. 173, available at <http://goo.gl/euxeey>; Note also that Decree 49 of April 2011 introduces a naturalisation process for some members of the otherwise stateless Syrian Kurdish community. On the specific impact of the Decree, see Tilburg University - Statelessness Programme, *The Stateless Syrians*, May 2013, available at: <http://www.refworld.org/docid/52a983124.html>;

³⁴ UNHCR, “Who is Stateless and Where?”, available at: <http://www.unhcr.org/pages/49c3646c15e.html>

2.2 Consequences of statelessness

61. In principle, individuals are entitled to most human rights regardless of their citizenship or lack thereof. In practice, however, statelessness often results in the denial of fundamental rights, causing social and economic hardship, and acute vulnerabilities, most notably for stateless women and children.

62. Authorities may refuse to register the birth and issue a birth certificate to a child whose parents cannot prove that they hold the nationality of their country of residence. Without such a birth certificate, the child is much more likely to experience trouble proving nationality (or enjoying a host of other rights) in the future. Stateless people may experience similar hindrances in obtaining personal identification documentation. Considering that stateless people are often at increased risk of discrimination, abuse, detention or expulsion, not being able to present an identity document may increase the incentive to avoid participation in society altogether.

63. While access to the labour market and housing is either difficult or barred completely, stateless people often have limited or no access to national services such as public education, healthcare and pensions. They may not be able to own, register or inherit property, or to get married legally. It can be virtually impossible to start a business due to the inability to enter into contracts, obtain licences or open a bank account. This way, poverty becomes an integral part of stateless life. Stateless persons are sometimes forced to obtain false identification documents or assume alternate identities in order to engage in day-to-day activities.

64. Some stateless persons face long periods of detention, because they cannot prove who they are or where they are from. Others may face difficulties regularising their stay or a heightened chance of expulsion from the country they call their own. They may also face restrictions on their freedom of movement, including on travelling – and returning from – abroad. Legitimate international travel may not be an option, resulting in significantly increased exposure to human smugglers and traffickers.

65. On a wider level, statelessness may hamper social development efforts and the problem becomes self-perpetuating because stateless parents cannot pass a nationality on to their children, thereby creating an inter-generational crisis. Apart from the misery caused to the people themselves, the effect of marginalising whole groups of people across generations may severely affect the balanced integration in society and may represent a source of conflict.



Name: **Kafil**
Country of birth: **Myanmar**
Arrival in Malta: **2011**
Time in detention: **4 months**
Current status: **Refugee Status**

Kafil was born in Rakhine State in Myanmar to Rohingya parents in 1987. He has two sisters and a brother. Kafil's father passed away when he was about 7. Kafil believes his father's passing at that point could have been avoided if there was better medical treatment available to the Rohingya. Since there was no regular hospital access, his father had been forced to satisfy himself with medical assistance from local pharmacies before his condition got so severe that it required emergency hospital treatment. He passed away while in the car on the way to the hospital.

“After my father's death, times were really hard for our family and at 13 I had to start working to supplement my mother's income as a seamstress. This way, my younger brother was able to attend school and we would have sufficient money for every day needs. Working in the rice fields was tough but Rohingya were not able to get any of the nice jobs so I did not have any choice.”

Kafil explains that he was made to feel like a foreigner in his own country and he would be discriminated against verbally by people shouting at him that “this is not your country”. He says that it is very difficult for the Rohingya to travel anywhere, even within Rakhine State. The Rohingya are only allowed to travel abroad on two occasions: either for medical treatment in Bangladesh (7 days maximum) or for the annual Muslim Holiday of the Hajj in Mecca, Saudi Arabia. Also, the authorities will take photos of all Rohingya families every year and if someone is not present, a red cross will be drawn over the previous record held for them.

“The type of ID card issued to Rohingya is even different to that of the Buddhists and some Rohingya are refused an ID card altogether. My brother was denied one unless he could pay a significant amount of money.”

Kafil fled from the country when he was accused by the police of stealing bamboo from around the rice fields where he worked. Kafil explains that it is not unusual for an informer to pass on such accusations about Rohingya to the police. He managed to flee to Bangladesh where he worked for a few months before eventually returning to his family in Rakhine State. Back home, Kafil would sleep in the jungle so that the police would not notice his return. The police however started asking around for him and ransacking the family's house.

“The police would have issued a fine of at least Kyat 500,000 if they had caught me and they would have put me in prison if I couldn't pay. I was really scared so I ran to the next village and paid a smuggler to travel to Bangladesh again.”

Kafil was smuggled to Libya to work and he was satisfied with conditions there and the fact that he was able to support his family. When the conflict in Libya started raging through Kafil's area, he was however forced to flee. After saving up funds, Kafil travelled by boat towards Europe and was rescued by the Armed Forces of Malta. Here, he was granted refugee status.

“I work in Malta as often as I can and I live in private accommodation with friends. I feel alone sometimes since there are no other people from Myanmar here. I wish I could help my younger brother escape from our country but my refugee status does not allow me to apply for family reunification with him.”

Kafil would like to go to Canada because someone has told him that it is a nice country. When asked why he doesn't see Malta as a long-term option, Kafil laughs and says:

“I know there is no prospect for citizenship here. I know many people who have been here for a very long time and still they don't have Maltese citizenship.”

2.3 Role of UNHCR

66. UNHCR is not explicitly mentioned in either the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.³⁵ However, the UN General Assembly has subsequently designated UNHCR as the appropriate “body” under Art 11 of the 1961 Convention.³⁶

67. Since the end of the Cold War, and with the dissolution of a number of federal States and new States being formed in its aftermath, the international community increasingly realised that more was needed to be done to highlight and address the plight of stateless persons. In 1995 UNHCR was requested by the UN General Assembly to actively promote accession to the two statelessness conventions and to serve in a technical and advisory role to States interested in implementing the conventions’ provisions in their nationality laws.³⁷ UNHCR has provided support to this end ever since.

68. The General Assembly subsequently reinforced UNHCR’s mandate to address statelessness through a resolution which noted “the work of the High Commissioner in regard to identifying stateless persons, preventing and reducing statelessness, and protecting stateless persons, and urge[d] the Office of the High Commissioner to continue to work in this area in accordance with relevant General Assembly resolutions and Executive Committee conclusions.”³⁸ These four areas therefore govern UNHCR’s statelessness-related efforts.

69. It was also confirmed that, in addition to the promotion of accession, UNHCR should take on the duty of providing training, technical expertise and operational support to States which were grappling with issues related to statelessness. UNHCR accordingly provides advice to States to ensure that rules on conferral and withdrawal of nationality do not lead to statelessness.³⁹

³⁵ UNHCR’s mandate responsibilities to address statelessness were initially limited to stateless persons who were refugees as set out in paragraph 6 (A) (II) of the UNHCR Statute and Art 1(A)(2) of the 1951 Convention relating to the Status of Refugees. In this capacity, UNHCR was involved in the drafting of the 1954 Convention. To undertake the functions foreseen by Arts 11 and 20 of the 1961 Convention on the Reduction of Statelessness, UNHCR’s mandate was expanded to cover persons falling under the terms of that Convention by General Assembly Resolutions 3274 (XXIX) of 1974 and 31/36 of 1976, available at: <http://www.unhcr.org/3dc8dca44.html> and at: <http://www.unhcr.org/42bc04ac2.html> respectively; The Office was entrusted with responsibilities for stateless persons generally under UNHCR Executive Committee Conclusion 78, which was endorsed by the General Assembly in Resolution 50/152 of 1995, available at: <http://www.un.org/documents/ga/res/50/ares50-152.html>; Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons; See also below.

³⁶ 1961 Convention: Art 11 provides that “the Contracting States shall promote the establishment within the framework of the United Nations [...] of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.

³⁷ UN General Assembly, *Office of the United Nations High Commissioner for Refugees : resolution / adopted by the General Assembly*, 9 February 1996, A/RES/50/152, available at: <http://www.refworld.org/docid/3b00f31d24.html>

³⁸ UN General Assembly, *Office of the United Nations High Commissioner for Refugees : resolution / adopted by the General Assembly*, 25 January 2007, A/RES/61/137, available at: <http://www.refworld.org/docid/45fa902d2.html>; UNHCR, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) - 2006, available at: <http://www.unhcr.org/refworld/docid/453497302.html>

³⁹ *Ibid.*

70. Moreover, the organisation can assist in awareness-raising through the dissemination of information on statelessness, provide legal advice, and promote birth registration with the help of partner organisations. The Executive Committee of the High Commissioner's Programme has further encouraged UNHCR to "promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which lead to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem".⁴⁰

71. UNHCR has therefore issued guidance materials on statelessness intended to provide interpretive legal guidance for Governments, NGOs, legal practitioners, decision-makers and the judiciary, as well as for UNHCR staff and other UN agencies involved in addressing statelessness.⁴¹ Furthermore, recognising that Parliamentarians are key partners in the eradication of statelessness because national responses often require legislation, UNHCR has – jointly with the Inter Parliamentary Union – produced a handbook for Parliamentarians on nationality and statelessness.⁴²

72. As previously indicated, *Mapping Statelessness in Malta* was instigated as part of this renewed resolve. UNHCR stands ready to work with the Government of Malta to prepare for the accession to the statelessness conventions and to provide technical advice for the implementation of the conventions, through for example the establishment of a statelessness determination procedure and through amendments to the nationality law.

⁴⁰ UNHCR, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) - 2006, available at: <http://www.unhcr.org/refworld/docid/453497302.html>

⁴¹ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>; UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Arts 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>; and, UN High Commissioner for Refugees (UNHCR), *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, March 2014, available at: <http://www.refworld.org/docid/533a754b4.html> (The last mentioned Conclusions will lead to a Guideline on the prevention of statelessness in the context of loss and deprivation of nationality.)

⁴² UN High Commissioner for Refugees (UNHCR), *Nationality and Statelessness: Handbook for Parliamentarians N° 22*, July 2014, ISBN 078-92-9142-599-0 (IPU), available at: <http://www.refworld.org/docid/53d0a0974.html>

3. ANALYSIS OF THE LEGAL FRAMEWORK IN RELATION TO STATELESSNESS IN MALTA

73. This chapter provides an overview of the international and regional legal framework in place for the identification and protection of stateless persons as well as the prevention and reduction of statelessness in relation to Malta. It then turns to an analysis of Malta's nationality legislation with a focus on the prevention and reduction of statelessness. This focus has been established since Malta does not currently have a national protection framework in place for stateless persons.

3.1 Overview of the international and regional legal framework

74. The 1948 Universal Declaration of Human Rights famously proclaims in its 15th Article that (1) Everyone has the right to a nationality; and (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.⁴³ A number of international conventions (adopted both previously and subsequently) address these rights more in-depth. The following section lists, in a chronological order, international and regional statelessness-specific conventions. The extent of Malta's commitments under each convention is highlighted and an assessment is made where relevant as to whether Malta currently meets those commitments.⁴⁴

3.1.1 Statelessness-specific conventions

a) 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws and its three Protocols

75. Malta became a party to the 1930 Convention⁴⁵ through succession on 16 August 1966⁴⁶ and under it, Malta is obliged to grant citizenship to children born in Malta whose parents are both unknown and may grant nationality to a child born in Malta if the parents have no nationality or are of unknown nationality.⁴⁷ On the same day, Malta also succeeded to the 1930 Protocol relating to a certain Case of Statelessness, which has the effect of granting Maltese

⁴³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html>

⁴⁴ A useful overview is provided by the EUDO Observatory on Citizenship, available at: <http://goo.gl/T6GS8a>

⁴⁵ League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, available at: <http://www.refworld.org/docid/3ae6b3b00.html>

⁴⁶ For Declarations entered by Malta concerning Arts 6 and 16, see Footnote 22 of League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, available at: <http://www.refworld.org/docid/3ae6b3b00.html>

⁴⁷ 1930 Convention: Arts 14-15.

citizenship to children born in Malta of Maltese mothers and fathers of unknown or without a nationality.⁴⁸ Although Malta had the opportunity to succeed to the 1930 Special Protocol concerning Statelessness, it did not do so.⁴⁹

b) 1957 Convention on the Nationality of Married Women

76. Malta succeeded to this treaty on 7 June 1967,⁵⁰ thereby committing itself to refrain from letting the nationality of a woman be automatically affected by marriage to a foreigner; to refrain from preventing a wife from retaining her nationality despite the acquisition or renunciation of a nationality by her husband; and, finally, to allow for the availability of privileged nationality procedures for a wife to take the nationality of her husband.⁵¹ As shall be seen below in Section 3.2.2(d), Malta's nationality legislation seems to be in line with these obligations.

c) 1954 Convention relating to the Status of Stateless Persons

77. Malta is not party to the 1954 Convention.⁵² This Convention nevertheless establishes the international definition of a stateless person in its Art 1(1) which provides that a stateless person is a "person who is not considered as a national by any State under the operation of its law." Since the 1954 Convention does not permit reservations to this Art, the definition is binding on all States Parties to the treaty. Moreover, the International Law Commission has concluded that by now this definition is part of customary international law.⁵³

78. The 1954 Convention sets out the obligations of States towards those who fall within this definition and the standards of treatment to which such individuals are entitled. As such, the Convention ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the 1954 Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

79. The 1954 Convention is silent on the mechanism to identify stateless persons. UNHCR's Handbook on Protection of Stateless Persons notes in its introduction that "it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment in order to comply with their Convention commitments".⁵⁴

80. While numerous countries have procedures in place to determine refugee status (which are also extensively adjudicated by national and European courts), there are relatively few countries that have dedicated procedures to determine whether someone is stateless, although increased attention has been given to this issue in recent years.⁵⁵ In the EU, France,

⁴⁸ 1930 Protocol: Art 1.

⁴⁹ Malta would have been able to succeed on the basis of the UK's status as a State Party since 1932.

⁵⁰ UN General Assembly, *Convention on the Nationality of Married Women*, 29 January 1957, available at: <http://www.refworld.org/docid/3ae6b3708.html>

⁵¹ 1957 Convention: Arts 1-3.

⁵² 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://www.unhcr.org/refworld/docid/3ae6b3840.html>

⁵³ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, paragraph 13, available at: <http://www.refworld.org/docid/53b676aa4.html>

⁵⁴ *Ibid.*, paragraph 8.

⁵⁵ See also European Network on Statelessness, *Statelessness Determination and the Protection Status of Stateless Persons*, 2013, available at: <http://www.refworld.org/docid/53162a2f4.html>; UN High Commissioner for Refugees (UNHCR), *Draft Overview of Pledges [Extracts Relating to Statelessness]*, 1 August 2013, available at: <http://www.refworld.org/docid/52428fa04.html>

Hungary, Italy, Latvia, Spain and the UK all have procedures in place to determine statelessness and a number of other EU Member States are currently looking into establishing such procedures.⁵⁶ At the 2011 Ministerial Meeting, organised by UNHCR in Geneva, a range of States around the world pledged to establish such procedures and Moldova and Georgia have now done so, fulfilling their pledge.⁵⁷

d) 1961 Convention on the Reduction of Statelessness

81. Malta is also not party to the 1961 Convention⁵⁸ which establishes an international framework to avoid statelessness by setting out safeguards against statelessness at birth⁵⁹ or upon loss or deprivation of nationality.⁶⁰ This makes it possible for States to prevent new cases of statelessness from arising, which should automatically lead to a reduction in statelessness over time.

82. This Convention aims at preventing statelessness at birth and later in life. It does not however under all circumstances prohibit loss or deprivation of nationality if it leads to statelessness nor does it require the Contracting State to grant citizenship to all stateless persons in the territory.

83. The 1961 Convention is the only universal instrument that elaborates clear, detailed and concrete safeguards to ensure the avoidance of statelessness. Accession and adherence to this Convention equip States to avoid and resolve nationality-related disputes if these may result in statelessness and to mobilise international support to prevent and reduce statelessness.

84. Further than ensuring that interpretation matters or disputes between Contracting States can be submitted to the International Court of Justice, the 1961 Convention notably provides for the creation of a body to which a person who may benefit from its provisions may apply to have his or her claim examined and for assistance in presenting that claim to the appropriate authority. The General Assembly subsequently asked UNHCR to fulfil this role.⁶¹

⁵⁶ Examples include Belgium and the Netherlands.

⁵⁷ See also UN High Commissioner for Refugees (UNHCR), *Draft Overview of Pledges [Extracts Relating to Statelessness]*, 1 August 2013, available at: <http://www.refworld.org/docid/52428fa04.html>

⁵⁸ UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations Treaty Series, Vol. 989, p. 175, available at: <http://www.unhcr.org/refworld/docid/3ae6b39620.html>

⁵⁹ 1961 Convention: Arts 1-4.

⁶⁰ 1961 Convention: Arts 5-9.

⁶¹ See also Section 2.3 above.

i. Malta and the UN statelessness conventions: an historical account

85. It is noteworthy that despite Malta's current status as non-party to both statelessness conventions, a relationship nevertheless exists in Malta's history to the said conventions.

86. It appears to be the case that Malta could hold relevant treaty obligations as a successor State to the United Kingdom (UK). The UK had ratified the 1954 Convention in 1959 following which it had, in 1962, extended its application to the territory of Malta. According to an Exchange of Letters entered into between the UK and Malta in 1964 (the year of Malta's independence), it seems that the UK intended for Malta to be under continuing obligations under the 1954 Convention as a successor State to the UK.⁶²

87. Despite the potential intention of the UK, an Exchange of Letters is not sufficient to constitute succession by the successor State to the treaties to which the predecessor State is or was a party.⁶³ Malta indeed is not listed as a party to all the multilateral treaties to which the UK was party prior to Malta's independence and in relation to which the UK extended territorial application to Malta prior to the independence of the latter. Despite having the opportunity to do so, Malta also does not appear to have taken any steps to succeed to the 1954 Convention, in contrast to steps taken by Malta in regard to a number of other multilateral treaties following its independence from the UK.⁶⁴

88. In brief, for the obligations under the 1954 Convention to apply, Malta would need to submit a formal notice of accession or, alternatively, submit a notice of succession.⁶⁵ In relation to the 1961 Convention, Malta would be able to ratify (rather than accede) to this instrument, as it was signed by the UK (in 1961) before Malta achieved its independence.⁶⁶

89. This historical perspective clarifies that Malta does not currently have any obligations under statelessness conventions specifically. The report will now turn to a commitment which Malta holds in respect to becoming a State Party to the 1954 Convention and to consider becoming a State Party to the 1961 Convention.

