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International and Regional Instruments

Cat	Q	Sub	Subtheme	Question	International Norms / Good Practice	Answer	Source
IOB	1	a	1954 Convention	Is your country state party to the 1954 Statelessness Convention?	<ul style="list-style-type: none"> • UN Convention Relating to the Status of Stateless Persons, 1954 	No	UNHCR: <i>Mapping Statelessness in Malta</i> , August 2014, available at: http://www.refworld.org/docid/546dae5d4.html
IOB	1	b		If yes, when was ratification/accession ?		-	
IOB	1	c		Are there reservations in place? Please list them.	Best practice is no reservations. If there are, they should have little or no effect on the rights of stateless persons.	-	
IOB	1	d		Does Convention have direct effect?	Best practice is that the Convention has direct effect, though this may depend on legal regime.	-	
IOB	2	a	1961 Convention	Is your country state party to the 1961 Statelessness Convention?	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961 	No	UNHCR: <i>Mapping Statelessness in Malta</i> , August 2014, available at: http://www.refworld.org/docid/546dae5d4.html
IOB	2	b		If yes, when was ratification/accession ?		-	
IOB	2	c		Are there reservations in place? Please list them.	As above	-	
IOB	2	d		Does Convention have direct effect?	As above	-	

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IOB	3	a	Other conventions	State party to European Convention on Nationality 1997? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • European Convention on Nationality, 1997 	Malta is signatory to the convention but has not acceded.	UNHCR: <i>Mapping Statelessness in Malta</i> , August 2014, available at: http://www.refworld.org/docid/546dae5d4.html
IOB	3	b		State Party to European Convention on Human Rights 1950? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • European Convention on Human Rights, 1950 	Yes, with reservations. The Government of Malta, having regard to Art. 64 of the Convention [Art. 57 since the entry into force of Protocol No 11], and desiring to avoid any uncertainty as regards the application of Art.10 of the Convention, declares that the Constitution of Malta allows such restrictions to be imposed upon public officers with regard to their freedom of expression as are reasonably justifiable in a democratic society. The Code of conduct of public officers in Malta precludes them from taking an active part in political discussions or other political activity during working hours or on official premises.	Council of Europe, <i>Chart of Signatures and ratifications</i> , 2017, available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=y6Zd1mGm
IOB	3	c		State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006 	No	Council of Europe, <i>Chart of Signatures and ratifications</i> , 2017, available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/200/signatures?p_auth=BSYqA3lx
IOB	3	d		Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive). Are there reservations in	<ul style="list-style-type: none"> • Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive) 	Yes, with no reservations.	

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				place? Please list them.			
IOB	3	e		State Party to Convention on the Rights of the Child 1989? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • Convention on the Rights of the Child 1989 	Yes, with no current reservations. On 20 August 2001, the Government of Malta informed the Secretary-General that it had decided to withdraw its reservation to Art. 26 made upon ratification: "The Government of Malta is bound by the obligations arising out of this article to the extent of present social security legislation."	United Nations Treaty Collection: Updated May 2017, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec
IOB	3	f		State Party to International Covenant on Civil and Political Rights 1966? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • International Covenant on Civil and Political Rights 1966 	Yes, with reservations: <ul style="list-style-type: none"> • The Government of Malta endorses the principles laid down in Article 13. However, in the present circumstances it cannot comply entirely with the provisions of this article; • Article 14 (2) – The Government of Malta declares that it interprets para. 2 of Art. 14 of the Covenant in the sense that it does not preclude any particular law from imposing upon any person charged under such law the burden of proving particular facts; • Article 14 (6) - While the Government of Malta accepts the principle of compensation for wrongful imprisonment, it is not possible at this time to implement such a principle in accordance with Art. 14(6) of the Covenant; • Article 19 - The Government of Malta desiring to avoid any uncertainty as regards the application of Art. 19 of the Covenant declares that the Constitution of Malta allow such restrictions to be imposed upon public officers in regard to their freedom of expression as are reasonably justifiable in a democratic society. The code of Conduct of public officers in Malta precludes them from taking an active part in political discussions or other political activity during working hours or on the premises. • The Government of Malta also reserves the right not to apply Art. 19 to the extent that this may be fully compatible with Act 1 of 1987 entitled "An act to 	United Nations Treaty Collection: Updated May 2017, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=en

						<p>regulate the limitations on the political activities of aliens", and this in accordance with Art. 16 of the Convention of Rome (1950) for the protection of Human Rights and Fundamental Freedoms or with Section 41(2)(a)(ii) of the Constitution of Malta;</p> <ul style="list-style-type: none"> • Article 20 - The Government of Malta interprets Art. 20 consistently with the rights conferred by Arts. 19 and 21 of the Covenant but reserves the right not to introduce any legislation for the purposes of Art. 20; • Article 22 - The Government of Malta reserves the right not to apply Art. 22 to the extent that existing legislative measures may not be fully compatible with this article. • The Government of Malta declares that under Art. 41 of this Covenant it recognises the competence of the Human Rights Committee to receive and consider communications submitted by another State Party, provided that such other State Party has, not less than 12 months prior to the submission by it of a communication relating to Malta, made a declaration under Art. 41 recognising the competence of the Committee to receive and consider communications relating to itself. 	
IOB	3	g		<p>State Party to International Covenant on Economic, Social and Cultural Rights 1966? Are there reservations in place? Please list them.</p>	<ul style="list-style-type: none"> • International Covenant on Economic, Social and Cultural Rights 1966 	<p>Yes, with reservations:</p> <ul style="list-style-type: none"> • Art. 13 - The Government of Malta declares that it is in favour of upholding the principle affirmed in the words "<i>and to ensure the religious and moral education of their children in conformity with their own convictions</i>". However, having regard to the fact that the population of Malta is overwhelmingly Roman Catholic, it is difficult also in view of limited financial and human resources, to provide such education in accordance with a particular religious or moral belief in cases of small groups, which cases are very exceptional in Malta. 	<p>United Nations Treaty Collection: Updated May 2017, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en</p>

IOB	3	h		<p>State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Are there reservations in place? Please list them.</p>	<ul style="list-style-type: none"> • Convention on the Elimination of all Forms of Discrimination Against Women 1979 • Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness. 	<p>Yes, with reservations:</p> <ul style="list-style-type: none"> • Art. 11 - The Government of Malta interprets para. 1 of Art. 11, in the light of provisions of para. 2 of Art. 4, as not precluding prohibitions, restrictions, or conditions on the employment of women in certain areas, or the work done by them, where this is considered necessary or desirable to protect the health and safety of women or the human foetus, including such prohibitions, restrictions or conditions imposed in consequence of other international obligations of Malta. • Art.13 - (i) The Government of Malta reserves the right, notwithstanding anything in the Convention, to continue to apply its tax legislation which deems, in certain circumstances, the income of a married woman to be the income of her husband and taxable as such. (ii) The Government of Malta reserves the right to continue to apply its social security legislation which in certain circumstances makes certain benefits payable to the head of the household which is, by such legislation, presumed to be the husband. • Arts. 13, 15, 16 -While the Government of Malta is committed to remove, in as far as possible, all aspects of family and property law which may be considered as discriminatory to females, it reserves the right to continue to apply present legislation in that regard until such time as the law is reformed and during such transitory period until those laws are completely superseded. • Art. 16 - The Government of Malta does not consider itself bound by sub-para. (e) of para. (1) of Art. 16 in so far as the same may be interpreted as imposing an obligation on Malta to legalize abortion. 	<p>United Nations Treaty Collection: Updated May 2017, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=en</p>
IOB	3	i		<p>State Party to Convention against Torture and Other Cruel, Inhuman or</p>	<ul style="list-style-type: none"> • Convention against Torture and Other Cruel, Inhuman or Degrading 	<p>Yes, with no reservations.</p>	<p>United Nations Treaty Collection: Updated May 2017, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=en</p>

