

COUNTRY BRIEFING
JANUARY 2019

Malta

INTRODUCTION

The [Statelessness Index](#)¹ is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#)², a civil society alliance of over 120 organisations and individuals in 40 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with [aditus foundation](#)³ to research and compile comparative information on statelessness in Malta. This briefing summarises the findings on how Maltese law, policy and practice performs against international norms and good practice on the protection of stateless persons and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the Maltese Government for reform in priority areas.

To be stateless is not to be recognised as a citizen by any state under the operation of its law. It is a legal anomaly that prevents more than 10 million men, women and children around the world - and more than half a million in Europe - from accessing fundamental civil, political, economic, cultural and social rights.

INTERNATIONAL AND REGIONAL INSTRUMENTS

Malta is not state party to any of the core statelessness conventions. It has signed but not acceded to the [European Convention on Nationality](#). It has reservations to the [European Convention on Human Rights](#), but these do not have a substantive effect on statelessness. Malta has fully transposed the [EU Returns Directive](#) into domestic law and is party to all other relevant human rights instruments; however it retains several significant reservations.

For example, the reservation to Article 13 of the [International Covenant on Civil and Political Rights \(ICCPR\)](#) relates to protection from unlawful expulsion. Other reservations to the ICCPR relate to the criminal justice system and protections from hate speech and incitement to violence. Malta is also signatory to the [Convention on the Elimination of all Forms of Discrimination Against Women](#), again with significant reservations. However, these do not have a direct impact on statelessness, rather they impact all women in Malta regardless of their status in relation to reproductive rights, family and property law, and the payment of certain social security entitlements to the head of the household, presumed to be the husband.

The Maltese Government should accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The Maltese Government should also consider acceding to the European Convention on Nationality, and the Convention on the Avoidance of Statelessness in Relation to State Succession, as well as withdrawing its reservations to the International Covenant on Civil and Political Rights, and the Convention on the Elimination of all Forms of Discrimination Against Women.



STATELESS POPULATION DATA

There is very limited disaggregated population data on statelessness in Malta. There is also no procedure for identifying and determining statelessness in Malta, however the Annual Demographic Review carried out by the National Statistics Office has included a 'stateless' category in its data on Maltese citizenship acquisition since 2008. Accordingly, from 2008-2010, 24 stateless individuals are reported to have obtained citizenship in Malta. In Malta's official census, which was most recently conducted in 2011, there is no 'stateless' category option. If the respondent answers 'no' to both the question of whether they have Maltese citizenship or whether they have 'any foreign citizenship', then statelessness is tentatively indicated. However, if both answers were indeed 'no', the census provides no further questions.



PREVENTION AND REDUCTION

The Malta Police Force and the Office of the Refugee Commissioner use the statistical category 'nationality not known' and record data on refused asylum-seekers who cannot be returned, but do not have a specific 'stateless' category. They include 'Palestinian' as a nationality category. The Government does not publish data on stateless people in detention and statelessness is not systematically recorded across government agencies. UNHCR conducted a mapping study in 2014, which provides a detailed commentary on the legislative framework on statelessness in Malta, including examples of different profiles of stateless people and those at risk of statelessness in the country. UNHCR reports that 100 people with 'unknown citizenship' applied for asylum in Malta in 2016.⁴

The Maltese Government should take concrete steps to improve the recording of statelessness by harmonising and defining statistical categories used by different agencies and ensuring that registration officials are trained to accurately identify and record statelessness. The Maltese Government should also include the recording and counting of stateless individuals in the national census.



STATELESSNESS DETERMINATION AND STATUS

There is no mechanism to identify or determine statelessness in Malta or any dedicated protection status for stateless people. The Office of the Refugee Commissioner has discretion to recommend a local form of protection – 'Temporary Humanitarian Protection (THP)' – usually either granted where someone has been refused asylum but obtains protection for exceptional humanitarian reasons (for example, unaccompanied minors, people who are terminally or seriously ill, family reunion). Furthermore, in late 2018 Malta launched the Specific Residence Authorisation (SRA) as a form of limited regularisation for people refused asylum, who are considered to be 'well-integrated', who arrived in Malta until 1 January 2016 and who have not been returned.⁵ Applicants have no rights during the procedures and they are completely discretionary.