⁶² *Exchange of Letters between the Government of Malta and the Government of the United Kingdom and Northern Ireland relative to the Inheritance of International Rights and Obligations by the Government of Malta*, Valletta, December 31, 1964, available at <http://goo.gl/Xkb2vi>; The Exchange of Letters is classified as a 'devolution agreement'.

⁶³ Prepared by the Treaty Section of the Office of Legal Affairs, *Summary of Practice of the Secretary General as Depository of Multilateral Treaties*, 1999, ST/LEG/7?Rev.1, United Nations, New York, (Summary of Practice), available at: <http://goo.gl/looAHx>; Summary of Practice: paragraphs 308-310 deal specifically with devolution agreements.

⁶⁴ This includes the four 1949 Geneva Conventions (Malta succeeded to all 4 in 1968); the 1955 Slavery Convention (Malta succeeded in 1966); the Convention on the Nationality of Married Women (Malta succeeded in 1967); and, the Vienna Convention on Diplomatic Relations (Malta succeeded in 1967). In relation to the 1948 Genocide Convention and the 1951 Refugee Convention, Malta chose to accede (in 2014 and 1971 respectively) although it could have succeeded to these conventions as well.

⁶⁵ UN General Assembly, *Vienna Convention on Succession of States in respect of Treaties*, 6 November 1978, Art 17, available at: <http://www.refworld.org/docid/3ae6b38518.html>; See also Summary of Practice: paragraph 289 which specifies that: "a successor State has the option of succeeding to any treaty the application of which was extended to it by the predecessor State (thus preserving the continuity of the application of the treaty), by depositing an instrument of succession in respect thereof. It is to be noted that, in accordance with the rules of customary succession, there is no time-limit for the deposit of such instrument of succession".

⁶⁶ Summary of Practice: paragraph 290: "New States may not only succeed to treaties in force that had been applied to them by the predecessor State prior to the succession of States, but they may also invoke, as successor, treaty actions taken on their behalf by the predecessor State (for example, signature of a treaty). Thus a newly independent State may ratify a treaty if it had been signed by the predecessor State intending that the treaty should extend to the Territory that subsequently became independent." The UK only formally indicated the territories to which the 1961 Convention should extend in 1966 (after Malta's independence, hence it was not included), however this does not change the fact that at the time of signature it is likely that the UK had intended for the treaty to extend to all its territories.

ii. European Union pledge in relation to the 1954 Convention and the 1961 Convention

90. In September 2012, at the United Nations High Level Meeting on the Rule of Law in New York, the Delegation of the European Union pledged, on behalf of “the EU and its Member States” in a Note Verbale that “Member States which have not yet done so pledge to address the issue of statelessness by ratifying the 1954 UN Convention relating to the Status of Stateless Persons and by considering ratification of the 1961 UN Convention on the Reduction of Statelessness.”⁶⁷ Only Malta and three other EU States – Cyprus, Estonia and Poland – are currently not party to the 1954 Convention.⁶⁸

91. Internally, the EU pledges were agreed by consensus by all EU Member States in the EU Council’s United Nations Working Party (CONUN). They were also agreed by the High Representative for Foreign Affairs and Security Policy prior to officially being announced by the President of the European Commission during his speech at the High Level Meeting in 2012.⁶⁹

92. Furthermore, it is specified in the related Statement presented by the EU Delegation to the UN Rule of Law meeting that “This support [provided by the EU] is not simply declaratory. In each of the areas covered by the Declaration, the EU will make substantive pledges, backed up by concrete measures.” And in relation to the international conventions, it follows that despite the fact that the EU Member States have some of the best records in becoming State Parties to international conventions “...we can and will do more, not to just ratify, but to ensure effective implementation.”⁷⁰

93. The pledge is of an entirely voluntary nature and considering the fact that this exact pledge – unlike others contained within the same document – is made by the concerned Member States themselves, it can be considered as a step forward from the Maltese Government’s end on the issue of accession to the statelessness conventions. The first part of the pledge promises for Malta to achieve the result of acceding to the 1954 Convention while the second part promises only that Malta must *consider* acceding to the 1961 Convention. Regarding this second part of the pledge, Malta must show which steps are being taken towards considering the accession to the 1961 Convention and even if it is suggested that accession cannot take place, detailed reasons for this should be made clear.

94. In the wider context, considerable activity has been observed in recent years, particularly since the beginning of the statelessness conventions Accession Campaign in 2010, by States around the world to accede to the two statelessness conventions. Between October 2010 (which marked the kick-off of the Accession Campaign) and 15 August 2014, there have been a total of 41 accessions by 26 States, which demonstrates an increased awareness by States of the plight of stateless persons and the need to prevent and reduce statelessness in their

⁶⁷ *Note Verbale of the European Union to the Rule of Law Unit of the United Nations*, 19 September 2012, Section A, paragraph 4, available at: <http://goo.gl/jnnAzh>; The pledge followed the Joint Statement of the EU High Representative Catherine Ashton and EU Commissioner for Home Affairs Cecilia Malmström on the occasion of World Refugee Day 2012 which read: “The UNHCR’s 2011 Ministerial Conference underlined the importance of eliminating the phenomenon of statelessness. We welcome the pledges made during this Conference, and underline the EU’s determination to step up its efforts to address statelessness worldwide.” European Union, *Joint Statement by EU High Representative Catherine Ashton and EU Commissioner for Home Affairs Cecilia Malmström, on the occasion of the World Refugee Day*, Brussels, 20 June 2012, A 281/12, available at: <http://goo.gl/UZ5bpK>

⁶⁸ In relation to the 1961 Convention, Malta joins eight other European Union Member States who have not yet acceded. See also for the situation pertaining to Poland: Legal Aid Center/The Halina Niec, *The Invisible Stateless Persons in Poland – Executive Summary*, Dec 2013, available at: <http://goo.gl/CfSkff>

⁶⁹ Information received from the European Union’s European External Action Service.

⁷⁰ Statement by José Manuel Durão Barroso, President of the European Commission at the General Assembly, High Level Meeting on the Rule of Law on “*The European Union and the Rule of Law*”, United Nations, New York, 24 September 2012, p. 2, available at: http://www.unrol.org/files/Statement_EuropeanUnion.pdf

territories. In Europe alone there have been 5 accessions to the 1954 Convention and 9 accessions to the 1961 Convention since the beginning of the Accession Campaign.⁷¹

95. Having established the existence of commitments that Malta has made vis-à-vis the statelessness conventions, the report will now turn to developments within the European framework in the last two decades.

e) 1997 European Convention on Nationality

96. Malta expressed its intention to be bound by the 1997 European Convention on Nationality (ECN) of the Council of Europe through its signature on 29 October 2003.⁷² But after more than a decade, it has yet to ratify the Convention. The Vienna Convention on the Law of Treaties – to which Malta acceded in 2012 – obliges States Parties to refrain from acts which would defeat the object and purpose of a treaty prior to its entry into force “when it has signed the treaty [...] subject to ratification”.⁷³ So in spite of Malta’s non-ratification, it nevertheless holds responsibilities under the 1997 Convention as signatory.⁷⁴

97. The ECN establishes principles and rules relating to the nationality of natural persons⁷⁵ and sets out rules on the acquisition and loss of a nationality.⁷⁶ It seeks to ensure that nationality can only be lost *ex lege* or at the initiative of the State Party for limited reasons and under the condition that the person does not become stateless, unless the nationality was acquired through fraud.⁷⁷

98. The Convention also stipulates that nationality cannot be arbitrarily withdrawn;⁷⁸ it guarantees that the procedures governing applications for nationality are just, fair, and open to appeal;⁷⁹ and it regulates the situation of persons in danger of being left stateless as a result of state succession.⁸⁰ It further covers issues concerning multiple nationality, military obligations, and cooperation between State Parties.⁸¹ According to its Art 29, some reservations may be permissible at time of accession.

99. Regarding the acquisition of nationality, ECN Art 6(3) requires domestic law to establish rules that make it possible for foreigners lawfully and habitually resident in the territory to be naturalised. This Art also limits any residency requirements to a maximum of 10 years before an individual is entitled to lodge an application for naturalisation. Art 6(4)(g) further obliges

⁷¹ Here, Europe includes all Member States of the Council of Europe, a list of which is available at: [http://hub.coe.int/Accessions to the 1954 Convention during this period: Bulgaria, Georgia, Portugal, Republic of Moldova and Ukraine; Accessions to the 1961 Convention during this period: Belgium, Bulgaria, Croatia, Georgia, Lithuania, Montenegro, Portugal, Republic of Moldova and Serbia. In total, European States account for 37 of the 82 States Parties to the 1954 Convention and 28 of the 60 States Parties to the 1961 Convention.](http://hub.coe.int/Accessions%20to%20the%201954%20Convention%20during%20this%20period%3A%20Bulgaria%2C%20Georgia%2C%20Portugal%2C%20Republic%20of%20Moldova%20and%20Ukraine%3B%20Accessions%20to%20the%201961%20Convention%20during%20this%20period%3A%20Belgium%2C%20Bulgaria%2C%20Croatia%2C%20Georgia%2C%20Lithuania%2C%20Montenegro%2C%20Portugal%2C%20Republic%20of%20Moldova%20and%20Serbia)

⁷² Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166, available at: <http://www.refworld.org/docid/3ae6b36618.html>

⁷³ United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Art 18, available at: <http://www.refworld.org/docid/3ae6b3a10.html>

⁷⁴ The European Convention on Nationality expressly provides for States to express their consent to be bound by signature subject to ratification, acceptance or approval (ECN: Art 27(1)(b)).

⁷⁵ ECN: Art 1.

⁷⁶ ECN: Arts 6-8.

⁷⁷ ECN: Arts 7(1)(b) and 7(3).

⁷⁸ ECN: Art 4(c).

⁷⁹ ECN: Art 12.

⁸⁰ ECN: Arts 18-20.

⁸¹ ECN: Chapters V, VII and VIII.

States to facilitate naturalisation procedures among others for stateless persons and recognised refugees lawfully and habitually resident on the territory.

f) 2006 Convention on the Avoidance of Statelessness in relation to State Succession

100. Malta is not party to the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.

101. The explanatory report of the 2006 Convention stresses that state succession can lead to the emergence of a large number of stateless persons. It therefore builds on the ECN by developing more detailed rules whereby States can prevent, or at least reduce to the extent possible, cases of statelessness arising from state succession. This Convention is, however, limited in its scope on the avoidance of statelessness as a result of state succession.⁸²

3.1.2 International refugee law and international human rights law

102. Other international conventions which include provisions to protect stateless persons or to prevent and reduce statelessness are found, firstly, in the area of international refugee law: the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol, both of which Malta acceded to in 1971.⁸³ These instruments mainly protect stateless persons by including them in the definition of a refugee. Furthermore, statelessness on account of state action depriving residents of citizenship on ethnic and other protected grounds can also warrant a presumption of persecution.⁸⁴

103. Secondly, within the sphere of international human rights law, the following instruments are of particular relevance: the 1965 International Convention on the Elimination of All Forms of Racial Discrimination,⁸⁵ the 1966 International Covenant on Civil and Political Rights,⁸⁶ the 1966 International Covenant on Economic, Social and Cultural Rights,⁸⁷ the 1979 Convention on the Elimination of All Forms of Discrimination against Women,⁸⁸ the 1989 Convention on

⁸² Council of Europe, *Convention on the Avoidance of Statelessness in relation to State Succession (CETS No. 200)*, *Explanatory Report*, available at: <http://goo.gl/4dAvkM>

⁸³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>

⁸⁴ 1951 Convention: Art 1A(2); Maryellen Fullerton, "The Intersection of Statelessness and Refugee Protection in US Asylum Policy" *Journal on Migration and Human Security* Volume 2 Number 3 (2014): 144-164, available at: <http://goo.gl/Lqgf1y>

⁸⁵ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <http://www.refworld.org/docid/3ae6b3940.html>; Malta is a party to this Convention, which it signed on 5 September 1968 and ratified on 27 May 1971.

⁸⁶ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>; Malta is a party to this Convention, which it acceded to on 13 September 1990 with a number of reservations; For details of the reservations, see *United Nations Treaty Collection, Chapter IV: Human Rights, 4. International Covenant on Civil and Political Rights*, New York, 16 December 1966, available at: <http://goo.gl/XXIbU9>

⁸⁷ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>; Malta is a party to this Convention, which it signed on 22 October 1968 and ratified on 13 September 1990.

⁸⁸ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html>; Malta is a party to this Convention, which it acceded to on 8 March 1991.

the Rights of the Child,⁸⁹ and the 2006 Convention on the Rights of Persons with Disabilities.⁹⁰ All these instruments contain norms on non-discrimination when it comes to acquiring, changing or retaining nationality and refer to the right to (acquire) a nationality. International human rights law applies to stateless persons in Malta irrespective of their legal status.⁹¹

104. Art 24(2) of the 1966 International Covenant on Civil and Political Rights (ICCPR) obliges Malta to ensure that every child is registered immediately after birth and, according to Art 24(3), that every child acquires a nationality.

105. The 1989 Convention on the Rights of the Child (CRC) further emphasises this right for children born in the territory of the State Party to acquire a nationality and expands on it as follows in its 7th Article:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

106. Regarding the requirement to register all births within the territory, it is important to specify that this applies irrespective of the nationality or residence status of the parents.⁹² There is no mention of nationality on birth certificates issued in Malta, neither in regard to the child whose birth is being registered nor in regard to the parents of that child. This is in line with international standards and favoured by UNHCR “because civil registration authorities will not always be competent to determine the child’s nationality at birth (in particular where one or both parents are foreigners)”.⁹³

107. During Malta’s second review by the Committee on the Rights of the Child in January 2013, it was recommended that Malta takes more measures to harmonise national law and policy to be in line with the provisions of the CRC. This recommendation was made in order for Malta to meet its obligations under the Convention, particularly under Art 7.

108. The Committee notes in its Concluding Observations that Malta was urged to “ensure that a child born in the State party to parents who are foreigners, but unable to pass on their nationality,⁹⁴ or to parents who themselves are stateless or whose nationality is unknown, is

⁸⁹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>; Malta is a party to this Convention, which it signed on 26 January 1990 and ratified on 30 September 1990.

⁹⁰ UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at: <http://www.refworld.org/docid/45f973632.html>; Malta is a party to this Convention, which it signed on 30 March 2007 and ratified on 10 October 2012.

⁹¹ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, paragraph 140, available at: <http://www.refworld.org/docid/53b676aa4.html>

⁹² UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Arts 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, paragraph 55, available at: <http://www.refworld.org/docid/50d460c72.html>; See also ICCPR Art 24(2) above.

⁹³ UN High Commissioner for Refugees (UNHCR), *Child protection Issue Brief: Birth Registration*, August 2013, p. 4, available at: <http://www.refworld.org/docid/523fe9214.html>

⁹⁴ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Arts 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, paragraphs 27-28, available at: <http://www.refworld.org/docid/50d460c72.html>

granted citizenship.”⁹⁵ Moreover, during the Session, Malta was also urged to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.⁹⁶

109. As shall be seen below in Section 3.2.2(b)(i), a safeguard for children born in Malta to acquire Maltese citizenship if they would otherwise be stateless is contained within its nationality legislation. Whether this safeguard is implemented in practice is however not clear and further explored in Chapter 4.

110. Art 9 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires States Parties to “grant women equal rights with men to acquire, change or retain their nationality” as well as to “grant women equal rights with men with respect to the nationality of their children.”⁹⁷ No discrimination against women is found in Maltese nationality legislation. As explored in Section 3.2.2(a) below, ‘reversed’ gender discrimination can however be observed in some circumstances (i.e. the inability of the father to confer his nationality while the mother is able to do so in the same circumstances).⁹⁸

111. Yet, the Committee on the Elimination of Discrimination against Women, in its Concluding Observations with respect to Malta in November 2010, specifically requested “the State party to consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.”⁹⁹

112. Regionally, the 1950 European Convention on Human Rights and Fundamental Freedoms¹⁰⁰ has recently shown its relevance to matters of nationality. This is in spite of the fact that the right to citizenship is not as such a Convention right. The European Court of Human Rights observed in *Genovese v Malta* that “the denial of citizenship may raise an issue under Article 8 because of its impact on the private life of an individual, which concept is wide enough to embrace aspects of a person’s social identity.”¹⁰¹

⁹⁵ 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, paragraph 35, available at: <http://goo.gl/E5ITB9>; See also the European Network on Statelessness blog entry of 15 January 2013 (by Nils Muižnieks, the Commissioner for Human Rights of the Council of Europe): “Governments should act in the best interests of stateless children”, available at: <http://goo.gl/LhZNtf>

⁹⁶ UN Committee on the Rights of the Child, *Summary Record of the 1762nd meeting, Second periodic report of Malta (17 January 2013)*, 22 May June 2013, CRC/C/SR.1762, paragraph 13, available at: <http://goo.gl/E5ITB9>

⁹⁷ CEDAW: Art 9(1)-(2).

⁹⁸ The European Network on Statelessness blog entry (by Sebastian Köhn) of 11 October 2011: “ECHR and citizenship: The case of *Genovese v. Malta*”, available at: <http://goo.gl/kh5zFi>

⁹⁹ Committee on the Elimination of Discrimination Against Women, *Concluding Observations - Malta, 47th Session (4-22 October 2010)*, CEDAW/C/MLT/CO/4, 9 November 2010, paragraph 39, available at: <http://goo.gl/wdleg4>

¹⁰⁰ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>

¹⁰¹ *Genovese v. Malta*, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, § 33, available at: <http://goo.gl/lwN09E>; See also Section 3.2.2(a) below for details of *Genovese v Malta*.