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				Degrading Treatment or Punishment 1984? Are there reservations in place? Please list them.	Treatment or Punishment 1984		tails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang= en
IOB	3	j		State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1965? Are there reservations in place? Please list them.	<ul style="list-style-type: none"> • International Convention on the Elimination of All Forms of Racial Discrimination 1965 	Yes, with no reservations.	United Nations Treaty Collection: Updated May 2017, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang= en

Stateless Population Data

Cat	Q	Sub	Subtheme	Question	International Norms / Good Practice	Answer	Source
POP	1	a	Availability and sources	Does the Govt have a discrete category for statelessness in its data collection system (e.g. in the census)? If so, what are the Govt figures for the total stateless population on the territory? Is the data disaggregated? If so, how?	<ul style="list-style-type: none"> • Gen. Rec. 32 of CEDAW (para. 39): States parties should... gather, analyse and make available sex-disaggregated statistical data and trends... • European Council, Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness: Recognise the importance of exchanging good practices...concerning the collection of reliable data on stateless persons... • UNHCR Global Action Plan to End Statelessness 2014-2024 (Action 10): Improve quantitative and qualitative data on stateless populations... • Institute on Statelessness and Inclusion (The World's Stateless) pg.11: States should adopt and/or strengthen measures to count stateless persons on their territory... 	<p>In Malta, the possibility to be officially recognised as a stateless person does not exist. Data concerning stateless persons in Malta is nearly inexistent. In the 2011 census, some 200 persons were initially recorded as stateless but prior to publication, the NSO cross-checked the data with other administrative sources (such as the national Common Database) and established that all persons initially recorded as stateless during the 2011 Census had a nationality recorded elsewhere. The only other official reference to stateless persons is found in the annual Demographic Review, which is published by the National Statistics Office and comprises the main demographic events for the year as well as other relevant statistics, such as on migration. 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, 24 stateless individuals are reported to have obtained citizenship this way.</p> <p>The questionnaire for the 2011 census asks the following question:</p> <ul style="list-style-type: none"> • What is your country of birth? (with the possibility of respondents entering OTHER). If respondents answer NO to the question 'Do you have Maltese citizenship?', they are then asked, 'Do you have any foreign citizenship?' If they also answer NO to this, then there are no further questions on citizenship. 	<p>UNHCR: <i>Mapping Statelessness in Malta</i>, August 2014, available at: http://www.refworld.org/docid/546dae5d4.html</p> <p>National Statistics Office (Malta), 2011 Questionnaire, available here: https://nso.gov.mt/en/nso/Sources_and_Methods/Unit_01/Methodology_and_Research/Documents/Questionnaires/Census_of_Population_and_Housing_2011.pdf</p>
POP	1	b		Do Govt authorities define categories of persons who may overlap with stateless	As above	The Office of the Refugee Commissioner reported on numbers of persons with nationality 'not known' in 2013, and reports Palestine as a nationality category. The Immigration Police have	UNHCR: <i>Mapping Statelessness in Malta</i> , August 2014, p.47, available at:

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				(e.g. unknown nationality, unspecified nationality, other)? Are statistics on these available? If, yes, please indicate categories and statistics.		data on refused asylum-seekers in respect of whom return has proved impossible or difficult. Statistics are not readily available but may be requested.	http://www.refworld.org/docid/546dae5d4.html
POP	1	c		What is the UNHCR estimate for the population of stateless persons and/or those at risk of statelessness on the territory? What is UNHCR's source for this information?	As above	<p>According to UNHCR, 94 stateless persons obtained citizenship in Malta between the years 1991-2008 and estimates are that this figure has remained stable.</p> <p>UNHCR does not have official statistics for the stateless population in Malta.</p>	<p>UNHCR: <i>Mapping Statelessness in Malta</i>, August 2014, p.48, available at: http://www.refworld.org/docid/546dae5d4.html</p> <p>UNHCR, Statistics on Stateless Persons, available here: http://www.unhcr.org/en-us/protection/statelessness/546e01319/statistics-stateless-persons.html</p>
POP	1	d		Are there indirect (proxy) sources of statistics on stateless persons? E.g. categories of persons for which statistics are available where stateless persons may be more highly represented (e.g. relevant country of origin or profiles (e.g. Palestinians or Syrian Kurds)? Please provide	As above	<p>Through the research carried out for the UNHCR mapping study, it was observed that the stateless category in the Demographic Review and published on the EUDO website consists of a mixture of persons of undetermined nationality but also stateless persons such as Palestinians. The Office of the Refugee Commissioner, and the Immigration Police could also act as indirect sources of data, yet this data would need to be analysed for variations and specific elements.</p>	<p>UNHCR: <i>Mapping Statelessness in Malta</i>, August 2014, p.48, available at: http://www.refworld.org/docid/546dae5d4.html</p>

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				explanation and figures.			
POP	1	e		Have there been surveys or mapping studies done to estimate the population of stateless persons in the country?	<ul style="list-style-type: none"> • UNHCR Global Action Plan to End Statelessness 2014-2024: Action 10 	Not apart from the UNHCR Mapping Study, 2014.	UNHCR: <i>Mapping Statelessness in Malta</i> , August 2014, available at: http://www.refworld.org/docid/546dae5d4.html
POP	1	f		Are there other sources of estimates for the population of stateless persons (not covered by the above)? If so, list sources and figures.	As above	No.	
POP	1	g		Are there issues with reliability of stateless data? If yes, please describe why.	As above	Data concerning stateless persons in Malta is nearly inexistent. The Mapping Statelessness in Malta study focuses on asylum seekers and former asylum seekers from particular countries of origin since this is the population amongst whom it is most likely that stateless persons can be identified. Other population groups, and therefore other causes of statelessness, have not been explored.	UNHCR: <i>Mapping Statelessness in Malta</i> , August 2014, available at: http://www.refworld.org/docid/546dae5d4.html
POP	1	h		Are there indications that the stateless population is either over or under reported? Please describe.	As above	The indications are that the population of statelessness in Malta may be under reported due the fact that there is very limited data, the data collection methods are poor, and there is no mechanism in place to identify and determine statelessness.	UNHCR: <i>Mapping Statelessness in Malta</i> , August 2014, pp. 46-48, available at: http://www.refworld.org/docid/546dae5d4.html
POP	1	i		Please provide any available figures on stateless refugees or asylum seekers (if there is data, please clarify whether Govt	As above	According to UNHCR data on asylum applications in Malta in 2016, of the approximately 1600 people who applied for asylum in Malta, approximately 100 were from an unknown country. The initial question asked by RefCom, regarding the nationality of asylum-seekers is:	UNHCR: <i>Malta Asylum Trends 2016</i> , available at: http://www.unhcr.org/mt/charts/category/17/year/9