If granted THP or SRA, the person has access to various rights including a renewable residence permit (one year for THP and two years for SRA) implying protection from removal, access to healthcare, and access to the labour market; but these are not rights set in law. People granted THP/SRA may apply for citizenship, which by law may be granted at the discretion of the Minister. However, as Malta considers THP-holders as migrants in an irregular situation, in practice it is highly unlikely that their applications will even be considered.

The Maltese Government should establish in law a Statelessness Determination Procedure and protection status, under the authority of the Office of the Refugee Commissioner, which is in line with UNHCR Guidance and fulfils the rights enshrined to stateless persons under the 1954 Convention, including the

granting of a residence permit, right to work, study and facilitated naturalisation.



DETENTION

In Malta, stateless people may be detained under different legal regimes dependent on the situation, each with its own criteria, rights and guarantees. Legal powers are provided for to detain: asylum-seekers, third country nationals denied entry at the border or in an irregular situation, and asylum-seekers pending Dublin transfers.

There are some protections against arbitrary detention relevant to statelessness. Maltese law on the grounds for detaining asylum-seekers reflects the [EU Reception Directive](#). For detention for removal, the law states that "detention shall be a consequence of the removal order" once an order has been issued.⁶ If someone subject to a Removal Order applies for asylum, the Order is suspended pending the outcome. However, a country of removal does not need to be explicitly identified prior to detention, and statelessness is not considered to be a juridically relevant fact during the decision to detain.⁷ In practice, stateless people are detained prior to the authorities initiating removal procedures.

The law explicitly provides for immigration detention to be used only as a last resort in the case of detention for removal or where unaccompanied minors and families with minor children are concerned. Elsewhere, the authorities have discretion on whether to consider less coercive measures, and alternatives are not explicitly referred to in law. There is evidence to suggest that in practice, immigration detention is used prior to all alternatives being considered.⁸ Additionally, vulnerability assessments can be carried out on asylum-seekers (predominantly for boat arrivals), which can impact detention decisions. However, statelessness is not considered a vulnerability factor in itself.

Limited procedural safeguards are present depending on the type of detention: if denied entry to the territory a person has very few rights and there is no time limit; if detained for removal there is a periodic review and access to legal aid to challenge detention. Detained asylum-seekers have a right to legal aid, periodic review, and information on rights and remedies.⁹ Asylum-seekers released from detention are issued with documentation and rights under EU law, but people detained for removal and subsequently released are issued with an administrative record and tolerated stay, which permits access to the labour market and healthcare only if they can show social security contributions from the preceding three months.

The Maltese Government should take further steps to identify and protect stateless persons from arbitrary detention, by establishing a referral mechanism to a statelessness determination procedure and including statelessness as a vulnerability factor within vulnerability assessments. The Maltese Government should also embed consideration of statelessness as a juridically relevant fact in all decisions to detain.

There are some safeguards in Maltese law to prevent statelessness, but implementation is problematic and there are some gaps. There is a non-automatic provision in the Citizenship Act for children born stateless in Malta to acquire citizenship after five years' residence.¹⁰ However, there is no information available about how proof of the child/person's statelessness is required or evidenced. The provision is generally little-known, and there are no reports of it ever having been used.

The Maltese Citizenship Act deems foundlings to be Maltese from birth. However the wording of the provision ("*until his right to any other citizenship is established*") leaves open the possibility of statelessness arising later in life. If the parents are identified and they are nationals of a country that gives rise to a 'right' to citizenship for the child, the child's Maltese citizenship would cease, making them potentially stateless until they apply for citizenship. In adoption cases, safeguards against statelessness are provided in law and policy, so that children adopted by a Maltese national can acquire nationality. Dual citizenship is permitted so a child adopted by foreign parents and acquiring another nationality would not automatically lose their Maltese citizenship.