3.2 Overview of the national legal framework

113. At the outset, it is relevant to note the inclusion in Maltese domestic law of a definition of “stateless” within the Preliminary section of its Citizenship Act to mean “destitute of any nationality and ‘stateless person’ shall be construed accordingly.”¹⁰²

3.2.1 Brief background to the current citizenship regime in Malta

114. Malta’s legal regime on citizenship came into being in 1964 when Malta achieved its independence from the British whose rule the Maltese had been under since 1800.¹⁰³

115. On 1 December 1964, Malta became a member of the United Nations. The Constitution of the new Republic was concluded shortly after and contains, in its Chapter III (Arts 22-31), provisions concerning Maltese citizenship which were typical of constitutions drafted by the British for their colonies post-independence.¹⁰⁴

116. All persons who were born in Malta and were citizens of the United Kingdom and Colonies before 21 September 1964, provided that one of the parents was also born in Malta, were conferred Maltese citizenship automatically according to the citizenship provisions. Additional provisions were set in place to ensure that citizenship was extended to include all persons with sufficient Maltese heritage, whether born in Malta or abroad, by combining an application of the *jus soli* and *jus sanguinis* principles.¹⁰⁵ Moreover, Chapter III of the Constitution explicitly established that Maltese citizens should have no other citizenship.

117. Malta’s Citizenship Act of 1965 was the first national law to complement the citizenship provisions of the Constitution. The Act is still in place today albeit with several revisions over time.¹⁰⁶ It particularly regulates the acquisition of Maltese citizenship by registration and naturalisation. In the last two and a half decades, notably in 1989, 2000 and 2007, substantial reforms to the Maltese citizenship laws were introduced, which brought about radical changes of policy regarding citizenship.¹⁰⁷

¹⁰² Citizenship Act: Art 2.1, available at: <http://goo.gl/1nb0UK>

¹⁰³ All persons born in Malta during this period were automatically British subjects according to British law, see Eugene Buttigieg, *Malta’s citizenship law: Evolution and current regime*, 2009 (update 2013), available at: <http://goo.gl/WQbqZi>

¹⁰⁴ See also the Constitution of Malta, available at: <http://goo.gl/1jmCTm>

¹⁰⁵ Eugene Buttigieg, *Malta’s citizenship law: Evolution and current regime*, EUDO Citizenship Observatory, 2009 (update 2013), p. 2, available at: <http://goo.gl/WQbqZi>

¹⁰⁶ Also relevant is Malta’s Immigration Act which was enacted in 1970 (Chapter 217) and provides for the control of immigration into Malta. Like the Citizenship Act, several revisions have been made to the Immigration Act which is also still in place today.

¹⁰⁷ Daniela DeBono, *Naturalisation Procedures for Immigrants - Malta*, EUDO Citizenship Observatory, March 2013, available at: <http://goo.gl/y01V57>

3.2.2 Acquisition of Maltese Citizenship

118. The following section sets out the modes of acquisition and loss of citizenship under the regime currently in place in Malta.

a) *Jus sanguinis/acquisition of nationality by descent*

119. Art 5(1) of Malta's Citizenship Act states that persons born to a citizen of Malta within the country are automatically conferred Maltese nationality.¹⁰⁸ Similarly, according to Art 5(2) of the same Act, persons born abroad to a citizen of Malta are conferred Maltese nationality automatically. As shall be seen below, some conditions exist which may nevertheless exclude some persons born to a Maltese citizen.

120. Prior to the revision of the Citizenship Act on 31 July 1989, a child born abroad to a Maltese mother and a foreign father could not acquire Maltese nationality unless the mother was unmarried.¹⁰⁹ Lacking a relevant safeguard, that child may have been stateless in the case that no other nationality was acquired from the father or the country of birth. The revision of the Citizenship Act in 2000 allowed these otherwise excluded children to register as Maltese citizens.¹¹⁰ If they failed to register – and no other citizenship was acquired – they could however remain stateless.

121. The Citizenship Act as it currently stands reflect for most situations the equality of men and women when it comes to the conferral of nationality to the child. The exception which remains relates to children born out of wedlock to a Maltese father. The Civil Code of Malta distinguishes between 'legitimate' and 'illegitimate' children, meaning children born in and out of wedlock, respectively. Citizenship Act Art 17(1)(a) places a limitation on the acquisition of nationality by 'illegitimate' children of Maltese fathers. Art 5(1) reads that a person born in Malta on or after 1 August 1989 shall only become a citizen of Malta if at the time of his birth, his father or his mother was or is a Maltese citizen. The limitation in Art 17(1)(a) reads that "any reference to the father of a person shall, in relation to a person born out of wedlock and not legitimated be construed as a reference to the mother of that person."

122. Consequently, according to Citizenship Act Art 5(1) read in conjunction with Art 17(1)(a), a person born *in Malta* to a Maltese father and a foreign mother on or after 1 August 1989 shall only become a citizen of Malta if his or her parents are married. In the case of a child born out of wedlock, if the mother is unable to confer her nationality to the child, that child may be stateless (at least until a practical application of the safeguard ensuring citizenship for otherwise stateless children born in Malta kicks in - see further below at Section 3.2.2(b)(i)).¹¹¹

123. The same limitation of Citizenship Act Art 17(1)(a) applies to sub-article (2) of Art 5 by virtue of which a child born *abroad* on or after 1 August 1989 acquires Maltese citizenship if at the time of birth, his or her father or mother is a citizen of Malta. In the case of an 'illegitimate' child, Art 5(2) read in conjunction with Art 17(1)(a) would only grant Maltese citizenship if the

¹⁰⁸ Citizenship Act: Arts 5(1) and 17(1)(a).

¹⁰⁹ If the mother was unmarried, a qualification clause in the pre-1989 Citizenship Act meant that any reference to the father should in this case be construed as a reference to the mother: information obtained from a consultation with the Department for Citizenship and Expatriate Affairs (21 July 2014); See also Eugene Buttigieg, *Malta's citizenship law: Evolution and current regime*, EUDO Citizenship Observatory, 2009 (update 2013), p. 2, available at: <http://goo.gl/WQbqZi>

¹¹⁰ Citizenship Act: Art 5(2)(a); By virtue of the revisions of 31 July 1989, children born abroad to Maltese mothers from 1 August 1989 onwards would automatically be granted Maltese citizenship (see Art 5(2)(b)).

¹¹¹ The difficulties of such children have been reported elsewhere, see "Children's Rights Portal: Malta", available at: <http://www.humanium.org/en/malta/>

mother is a citizen of Malta. This means that children born out of wedlock abroad to a Maltese father and a foreign mother, and not legitimated, would fail to acquire Maltese citizenship by virtue of this Art, even if rendered stateless. As shall be seen below, some of these children could however fall within the ambit of the 2007 revised Arts of the Citizenship Act which opened up the possibility for persons born abroad and who possesses sufficient Maltese heritage to become citizens by a mere formality which is not conditional.¹¹²

124. The above provisions of the Maltese Citizenship Act have been challenged in court in Malta and at the European Court of Human Rights. The Maltese courts considered the issue of whether the Act discriminates against fathers in cases of children born out of wedlock. The son – born out of wedlock in Scotland – to a British mother and a Maltese father was refused Maltese citizenship on the grounds of the provisions outlined above (Art 5(2) read in conjunction with Art 17(1)(a)). In Malta, the case resulted in the highest court twice overruling the lower court on appeal and confirming that the Citizenship Act neither violates the provisions of the Constitution prohibiting discrimination nor the provisions of the European Convention on Human Rights.

125. The case started in 2006 in Malta's Civil Court which pronounced in its constitutional jurisdiction that Art 17(1)(a) of the Maltese Citizenship Act was unconstitutional on the grounds that it is discriminatory on the basis of sex in violation of Art 45 of the Constitution of Malta as it discriminates against the father in cases of children born out of wedlock.¹¹³

126. On appeal in 2008, the Constitutional Court overturned the judgment of the Civil Court on the basis that the provision of the Citizenship Act merely distinguishes between 'legitimate' and 'illegitimate' children; it does not treat persons seeking Maltese citizenship differently because of their sex but all persons born out of wedlock irrespectively of their sex are disadvantaged.¹¹⁴ Since the first court had failed to examine the compatibility of the provision of the Act with Arts 8 and 14 of the European Convention on Human Rights - which are wider in scope and protection than the said provision of the Maltese Constitution – although the parties had invoked these provisions of the Convention before the court, the Constitutional Court referred the case back to the first court for consideration on this point.

127. Subsequently, in a judgment dated 4 November 2008¹¹⁵ the Civil Court, First Hall in its constitutional jurisdiction held on this point that the said Art 17(1)(a) of the Maltese Citizenship Act does violate Arts 8 and 14 of the European Convention on Human Rights because it damages the 'family' and 'private' life of the illegitimate child protected by these provisions of the Convention. However, on appeal, the judgment was once again overturned by the Constitutional Court, this time in 2009,¹¹⁶ as no link was found between the restrictive nature of this provision and the difficulties that the illegitimate child denied Maltese nationality was facing in his relationship with his father and the consequent lack of enjoyment of a proper family life. The Court further held that the right to citizenship was not a substantive Convention right.¹¹⁷

¹¹² Citizenship Act: Art 5(3)-(7); It should also be pointed out that under Article 11(1) of the Citizenship Act, the father can apply for naturalisation of his child and it has been the policy and practice that the Minister grants these requests in bona fide cases; Information obtained from a consultation with the Department for Citizenship and Expatriate Affairs (31 January 2013).

¹¹³ *Miller Anne pro et noe vs Avukat Generali et Rikors* Nru 19/2002/1 Civil Court First Hall (Constitutional Jurisdiction), judgment of 25 January 2006.

¹¹⁴ *Appell Civili* Nru 19/2002/1 Constitutional Court, judgment of 18 July 2006.

¹¹⁵ *Citazzjoni* Nru 19/2002/2 Civil Court First Hall (Constitutional Jurisdiction), judgment of 4 November 2008.

¹¹⁶ *Appell Civili* Nru 19/2002/2 Constitutional Court, judgment of 27 March 2009.

¹¹⁷ See also "EURO Citizenship Case Law - Malta", available at: <http://goo.gl/4jgVGr>

128. The case was referred to the European Court of Human Rights which stated in its 2011 ruling of *Genovese v Malta* that the equality between children born in and out of wedlock had already been recognised through European legislation¹¹⁸ and the Court reaffirmed that very weighty reasons would have to be advanced before what appears to be an arbitrary difference in treatment on the ground of birth out of wedlock could be regarded as compatible to the Convention.¹¹⁹ The Court held that there had been a violation of Art 14 in conjunction with Art 8 of the Convention.¹²⁰

129. The Maltese courts thus focused on the distinction between children born out of wedlock abroad to Maltese fathers as opposed to children born out of wedlock abroad to Maltese mothers while the European Court of Human Rights highlighted instead the distinction between children born in wedlock and children born out of wedlock. Nevertheless, the European Court noted in respect to the sex discrimination “that the only other reason put forward by the Government is the social reality of such cases and the fact that, while a mother is always certain, a father is not. The Court cannot accept this argument.”¹²¹

130. Despite three years having passed since the *Genovese* ruling, Malta is yet to delete the problematic Art of 17(1)(a) from its Citizenship Act. It appears that Malta is still examining the impact of the ruling upon Maltese nationality legislation.¹²² The distinction between children born in and out of wedlock as well as between children born to a Maltese mother as opposed to a Maltese father when out of wedlock thus persists in Maltese nationality law.

b) *Jus soli*/acquisition of nationality through birth in the country

131. Being born in Malta no longer carries any direct entitlement to Maltese citizenship as it did between independence, in 1964, and the citizenship law revisions of 1 August 1989 through the principle of *jus soli*.¹²³ Seeing that this principle was in place upon independence (which was three years following the adoption of the 1961 Convention on the Reduction of Statelessness), the possibility of children being born stateless in Maltese territory may not have been foreseen at that time.

132. Currently, Maltese nationality legislation only grants citizenship purely on the basis of the *jus soli* principle for two groups of persons, namely children born stateless in Malta¹²⁴ and foundlings.¹²⁵

¹¹⁸ Examples include: 1975 European Convention on the Legal Status of Children Born out of Wedlock.

¹¹⁹ *Genovese v. Malta*, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, available at: <http://goo.gl/lwN09E>

¹²⁰ A summary can be found on EUDO Citizenship Case Law website, available at: <http://goo.gl/t3Akkq>

¹²¹ *Genovese v. Malta*, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, § 47, available at: <http://goo.gl/lwN09E>

¹²² Information obtained from a consultation with the Department for Citizenship and Expatriate Affairs (31 January 2013).

¹²³ Eugene Buttigieg, *Malta's citizenship law: Evolution and current regime*, EUDO Citizenship Observatory, 2009 (update 2013), 373, available at: <http://goo.gl/WQbqZi>

¹²⁴ Citizenship Act: 10(6)(a).

¹²⁵ Citizenship Act: 17(3); 5(1).

i. Safeguard for children born stateless in Malta

133. Children who would otherwise be stateless, because they are born to stateless parents or to foreigners who are unable to confer their nationality should fall under the safeguard found in the Maltese Citizenship Act in Art 10(6), taken together with Art 10(7). The child is entitled to Maltese citizenship through a certificate of naturalisation on the following conditions:

- that the child born stateless in Malta is and always has been stateless;
- that the applicant has been ordinarily resident in Malta throughout the five years preceding the application;
- that no conviction in any country against the security of the State is established; and
- that the applicant has not been sentenced in any country to a punishment restrictive of personal liberty for a term of not less than five years.

134. In the context of this safeguard, it is important to address the apparent position of the Maltese authorities that children born in Malta to foreign parents acquire the nationality of their parents.¹²⁶ Whether the child acquires the nationality of the parents can only be assessed on an individual basis and depends on the relevant legislation and practice of the country of nationality of the parents. If the foreign parents are unable to pass on their nationality to the child, or if they are themselves stateless or of unknown or undetermined nationality, the child may be stateless in Malta.¹²⁷

135. In relation to the application procedure for children born stateless in Malta, the conditions imposed in the Maltese Citizenship Act are in line with those allowed under Art 1(2) of the 1961 Convention on the Reduction of Statelessness and thus in line with international standards. In fact, Malta and the UK are the only EU Member States whose application procedures are completely in line with the standards outlined in the 1961 Convention without establishing any requirements that are not in accordance with the exhaustive set of optional conditions outlined in that Convention.¹²⁸

136. Nevertheless, Malta would go a long way to bring its domestic legislation in line with international human rights law by granting automatic citizenship to this group of children at birth. It follows from Arts 3 and 7 of the Convention on the Rights of the Child “that a child must not be left stateless for an extended period of time: a child must acquire a nationality at birth or as soon as possible after birth.”¹²⁹ If Malta maintains the current application procedure, it is recommended that the residence requirement is reduced to allow the child to apply for citizenship as soon as possible after birth.

¹²⁶ UN Committee on the Rights of the Child, *Summary Record of the 1762nd meeting, Second periodic report of Malta (17 January 2013)*, 22 May June 2013, CRC/C/SR.1762, paragraph 25, available at: <http://goo.gl/ESlTB9>

¹²⁷ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, Part One: Criteria for determining statelessness, available at: <http://www.refworld.org/docid/53b676aa4.html>; See also 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, paragraph 35, available at: <http://goo.gl/yZG9Uu>

¹²⁸ European Network on Statelessness, *Childhood Statelessness In Europe: Issues, Gaps and Good Practices*, April 2014, Section 3.2.2, available at: <http://www.refworld.org/docid/5343a45f4.html>

¹²⁹ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Arts 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, paragraph 11, available at: <http://www.refworld.org/docid/50d460c72.html>

137. Furthermore, the stateless child born in Malta who is granted citizenship under this safeguard should not be considered as having naturalised for purposes of withdrawal of citizenship. This is pertinent especially if Malta decides to retain its distinction between nationals by birth and those who have acquired citizenship later through naturalisation or registration in order to avoid the child becoming stateless subsequently.

138. The extent of the practical application of this safeguard is explored in the following Chapter, at Section 4.4.2.

ii. Safeguard for foundlings

139. The foundling safeguard found in the Maltese Citizenship Act reads that “a new-born infant found abandoned in any place in Malta who would in virtue thereof be stateless [...] shall remain a citizen of Malta until his right to any other citizenship is established.”¹³⁰ While this safeguard is a positive one, the way in which the relevant provisions are worded nevertheless leaves room for concern.

140. Firstly, the safeguard is limited to a “new-born infant” foundling.¹³¹ While it is not clear which exact age-range a “new-born infant” spans, it is certain that Malta’s limitation in this aspect falls short of meeting the recommendations set by UNHCR which articulates that at a minimum the safeguard “to grant nationality to foundlings is to apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth.”¹³²

141. The second concern relates to the final sentence of Art 5(1) which states that “any such infant shall remain a citizen of Malta until his *right* to any other citizenship is established.”¹³³ This could mean that a former foundling has his or her Maltese citizenship withdrawn before actually being granted another citizenship, leaving him or her at risk of statelessness in the interim period or potentially for a longer period should the other citizenship for some reason not materialise.

142. From the above, it is clear that the safeguard found in Maltese nationality legislation for foundlings is too limited to be in line with international standards since, as an example, an abandoned two-year-old toddler would not seem to fit the definition of new-born infant while nevertheless being unable to communicate information about his or her identity.¹³⁴

¹³⁰ Citizenship Act: Art 5(1).

¹³¹ Citizenship Act: Art 5(1).