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				also counts stateless refugees and asylum seekers in the stateless population to avoid under/over reporting).		CITIZENSHIP AT BIRTH AND AT PRESENT. It is not known whether NONE or N/A would be an acceptable answer.	
POP	2	a	Stateless in Detention data	Number of stateless persons in immigration detention	As above and see also norms in Detention section.	According to the authorities, 20 asylum seekers were detained in 2016. For most of the cases, the detention was based on the ground that the identity of the individual had yet to be determined and that the asylum claim could not be ascertained in the absence of detention i.e. risk of absconding. Given the lack of reporting of Statelessness in Malta it is difficult to accurately understand exactly how many people in detention are stateless. In 2016-2017, a group of refused asylum-seekers from Mali were detained with a view to their removal. The removal was not possible since the Malian authorities refused to cooperate, and all were eventually released.	aditus foundation & Jesuit Refugee Service: <i>Asylum Information Database, Country Report, Malta, 2016</i> update, available at: http://www.asylumineurope.org/reports/country/malta/general http://www.maltatoday.com.mt/news/national/74424/malians-facing-deportation-released-after-three-months-#WUj6rclLdTY
POP	2	b		Are there statistics on individuals released from immigration detention who were un-removable, their country of origin and length of detention? If yes, please provide.	As above	Not publicly available.	

Statelessness Determination and Status

Cat	Q	Sub	Subtheme	Question	International Norms / Good Practice	Answer	Source
IDP	1	a	Existing SDP procedure	<p>Which of the following best describes the situation in your country (choose only one and then proceed to the question indicated)?</p> <ol style="list-style-type: none"> There is a dedicated Statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure (proceed to Question 2a). There is no dedicated SDP procedure but there are other administrative procedures by which statelessness can be identified (e.g. through citizenship, residence permit and international protection procedures or ex-officio) (proceed to Question 10a). There is a dedicated statelessness status even if no formal procedure exists for determining this (proceed to Question 16a). If none of the above describe the situation in your country, are there other possibilities by which stateless persons can regularise their stay without their statelessness being determined (proceed to Question 17a)? 	<ul style="list-style-type: none"> UNHCR (2014), Handbook on Protection of Stateless Persons: ... 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. UNHCR (Good Practices Paper 6): Establishing a statelessness determination procedure is the most efficient means for States Parties to the 1954 Convention to identify the beneficiaries of that Convention. European Council, Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness: Recognise the importance of exchanging good practices among Member States concerning... procedures for determining statelessness. 	<p>Group 4.</p> <p>However, the Office of the Refugee Commissioner can recommend Temporary Humanitarian Protection or Temporary Humanitarian Protection N (THP/N), which are local types of protection. THP is granted in cases where the applicant’s claim for international protection has been rejected, but due to certain humanitarian reasons the Office grants him/her this form of local protection. Such cases include unaccompanied minors, terminally ill or seriously ill persons, and in order to maintain family unity. THP/N beneficiaries (phased out in October 2017) are also refused asylum-seekers who fulfil a specific set of integration-related criteria and who cannot be returned through no fault of their own. It is possible that there are stateless people amongst these two groups.</p> <p>There are also cases known to UNHCR of individuals/families with specific ethnic backgrounds who enjoy subsidiary protection but who might be potentially stateless.</p>	<p>Aditus Foundation & Jesuit Refugee Service: <i>Asylum Information Database, Country Report, Malta</i>, 2016 update, available at: http://www.asylumineurope.org/reports/country/malta/general</p> <p>UNHCR: <i>Mapping Statelessness in Malta</i>, August 2014, p.20 & p.65, available at: http://www.refworld.org/docid/546dae5d4.html</p>

IDP	17	a	Other routes to regularisation (if no options under IDP1-16 above)	<p>If none of the above questions can be answered, are there other possibilities by which stateless persons can regularise their stay without their statelessness being determined? For each such status please explain the rights during the procedure. For each such status explain the rights granted to beneficiaries. [Section complete]</p>	<p>See above re TNP/N. In both cases applicants have no rights in the procedure since it is entirely at the discretion of the Office of the Refugee Commissioner. Rights related to THP/N if granted are based in policy rather than law and include:</p> <ul style="list-style-type: none"> • 1-year renewable residence permit (i.e. protection from removal but not considered regularisation); • Access to state health services on the same basis as nationals; • Access to the labour market. <p>Stateless people who are granted subsidiary protection have, under Article 20 of Legal Notice 243/2008 of the Laws of Malta, the right to remain in Malta with freedom of movement, and to be granted, as soon as possible, personal documents, including a residence permit for a period of three years, which shall be renewable:</p> <ul style="list-style-type: none"> • Provided that a residence permit to be granted to a family member may be valid for at least three years and shall be renewable; • unless he is in custody awaiting judicial proceedings for the commission of a criminal offence, or is serving a term of imprisonment, to be given a Travel Document in accordance with relevant provisions of national law in the case of a beneficiary of subsidiary protection, entitling him to leave and return to Malta without the need of a visa; • to have access to employment, social welfare, appropriate accommodation, integration programmes, State education and training, and to receive State medical care: • Provided that the social welfare benefits granted to 	<p>Various NGOs, Joint NGO Input on Temporary Humanitarian Protection N (November 2016), available at: http://aditus.org.mt/Publications/THPNsubmissions_2016.pdf</p>
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					<p>beneficiaries of subsidiary protection may be limited to core social welfare benefits.</p> <ul style="list-style-type: none"> • Family members of a person granted subsidiary protection, if they are in Malta at the time of decision, enjoy the same rights and benefits as the person enjoying subsidiary protection status so that family unity may be maintained. • Persons granted the status of refugee or subsidiary protection and who are considered as vulnerable persons shall, as far as possible, be provided with adequate healthcare. <p>Beneficiaries of subsidiary protection may try to apply for citizenship after several years in Malta (usually 18-20 years), but the procedure is at the discretion of the Minister and rarely granted.</p>	
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Detention

Cat	Q	Sub	Subtheme	Question	International Norms / Good Practice	Answer	Source
DET	1	a	Detention screening	Are immigration detention powers provided for in law?	<ul style="list-style-type: none"> • ICCPR Art 9 (1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. • ECHR Art 5 (1): Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition. 	<p>Yes, these are powers provided for in law for the detention of:</p> <ol style="list-style-type: none"> 1. Asylum-seekers; 2. Third country nationals (TCN) denied entry at the border; 3. Third country nationals in an irregular situation (including refused asylum-seekers); and 4. People awaiting Dublin transfer. 	<p>The relevant source for each group is:</p> <ol style="list-style-type: none"> 1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662 2. Immigration Act, Chapter 217 of the Laws of Malta, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1 3. Subsidiary Legislation 217.12, Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, 2011, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1 4. EU Dublin Regulation, available at: http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604
DET	1	b		In what circumstances does the law provide for immigration detention? Does	<ul style="list-style-type: none"> • ECHR Art 5 (1)(f) 	<ol style="list-style-type: none"> 1. The same grounds found in the recast EU Reception Directive; 2. When a TCN is refused entry to the territory; 3. When a TCN is subject to return procedures and: <ul style="list-style-type: none"> • Other sufficient and less coercive measures are inapplicable; 	<p>As above, but specifically:</p> <ol style="list-style-type: none"> 1. Section 6; 2. Section 10 3. Regulation 11(6).