There is a provision in the Citizenship Act for Maltese nationality to automatically be conferred by parents (*ius sanguinis*) to children born to Maltese citizens either in Malta or abroad, but there are discriminatory limitations in the Act. Under the limitations, in the case of unmarried parents, a child born in Malta on or after 1 August 1989 shall only automatically become Maltese if the mother is a Maltese citizen, which leaves a risk of statelessness if only the father is Maltese and the mother cannot confer her nationality to the child. The differential treatment of children born in and out of wedlock to Maltese parents abroad was ruled to be discriminatory by the European Court of Human Rights in 2011, but this provision remains in force in Maltese law.¹¹

Finally, birth registration is not problematic in law, but there are credible reports of births remaining unregistered due to lack of documentation or refusal of parents to register the child, even though there are no mandatory requirements to report people who are undocumented to the immigration authorities. Identity Malta and Gov.mt try to promote awareness of birth registration through clear and easy-to-understand information on services for birth registration (in both English and Maltese) on their websites. However, there are no proactive campaigns on birth registration.

The Maltese Government should consider amending the law so that all children born on its territory who would otherwise be stateless acquire nationality at birth, regardless of the status of the parents. The Government should also implement the 2011 European Court of Human Rights ruling to address discrimination and remove practical barriers to birth registration by amending the law and implementing national campaigns and promotion activities on birth registration.

SUMMARY OF RECOMMENDATIONS

- Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness
- Consider acceding to the European Convention on Nationality and the Convention on the Avoidance of Statelessness in Relation to State Succession.
- Remove reservations to the International Covenant on Civil and Political Rights, and the Convention on the Elimination of all Forms of Discrimination Against Women.
- Improve the recording of statelessness by harmonising and defining statistical categories used by different agencies, counting stateless individuals in the national census, and ensuring that registration officials are trained to accurately identify and record statelessness.
- Establish in law a Statelessness Determination Procedure and protection status, under the authority of the Office of the Refugee Commissioner, which is in line with UNHCR Guidance and fulfils the rights enshrined to stateless persons under the 1954 Convention, including the granting of a residence permit, right to work, study and facilitated naturalisation
- Take further steps to protect stateless persons from arbitrary detention by establishing a referral mechanism to a statelessness determination procedure and including statelessness as a vulnerability factor within vulnerability assessments.
- Include statelessness as a juridically relevant fact in all decisions to detain
- Consider amending the law so that all children born on its territory who would otherwise be stateless acquire nationality at birth, regardless of the status of the parents.
- Address discrimination in the acquisition of nationality and practical barriers to birth registration by amending the law in line with the 2011 European Court of Human Rights judgement and implementing national campaigns and promotion activities on birth registration.

ENDNOTES

¹ <https://index.statelessness.eu>

² www.statelessness.eu

³ <https://aditus.org.mt/>

⁴ UNHCR, Mapping Statelessness in Malta, August 2014, available at:

<https://www.refworld.org/docid/546dae5d4.html>

⁵ The policy and an information note may be found here:

<https://homeaffairs.gov.mt/en/media/Policies-Documents/Pages/Specific-Residence-Authorisation-2018.aspx>.

⁶ Subsidiary Legislation 217.12, Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, 2011, available at:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1>.

⁷ <https://www.timesofmalta.com/articles/view/20170214/local/malians-to-be-released-after-controversial-three-month-detention.639627>.

⁸ aditus foundation & Jesuit Refugee Service: Asylum Information Database, Country Report, Malta, 2016 update, available at:

<http://www.asylumineurope.org/reports/country/malta/general>.

⁹ Returns Regulations, Regulation 11(12) and (13), available at:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1>.

¹⁰ Citizenship Act, Chapter 188 Section 10(6) & (7), available at:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1>.

¹¹ European Court of Human Rights, *Genovese v. Malta*, 53124/09, 11 October 2011, available at:

<http://hudoc.echr.coe.int/eng?i=001-10678>

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