¹³² UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Arts 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, paragraph 58, available at: <http://www.refworld.org/docid/50d460c72.html>; See also *European Network on Statelessness, Childhood Statelessness In Europe: Issues, Gaps and Good Practices*, April 2014, available at: <http://www.refworld.org/docid/5343a45f4.html>; It should be noted that the Maltese authorities argue that in a close knit society such as Malta and considering the territorial limitations of the country, it is unlikely that instances would occur of non-newborn infant foundlings being located in the first place and a too liberal approach would open up the safeguard to abuse; Information obtained from a consultation with the Department for Citizenship and Expatriate Affairs (31 January 2013).

¹³³ Emphasis added.

¹³⁴ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Arts 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, paragraph 58, available at: <http://www.refworld.org/docid/50d460c72.html>; See also *European Network on Statelessness, Childhood Statelessness In Europe: Issues, Gaps and Good Practices*, April 2014, Section 4.4, available at: <http://www.refworld.org/docid/5343a45f4.html>

c) Naturalisation

143. The rules for obtaining Maltese citizenship through naturalisation are governed by Art 10 of the Citizenship Act. It sets out that anyone who has resided in Malta for 5 years may be granted a certificate of naturalisation as a citizen of Malta as long as he satisfies the Minister that he meets the language requirement; is of good character; and, would be a suitable citizen of Malta.¹³⁵

144. No provision exists in Maltese domestic law regarding the facilitation of naturalisation for either stateless persons or recognised refugees. While both groups seem to be entitled to apply for naturalisation under Art 10(1), the decision of whether or not they are indeed granted citizenship is entirely discretionary. It has been suggested that Malta's policy vis-à-vis naturalisation of foreigners is one of "protectionism, and at times outright exclusion."¹³⁶ Furthermore, both stateless persons and refugees may encounter difficulties to produce the required documentary evidence required for such applications since this includes a birth certificate and a visa to prove that they are staying in Malta legally.¹³⁷

145. Malta's international obligations in regard to naturalisation of foreigners may – in light of Malta's 2003 signature of same – include those of the European Convention on Nationality (ECN) which requires, in its Art 6(3), that domestic law must establish rules that make it possible for foreigners lawfully and habitually resident in the territory to be naturalised. This Art also limits any residency requirements to a maximum of 10 years before an individual is entitled to lodge an application for naturalisation.

146. Malta also holds an obligation under the 1951 Convention relating to the Status of Refugees to "as far as possible, facilitate the [...] naturalisation of refugees".¹³⁸ Furthermore, under Art 6(4)(g) of the ECN, a States is required to facilitate in its internal law the acquisition of its nationality for among others stateless persons and recognised refugees who are lawfully and habitually resident on the territory.

147. And finally, the ECN requires that the decisions relating to the acquisition, retention, loss, recovery or certification of its nationality are carried out in a transparent manner with the possibility of a review.¹³⁹ Maltese nationality legislation does not require transparency in the naturalisation process and neither does it allow for an appeal or judicial review for negative decisions.¹⁴⁰ To ratify the European Convention on Nationality at this point in time, the Maltese authorities could decide to submit a reservation to the relevant Articles of the ECN with a view to withdrawing these reservations once compliance is reached.¹⁴¹

¹³⁵ Citizenship Act: Art 10(1) specifies in regard to residence requirements, that the applicant must satisfy the Minister (a) that he has resided in Malta throughout the period of twelve months immediately preceding the date of application; and (b) that, during the six years immediately preceding the said period of twelve months, he has resided in Malta for periods amounting in the aggregate to not less than four years. A qualification follows: Provided that the Minister may, if he so thinks fit in the special circumstances of any particular case, allow periods of residence earlier than seven years before the date of application to be reckoned in computing the aggregate mentioned in paragraph (b).

¹³⁶ Daniela DeBono, *Naturalisation Procedures for Immigrants - Malta*, EUDO Citizenship Observatory, March 2013, p. 8, available at: <http://goo.gl/y01V57>

¹³⁷ These requirements are the same as for any foreigner (not a beneficiary of protection) wishing to naturalise in Malta; See also the explanatory leaflet for persons wishing to naturalise in Malta issued by the Department for Citizenship and Expatriates Affairs, available at: <http://goo.gl/JHfB3D>

¹³⁸ 1951 Convention: Art 34; A similar obligation exists in relation to stateless persons for States Parties to the 1954 Convention in its 32nd Article.

¹³⁹ ECN: Arts 11-12.

¹⁴⁰ Citizenship Act: Art 19: "The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court."

¹⁴¹ See also ECN: Art 29 on details of reservations permitted.

d) Registration

148. Maltese nationality legislation provides for the conferral of citizenship through registration for a number of cases, including for foreign spouses of Maltese nationals as well as for various groups of persons with Maltese heritage.

149. Foreign spouses of Maltese nationals are able to register as Maltese citizens after five years of marriage, with some conditions.¹⁴² The person registering must take an oath of allegiance to the country and granting of citizenship must not be contrary to the public interest.

150. Malta should be commended on this positive development when compared to its previous discriminatory rule that only the foreign wife of a Maltese citizen was entitled to become a citizen of Malta by registration while a foreign husband of a Maltese citizen was not. At the same time, it is important to stress that in spite of the fact that the law allows rejections of applications for registration on grounds of public interest, each case should be decided on its merit and a broad and vague interpretation should be avoided so as not to disproportionately affect any particular groups.¹⁴³

e) Investment and residence

151. A recent introduction of a Legal Notice to the Maltese Citizenship Act introduces the Individual Investor Programme (IIP) which offers Maltese citizenship to ultra-high net worth individuals and families worldwide and with it, the right of establishment in all 28 EU countries.¹⁴⁴ Henley and Partners – the global residence and citizenship planning firm which was chosen to design, implement and promote internationally Malta's IIP – specifies that citizenship is granted to suitable individuals and families who hold resident status in Malta for a period of twelve months immediately preceding the day of issuing of the certificate of naturalisation and who qualify under the very strict due diligence scheme. All individuals and families applying to the Malta IIP must make a significant contribution to the National Development and Social Fund established by the Government.

152. The minimum contribution levels that must be met in the initial phase of the program have been set as a contribution to the National Development and Social Fund of €650,000 for the main applicant while contribution for dependants range from €25,000–€50,000 and includes spouses, minor children, dependent children of 18-26 years old and parents over 55 years old.

153. Henley and Partners highlight that all persons who acquire citizenship under the Malta Individual Investor Program, enjoy full citizenship for life, which can be passed on to future generations by descent.¹⁴⁵

¹⁴² Citizenship Act: Art 6(1)-(2) allows for a spouse of a Maltese citizen to be registered as a Maltese citizen provided that the applicant is still married to the citizen of Malta on the date of the application and had been so married for at least five years. It however specifies in 6(2)(a) that the Minister must be satisfied that the grant of citizenship to the applicant is not contrary to the public interest.

¹⁴³ Citizenship Act: Art 6(2)(a).

¹⁴⁴ Individual Investor Programme of the Republic of Malta Regulations can be found in L.N. 47 of 2014 (Maltese Citizenship Act (Cap. 188)).

¹⁴⁵ Henley & Partners, *Citizenship by Investment in Malta, Individual Investor Program*, available at: <https://www.henleyglobal.com/citizenship-malta-citizenship/>

3.2.3 Withdrawal of Maltese citizenship

a) Renunciation

154. Maltese citizens are allowed under Art 13 of the Maltese Citizenship Act to renounce their citizenship on the condition that they hold an alternative nationality. This is in line with international standards since the condition represents a safeguard against statelessness upon renunciation.¹⁴⁶

b) Deprivation

155. The Maltese Citizenship Act also contains specific provisions relating to the deprivation of citizenship but only includes a safeguard against statelessness in case of deprivation of nationality for reasons of a prison sentence of not less than twelve months, of someone who acquired Maltese nationality through registration or naturalisation less than seven years earlier.¹⁴⁷ A person who has acquired citizenship by registration or naturalisation who is resident abroad for at least seven years (other than in diplomatic service) and has not declared an intention to remain a citizen, may be deprived of his or her Maltese citizenship, whether or not this loss results in statelessness.¹⁴⁸

156. Furthermore, for reasons of disloyalty or treason, a person who has acquired citizenship by registration or naturalisation can have his or her citizenship withdrawn, even if this loss results in statelessness.¹⁴⁹ Thus, there is no safeguard against statelessness for such citizens who are disloyal or whose conduct is seriously prejudicial to the vital interests of the country.

157. In line with international standards, withdrawal of Maltese citizenship, despite the loss resulting in statelessness, may occur where a person has acquired citizenship by registration or naturalisation, by means of fraud, false representation or the concealment of any material fact.¹⁵⁰

158. Finally, it is clear that in regard to withdrawal of citizenship Maltese nationality law discriminates against persons who have naturalised or registered as Maltese citizens compared to those who have acquired nationality automatically. Any such distinction is contrary to the European Convention on Nationality which Malta signed in 2003.¹⁵¹

¹⁴⁶ 1961 Convention: Art 7; ECN: Art 8.

¹⁴⁷ Citizenship Act: 14(2)(c); 14(3).

¹⁴⁸ Citizenship Act: Art 14(2)(d).

¹⁴⁹ Citizenship Act: Art 14(2)(a)-(b).

¹⁵⁰ Citizenship Act: Art 14(1); Both 1961 Convention: Art 8(2)(b) and ECN: Art 7(3) allow for the withdrawal of nationality in cases of fraud, even if this results in statelessness.

¹⁵¹ ECN: Art 5(2) requires that “Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently”; See also Gerard René de Groot and Maarten Vink (Maastricht University), and Iseult Honohan (University College Dublin), *Loss of Citizenship*, EUDO CITIZENSHIP Policy Brief No. 3, p. 4, available at: http://eudo-citizenship.eu/docs/policy_brief_loss.pdf

3.3 Concluding remarks

159. In conclusion to this Chapter of the report, UNHCR encourages Malta to stand by its EU pledge by acceding to the two statelessness conventions and align its domestic legislation fully with international standards on statelessness. By taking this step, Malta would strengthen its national human rights framework while at the same time support global efforts to eradicate statelessness.¹⁵²

160. Furthermore, for purposes of achieving coherence between the EU's internal and external human rights policies, Malta's accession to the statelessness conventions would facilitate the Union's human rights dialogues with third countries. Having universal accession to the statelessness conventions among EU Member States would evidently facilitate efforts of trying to encourage third countries to accede and implement the same conventions.¹⁵³

161. In the case of Malta, the majority of challenges related to preventing and reducing statelessness identified by the legal analysis – along with the human rights concerns presently found for stateless persons in Malta which are outlined in the Chapter below – could be solved by the country's accession to and implementation of the statelessness conventions.

162. Malta's accession to the 1961 Convention on the Reduction of Statelessness would help guide the country in the further aligning of its domestic legislation with the relevant international standards by strengthening its safeguards against statelessness. And along the same lines, by acceding to the 1954 Convention relating to the Status of Stateless Persons, Malta would be guided in its establishment of a national protection framework for stateless persons which is not currently available, including the facilitation of the naturalisation of stateless persons.

163. At the same time, Malta would go a long way in the efforts to eradicate statelessness by confirming its signature of the 1997 European Convention on Nationality by way of ratification at the earliest possible time. Along with this, the ratification of the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession would also be a positive signal that Malta supports regional and international efforts in this area.

164. In order to bring Malta fully in line with international standards as regards the prevention and reduction of statelessness and to fulfil its EU pledge, the recommended amendments to domestic law can be summarised as follows:

- In line with the Convention on the Rights of the Child and the best interests of the child, consider granting nationality automatically at birth to children born in Malta who would otherwise be stateless;
- Eliminate any discrimination between children born in and those born out of wedlock as the current Citizenship Act breaches those children's rights under the European Convention on Human Rights, as ruled in *Genovese v Malta*;
- Adjust the definition of a "foundling" in the law to ensure an appropriate inclusion and adjust wording related to the withdrawal of Maltese citizenship for foundlings found to be entitled to another citizenship so that statelessness is avoided;

¹⁵² UNHCR, *Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness*, March 2014, p. 2, available at <http://www.refworld.org/docid/4cad866e2.html>

¹⁵³ Information received from the European Union's European External Action Service.

- Facilitate the naturalisation of stateless persons by reviewing the naturalisation requirements and alleviating the naturalisation process. In order to ensure that beneficiaries of international protection and their children avoid eventual statelessness many years down the line, and to ensure Malta meets its international obligations in this regard, their inclusion in the facilitation process is important;
- Adjust current mechanisms related to the acquisition of nationality (naturalisation and registration for example) by putting in place a transparent process with reasoned decisions that would be reviewable.

165. As regards the creation of a national framework to ensure stateless persons enjoy their basic rights in Malta, its present absence in Malta necessarily invokes the solution of acceding to the 1954 Convention relating to the Status of Stateless Persons. The framework should in particular include the adoption of a statelessness determination procedure which would clarify for all authorities alike, as well as for the stateless person him or herself, who is stateless in Malta. The following Chapter sheds light on individuals and groups of persons in Malta to which such changes would be significant and describes some of the difficulties they currently face in the enjoyment of their basic rights.

4. STATELESSNESS IN MALTA

166. In Malta, the possibility to be officially recognised as a stateless person does not exist. It naturally follows that a comprehensive mapping of Malta's stateless population is challenging. In this Chapter, profiles of various individuals and groups who are or may be stateless in Malta are listed.

167. The profiles established are based on interviews with individuals who are or may be stateless; on legal research in regard to the main countries of origin of relevant migrant groups in Malta; and, on information gathered during consultations with stakeholders.

168. Data concerning stateless persons in Malta is nearly inexistent. Hence it is difficult to purport that the report is exhaustive regarding the profiles established. *Mapping Statelessness in Malta* focuses on asylum seekers and former asylum seekers from particular countries of origin since this is the population amongst whom it is particularly likely that stateless persons can be identified.¹⁵⁴

169. This Chapter sets out to provide an overview of the data and information which is currently available. Examples have been provided where relevant of individuals and groups who are, may be or could become stateless in Malta. It is however possible that statelessness is found to affect other individuals or groups of persons in Malta – such as economic migrants from Central and Eastern Europe, the Middle East and North Africa, and Asia.

4.1 A brief 'history' of statelessness in Malta

170. This section sheds light on the limited data available in Malta on stateless persons. Two official statistics sources from the National Statistics Office (NSO) reporting on stateless persons in Malta have been identified along with data published by the EUDO Observatory on Citizenship.

4.1.1 Census information

171. Census information is obtained from Malta's population through self-declaration on a census questionnaire. In the 1995 Malta Census, 128 persons were recorded as stateless and in 2005, the number was at 198.¹⁵⁵ During the following Census, in 2011, some 200 persons were initially recorded as stateless but prior to the release of information collected, the NSO cross-checked the recordings with other administrative sources, such as the national Common Database. Through this cross-check, it was established that all persons initially recorded as stateless during the 2011 Census had a nationality recorded elsewhere. When the Census results were made public, the 200 persons or so who had initially been recorded as stateless

¹⁵⁴ This category includes beneficiaries of protection and rejected asylum seekers in Malta.

¹⁵⁵ Information obtained from consultations with the National Statistics Office (10 December 2012 and 28 March 2014).

were thus no longer shown as such. Instead, the nationality recorded elsewhere was used. This cross-checking method was not available to the NSO for previous census results.

172. In any case, no conclusion can be reached as to whether the persons initially recorded as stateless in any of the population censuses actually were stateless. The nationality information recorded on the national Common Database, or in other administrative sources consulted for cross-checking purposes following the most recent population census, may not necessarily have been correct for various reasons that we shall see below. There was also no confirmation that the initial figures for stateless persons in fact represented persons who had self-declared as stateless or whether they had simply been recorded as such due to missing information.

173. In the 2005 and 2011 Population Census Questionnaires, there was no dedicated 'stateless' option available. Instead, an 'other' option was available under the Foreign Citizenship category. The layout of the 1995 questionnaire remains uncertain but is likely to have been a similar version of the later questionnaires.¹⁵⁶

174. In any case, the National Statistics Office should be encouraged to include provisions in its future census questionnaires aiming at obtaining specific data for stateless persons. To this end, the section related to nationality could be expanded to include explicit options of 'stateless' / 'no nationality' / 'do not know' / 'unsure' in the nationality category to sufficiently cater for stateless persons and others with questions on their nationality. To better assess the profile of the stateless population, an 'open' box could be included for persons who have chosen any of the above options within the nationality category to further explain their situation. The census questionnaire could furthermore include questions about the person's previous country(ies) of habitual residence, year of arrival in Malta, the nationality(ies)/birth country(ies) of the parents, and even about any previously held nationality(ies).¹⁵⁷

4.1.2 Data on stateless persons who have obtained Maltese citizenship

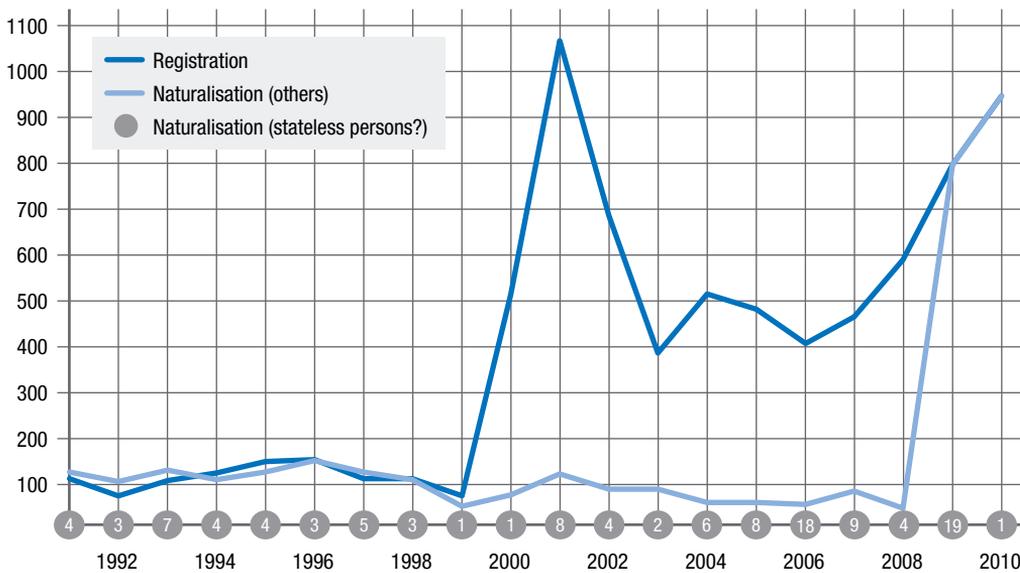
175. The only other official reference to stateless persons is found in the annual Demographic Review, which is published by Malta's National Statistics Office and comprises the main demographic events for the year as well as other relevant statistics, such as on migration. Since 2008, the Review has included 'Stateless' as a category of persons who have obtained Maltese citizenship through registration or naturalisation. Between 2008 and 2010, twenty four stateless individuals are reported to have obtained citizenship this way.¹⁵⁸

¹⁵⁶ Information obtained from consultations with the National Statistics Office (10 December 2012 and 28 March 2014).