				domestic law allow immigration detention for purposes other than those allowed under ECHR 5(1)(f)?		<ul style="list-style-type: none"> • Detention is necessary to carry out the return and removal procedure, in particular where: (i) there is a risk of absconding; OR (ii) the TCN avoids or hinders return or removal procedure. <p>5. However, despite above criteria, the law states that “<i>detention shall be a consequence of the removal order</i>”, so the relevance of the criteria is questionable.</p>	
DET	1	c		Does a proposed country of removal need to be identified before a person is detained for the purpose of removal? Please describe the situation in law and in practice.	<ul style="list-style-type: none"> • ICCPR Art 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Repeated attempts to expel a person to a country where his/her well-being is not guaranteed and where he/she could be subject to cruel, inhuman or degrading treatment or punishment or to a country that is refusing to admit the individual in question could amount to inhuman or degrading treatment. • ECHR Art 5 (1)(f) • Auad v Bulgaria [2011] Application no 46390/10 (ECtHR): ...the only issue is whether or not the authorities were sufficiently diligent in their efforts to deport the applicant. • EU Returns Directive: Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence. • ECRE, Point of No Return: The Futile Detention of Unreturnable Migrants, 2014: Once un-returnability is established, migrants should not be detained. 	<p>Detention for purposes of removal is envisaged for TCNs (2 & 3 above). The relevant laws do not specify the need for a country of removal to be identified. However, the Returns Regulations (and not the Immigration Act), contain the requirements of necessity, proportionality and due diligence. These may be interpreted as requiring an identified country of removal. Also, Regulation 11(11) states that the TCN will be released immediately where removal cannot take place due to legal or other considerations. Also, Regulation 11(14) states that where “<i>a reasonable prospect of removal no longer exists for legal or other considerations...detention ceases to be justified...</i>”</p> <p>Furthermore, the inclusion of the ECHR into Maltese law is also relevant due to the guarantees of Article 5(1)(f).</p>	<p>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</p> <p>European Convention Act, Ch. 319 of the Laws of Malta, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8795&l=1</p>
DET	1	d		Is statelessness a juridically relevant fact in	<ul style="list-style-type: none"> • Auad v Bulgaria [2011] Application no 46390/10 (ECtHR): as above. 	<p>Statelessness is not considered in any decision to detain. The decision to release a detainee is not based on potential statelessness. There is no</p>	<p>https://www.timesofmalta.com/articles/view/20170214/local/malians-to-be-released-</p>

			<p>any decision to detain (in practice and in law)? If so, at what point(s) is a risk of statelessness identified? Is referral to an SDP possible within the detention regime?</p>	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary... For stateless persons, the absence of status determination procedures to verify identity or nationality can lead to prolonged or indefinite detention. SDPs are therefore an important mechanism to reduce the risk of prolonged and/or arbitrary detention. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 13 – states must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights. • International Commission of Jurists, Migration and International Human Rights Law: a Practitioner’s Guide 2014: the detention of stateless persons can never be justified when there is ‘no active or realistic progress towards transfer to another State’. 	<p>procedure to identify or determine statelessness in Malta. There have been instances of people being released from detention when it was clear that their removal would not be possible due to lack of cooperation from the country of origin or failure to confirm nationality.</p>	<p>after-controversial-three-month-detention.639627</p>
1	e		<p>Are stateless persons detained in practice? Please provide figures and source of information if available.</p>	<ul style="list-style-type: none"> • Ariad v Bulgaria [2011] Application no 46390/10 (ECtHR): as above. • UNHCR (2014), Handbook on Protection of Stateless Persons: as above. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: as above. • International Commission of Jurists, Migration and International Human Rights Law: a Practitioner’s Guide 2014: as above. 	<p>Yes. According to the Government, 20 people were detained in 2016, in most cases based on the ground that their identity had yet to be determined and elements of their protection claim could not be ascertained in the absence of detention i.e. risk of absconding.</p> <p>The (im)possibility of return is not taken into account at the moment of taking a decision to detain, as this becomes a relevant fact once concrete attempts to remove are actually initiated. Also, persons denied access to the territory and detained could also be stateless.</p>	<p>Aditus Foundation & Jesuit Refugee Service: <i>Asylum Information Database, Country Report, Malta, 2016 update</i>, available at: http://www.asylumineurope.org/reports/country/malta/general</p>

						UNHCR’s figures for November and December 2016 are: 41 individuals detained in Safi and Mount Carmel. UNHCR was not present in detention during some months due to staff capacity issues so this figure is likely to be higher in reality higher.	UNHCR Country Office, Malta.
DET	1	f		Does law (and/or policy) provide that immigration detention should be used only as a last resort, after all alternatives to detention have been exhausted?	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: Detention is therefore a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful governmental objective pursued by detention. • EU Returns Directive: Art 15(1) Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process. 	<p>In the case of asylum-seekers, the law (and/or policy) does not provide that detention should be a last resort. The authorities have discretion as to whether to consider less coercive measures. Rather than alternatives being use first, as an alternative, they are being used after the person has been detained as a form of ‘temporary early release’. In fact, ATDs are not referenced in the legislation, instead it is referred to as temporary early release.</p> <p>For persons detained pre-removal it does. Furthermore, detention of Unaccompanied Asylum-Seeking Minors and families with minor children is specifically singled out as requiring the last resort and shortest time possible tests.</p> <p>For persons denied leave to enter, law/policy does not provide that detention should be a last resort.</p>	<p>UNHCR Country Office, Malta.</p> <p>Regulation 11(6), Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, Legal Notice 81 of 2011, 11 March 2011. Regulation 10, for UAMs and families with minor children. Available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1</p>
DET	1	h		Are individual vulnerability assessments carried out before a decision to detain (or shortly thereafter), and are stateless persons defined as a vulnerable group?	<ul style="list-style-type: none"> • ENS (2015) Protecting Stateless Persons from Arbitrary Detention: a regional toolkit for practitioners: Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless persons are not understood and addressed... • EU Returns Directive: Art 16(3) Particular attention shall be paid to the situation of vulnerable persons... 	<p>With regard to vulnerable asylum-seekers, including minors and unaccompanied minors, the amended legislation and policy prohibit their detention. Reception Regulations state that “<i>whenever the vulnerability of an applicant is ascertained, no detention order shall be issued or, if such an order has already been issued, it shall be revoked with immediate effect.</i>” Upon arrival at the border, unaccompanied minors, family groups with children and other manifestly vulnerable persons would be prioritised during the</p>	<p>Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662</p> <p>Aditus Foundation & Jesuit Refugee Service: <i>Asylum Information Database, Country</i></p>

				<ul style="list-style-type: none"> • UNHCR (2012), Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention: The special circumstances and needs of particular asylum-seekers must be taken into account... • Council of the European Union Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons 2013: European entities should assess the situation of LGBTI persons in detention... 	<p>preliminary screening. When an asylum seeker is deemed vulnerable, following a vulnerability assessment, he or she will not be detained and will be accommodated immediately in a reception centre and assisted according to his or her vulnerability... According to the Regulations, whenever the vulnerability becomes apparent at a later stage, assistance and support would be provided from that point onwards. In order to give effect to this policy, two procedures are in place to assess 'vulnerability' in individual cases. These procedures are known as the Age Assessment Procedure and the VAAP (see section on Identification). Both of these procedures are officially implemented by the Agency for the Welfare of Asylum-Seekers (AWAS). This procedure was established with boat arrivals in mind and is not used for all asylum-seekers reaching Malta. In the case of asylum-seekers arriving by plane:</p> <ul style="list-style-type: none"> • Persons denied access to the territory, even if asylum-seekers, are not assessed for vulnerability before a detention decision is taken. • Persons detained pending removal are not screened for vulnerability before a Detention Order is issued. <p>In all situations, statelessness is not considered to be a factor affecting vulnerability.</p>	<p><i>Report, Malta, 2016 update, available at:</i> http://www.asylumineurope.org/reports/country/malta/general</p>
DET	1	i	<p>Are there measures to protect stateless persons scheduled for deportation because of criminal records from arbitrary detention?</p>	<ul style="list-style-type: none"> • OHCHR, Administrative Detention of Migrants: [detention] should last only for the time necessary for the deportation/expulsion to become effective. • Mikolenko v. Estonia, Application no. 10664/05, 8 October 2009 (ECtHR): Detention is justified as long as "deportation proceedings are being conducted" and these proceedings must be carried out with due diligence... when 	<p>Nothing that is not mentioned above.</p>	

					<p>A/HRC/20/24: Alternatives to detention should not become alternatives to unconditional release [...] the obligation to always consider alternatives to detention (non-custodial measures) before resorting to detention should be established by law.</p> <ul style="list-style-type: none"> • Council of Europe (2005), Twenty Guidelines of the Committee of Ministers of Europe on Forced Return: After a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the host state have concluded that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems. • EU Returns Directive: Art 15(1) Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: (31) ...states have an obligation in the first instance to consider and apply appropriate and viable alternatives to immigration detention that are less coercive and intrusive than detention, ensure the greatest possible freedom of movement and that respect the human rights of the individual. 		
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				<ul style="list-style-type: none"> • International Detention Coalition (2015), There Are Alternatives: A handbook for preventing unnecessary immigration detention (revised edition): immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case. 			
DET	2	b		<p>Is there evidence that immigration detention is used in practice prior to all alternatives being considered? Please cite relevant reports.</p>	<p>As above</p>	<p>Yes, according to the authorities, 20 asylum seekers were detained in 2016. It seems that no assessment as to the possibility of applying alternatives was made. JRS and aditus foundation have noted that people arriving irregularly by plane and apprehended at the airport are usually detained immediately without being taken to the centre where individual assessments are supposed to take place. Attempts to challenge this almost automatic detention before the Immigration Appeals Board and the Criminal Courts have proved unsuccessful.</p> <p>There is evidence from UNHCR and JRS monitoring reports that immigration detention is used in practice prior to all alternatives being considered.</p>	<p>Aditus Foundation & Jesuit Refugee Service: <i>Asylum Information Database, Country Report, Malta, 2016 update</i>, available at: http://www.asylumineurope.org/reports/country/malta/general</p> <p>UNHCR Country Office, Malta - These reports have not been published since they are part of ongoing monitoring activities.</p>
DET	3	a	Procedural safeguards	<p>Is there a maximum time period for immigration detention set out in the law? What is it?</p>	<ul style="list-style-type: none"> • UN Human Rights Council (HRC) (2010), Report of the UN Working Group on Arbitrary Detention to the Human Rights Council, 13th Session, A/HRC/13/30: a maximum period of detention must be established by law and upon expiry of this period the detainee must be automatically released. • UNHCR (2012), Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention : to guard against 	<ol style="list-style-type: none"> 1. 9 months maximum for asylum-seekers; 2. TCNs awaiting return – “for a short period’, initial period of 6 months extendable by a further 12 months where there is lack of cooperation by the TCN OR there are delays in obtaining the necessary documents from the third country in question; 3. No time limit for persons denied entry. 	<ol style="list-style-type: none"> 1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=Iom&itemid=10662 2. Returns Regulations, Regulation 11(12) and (13), available at: http://www.justiceservices.gov

				<p>arbitrariness, maximum periods of detention should be set in national legislation.</p> <ul style="list-style-type: none"> • EU Returns Directive: Art 15(5) Each Member State shall set a limited period of detention, which may not exceed six months (extendable by 12 months in specific circumstances of the detainee refusing to cooperate with removal proceedings or delays in obtaining documentation from third countries). • ENS (2015) Protecting Stateless Persons from Arbitrary Detention: a regional toolkit for practitioners: It is desirable that states clearly specify a reasonable maximum time limit. Under no circumstances should indefinite detention be tolerated. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 39 Detention should always be for the shortest time possible. There should be a reasonable maximum time-limit for detention. It is highly desirable that states do not detain stateless persons for more than six months. States which at present have a lower than six-month maximum time-limit for detention are urged not to increase it, and all states are urged to review and reduce their maximum time limit for detention. 		<p>.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1</p>
DET	3	h	Does law/policy provide that individuals must be informed in writing of the reasons for	<ul style="list-style-type: none"> • UN General Assembly (UNGA) (1988), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Resolution A/RES/43/173: Anyone who is arrested shall be informed at the time of his arrest of the reason for his 	<ol style="list-style-type: none"> 1. Asylum-seekers – YES, in a language the applicant is reasonable supposed to understand; 2. Pending removal – NO 3. Denied entry - NO 7. 8. In practice, information on rights and obligations as well as the asylum process and possible 	<ol style="list-style-type: none"> 1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, Regulation 6(2), available at: http://justiceservices.gov.mt/D

				immigration detention?	<p>arrest and shall be promptly informed of any charges against him.</p> <ul style="list-style-type: none"> • EU Returns Directive: Detention shall be ordered in writing with reasons being given in fact and in law. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 37 Stateless detainees shall receive their order of detention in writing and in a language they understand and this must outline the reasons for their detention. 	<p>outcomes are not provided for by the government. UNHCR and other NGOs fill this gap. Additionally, detention orders, if given, are always in English. UNHCR staff have never come across a detention order written in any other language.</p>	<p>ownloadDocument.aspx?app=lom&itemid=10662</p> <p>UNHCR Country Office, Malta</p>
DET	3	b		<p>Are all detainees provided with information on their rights, contact details of organisations to assist them, including in challenging the legality of their detention and conditions of detention? Does this include guidance on how to access a dedicated SDP?</p>	<ul style="list-style-type: none"> • International Commission of Jurists (ICJ) (2014), Migration and International Human Rights Law: a Practitioner’s Guide (updated edition): The authorities are required to take steps to ensure that sufficient information is available to detained persons in a language they understand, regarding the nature of their detention, the reasons for it, the process for reviewing or challenging the decision to detain. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 37 Detainees must be informed of their rights related to the detention order, including the right to legal advice, the right to apply for bail, seek judicial review and/or appeal the legality of the detention. Where appropriate, they should receive free legal assistance; they must be informed of the maximum time limit which they can be held in detention; and they must be provided with a handbook in a language which they understand and that contains information on all their rights and entitlements during detention. 	<ol style="list-style-type: none"> 1. In the case of asylum-seekers, the Detention Order contains information on procedures to challenge detention and obtain free legal aid. 2. In the case of those denied entry, there is no specific mention of the obligation to provide such information. 3. In the case of detention for removal the Regulations state that the detainee shall be provided with information regarding the detention facility rules, rights and obligations, and entitlement to contact organisations and other bodies. <p>In practice, it is not clear if information on rights/obligations in detention is actually provided, since visiting NGOs (JRS Malta and aditus foundation) have not come across this.</p>	<ol style="list-style-type: none"> 1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, Regulation 6(2), available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662 2. N/A 3. Returns Regulations, Regulation9(5), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1