¹⁵⁷ See also UN High Commissioner for Refugees (UNHCR), *Measuring Statelessness through Population Census. Note by the Secretariat of the United Nations High Commissioner for Refugees*, 13 May 2008, ECE/CES/AC.6/2008/SP/5, available at: <http://www.refworld.org/docid/4a705e4b2.html>

¹⁵⁸ The Demographic Reviews are available according to year at: 2008 – <http://goo.gl/IN2TYG>; 2009 – <http://goo.gl/Z6kGqD>; 2010 – <http://goo.gl/44pLm>; Please note that the most recent issue of the NSO's Demographic Review was for 2010.

Figure 1: Acquisition of Maltese nationality 1991-2010



176. Some statistics also exist from prior to this introduction. On the website of the EUDO Observatory on Citizenship it can be observed that 94 stateless persons obtained citizenship in Malta between the years 1991-2008.¹⁵⁹ The trend of stateless persons obtaining Maltese citizenship throughout the years 1991-2010 according to the statistics above is generally stable, peaking in 2006 and 2009 as can be observed in Figure 1.

177. Through the research carried out for this report, it was however observed that the stateless category contained in the Demographic Review and published on the EUDO website consists of a mixture of persons of undetermined nationality but could also include classic stateless persons such as Palestinians.¹⁶⁰ With this in mind, the above data unfortunately fails to shed much light on the prevalence of statelessness in Malta.

178. Finally, it is found that statelessness may not be comprehensively assessed within asylum or other immigration procedures in Malta.¹⁶¹ The Office of the Refugee Commissioner has however reported numbers of persons with nationality ‘not known’ in 2013 which is a first step forward and also reports Palestine as a nationality category. At the same time, it remains a concern that stateless persons who have been granted protection in Malta do not seem to have had their statelessness recorded in official statistics, instead being listed as nationals of a country with which certain links exist.¹⁶²

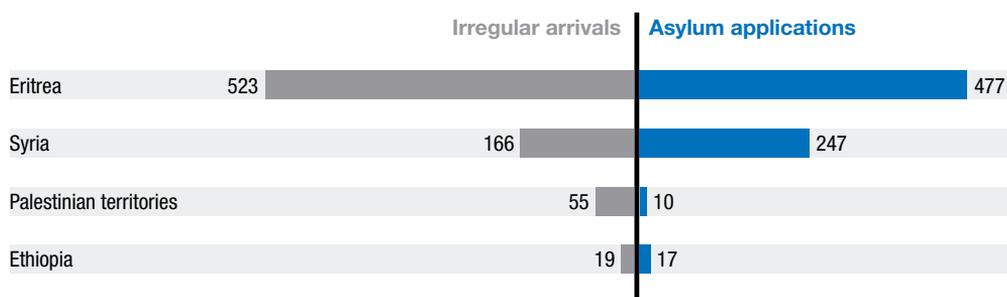
¹⁵⁹ EUDO Observatory on Citizenship, Malta statistics (with sources and explanation of data), available at: <http://goo.gl/p7N80j>

¹⁶⁰ Information obtained from a consultation with the Department for Citizenship and Expatriate Affairs (31 January 2013) included the fact that this Department supplies statistics to the National Statistics Office (for the Demographic Review) and to the EUDO Observatory on Citizenship; See also the EUDO Observatory on Citizenship website for source information, available at: <http://eudo-citizenship.eu/stat/source/Malta.pdf>

¹⁶¹ Conclusions drawn from consultations with the Office of the Refugee Commissioner (5 March 2013) and the Malta Police Force (5 December 2013).

¹⁶² See also the website of UNHCR Malta for these and further statistics, available at: <http://www.unhcr.org.mt>

Figure 2: Irregular arrivals and asylum applications by persons from relevant countries of origin 2013



179. Figure 2 shows some of the nationalities which are sometimes recorded for stateless persons arriving or applying for asylum in Malta. Of course, it will generally only be a fraction of these persons – if any – who are in fact stateless.

4.2 Avenues of registration and identification of stateless persons

180. In view of the lack of a formal statelessness determination procedure in Malta, the description below of individuals and groups who are or may be stateless in Malta is based on an assessment of various avenues of registration in Malta. Some categories identified inevitably overlap.

4.2.1 Birth registration

181. “Birth registration ensures official recognition of the facts of a child’s birth – birthplace, date of birth and parentage. An effective and inclusive system of birth registration is an important tool in combating statelessness, because these same facts are decisive in determining which nationality a person acquires. [...] As such, not being registered at birth is not the same as being stateless. Conversely, having a system of birth registration in place is not a guarantee that no children will be left stateless.”¹⁶³

182. “Nevertheless, where someone is left out of the national birth registration system, this can cause problems, because the state may not be convinced that the conditions for *ex lege* acquisition of nationality were fulfilled and fail to recognise the person as a national. For this reason, the importance of birth registration in the prevention and reduction of statelessness is widely recognised. The likelihood that lack of birth registration will be an obstacle to recognition as a national increases when other factors come into play. For instance, problems may arise if an unregistered child is born outside the parents’ country of nationality or migrates/ becomes displaced subsequent to the birth [...] or if an unregistered child belongs to a minority group whose claim to nationality is generally treated with scepticism or challenged by the authorities.”¹⁶⁴

¹⁶³ European Network on Statelessness, *Childhood Statelessness In Europe: Issues, Gaps and Good Practices*, April 2014, p. 21, available at: <http://www.refworld.org/docid/5343a45f4.html>

¹⁶⁴ *Ibid.*



Name: **Ibrahim**
Country of birth: **Sudan**
Arrival in Malta: **August 2012**
Time in detention: **1 month**
Current status: **Beneficiary of international protection (Subsidiary)**

Ibrahim's Eritrean parents settled in Sudan before he was born. Ibrahim's birth in 1989 was never registered. When Ibrahim was 5 years old, his father, who worked as a merchant, went for one of his trips to Eritrea and never returned. Ibrahim's family was informed that he had been killed by the Eritrean army.

“ After my father's disappearance, my mother went into shock and stopped talking. Times were hard - we had to move around a lot and there was always a risk of deportation. Without a birth certificate, I could not attend school. Even though a teacher tried to help me to register at a school, it was impossible without the birth certificate.”

“ Instead, I started working when I was only 11 years old since I had to provide for myself and my mother. My colleagues were much older than me. To make ends meet, I had several other temporary jobs in the following years.”

When Ibrahim was growing up, a friend of him spotted his running skills and encouraged him to register with a running club, which he did in 2005. Ibrahim was a very talented runner and he would train regularly with Sudanese international athletes. However, the clubs always refrained from registering him for the races he was running so his winnings were never recorded. The club simply used Ibrahim to train their own athletes and since this was beneficial to the club, no one ever asked for his documents.

Ibrahim explains that in addition to being refused access to school and unacknowledged by his running club, the lack of identification documentation also meant that he would be unable to marry or own any property in Sudan. Due to the deportation risk, Ibrahim was taught to keep quiet about his background and he would not socialise much with neighbours who would discriminate against him verbally because he was a foreigner. Furthermore, Ibrahim was well aware of the difficulties to obtain Sudanese citizenship even with a birth certificate, so without it he did not even try.

“ In 2008, I reached the running time to be considered for the Olympic Games so I wanted to check whether it would be possible to run for Eritrea. As I was approaching the Eritrean Embassy in Khartoum, the Eritrean guard saw me and he refused to let me in. I was later informed by fellow Eritreans that with no way to prove my Eritrean origins, I would never be able to establish a claim to Eritrean citizenship.”

Ibrahim fled Sudan in 2012, during tensions caused by the split of the South and the North. After being trapped in Libya for 7 months due to the raging conflict in that country, he finally boarded a boat which was rescued by the Armed Forces of Malta. In Malta, Ibrahim was granted international protection (Subsidiary) based on his asylum claim and he now lives with his cousin who facilitates his running ambitions financially as best he can. Ibrahim runs with a local club and he has won various races in Malta, including the 2014 half-marathon.

“ I want to pursue my running – my dream is for a country to grant me nationality so that I can compete internationally and win for them. When I mentioned to a journalist that perhaps Malta could grant me citizenship so that I could run for the country, there was a backlash from readers who were strongly opposed to this. I now know that I have no real prospect for citizenship in Malta and I lack effective support for my running ambitions.”

“ Without running I have nothing. With running, maybe – just maybe – a country would be willing to recognise me as a national so that I would no longer have to be stateless.”

a) Registration soon after birth

183. In Malta, it is compulsory for parents to register the birth of their child within five days of the birth with the Public Registry office.¹⁶⁵ Since this obligation may at times be difficult to meet, in practice the timeframe is relaxed and no penalties incur within the first weeks past the deadline.¹⁶⁶

184. In the event that a child is born to a mother who is serving a sentence at the country's only prison, the Corradino Correctional Facility, the birth will be registered immediately via a prison officer present at the hospital who communicates the details of the birth to the Public Registry.¹⁶⁷

185. According to the detention policy in relation to irregular arrivals in Malta, pregnant women should be released from detention as soon as possible after arrival as they are deemed to be "vulnerable".¹⁶⁸ For this reason, children are unlikely to be born in a detention centre.

186. The Committee on the Rights of the Child noted, in its Concluding Observations of the 2013 review of Malta, its concern "that there continue to be cases of children, including those in irregular migration situations, who are not provided with birth registration" and the Committee therefore "urges [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."¹⁶⁹

b) Children born at sea

187. In the past, the Armed Forces of Malta has rescued babies born on vessels at sea who later disembarked on Malta's shores. An important distinction has to be drawn between births occurring within Malta's territorial waters, and those that take place in international waters because the second group does not enjoy regular access to birth registration processes in Malta.

188. Upon application by the parent(s) for a birth certificate for a child born at sea, the Public Registry will make an enquiry with the Armed Forces of Malta who will in turn aim to confirm the exact location of the boat at the time which the parents claim the child to be born. If the location is within the territorial waters of Malta, the child will receive a birth certificate showing that he or she was born in Malta. If not, the child has no right to have his or her birth registered in Malta.

189. This was contested in a Civil Court in Malta by a Somali woman, Chama Hatra. She gave birth to her daughter, Muna, on a vessel in international waters and later disembarked in Malta

¹⁶⁵ Information obtained from a consultation with the Births and Deaths Section of the Public Registry (19 February 2013); The Civil Code of Malta however allows for registration within 15 days of the birth: Civil Code of Malta, Chapter 16, Sub-title II: Acts of Birth, Section 272, available at: <http://goo.gl/h1e9qk>; See also Sections 272-292A in relation to birth registration in general.

¹⁶⁶ Information obtained from a consultation with the Births and Deaths Section of the Public Registry (19 February 2013).

¹⁶⁷ Information obtained from a consultation with the Corradino Correctional Facility (20 March 2013).

¹⁶⁸ Ministry for Justice and Home Affairs (Malta) and Ministry for the Family and Social Solidarity (Malta), *Irregular Immigrants, Refugees and Integration – Policy Document*, 2005, p. 6, available at: <http://www.refworld.org/docid/51b197484.html>; See also UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, Part Two (E)(2): Detention, available at: <http://www.refworld.org/docid/53b676aa4.html>

¹⁶⁹ 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, paragraphs 34-35, available at: <http://goo.gl/E51TB9>

where both were granted subsidiary protection status.¹⁷⁰ The claim for birth registration was dismissed by the Civil Court. In its judgment delivered on 17 May 2013, the Court confirmed the decision of the Director of the Public Registry to deny birth registration. The reasons given were fourfold:

- because the boat on which Chama Hatra gave birth was not carrying a Maltese flag;
- said birth did not occur in Malta's territorial waters;
- because such registration should have been done in the country nearest to where the baby was born, i.e. Libya, or in the country of origin of the mother, i.e. Somalia; and
- because said registration should have been made within five days from her arrival in Malta.

The Civil Court did not consider the human rights issue before it. An appeal was entered against the judgment and the case is pending before the Court of Appeal.¹⁷¹

190. In contrast to Chama Hatra who gave birth while still on the boat, another pregnant Somali woman was airlifted from the same vessel and brought to a hospital in Malta. There she delivered twins whose births were easily registered in Malta.¹⁷²

191. The situation of Chama Hatra raises two main concerns:

- The first concern is the question of the birth registration of children born in international waters. Although all children have a right to be registered immediately after birth in accordance with Art 7 of the Convention on the Rights of the Child, international law and practice are not clear on which State is responsible for the registration of such birth in international waters, in particular when a birth takes place on an unregistered vessel;
- The second concern relates to how the child can acquire a nationality when he or she is born on an unregistered vessel in international waters, in the case that the child is otherwise stateless. Art 3 of the 1961 Convention on the Reduction of Statelessness provides that birth on a ship is deemed to have taken place in the territory of the State whose flag it flies. The Convention does not cover the situation where the ship does not fly a flag.

192. The issue of babies born at sea to migrant women in international waters has been the cause of some debate nationally. In its "Manifesto for Children 2013", the Office of the Commissioner for Children states in regards to the right to a nationality that "children born in Malta are automatically registered as being born in Malta. However, this does not apply to those children of immigrant women who are born at sea outside Maltese waters, which children end up not having a nationality." The Commissioner for Children goes on to recommend that this situation can be rectified through "an amendment in the law so that children who are brought to Malta after they are born in international waters and not on a registered vessel are given Maltese citizenship."¹⁷³

¹⁷⁰ See also Times of Malta, *Boat baby leaves for France without an identity*, 9 July 2009, available at: <http://goo.gl/6tMakP>

¹⁷¹ *Advocate Tonio Azzopardi nomine vs. Director of Public Registry* (Civil case no. 198/2010) pending before the Court of Appeal of Malta.

¹⁷² Information obtained from a consultation with Malta Emigrants Commission (1 November 2012).

¹⁷³ Commissioner for Children, *Manifesto for Children 2013*, Section 2.1.3: Right to a Nationality (informal translation), available at: <http://goo.gl/BOChwW>

193. Recently it was announced that the Ombudsman is supporting the claim for birth registration in these circumstances and apparently an amendment to Malta's Civil Code in this respect is imminent.¹⁷⁴

c) Children found at sea

194. In addition to babies *born* at sea, there also exists the issue of children *found* at sea and later disembarked in Malta. This includes children arriving in Malta's territory with no family members or acquaintances, no documentation, and unable to communicate their origins. They may be found in international waters or 'come from' international waters to enter territorial waters. An example is the two baby sisters who were rescued from a vessel at sea in 2008 while their mother passed away during the rescue operation. No one could identify the children and no information was forthcoming about their possible nationality or lack thereof.

195. According to the nationality legislation currently in place, foundlings are granted Maltese nationality on the basis of the assumption that the baby was born in Malta.¹⁷⁵ To reiterate Section 3.2.2(b)(ii) above related to the safeguard for foundlings, the relevant provision of the Citizenship Act reads that where "a newborn infant is found abandoned in any place in Malta, that infant shall, unless the contrary is shown, be deemed to have been born in Malta and in any such case the provisions of the third proviso to Art 5(1) shall apply to such infant."¹⁷⁶ In the case of a child found on board an unregistered vessel in international waters, unable to communicate his or her identity, it may not be straightforward for such a child to ordinarily fall within the ambit of Malta's foundling safeguard.

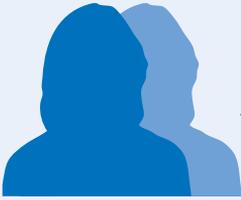
196. Even if Malta was to include children found on unregistered vessels in international waters within the ambit of its foundling provision, domestic legislation currently restricts the definition of a foundling to a "new-born infant". There could very well be children deemed older arriving alone yet still unable to communicate their identity. In fact, one of the baby sisters who arrived in 2008 was around 20 months old. It is not inconceivable that an 20 month old toddler could be excluded from the ambit of the foundling safeguard merely on the ground of not fitting the "new-born infant" criteria. In order to avoid statelessness, it follows that Malta could adjust its foundling definition to include all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth.¹⁷⁷

¹⁷⁴ Times of Malta, *Civil Code to be amended to allow registration of births at sea*, 24 May 2014, available at: <http://goo.gl/38sdEf>

¹⁷⁵ Citizenship Act: Art 17(3).

¹⁷⁶ *Ibid.*

¹⁷⁷ According to the Guidelines, this follows from the object and purpose of the 1961 Convention: UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Arts 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, paragraph 58, available at: <http://www.refworld.org/docid/50d460c72.html>; See also European Network on Statelessness, *Childhood Statelessness In Europe: Issues, Gaps and Good Practices*, April 2014, Chapter 4, available at: <http://www.refworld.org/docid/5343a45f4.html>



Name: **Victoria (6yo) and Destiny (7yo)**

Country of birth: **Unknown**

Arrival in Malta: **September 2008**

Time in detention: **None**

Current status: **Spanish citizens**

Among 20 migrants rescued by the Armed Forces of Malta at sea after their boat had capsized in September 2008 were two baby girls. The woman thought to be their mother was the only one who perished during the rescue operation and no information about the origins of the baby girls was forthcoming. They were determined to be sisters and about 6 and 20 months old respectively at the time of rescue.