DET	3	c		<p>Are there regular periodic reviews of the necessity for the continuation of detention before a court or an independent body? If yes, are detainees released when it becomes evident that their removal will not be possible within a reasonable time?</p> <ul style="list-style-type: none"> • ICCPR Art 9(3): Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. • EU Returns Directive: Any detention shall ... only be maintained as long as removal arrangements are in progress and executed with due diligence. • Aaad v Bulgaria [2011] Application no 46390/10 (ECtHR): ...the only issue is whether or not the authorities were sufficiently diligent in their efforts to deport the applicant... the length of the detention should not exceed that reasonably required for the purpose pursued. • Kim v Russia [2014] Application no 44260/13 (ECtHR): The purpose of Art 5(4) ECHR is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected. • A. v. Australia, CCPR/C/59/D/560/1993, (HRC): Decisions to detain should be open to review periodically so that the grounds justifying the detention can be assessed. • Saïd Shamilovich Kadzoev v Direktsia Migratsia' priMinisterstvo na vatreshniteraboti [2009] Case C-357/09 (ECJ): There must, at the time of the national Court's review of the lawfulness of detention, be a real prospect that the removal can be carried out successfully. • Council of Europe (2005), Twenty Guidelines of the Committee of Ministers of 	<p>1. Asylum-seekers: YES. The Immigration Appeals Board reviews the lawfulness of their detention within 7 working days from the Detention Order, extendable for another 7 working days for duly justified reasons. It is unclear if the extension refers to the timeframe within which the review must happen, or to the additional period for which a person may be detained following the first review. After this first period, reviews are held by the IAB every 2 months. If detention is not legal, the Board shall order immediate release. From practice observed in 2016, a review of detention is not usually carried out after the first 7 days but after a few weeks. Furthermore, due to the unclear wording of the law, the IAB, NGOs and legal practitioners fail to agree on the precise detention review schedule required by the Regulations.</p> <p>2. Denied entry: NO.</p> <p>3. Pending removal: YES, either on application or <i>ex officio</i> by the Principal Immigration Officer at reasonable intervals of time. These intervals are not defined by the law, but they should not exceed 3 months. If detention is for 6 months or more, the PIO shall conduct the review and notify the IAB to supervise and, where necessary, revise such review.</p> <p>9. 10.</p>	<p>Aditus Foundation & Jesuit Refugee Service: <i>Asylum Information Database, Country Report, Malta</i>, 2016 update, available at: http://www.asylumineurope.org/reports/country/malta/general</p> <p>1. Reception Regulations, Regulation 6(3)&(4), available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app= lom&itemid=10662</p> <p>2. N/A</p> <p>3. Returns Regulations, Regulation 11(8), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1</p>
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				<p><u>Europe on Forced Return</u>: Detention pending removal shall be justified only for as long as removal arrangements are in progress. If such arrangements are not executed with due diligence the detention will cease to be permissible.</p> <ul style="list-style-type: none"> • <u>Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention</u>: Guideline 41 To avoid arbitrariness, detention should be subject to automatic, regular and periodic review throughout the period of detention, before a judicial body independent of the detaining authorities. 		
DET	3	d	<p>What remedies are available to an individual to challenge detention? How often can these be invoked? Are there any obstacles in practice?</p>	<ul style="list-style-type: none"> • <u>ICCPR Art 9(4)</u>: Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. • <u>ECHR</u>: Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. • <u>Kim v Russia [2014] Application no 44260/13 (ECtHR)</u>: the purpose of Art 5(4) ECHR is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected. 	<ol style="list-style-type: none"> 1. Asylum-seekers: applicants may challenge the Detention Order before the IAB within 3 working days. Legal aid is available for those without sufficient resources. In practice, it is very difficult to challenge the Detention Order as there is a lack of expertise among legal aid lawyers and the IAB, which meets only once a week, and a lack of understanding among detainees of their rights. These difficulties were also highlighted by ECtHR in cases brought against Malta by detained asylum seekers (Louled Massoud, Aden Ahmed, and Ibrahim Suso). 2. Denied entry: same as above. 3. Pending Removal: the TCN can trigger automatic review by the Principal Immigration Officer, by application. In practice, it is difficult for NGOs to access this group as they may be detained for only a short time (hours/days), as they await the return flight to their country of origin. Whilst we do come across some people, particularly if detained for days, we 	<ol style="list-style-type: none"> 1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, Regulation 16, available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=Iom&itemid=10662 <ul style="list-style-type: none"> • ECtHR, LOULED MASSOUD v. MALTA, Application no. 24340/08, 2010, para 69 • Aden Ahmed v. Malta, Application No. 55352/12, Council of Europe: European Court of Human Rights, 23 July 2013, available at: http://www.refworld.org/cases,ECHR,52025bb54.html <ul style="list-style-type: none"> • ECtHR, Suso Musa v Malta, Application no. 42337/12, 2013 11. • Immigration Act, Section 25(A), available at:

						know that we miss many individuals because they are returned too quickly. Their access to remedies is severely hampered by the speed and lack of monitoring of their situation.	http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8722&l=1 12. • Return Regulations, Regulation 11(8), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11637&l=1 13. 14. Aditus foundation casework practice.
DET	3	e	<p>Are there rules/guidance in place that govern the process of re-documentation and/or ascertain entitlement to nationality, for the purpose of removal? Do these rules articulate the respective roles that state and individual are expected to play? Are there time limits clearly set out? Are the outcomes of such processes used/considered relevant for subsequent determination of</p>	<ul style="list-style-type: none"> • Auad v Bulgaria [2011] Application no 46390/10 (ECtHR): The only issue is whether or not the authorities were sufficiently diligent in their efforts to deport the applicant. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation (see also above). • ENS (2015) Protecting Stateless Persons from Arbitrary Detention: a regional toolkit for practitioners: The detaining state should have rules in place that govern the process of re-documentation and/ or ascertaining entitlement to nationality...the respective roles that the state and the individual should be expected to play and related time limits should be clearly articulated. The longer it takes to do so, detention is more likely to become unreasonable and disproportionate. • ECRE, Point of No Return: The Futile Detention of Unreturnable Migrants, 2014: 	No.		

				whether an individual is stateless?	Once un-returnability is established, migrants should not be detained. Detention should not be used for nationals of countries to which forced returns are not generally possible.		
DET	3	f		Is free legal aid available to challenge detention? Are there any barriers to accessing this in practice?	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means. • EU Returns Directive: Art 13(3) The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. 	<ol style="list-style-type: none"> 1. Asylum-seekers: yes, there is a right to legal aid if they are of insufficient means. Free legal assistance and representation is defined as “the preparation of the required procedural documents and participation in the hearing before the Immigration Appeals Board.” In practice, although the law envisages a series of review sessions to be conducted by the IAB, legal aid is only provided for the first session. 2. Denied entry: legal aid not available. 3. Pending removal: legal aid not available. 	<p>Aditus Foundation & Jesuit Refugee Service: <i>Asylum Information Database, Country Report, Malta</i>, 2016 update, available at: http://www.asylumineurope.org/reports/country/malta/general</p> <p>1. Reception Regulations, Regulation 16, available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662</p>
DET	4	a	Protection s on release	Are those released from detention issued with any identification, including confirmation of their statelessness status, and thus protected from arbitrary re-detention?	<ul style="list-style-type: none"> • UN Convention Relating to the Status of Stateless Persons, 1954: Art 27 • UNHCR (2014), Handbook on Protection of Stateless Persons: Statelessness, by its very nature, severely restricts access to basic identity and travel documents that nationals normally possess. Moreover, stateless persons are often without a legal residence in any country. Thus, being undocumented or lacking the necessary immigration permits cannot be used as a general justification for detention of such persons. • ENS (2015) Protecting Stateless Persons from Arbitrary Detention: a regional toolkit for practitioners: Article 27 of the 1954 Statelessness Convention... applies to all stateless persons, which includes those not 	<ol style="list-style-type: none"> 1. Asylum-seekers: are given on release a document stating that they are asylum-seekers, in accordance with the recast EU Reception Directive. 2. & 3. In the case of those denied entry or detained pending removal, if they do not have their own identification documents, or if these are found to be false, the Immigration Police will issue a document showing basic bio details, together with an Immigration Number. This is not an official identification document but merely an administrative tool for recording the presence of the TCN in Malta. 	<ol style="list-style-type: none"> 1. Regulation 5(1), Reception Regulations, available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662 2. & 3. Information based on aditus foundation practice/casework.

				<p>staying legally in the state’s territory... state parties to the 1954 Convention have an obligation to provide stay rights to stateless persons who have been released from detention.</p> <ul style="list-style-type: none"> • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guidelines 55 & 56 Special care should be taken to address the vulnerabilities of stateless persons who are released from detention and to ensure that they enjoy all human rights which they are entitled to under international law... Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation. 		
DET	4	b	<p>If the purpose of detention cannot be fulfilled (e.g. removal) and the person is released, what legal status is provided to them by law? Can they access social services, accommodation, welfare, education and healthcare? Do they have the right to work?</p>	<ul style="list-style-type: none"> • Saïd Shamilovich Kadzoev v Direktsia Migratsia’ pri Ministerstvo na vatrešnite raboti [2009] Case C-357/09 (ECJ): Article 15(4) and (6) of the Directive should be interpreted as requiring that after the maximum period of detention has expired, the person must be released immediately... the individual’s lack of valid documentation, his/her inability to support him/herself or his/her “aggressive conduct” should not be a deterrent to his/her release. • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 55 as above. 	<ol style="list-style-type: none"> 1. If released, asylum-seekers enjoy rights under the Reception Regulations. 2. & 3. For those detained pending removal or on being denied entry, in practice, they would live in the community with tolerated stay, with few recognised rights. They would have: <ul style="list-style-type: none"> 15. • Access to the labour market, with a work permit issued in the name of the employer; • Access to public health system if they can show payment of a relatively small number of security contribution in the past 3 months. 	<ol style="list-style-type: none"> 1. Subsidiary Legislation 420.06, Amended by Law 417 of 2015, Reception of Asylum Seekers Regulations 2005, available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662 2. & 3. Based on aditus foundation practice/casework.
DET	4	c	<p>If re-detention does occur, is the cumulative time spent in</p>	<ul style="list-style-type: none"> • Equal Rights Trust (ERT) (2012), Guidelines to Protect Stateless Persons from Arbitrary Detention: Guideline 40 When calculating the total time spent by an individual in 	<p>It is unclear whether cumulative time spent in detention counts towards the maximum time limit.</p>	

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				detention counted towards any maximum time limits?	detention, it is highly desirable that time spent in detention on previous occasions is taken into consideration.		
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Prevention and Reduction

Cat	Q	Sub	Subtheme	Question	International Norms / Good Practice	Answer	Source
PRS	1	a	Stateless born on territory	Is there a provision in law for stateless children born on the territory to be granted nationality? If yes, continue with PRS1b below. If no, proceed to PRS1j.	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless... • European Convention on Nationality, 1997: Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality... • Convention on the Rights of the Child 1989: The child shall have... the right to acquire a nationality... States Parties shall ensure the implementation of these rights...in particular where the child would otherwise be stateless... States Parties undertake to respect the right of the child to preserve his or her identity, including nationality... • Genovese v. Malta (ECtHR) Application No. 53124/09, 11 October 2011 	Yes. A stateless person (who is and has always been stateless) born in Malta is entitled to be naturalised if: <ol style="list-style-type: none"> 1. he has been ordinarily resident in Malta for 5 years immediately preceding the application; AND 2. he has not been convicted in any country of an offence against the security of the State or sentenced in any country to a punishment restrictive of personal liberty for a term of not less than 5 years. However, the CRC Committee has expressed concern about the application of the safeguard. 	<p>Citizenship Act, Chapter 188 Section 10(6)&(7), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1</p> <p>Committee on the Rights of the Child, Concluding Observations on the second periodic report of Malta, adopted by the Committee at its sixty-second session (14 January–1 February 2013), 18 June 2013, CRC/C/MLT/CO/2, para. 34-35, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&Lang=en</p>
PRS	1	b		Is the provision for stateless children to access nationality automatic or non-automatic (i.e. by application)?	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: Article 1 of the 1961 Convention provides Contracting States with two alternative options for granting nationality to children who would otherwise be stateless born in their territory. States can either provide for automatic acquisition of nationality upon birth pursuant to Article 1(1)(a), or for acquisition of nationality upon application pursuant to Article 1(1)(b) ... • ENS (2015), No Child Should Be Stateless: Article 1 of the 1961 Convention and article 6(2) of the ECN are the most important of these norms for the European context. Both oblige the conferral of nationality to children born on the territory if they would otherwise be stateless but allow some leeway in how states transpose this safeguard into their domestic systems. The first, and optimal, method – as it is all-encompassing and does not tolerate even a 	The provision is non-automatic, by application.	<p>Citizenship Act, Chapter 188 Section 10(6)&(7), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1</p>

				temporary period of statelessness – is to grant nationality to otherwise stateless children automatically, at birth.		
PRS	1	c	Is it a requirement that the parents are also stateless for the child to acquire the nationality of the host state?	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: The test is whether a child is stateless because he or she acquires neither the nationality of his or her parents nor that of the State of his or her birth; it is not an inquiry into whether a child’s parents are stateless. Restricting the application of Article 1 of the 1961 Convention to children of stateless parents is insufficient in light of the different ways in which a child may be rendered stateless and contrary to the terms of those provisions. • ENS (2015), No Child Should Be Stateless: Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the child’s parent(s) do hold a nationality themselves, but are unable to pass this on... 	No.	
PRS	1	d	Are children born stateless required to prove they cannot access another nationality to acquire nationality of the country of birth? If yes, please describe the requirement e.g. what is the standard and burden of proof, and how lack of any other nationality (i.e. statelessness) is determined in practice?	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: A Contracting State to the 1961 Convention cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless...based on its own interpretation of another State’s nationality laws where this conflicts with the interpretation applied by the State concerned... the burden of proof must be shared between the claimant and the authorities... decision makers need to take into account Articles 3 and 7 of the CRC and adopt an appropriate standard of proof, for example... ‘reasonable degree’... Requiring a higher standard of proof would undermine the object and purpose of the 1961 Convention. Special procedural considerations to address the acute challenges faced by children, especially unaccompanied children, in communicating basic facts with respect to their nationality are to be respected. 	The Act says that stateless persons born in in Malta must be and must have always been stateless. The practice of this is unknown as the safeguard has not been implemented in practice.	Citizenship Act, Chapter 188 Section 10(6), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS	1	e	Is a stateless child born on the territory required to fulfil a period of residence to be granted	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: A Contracting State may make the grant of its nationality...subject to one or more of the following conditions: <ul style="list-style-type: none"> ...b) that the person concerned has habitually resided in the 	Yes, a person shall not be entitled to be granted a certificate of naturalisation as a citizen of Malta under the provisions of that sub	Citizenship Act, Chapter 188 Section 10(6)&(7), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1