They were taken into care at the Ursuline Sisters' crèche and it was here that they were named. Being so young, it was impossible for the girls to hold any information about their origins and their nationality was thus unknown. The safeguard against statelessness for foundlings in Maltese law was not applied in this case, perhaps because the authorities did not consider that they were "new-born infants" nor that they were born in Malta. The safeguard for children born stateless in Malta was similarly not applied.

The legal status of the sisters remained uncertain until they were adopted in 2010 and granted Spanish nationality through their adoptive mother. At this point, they were also issued Maltese birth certificates documenting them as the children of their adoptive mother but with a blank space for the place of birth.

Their adoptive father managed to establish that the woman who perished during the rescue operation indeed was the girls' birth mother and that she had been buried in an unnamed grave in Malta. No death certificate had been issued though because she had perished outside Malta's territorial waters. Through an account by a fellow boat traveller, it was indicated several years later that the girls' mother had been Nigerian and that their father (who may have been detained in Libya during his family's perilous sea crossing) presumably also was Nigerian.

The girls, now 6 and 7 years old respectively, were fortunate to have their legal status resolved reasonably speedily. Cases of children found at sea without any relatives or anything known about them have so far been very rare in Malta. However, if it does happen, and lacking adoptive parents from whom to have a citizenship conferred, such children may be left in a stateless-like situation in Malta, unable to enjoy their human rights since Malta does not have in place a safeguard for them to acquire nationality.

4.2.2 Arrangements in place for asylum seekers arriving irregularly

197. Since 2002, Malta has experienced an increase in irregular arrivals by boat from Libya. In total, around 19,000 individuals have arrived in Malta between 2002 and August 2014. Nearly all have applied for asylum, and the majority has been granted some form of protection. An estimated 30% of the total number of arrivals remain on the island.¹⁷⁸

198. Upon disembarkation, persons arriving irregularly are registered with the Immigration Police. In this context it is possible to claim to be stateless but the Immigration Police reports only a single such occurrence.¹⁷⁹ For a number of reasons, it is possible that incorrect claims of nationality are registered at this point. The registrant may for example not know his or her correct nationality or statelessness or he or she may not want to reveal his or her statelessness. Finally, the mere fact that the registrant would have only just been rescued from a harrowing and precarious sea journey from North Africa may have left him or her in distress and does not aid in the correct registration of nationality at this stage.

199. The next point of registration is during the optional asylum process with the Office of the Refugee Commissioner (RefCom) which will for all but those categorised as “vulnerable” and released early, take place in the detention centre.¹⁸⁰ In the Preliminary Questionnaire and for the asylum interview, the applicant is required to provide a ‘country of origin’ and a ‘citizenship at birth and at present’. It does not seem that there is any specific guidance available to the applicant at this stage if they wish to clarify aspects related to these questions. A lack of knowledge on the part of the applicant as to his or her origins and citizenship status coupled with this lack of guidance may lead to a situation where the nationality and/or country of origin is registered incorrectly.

200. Unless a satisfactory reason is given to have it amended, the nationality claimed at the time of registration to the Immigration Police and later to RefCom is linked to that person throughout his or her stay in Malta and possibly beyond. It will be noted on the person’s ‘Police Card’¹⁸¹ and, for successful asylum applicants, their country of birth (and country of origin if different from country of birth) will be noted on their ‘Protection Certificate’.¹⁸²

201. The ‘Protection Certificate’ is required when applying for national identification documentation, travel documentation and so on. It is this national identification documentation (which also acts as a residence permit) that feeds into the national Common Database which in turn is used by the National Statistics Office to clarify census recordings of stateless persons.¹⁸³

202. In light of the above, it can be concluded that for the purposes of the Immigration Police and RefCom registration stages, the way in which nationality and country of origin are recorded may have repercussions subsequently. For the individual concerned, these repercussions may

¹⁷⁸ 2014 Malta Asylum Trends Update, available at: <http://www.unhcr.org/mt/news-and-views/press-releases/753>

¹⁷⁹ Information obtained from a consultation with the Malta Police Force (5 December 2013).

¹⁸⁰ Ministry for Justice and Home Affairs (Malta) and Ministry for the Family and Social Solidarity (Malta), *Irregular Immigrants, Refugees and Integration – Policy Document*, 2005, p. 6, available at: <http://www.refworld.org/docid/51b197484.html>; See also UN High Commissioner for Refugees (UNHCR), *UNHCR’s Position on the Detention of Asylum-seekers in Malta*, 18 September 2013, available at: <http://www.refworld.org/docid/52498c424.html>

¹⁸¹ The ‘Police card’ contains identification details of the holder.

¹⁸² For children born in Malta, the country of birth is omitted.

¹⁸³ See also Section 4.1.1 above; Note that only persons with positive asylum decisions are granted a residence permit. This means that unsuccessful asylum seekers who are automatically issued with a pending removal order would not have their details displayed on the National Common Database.

be severe. For example, a stateless person may not have access to benefits that he or she should have had access to had he or she been guided appropriately and registered as a stateless person. Perhaps the statelessness issue has not been given appropriate consideration in the asylum claim and has led to his or her rejection. In the worst case, after rejection of the asylum claim, the applicant could be considered for return to a country which does not recognise him or her as a national and does not grant permanent residence status and related rights.

4.2.3 Arrangements in place for other asylum seekers, arriving regularly

203. This category of persons would not necessarily go through all the steps described for the group immediately above. They would nevertheless be asked about their 'country of origin' and 'citizenship at birth and at present' in the process of the asylum claim when completing the 'Preliminary Questionnaire' and at later stages, at which points no specific guidance seems to be available to the applicant in cases of doubts. Again, a lack of knowledge of the applicant coupled with this lack of guidance may lead to a situation where the nationality and/or country of origin is registered incorrectly.

4.2.4 Foreign nationals marrying in Malta

204. In order for foreign – including stateless – persons who are beneficiaries of protection in Malta to register to be married, they should submit a number of documents issued to them by the Maltese authorities.¹⁸⁴ For stateless persons who are not beneficiaries of protection, including rejected asylum seekers, a birth certificate and proof of legal residence in Malta are required among other forms of documentation.¹⁸⁵ For a stateless person, it may not be possible to produce these documents which would thus limit the possibility to marry. To alleviate this, the Public Registry could put in place an exemption for stateless persons so that they would not be required to produce certain documentation in order to marry.

205. Although most countries in the world refrain from withdrawing their nationality from any national who marries a foreigner, it should still be noted that if this is the case for any foreigner marrying a Maltese in Malta, the foreign spouse would remain stateless for at least five years. At this time, the foreign spouse would be able to register as a Maltese citizen only if the marriage was still in place and the partners had been continuously living together for at least five years after the celebration of their marriage.¹⁸⁶ In the case that the marriage in Malta is to another foreigner, the nationality laws of the latter would dictate any options available to the otherwise stateless spouse.

4.2.5 Foreign nationals residing long-term in Malta

206. Another group at risk of statelessness in Malta consists of persons who are residing regularly in Malta and whose national law dictates that citizenship may be withdrawn by reason of (normally lengthy) residency abroad. Only a minority of countries retain automatic withdrawal of citizenship for this reason but it could still apply to some Malta residents.

¹⁸⁴ Interview papers (Preliminary Questionnaire, perhaps also Application Form) to check the declared civil status at arrival; Police card/travel document; Protection certificate; and, completed Public Registry form. Information obtained from a consultation with the Marriage Section of the Public Registry (20 March 2013).

¹⁸⁵ Birth Certificate; single status certificate; and, for nationals of non-EU countries, a visa to prove legal residence in Malta. Information obtained from a consultation with the Marriage Section of the Public Registry (20 March 2013).

¹⁸⁶ Citizenship Act: Art 6.

4.2.6 Un-returnable persons

207. Rejected asylum seekers or other persons who Malta wishes to repatriate, must first be furnished with travel/identification documentation from the country of return. Some persons may fail to be recognised as nationals by the country to which they have been linked for possible return and thus the forced removal is likely to fail. So far, the Immigration Police has only come across a single case of this nature.¹⁸⁷

208. A similar scenario could also play out in the application process for assisted voluntary return, as currently facilitated by the International Organization for Migration (IOM) in Malta. In fact, IOM reports that one applicant for assisted voluntary return was not recognised as a citizen by the country he claimed to originate from,¹⁸⁸ leaving him 'stranded' in Malta as a failed asylum seeker with no travel documentation, no chance to be naturalised and no other country which recognises him as a citizen.

4.3 Challenges facing stateless asylum seekers, beneficiaries of protection and their family members

4.3.1 Naturalisation

209. Despite the possibility in law for anyone resident in Malta for five years to apply for naturalisation,¹⁸⁹ the decision to grant Maltese citizenship through naturalisation remains at the discretion of the Minister for Home Affairs and National Security.¹⁹⁰ The conferral of Maltese citizenship through naturalisation has remained somewhat low and in practice persons who do not have any Maltese heritage are mainly considered favourably only if humanitarian grounds exist. Such grounds could include having formed a family/and or having children in Malta.¹⁹¹ Lacking either of these, it has been suggested that applications for naturalisation only stands a chance of being considered favourably if the applicant has resided in Malta for a period of at least 18 years.¹⁹²

210. There exist no provisions in the domestic law that facilitate the granting of citizenship to refugees (including stateless refugees), as already established in Section 3.2.2(c) above. The Maltese Government indicated in 2005 that it was moving towards a change in policy

¹⁸⁷ Information obtained from a consultation with the Malta Police Force (5 December 2013).

¹⁸⁸ Information obtained from a consultation with the International Organization for Migration (26 December 2013).

¹⁸⁹ Citizenship Act: Art 10.

¹⁹⁰ Citizenship Act: Art 2(1) specifies that the Minister responsible is the "Minister for the time being responsible for matters relating to Maltese citizenship and, to the extent of the authority given, includes any person authorised by such Minister to act on his behalf".

¹⁹¹ Daniela DeBono, *Naturalisation Procedures for Immigrants - Malta*, EUDO Citizenship Observatory, March 2013, p. 4, available at: <http://goo.gl/38sdEf>; Eugene Buttigieg, *Malta's citizenship law: Evolution and current regime*, EUDO Citizenship Observatory, 2009 (update 2013), p. 12, available at: <http://goo.gl/WQbqZi>

¹⁹² Daniela DeBono, *Naturalisation Procedures for Immigrants - Malta*, EUDO Citizenship Observatory, March 2013, p. 4, available at: <http://goo.gl/y01V57>; Malta Today (James Debono), *Who wants to be Maltese?*, 16 August 2009, available at: <http://archive.maltatoday.com.mt/2009/08/16/t14.html>

in regard to the potential naturalisation of recognised refugees in Malta in favour of granting citizenship to refugees who have been living in Malta for ten years so as to enable them to integrate better into Maltese society.¹⁹³

211. Almost a decade later, only around 18 refugees have so far been naturalised as Maltese citizens¹⁹⁴ and no official change in policy has been issued publicly to facilitate the naturalisation of refugees. It has been suggested that this protectionist policy applicable to Malta's naturalisation procedures, coupled with the lack of transparency and the Minister's non-reviewable discretion in taking a decision on the application, deters people from applying in the first place.¹⁹⁵

212. It is not clear whether naturalisation applications from other groups of migrants, such as beneficiaries of subsidiary protection or temporary protection or rejected asylum seekers would be accepted let alone viewed favourably. The first two of these categories are issued with residence permits which is one of the requirements to apply for naturalisation after the mandatory five year period. Attempts made to lodge a naturalisation application at the Department for Citizenship and Expatriate Affairs have failed for some beneficiaries of subsidiary protection while others who have resided in Malta for 5-10 years have reported that their citizenship applications have been rejected and/or pending for extended periods of time.¹⁹⁶ It is not clear whether stateless beneficiaries of subsidiary protection are viewed more favourably.

213. No official statistics are published concerning the naturalisation of persons on humanitarian grounds and no data is available about rejected applications.¹⁹⁷ It is of course important to bear in mind that, as also established in Chapter 3, one of the conditions for naturalisation is that the applicant should show evidence of his or her good character and suitability for citizenship. This may exclude particularly vulnerable refugee applicants as they may have less of an integration capacity which ground is noted as important to meet the essential criteria for eligibility under the conditions entitled as 'good character' and 'suitable citizen of Malta'.¹⁹⁸ In light of the Minister's discretionary power to reject applications without providing any reasons coupled with the impossibility of a review of such decisions, it is difficult to draw conclusions on naturalisation policies in this respect.

¹⁹³ Times of Malta, *Government moving towards granting citizenship to refugees*, 18 June 2005; It could be explored further if a link exists here with Malta's signature of the 1997 European Convention on Nationality in 2003 which limits any residency requirement to a maximum of 10 years before an individual is entitled to lodge an application for naturalisation.

¹⁹⁴ Data obtained informally from the Department for Citizenship and Expatriate Affairs.

¹⁹⁵ Daniela DeBono, *Naturalisation Procedures for Immigrants - Malta*, EUDO Citizenship Observatory, March 2013, p. 4, available at: <http://goo.gl/2BMYTS>; See also Figure 1: Acquisition of Maltese nationality 1991-2010 above.

¹⁹⁶ Information obtained through interviews for this report with beneficiaries of protection and other persons who are or may be stateless in Malta; It should be noted that the Department for Citizenship and Expatriate Affairs have informed UNHCR that any instances of failure to accept applications from individuals who are eligible would not be in line with prevailing law and policy.

¹⁹⁷ Daniela DeBono, *Naturalisation Procedures for Immigrants - Malta*, EUDO Citizenship Observatory, March 2013, p. 4, available at: <http://goo.gl/jli1s0>; Statistics showing the country of origin of successful applicants of Maltese citizenship are displayed on the EUDO Observatory for Citizenship website for the years 1991-2008, available at: <http://goo.gl/p7N8oj> and in the National Statistics Office's Demographic Reviews for the years 2008-2010, available at: <http://goo.gl/WzAaeS>

¹⁹⁸ Daniela DeBono, *Naturalisation Procedures for Immigrants - Malta*, EUDO Citizenship Observatory, March 2013, p. 5, available at: <http://goo.gl/y01V57>

4.3.2 Family members of refugees

214. Since internal policy seems to dictate that refugees may be considered for naturalisation as Maltese citizens after 10 years of residence,¹⁹⁹ their family members in Malta should be able to benefit from naturalisation also. Domestic law provides for family members of refugees to enjoy the same rights and benefits as the refugee (whether already present in Malta or once joined through family reunification).²⁰⁰ But even so, the conferral of citizenship is still entirely discretionary.

215. Though limited in number currently, spouses and/or children of refugees in Malta, who have travelled to Malta through a family reunification process may face some difficulties which could force them into a stateless-like situation. In order to avoid endangering their refugee spouse/parent or other family members, potentially still in the country of origin, they cannot be required to contact the authorities of their country of origin for the purpose of extending their passport, especially if the refugee spouse/parent is from the same country. So although enjoying derivative rights and benefits from their refugee spouse/parent, they are not in their own right recognised and documented in Malta as a refugee.

216. Over time, spouses/children in this situation may end up living in a stateless-like situation since in practice they will not have access to all personal identification documentation which may seriously hinder access to fundamental civil, political, economic, cultural and social rights. This problem is exacerbated if relevant entities do not recognise the entitlement of refugee spouses/children to rights and benefits flowing from the derivative status.²⁰¹

4.3.3 Children of beneficiaries of protection

217. For some children of beneficiaries of protection born in Malta, an act of the parents may be necessary for the child to acquire the nationality of one of the parents, for example through registration of the child with the consular authorities of the country of origin. In these cases, it will normally not be possible for the child to claim the relevant nationality since contact with consular authorities or any required entry into the country of origin may jeopardise the family's protection status. Any such child will be stateless until the safeguard for children born stateless in Malta is implemented.²⁰²

218. The situation is different for children born to beneficiaries of protection who automatically acquire the parents' nationality at birth. Nevertheless, such children have often been viewed as *de facto* stateless persons. The Final Act of the 1961 Convention on the Reduction of Statelessness contains a non-binding recommendation that *de facto* stateless persons should as far as possible be treated as stateless persons. States are therefore encouraged

¹⁹⁹ Information obtained from a consultation with the Department for Citizenship and Expatriate Affairs (31 January 2013); Times of Malta, *Government moving towards granting citizenship to refugees*, 18 June 2005.

²⁰⁰ SL 420.07 Procedural Standards in Examining Applications for International Protection, Art 14(3)(a), Legal Notice 243 of 2008, as amended by Legal Notice 161 of 2014.

²⁰¹ An example is past reluctance of the Passport Office to issue travel documentation to refugee spouses unless confirmation of entitlement to derivative rights and benefits was provided by the Office of the Refugee Commissioner.

²⁰² Citizenship Act: Art 10(6); UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Arts 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, paragraphs 27-28, available at: <http://www.refworld.org/docid/50d460c72.html>; See also Hungarian Helsinki Committee, *Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary*, January 2014, p. 15, available at: <http://www.refworld.org/docid/5310640b4.html>

to offer the possibility for such children to acquire the nationality of the State of birth in the manner foreseen under Art 1(1) of the 1961 Convention.

219. However, where the child of a beneficiary of protection has acquired the nationality of the country of origin of the parents at birth, it is not desirable for host countries to provide for an automatic grant of nationality under Art 1(1) of the 1961 Convention at birth, especially in cases where dual nationality is not allowed in one or both States. Rather, States are advised that children of beneficiaries of protection and their parents be given the possibility to decide for themselves, whether or not these children acquire the nationality of the State of birth.²⁰³ In the case of Malta, the wording of Art 10(6) of the Citizenship Act (by virtue of which children born otherwise stateless in Malta are granted Maltese nationality) does not apply to these children, nor is it likely these children will be able to apply for naturalisation in Malta.

220. With regards to children born before arriving to Malta but after departing from the country of origin, there remains a risk of statelessness if no birth certificate is issued in the relevant transit country. Without a birth record linking them to a particular country, these children are unable to prove who they are or even that they exist, and are more at risk of becoming stateless.²⁰⁴ It will then depend on the country of origin as to whether the child will still be considered as a national at a later time.

221. Furthermore, stateless children born to refugees may be incorrectly classified as a national of their parents' country on various documents such as in travel documentation issued by the Passport Office. In order for a refugee to apply for a travel document for any children born in Malta, he or she is required to complete an application form at the Passport Office. The nationality entered on this form will be entered in the travel document.²⁰⁵ Perhaps a Somali refugee woman, applying for a travel document for her child, enters Somali in the nationality box despite the child being registered with unknown father on its birth certificate. Lacking a statelessness determination procedure to clarify whether that child is stateless, this would presumably be accepted by the Passport Office despite the fact that a Somali woman can under no circumstances confer that nationality to her child.²⁰⁶

222. A similar risk exists for stateless children of other beneficiaries of protection (i.e. not refugees). The tailored application form for travel documentation, provided by the Passport Office and completed at the Malta Emigrants Commission, requires the applicant to enter the nationality of their children. If the nationality entered is incorrect, it will nevertheless be printed in the travel document since there is no process in place to assess the assertions of nationality, including that of children born in Malta. And thus the likelihood of incorrectly registered nationality remains.

²⁰³ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Arts 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, paragraph 28, available at: <http://www.refworld.org/docid/50d460c72.html>

²⁰⁴ See also UN High Commissioner for Refugees (UNHCR), *Under the Radar and Under Protected: The Urgent Need to Address Stateless Children's Rights*, June 2012, available at: <http://www.refworld.org/docid/514acd3e2.html>

²⁰⁵ Information obtained from a consultation with the Passport Office (7 May 2014).

²⁰⁶ UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*, 8 March 2014, under 'Africa' section, available at: <http://www.refworld.org/docid/532075964.html>



Name: **Alem* and Freweini*** (*Not their real names)

Country of birth: **Ethiopia**

Arrival in Malta: **March 2011**

Time in detention: **18 months**

Current status: **Rejected asylum seekers**

Alem and Freweini are twin sisters. Born in Ethiopia around 1985 to an Ethiopian mother and an Eritrean father, their births were never registered. The twins have been told that their father travelled to Eritrea when they were about one year old and he passed away there, leaving their mother to raise them and their siblings in Ethiopia. Alem explains:

“ Without documents, we could not access school. We could not even go out at night. We always knew that the lack of documentation in Ethiopia was due to our father’s Eritrean nationality. For the same reason, our neighbours in Gondor (Ethiopia) discriminated against us and our family. Because of this, we just stayed at home most of the time.”

“ Once grown up, we realised that without documentation, we could not work legally. Without information about my father’s origins, it was impossible to pursue Eritrean documentation and we were struggling under the discriminated faced in Ethiopia and the fact that we were continually refused acknowledgement and documentation.”

With no country to call her own, the only solution Alem could think of was to run away. She thought nowhere could be worse than where she was. So in 2005, she fled from Ethiopia and spent 4 years in Sudan and 2 years in Libya, sometimes working.

Some time after Alem’s departure, Freweini also fled Ethiopia. Freweini explains that it was the same problems which caused her to flee.

The sisters re-established contact once in Libya and from there they fled from the conflict in the spring of 2011 on a boat towards Europe. The twin sisters’ boat arrived to Malta where they applied for asylum. Their claims were rejected and their appeal was to no avail.

Alem’s first husband was killed in Ethiopia and her second husband died in the Sahara. Since her arrival in Malta three years ago, she has married a beneficiary of international protection who was already in the process of being resettled from Malta to the United States. Alem claims that the Maltese authorities refused to register the marriage due to her lack of documentation. The marriage was therefore only registered at the Mosque.

Alem was added on to her husband’s case for resettlement and even though it is still pending, Alem finally sees a solution to her statelessness since, if accepted, the United States will grant her refugee status and under normal circumstances she would be able to lodge an application for naturalisation after five years of residence. Alem would furthermore be able to apply for family reunification with her two minor children who are currently with her mother in Ethiopia.

Freweini on the other hand remains in Malta with no solution in sight. She is allowed to work but her rejected asylum seeker status complicates work permit processes. Freweini is not allowed to leave Malta except through voluntary return or unless the Government decides to deport her. But where would she return to?

“ I do not have documentation in Malta and I did not have it in Ethiopia. I cannot work and my mental health is getting worse. All I want is to be documented and offered some kind of assistance so that I can start building my life...perhaps even together with my children who are still with my mother in Ethiopia?”

If Malta creates a statelessness determination procedure, Freweini’s links with Ethiopia and Eritrea could be explored and in the event that no country recognises her as their national, such a determination procedure could grant Freweini a legal status as a stateless person and provide her with access to a protection framework. As things stand now, she has little hope for the future.

4.3.4 Children born in Malta to rejected asylum seekers

223. Rejected asylum seeker parents may be better placed than the above groups to contact their consular authorities for any necessary registration of their children born in Malta in order to secure nationality. That is because rejected asylum seekers do not hold a protection status which they risk losing in this situation. Despite the possibility existing in law, it may not be a viable option in practice since rejected asylum seeker parents oftentimes do not possess the funds for such an undertaking and in any case, they cannot access the necessary travel documentation. In practice, this could mean that the child remains stateless if no other nationality was acquired at birth, until such a time that registration becomes possible.

4.4 Rights of stateless persons in Malta?

4.4.1 Lack of access to rights based on statelessness

224. A stateless person may be able to obtain identification documentation and have access to a number of rights in Malta based on a legal status separate from a statelessness claim. As seen above, stateless persons in Malta may be found among beneficiaries of protection and rejected asylum seekers who all have access to free health care and some access to the employment market among other rights. Beneficiaries of protection furthermore have access to national identification documents and, depending on level of protection, some have access to travel documentation and other types of public assistance such as unemployment benefits.

225. If however a stateless person in Malta does not fall into any such distinct category, he or she cannot access any rights purely on account of his or her statelessness. Malta's various domestic laws that concern foreigners such as the Immigration Act or the Extradition Act do not include any reference to stateless persons and do not include a definition of a stateless person. In the absence of any type of formal mechanism to determine statelessness as well as the absence of a legal status based on a person's statelessness, stateless persons in Malta are not identified as such and are unable to enjoy their basic rights.



Name: **Mikal*** (*Not his real name)

Country of birth: **Eritrea**

Arrival in Malta: **2012**

Time in detention: **2 months**

Current status: **Temporary Humanitarian Protection**

“ I was born in Eritrea in 1995. My father was an Eritrean Muslim and my mother an Ethiopian Christian. When I was 5 years old, the ongoing war between Eritrea and Ethiopia made the environment in Eritrea increasingly hostile towards Ethiopians which is why I travelled with my mother to Ethiopia where we settled. My father could not come to Ethiopia since that country was equally hostile to Eritreans.”

That was the last time Mikal had contact with his father or his father's side of the family. He attended primary school in Ethiopia but had to quit once the physical abuse at the hands of his classmates got too severe, owing to the fact that his father was Eritrean. He never attended a hospital or saw a doctor. When Mikal was 11 years old, his mother passed away from an unknown disease at which point Mikal was forced to stay with his neighbour who was a single older man. After a couple of years, the two of them fled to Sudan together where Mikal worked and learned Arabic over the following four years.

“ My employer in Sudan asked me for identification documents so I went to the Ethiopian Embassy in Khartoum to request this. I have no birth certificate or any other identification documents and without this, my request was denied. I don't see how I could ever make a successful claim in the future since I don't even have contact with any family or friends able to help me obtain the required documentation.”

Mikal did not pursue the Eritrean Embassy for the purpose of obtaining identification documents since he was afraid of being deported to Eritrea to join the army and generally due to the possibility of physical abuse at the hands of the authorities there.

“ It was difficult for me to make friends in Sudan as Eritreans would see me as being Ethiopian, and Ethiopians would discriminate against me based on my father's Eritrean nationality. At least I managed to steer clear of the annual round ups of non-Sudanese persons, during which the Sudanese authorities would target those without identification documents as well as Eritrean and Ethiopian nationals.”

Seeking higher paid employment, Mikal crossed the Sahara to Libya only to be arrested and detained upon arrival for lacking identification documents. An employer picked him up from a detention centre and employed him to work as a shepherd, allowing him out in the afternoons. One afternoon Mikal decided to flee to Tripoli to attempt to cross the sea to Italy. After four days at sea, the Armed Forces of Malta rescued his boat and brought him to Malta.

On arrival, Mikal was asked by the Immigration Police about the origin of his parents and since his father was Eritrean, this is the nationality which was entered on his registration papers. After being released from detention, he faced problems at his open centre as no one wanted to share food with him on account of his mixed ethnicity. Eventually, Mikal was transferred to a more accommodating open centre which hosted a number of other unaccompanied minors. Mikal had only just turned 17 when he arrived in Malta.

Mikal's claim for asylum was rejected in Malta, including upon appeal. He was initially granted the discretionary Temporary Humanitarian Protection which allows access to a limited range of rights only. Mikal had no family or other links in neither Eritrea nor Ethiopia and with no long term protection status in Malta, he was worried about the risk of deportation to whichever country of origin the deporting authorities may send him. Mikal was keen to re-commence his studies and found full time employment shortly after his arrival in Malta. Despite this, his most recent communications with the open centre and his employer indicate that he felt that the only way ahead was to try to leave Malta which is in all likelihood what he did.

4.4.2 Practical application of safeguard for children born stateless in Malta

226. As explored in Section 3.2.2(b)(i) above, domestic legislation entitles children born stateless in Malta to be naturalised after 5 years of ordinary residence.²⁰⁷ In practice however it appears that this safeguard is not made use of. A lack of awareness on the side of the Maltese authorities could be the cause of this, or on the side of the parents or guardians of the stateless child born in Malta, or even on the part of their legal representative. Or perhaps all three.

227. In order for Malta to fully comply with its responsibilities under the Convention on the Rights of the Child Art 7, the International Covenant on Civil and Political Rights Art 24 and the European Convention on Nationality Art 6, the Maltese authorities should ensure that anyone who could potentially fall within the ambit of this safeguard is provided with sufficient information to allow them to invoke it. Appropriate information could be made available through the Public Registry that registers births, and civil society organisations who work with migrants who may be stateless or who may give birth to stateless children.

228. Maltese authorities responsible for citizenship applications under the safeguard for children born stateless in Malta²⁰⁸ – presumably the Department for Citizenship and Expatriate Affairs – should receive training and instructions on how to address such applications. This is how the practical application of similar safeguards for children born stateless in other countries has been guaranteed.

229. As a final note on the application of the safeguard for children born stateless in Malta, potential avenues of redress exist for children who face difficulties benefitting from the safeguard in Malta who have not seen their situation being resolved by the authorities. A complaint could be lodged with Malta's Commissioner for Children,²⁰⁹ with Malta's Ombudsman²¹⁰ or under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (once Malta ratifies the relevant Protocol following its signature of same in 2012).²¹¹

²⁰⁷ Citizenship Act: Art 10(6)-(7).

²⁰⁸ *Ibid.*

²⁰⁹ Commissioner for Children – Malta, *Report for ENOC Annual Meeting, Developments and Achievements, September 2006 – August 2007*, p. 11, available at: <http://goo.gl/jWu0TC>

²¹⁰ See also the Ombudsman's website: "What type of complaints do the Ombudsman investigate", available at: <http://goo.gl/oce0vQ>

²¹¹ UN Human Rights Council, *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure : resolution / adopted by the Human Rights Council*, 14 July 2011, A/HRC/RES/17/18, available at: <http://www.refworld.org/docid/4e72fbb12.html>



Name: **Mohamed (6yo) and Stera (9yo)**
Country of birth: **Malta**
Arrival in Malta: **N/A**
Time in detention: **N/A**
Current status: **Beneficiaries of international protection (Subsidiary)**

Mohamed and Stera were born in Malta to Kurdish parents from Syria. Their father, Quis, has always been stateless while Nessrin, the children's mother, is a Syrian national. As a woman however Nessrin is unable to pass on her citizenship to her children born abroad. This renders Mohamed and Stera stateless.

Although Quis' birth in Syria was registered, his access to identification documentation severely restricted his travels and he could not access tertiary education. Furthermore, participation in the annual Kurdish festival of 'Nawrose' was prohibited by the Turkish law enforcers. Quis did not have the right to vote and the only work available to him as a stateless Kurd was hard physical labour. Quis fled from Syria on account of this discrimination he endured while growing up, coupled with the persecution suffered as an adult on account of his Kurdish ethnicity and his statelessness.

“ After I fled to Malta in 2002 and was granted international protection, my wife-to-be arrived in 2004 and we married here. The following year Stera was born and then we had Mohamed in 2008. Birth certificates were issued for both children by the Maltese Public Registry and the children were automatically included in our international protection certificate (Subsidiary) in Malta.”

“ We really like life in Malta but the future is so uncertain and we do not have many rights here. After being paid children's allowance for 2 years, the authorities informed us that this was a mistake and that we would have to repay it. And I have always paid taxes and national insurance and still I do not have the right to receive children's allowance or unemployment benefits.”

Knowing that prospects of solving their stateless situation in Malta is slim, the family has tried to travel to another European country where they had family. They were however promptly returned to Malta under the European legislation in place.

“ I approached the Maltese Citizenship office in 2012 and asked to apply for citizenship. They advised me to apply for myself at first which I did at the end of that year. My application is still pending and I know other Kurds whose citizenship applications have been rejected so despite my 12 years in Malta, I have to remain realistic.”

Quis was only recently informed about the provision in Maltese law that entitles children born stateless in Malta to naturalise as Maltese citizens after 5 years of ordinary residence in the country. This safeguard may prove to be the light at the end of the tunnel for Quis's children and hopefully, in turn, the whole family. Or, as Quis puts it “if I was granted citizenship now, it would be like having been inside this room for 12 years (referring to a very small and crammed counselling room), and then someone opens the door.”

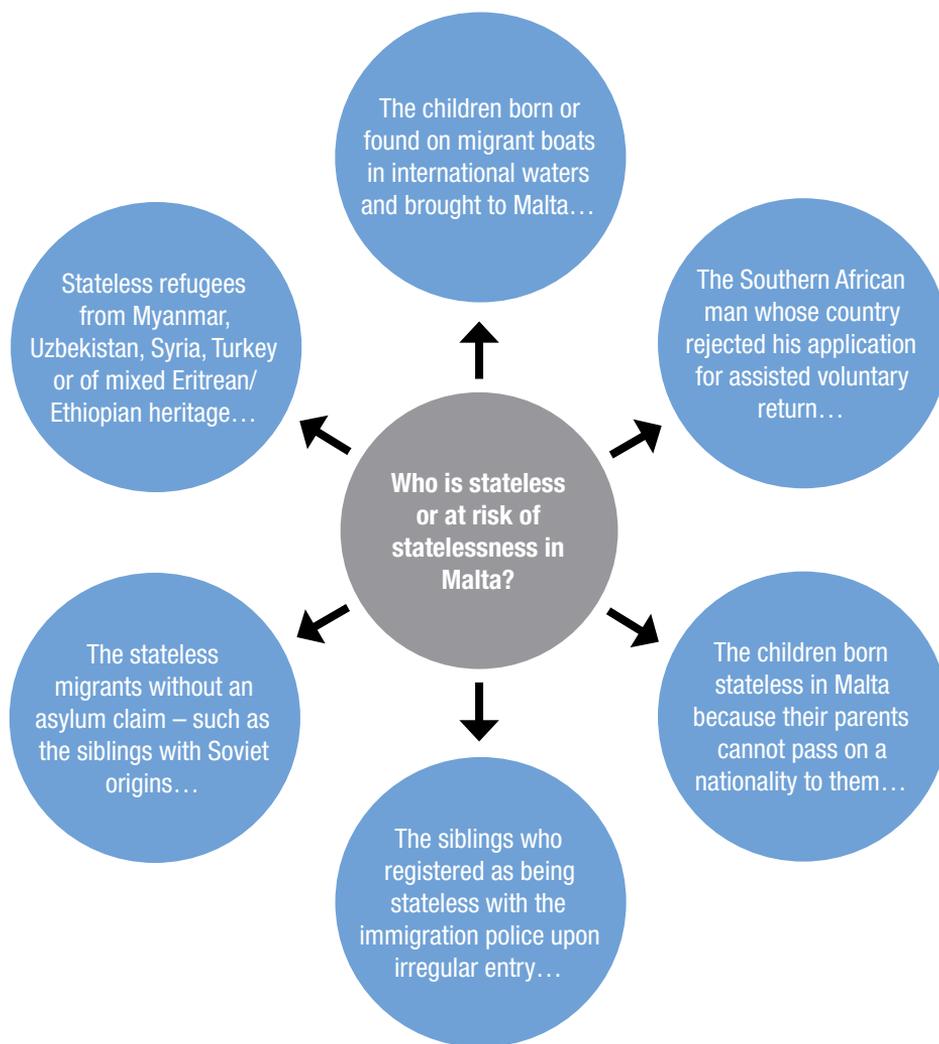
The family was interviewed by the Times of Malta recently:
Meet Stera, Mohammed - Malta's stateless children, 22 June 2014,
available at: <http://goo.gl/RJpOHZ>

4.5 The face of statelessness in Malta

230. It is beyond the scope of this report to delve deeply into the nationality laws of countries of origin of persons who are or may be stateless in Malta. Some relevant origins of potential cases have however been identified for an understanding of the face of statelessness in Malta.

231. The persons who are or may be stateless in Malta – whether born in Malta or arrived in Malta later in life – who have been identified through the research for this report include persons of the following origins: Kurdish (especially those from Turkey and Syria); Palestinian; Soviet; Southern African; Rohingya; Crimean Tatar; and, children of mixed Ethiopian/Eritrean origins.

Figure 3: Who is stateless or at risk of statelessness in Malta?



In addition to the persons with these origins, concerns also arise in the context of children born or found on migrant vessels in international waters and later brought to Malta. These children could be at risk of statelessness. Also of concern are persons in Malta born outside their parents' country of origin and for whom no birth registration was done or for whom no registration of nationality (where necessary) took place with the authorities of the parents' country.

4.6 Concluding remarks

232. The main conclusions drawn from this Chapter is the confirmation of the presence of stateless persons in Malta and the likelihood that more stateless persons in Malta have not yet been identified among certain profiles of migrants. This highlights the need for a statelessness determination procedure to be established in order for stateless persons to be adequately identified and protected. Such a procedure would also allow for more accurate public data on stateless persons in Malta.

233. Through different avenues of registration in Malta, asylum seekers – arriving irregularly and regularly – are identified as the group amongst whom most stateless persons are likely to be found. The Chapter also notes that statelessness could be identified through marriage applications. Furthermore, the plight of un-returnable persons was mentioned as among them there may be persons who are not considered as a national by any State under the operation of its law and would thus be stateless.

234. The creation of new cases of statelessness (*in situ*) is also possible through birth in Malta to parents unable to confer their nationality. The Maltese Citizenship Act provides a safeguard for children born stateless in the country under its Art 5, through an application procedure. No information is available however on the practical implementation of this safeguard and no known cases of acquisition of citizenship through this safeguard have come to light during the research. This is notwithstanding confirmation of the presence in Malta of stateless children who would presumably fulfil the criteria for entitlement to citizenship through this safeguard.

235. The *in situ* creation of statelessness for children born in Malta could thus be reduced through effective implementation of the safeguard that grants nationality to such children. To eliminate entirely the occurrence of children being born stateless in Malta, it is recommended that nationality is granted to such children automatically at birth instead of requiring 5 years of ordinary residence in the country prior to application.

236. The Chapter touched upon avenues of redress for children who face difficulties benefitting from the safeguard for persons born stateless in Malta and highlighted concerns of the possibility that some children born stateless in Malta may incorrectly be considered as a national of their parents' country despite in fact being stateless.

237. Malta exhibits a strong birth registration system but concerns were highlighted in relation to the registration of births for children in single-parent families and/or irregular migration situations. Malta should ensure that birth registration is carried out for all children born within its territory and that no discrimination takes place in this regard.

238. A related issue is that of babies born on vessels in international waters, who are rescued and later disembarked in Malta. The question of the registration of their birth arises. Similar is the issue of children found on such vessels and later brought to Malta. While Malta is under no obligation to register the births of the first group, or to include within the ambit of its founding safeguard the second group, Malta would go a long way in the prevention and reduction of statelessness and upholding the best interests of the child under the Convention on the

Rights of the Child if it chooses to register the children born on vessels in international waters and to consider children found on such vessels as foundlings under its Citizenship Act.

239. The issue of naturalisation restrictions for (particularly stateless) beneficiaries of protection in Malta was highlighted as a concern. Despite the law allowing applications for citizenship after five years of residence on satisfying a number of conditions, it is observed that beneficiaries of protection are unlikely to be able to meet the conditions. Even so, it appears that their applications would only be considered after 10 years or 18 years of residence, respective of whether the applicant benefits from refugee status or subsidiary protection. There are no indications that other groups of protected persons in Malta or former asylum seekers have access to naturalisation, whether or not they are stateless.

240. The lack of access to rights for stateless persons – purely on account of his or her statelessness (unless refugee status was granted for reasons of statelessness) – was highlighted as another concern. This concern was given a face by shedding light on the individuals and groups of persons identified as stateless or being at a risk of becoming stateless in Malta.

241. UNHCR encourages Malta to be proactive in addressing the situation of statelessness in its territory and for its nationals abroad. To do this, Malta should put in place a proper system for the identification and protection of stateless persons, particularly through the establishment of a statelessness determination procedure.²¹² Malta should at the same time enforce the prevention and reduction of statelessness in a proactive manner instead of allowing the issue to fester and meanwhile ignoring the plight of the individuals and groups affected.

242. It is important to highlight that Malta is far from the only country that does not yet register correctly stateless persons through its various registration mechanisms.²¹³ It is nevertheless crucial that the issue is addressed and UNHCR is ready to assist the authorities to implement an appropriate system to ensure the accurate identification and registration of stateless persons (including from within and outside the asylum system) and to assist in the elaboration of a legal and administrative framework for the protection of stateless persons in Malta.

²¹² See also UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, Part Two (F): Statelessness determination where the 1954 Convention does not apply, available at: <http://www.refworld.org/docid/53b676aa4.html>

²¹³ In 2011 it came to light that certain asylum seekers in Denmark were not registered correctly as stateless. The Danish Institute for Human Rights therefore decided to take several initiatives in close cooperation with Danish authorities to implement systems ensuring correct entries: Institut for Menneskerettigheder, *Årsberetning 2011, Myndighederne følger IMR's anbefalinger om statsløse*, p. 29, available at (in Danish): <http://goo.gl/cM1R82>

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

243. *Mapping Statelessness in Malta* has found – by way of analysing Maltese nationality law and its capacity to prevent and reduce statelessness – that some safeguards against statelessness exist and most of the domestic legislation is in line with international standards. Serious concerns however remain. These mainly relate to the lack of implementation of the safeguard against statelessness at birth, the lack of identification procedures of stateless persons in Malta and the lack of a dedicated protection framework for such persons. Also worrying are crucial shortcomings in the availability and fair process for naturalisation of long term residents, including refugees and stateless persons. Finally, a distinction was found in respect of the treatment of nationals, depending on whether they are nationals by birth or have acquired nationality subsequently.

244. Malta, like many other European countries (whether or not they are party to the statelessness conventions), has no framework to effectively address the issue of statelessness. This gap leaves stateless persons vulnerable to human rights abuses. A particular challenge to the reduction of statelessness in Malta over time has been identified as the country's protectionist policy regarding naturalisations. It is notable though that this may not necessarily reflect a particular reluctance towards stateless persons.

245. *Mapping Statelessness in Malta* has identified relevant gaps in domestic law, policy and practice in order that light may be shed on the way forward in general and specifically to encourage the Government to take steps towards acceding to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness. To this end, a set of concrete recommendations are put forth with the aim of strengthening Malta's compliance with its current obligations towards preventing and reducing statelessness.

246. The Government should be encouraged to enact the necessary amendments in law to further align itself with international standards on statelessness by way of preventing and reducing statelessness while also establishing an effective system for the identification and protection of stateless persons. It is not unusual that a mapping of this kind will reveal such gaps, even in countries which are party to the statelessness conventions.

247. Despite the challenges faced in obtaining statistics, the report has pointed out particular profiles of persons who are most likely to be affected by statelessness in Malta. There may be, among asylum seekers from particular countries of origin, some stateless persons who are incorrectly registered upon entry to Malta or during the asylum process as having a nationality. Yet another group of affected persons are children born stateless in Malta. Their parents or guardians are perhaps unaware of the safeguard in the Maltese Citizenship Act for the children to be granted citizenship. This unawareness may extend also to the Maltese authorities as well as to relevant legal representatives.

248. Broad consensus was found among stakeholders consulted for *Mapping Statelessness in Malta* that the individuals or groups of stateless persons in Malta is a most likely small and not very visible population. The research carried out for the report confirms this finding. A statelessness determination procedure would ensure stateless persons are identified and registered correctly. In countries which have in place statelessness determination procedures, relatively low numbers of applications are generally filed, especially in comparison to asylum claims.

249. In the context of the decade-long global campaign to eradicate statelessness, which is being launched in the final quarter of 2014, UNHCR plans to raise awareness on statelessness in Malta through briefings to relevant authorities and information sessions at the University of Malta. The Government of Malta is encouraged to take ownership of the process of accession to the statelessness conventions with UNHCR offering any support that is needed.

250. Furthermore, UNHCR hopes to provide specific statelessness training to various authorities in Malta, some of whom have shown a keen interest in the subject. There is also scope for further awareness raising or information sharing activities in the Malta context among the civil society and academia as well as among the general public. These efforts should aim to address the general observation from the consultations carried out in the context of this research that despite their interest, most stakeholders clearly showed a limited awareness of the issue of statelessness.

5.2 Recommendations

The prevention and reduction of statelessness

Malta has signed the European Convention on Nationality and within the Council of the EU United Nations Working Party (CONUN), Malta has agreed - in the context of the September 2012 High-Level Meeting on the Rule of Law - to consider acceding to the 1961 Convention on the Reduction of Statelessness. In view of this and for Malta to show its commitment to international standards in terms of the prevention and reduction of statelessness, UNHCR makes the following recommendations:

1

Accession to the 1961 Convention on the Reduction of Statelessness

Malta should accede to the 1961 Convention on the Reduction of Statelessness at the earliest possible time.

2

Statelessness and children

Malta should comply with its commitments under the Convention on the Rights of the Child (CRC) to ensure that all children born stateless in its territory have the right to acquire a nationality.

Malta should amend its nationality legislation to eliminate the distinction between children born in and out of wedlock as highlighted in the European Court of Human Rights judgment of *Genovese v Malta*.

Malta should adjust its Citizenship Act to ensure that children born stateless in Malta acquire nationality automatically at birth.

In the meantime, Malta should implement in practice the safeguard found in its Citizenship Act for children born stateless in Malta.

Malta should ensure that birth registration is carried out for all children born within its territory, regardless of the migrant status of the parents or their lack of documentation.

In line with the CRC, Malta should enact legislative changes to ensure that children born on vessels at sea outside of Malta's territorial waters and who later disembark in Malta are entitled to Maltese birth registration documents so as to avoid exposure to the risk of statelessness.

Malta should adjust its Citizenship Act to eliminate any reference to "new-born" and "infant" in relation to the foundlings safeguard and to substitute it with "child" in order to ensure the inclusion of all children who are not yet able to communicate their origins.

Malta should include within the ambit of its foundling safeguard those children who are found on vessels at sea and who disembark in Malta, as such children are otherwise likely to end up stateless. Although such action is not specifically required under the 1961 Convention on the Reduction of Statelessness, subsequent developments in international human rights law do warrant such

an approach. Indeed, granting citizenship to such foundlings is in line with the principle of the best interests of the child under the CRC of which Art 7(2) states that “States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless”.

3

Safeguards in case of withdrawal of nationality

Malta should include in its domestic legislation, a safeguard against statelessness in respect of the withdrawal of nationality of citizens residing abroad for a continuous period of seven years and citizens who are disloyal or whose conduct is seriously prejudicial to the vital interests of the country.

Malta should ensure that no person who is a citizen by virtue of the foundlings safeguard in the Citizenship Act has their citizenship withdrawn until reassurances that another is granted or will be granted imminently.

4

Facilitated naturalisation for stateless persons

Pursuant to international standards including the 1997 European Convention on Nationality to which the country is signatory, Malta should introduce measures to facilitate the naturalisation of stateless persons. Although most refugees possess a nationality, it is also recommended that Malta introduce measures to facilitate naturalisation for this group since they cannot normally avail themselves of the benefits of their citizenship. UNHCR further recommends that the naturalisation option in law is opened up to all beneficiaries of protection.

5

Ratification of the 1997 European Convention on Nationality

Malta should consider ratifying the 1997 European Convention on Nationality (ECN), having already confirmed its intention to be bound by this Convention through its signature in 2003. Malta should be able to ratify the ECN immediately with reservations to the Arts concerning ‘Decisions’ and ‘The right to a review’ which could later be withdrawn. Such an approach would help reinforce Malta’s commitment to reducing and preventing statelessness and set a positive example to other States while also heeding the recent call by the Parliamentary Assembly of the Council of Europe for all Member States to ratify the said Convention (Resolution 1989(2014)).

In this respect, Malta should make transparent naturalisation decisions and introduce the possibility of an administrative or judicial review of negative decisions.

The identification and protection of stateless persons

In view of Malta's agreement within the Council of the EU United Nations Working Party (CONUN) - in the context of the September 2012 High-Level Meeting on the Rule of Law - to accede to the 1954 Convention relating to the Status of Stateless Persons and for Malta to show its commitment to international standards in terms of the protection of stateless persons, UNHCR makes the following recommendations:

6

Accession to the 1954 Convention relating to the Status of Stateless Persons

Malta should accede to the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) without delay.

7

Definition

Malta should ensure that the definition of "stateless" and "stateless person" found within its domestic law is interpreted in line with the universal definition found in Art 1(1) of the 1954 Convention.

8

Awareness raising

Malta should raise awareness about statelessness among its various Government institutions that may encounter stateless persons, such as immigration and asylum authorities, citizenship authorities and civil registries among others.

The Government could appoint a focal point within Malta's national human rights structure to pay greater attention to the rights of stateless persons and to the right to a nationality.

9

Establishing an effective statelessness determination procedure

Malta should put in place an effective statelessness determination procedure which should adhere to international procedural standards established such as those described in UNHCR's Handbook on Protection of Stateless Persons. Malta could also draw on experiences from other European countries as guidance.

Such a procedure should be accessible to any stateless person present in Malta, and not limited to those with lawful residence. There should be no time limit within which a statelessness claim must be lodged following entry in the country.

When potential stateless persons are identified during the asylum procedure, they should be referred to the statelessness determination procedure when their application for refugee status is rejected on appeal.

Applicants should be issued a temporary residence permit during a statelessness determination procedure and be accorded the same standards of treatment as asylum-seekers at a minimum. Access to work for applicants with a residence permit of limited duration should be similar to that of asylum seekers in Malta.

Ensuring the rights of stateless persons are upheld in the country

In order to uphold Malta's international obligations vis-à-vis stateless persons under international human rights instruments, Malta should ensure the basic rights of stateless persons found within the country.

The recognition of statelessness should in general result in the issuance of a residence permit. This would enable stateless people recognised in Malta to enjoy the rights set out in human rights instruments as well as in the 1954 Convention.

Access to work for recognised stateless persons with a residence permit of limited duration should be similar to that of beneficiaries of international protection in Malta.

Travel documents should be made available upon application to all stateless persons lawfully staying in Malta, irrespective of the duration of their residence permit.

The procedure should ideally also allow for stateless persons to be granted permanent residence after a limited number of years, such as five years like in the UK, and with the subsequent opportunity to naturalise as Maltese citizens soon thereafter and thereby finally escape statelessness altogether.

Accurate data and information about stateless persons in Malta

In regard to population censuses carried out in Malta, the National Statistics Office should in its census questionnaire include provisions aimed at obtaining specific data for stateless persons. This could be done by expanding its section related to nationality to include explicit options for stateless persons and others with questions on their nationality.

The various agencies which produce relevant statistics – such as the Department for Citizenship and Expatriate Affairs, the National Statistics Office and the Office of the Refugee Commissioner – should include both a category for stateless persons as well as one for persons of undetermined nationality. The two categories need to be kept distinct as uncertainty about someone's nationality does not mean that they are stateless.

Further research should be undertaken in respect of the human rights of stateless persons in Malta, in particular pertaining to the access to public relief and the country's policy of detention of persons arriving irregularly.

Addressing the situation of un-returnable persons.

Malta should systematically verify whether a person in a return situation is or may be stateless, perhaps by way of referral to a statelessness determination procedure. The particular predicaments of this group of persons should be explored further to map out the best way forward for assistance in the interim and long term.

PARTICIPANTS INTERVIEWED

1. Alem* and Freweini*, **Eritrea/Ethiopia**
2. Destiny and Victoria, **Nigeria?**
3. Hassan*, **Kurd (Syria)**
4. Ibrahim, **Eritrea (Sudan)**
5. Kadija*, **Eritrea (Ethiopia)**
6. Kafil, **Rohingya (Myanmar)**
7. Mikal*, **Eritrea/Ethiopia**
8. Quis, **Kurd (Syria)**

* *Not their real name*

STAKEHOLDERS CONSULTED

Government departments

Department for Citizenship
and Expatriate Affairs
Malta Police Force
National Statistics Office
Office of the Refugee Commissioner
Passport Office
Prison Authorities
Public Registry

Data was obtained from the Global Issues Directorate of the Ministry for Foreign Affairs and the legal aid pool at the Ministry for Home Affairs and National Security was also consulted.

Others

aditus
International Organization for Migration
Jesuit Refugee Services Malta
Malta Emigrants Commission

Information was obtained from the European Union's European External Action Service and Tonio Azzopardi Advocate.

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To be stateless means to be without a nationality. Stateless persons' lack of nationality forms an obstacle to the enjoyment of their human rights. They do not possess that all important legal bond with any State which is generally considered as the basis for the enjoyment of their rights. The 1954 Convention relating to the Status of Stateless Persons addresses this anomaly by ensuring that stateless persons can enjoy a set of minimum rights.

Malta - along with only three other EU member states - is neither party to the 1954 Convention yet nor does it have in place a procedure to determine statelessness and a protection system for stateless persons. Malta is also not party to the 1961 Convention on the Reduction of Statelessness and the Government has only signed, not yet ratified, the 1997 European Convention on Nationality which mirrors to a large extent the 1961 Convention.

Mapping Statelessness in Malta seeks to highlight the importance of and encourage Malta's accession to the two statelessness conventions along with their due implementation. Although Malta is not found to host a large-scale stateless population, this report establishes that various groups of persons in Malta are or may be stateless or of undetermined nationality. Despite the limited size of the stateless population in Malta, it is important to recognise that each stateless person faces particular hardships that should not be disregarded.

In the final quarter of 2014, UNHCR will launch globally its Campaign to End Statelessness in 10 years. Statelessness is an entirely man-made problem and is, in principle, relatively easy to resolve and prevent. With the necessary political will and public support, millions of people around the world could acquire a nationality and prevent their children from being born stateless.



UNHCR
The UN
Refugee Agency

United Nations High Commissioner for Refugees
Malta, August 2014

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