				<p>nationality? If yes, what is it? Must this be legal and/or permanent residence?</p>	<p>territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all.</p> <ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: States may stipulate that an individual who would otherwise be stateless born in its territory fulfils a period of “habitual residence” This period is not to exceed five years immediately preceding an application nor ten years in all. In light of the standards established under the CRC, these periods are lengthy. States which ...require a certain period of habitual residence are encouraged to provide for a period as short as possible...The term “habitual residence” is ...to be understood as stable, factual residence. It does not imply a legal or formal residence requirement. The 1961 Convention does not permit Contracting States to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon lawful residence. • Convention on the Rights of the Child 1989: Arts 3 & 7 • Committee on the Rights of the Child, Concluding observations on the 4th periodic report of the Netherlands CRC/C/NDL/CO/4, 2015: The Committee recommends that the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to citizenship without any conditions. • European Convention on Nationality, 1997: Article 6 (2)(b) ... Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application. • ENS (2016), Ending Childhood Statelessness: The ECN cannot be interpreted as undermining states’ obligations under the CRC...and the requirement of lawful residence should be removed. 	<p>article if the Minister is satisfied - (a) that he has not been ordinarily legal resident in Malta throughout the period of five years ending with the date of his application.</p>	
PRS	1	f		<p>Are the parents of a stateless child</p>	<ul style="list-style-type: none"> • Committee on the Rights of the Child, Concluding Observations Czech Republic CRC/C/CZE/CO/3-4, 2011: The 	<p>No.</p>	<p>Citizenship Act, Chapter 188 Section 10, available at:</p>

				<p>required to fulfil a period of residence for the child to be granted nationality? If yes, what is it? Must this be legal and/or permanent residence?</p>	<p>outcome of an application for citizenship, legal residence or similar status by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State party where the child would otherwise be stateless.</p> <ul style="list-style-type: none"> • ENS (2015), No Child Should Be Stateless: Demanding that the child or his/her parents reside lawfully on the territory is... prohibited by the 1961 Convention which permits only the condition of a certain period of habitual residence. 		<p>http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1</p>
PRS	1	g		<p>What are the age limits, if any, for making an application for nationality for a stateless person born on the territory?</p>	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: A Contracting State may make the grant of its nationality...subject to one or more of the following conditions: (a) that the application is lodged during a period... beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years... • UNHCR Guidelines on Statelessness #4 2012: ...Contracting States ...need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21 in accordance with Article 1(2)(a) of the 1961 Convention. • ENS (2015), No Child Should Be Stateless: ...any application procedure which only becomes available in late childhood or even upon reaching majority is particularly problematic [...] closing the window of opportunity to apply for a nationality through such safeguards too early has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child and may mean children are left stateless due to the lack of action on the part of their parents. 	<p>There are no specific age limits for making an application for nationality for a stateless person born on the territory.</p>	

PRS	1	h		Are there specific provisions for the nationality or statelessness of children born to beneficiaries of international protection?	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: Some children are born to refugee parents who are themselves stateless or cannot acquire the nationality of their parents owing to restrictions on transmission of nationality to children born abroad. Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities. 	No.	Citizenship Act, Chapter 188 Section 10, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS	2	a	Foundlings	Are foundlings granted citizenship <i>by law</i> ? If it's not automatic, is there an application procedure?	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State. • European Convention on Nationality, 1997: Each State Party shall provide in its internal law for its nationality to be acquired ex lege by the following persons: [...] b) foundlings found in its territory who would otherwise be stateless. 	Yes, foundlings are deemed to have been born in Malta and to have Maltese citizenship by origin.	Citizenship Act, Chapter 188 Section 17(3), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS	2	b		If yes to either question immediately above, is there an age limit (or status e.g. 'newborn') specified for foundlings to be granted citizenship? If not, when would a child usually qualify in practice?	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: At a minimum, the safeguard ... 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... If a State provides for an age limit for foundlings to acquire nationality, the age of the child at the date the child was found is decisive and not the date when the child came to the attention of the authorities. 	The law states that the " <i>new-born infant</i> " shall be a citizen of Malta at the date of birth. It is unclear whether this provision would apply to a foundling approaching the authorities at a later age.	Citizenship Act, Chapter 188 Section 17(3) & 5(1)(3), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1
PRS	2	c		Can citizenship be withdrawn from foundlings if parents are identified even if even if this leads to statelessness?	<ul style="list-style-type: none"> • UNHCR Guidelines on Statelessness #4 2012: Nationality acquired by foundlings pursuant to Article 2 of the 1961 Convention may only be lost if it is proven that the child concerned possesses another State's nationality. 	The provision says, ' <i>until his right to any other citizenship is established</i> '. So, it might be that if parents are identified and if they are nationals of a country which	Citizenship Act, Chapter 188 Part VI, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1

						might give rise to the infant to have a ‘right’ to their citizenship, Maltese citizenship would cease making the child potentially stateless until they apply for citizenship in the identified country.	
PRS	3	a	Adoption	Where a child national is adopted by foreign parent(s), does the child lose their original nationality before the new nationality is adopted?	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality. • European Convention on Nationality, 1997: Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons: ...d) children adopted by one of its nationals... Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless. • Committee on the Rights of the Child, Concluding Observations: Switzerland, CRC/C/CHE/CO/2-04, 2015: [recommended that Switzerland] accelerate the assessment procedure and ensure that a child adopted from abroad is not stateless or discriminated against during the waiting period between his or her arrival in the State party and formal adoption. • ENS (2015), No Child Should Be Stateless: ...the “sending” state in a situation of inter-country adoption may be a non-European one, so even if Europe’s nationality laws were all in alignment with international standards, children may be exposed to a (temporary) risk of statelessness during the adoption process. 	No, under the Citizenship Act it shall be lawful for any person to be a citizen of Malta and at the same time a citizen of another country.	Citizenship Act, Chapter 188 Part IV, Section 7, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1

<p>PRS</p>	<p>3</p>	<p>b</p>	<p>Ius sanguinis and discrimination</p>	<p>Can children of a parent who is a national, born outside the country, access nationality by descent (ius sanguinis)? Are there any conditions? Could these conditions be regarded as discriminatory? (see question below for where child would otherwise be stateless)</p>	<ul style="list-style-type: none"> • UN Convention on the Reduction of Statelessness, 1961: Art 4 • UNHCR Guidelines on Statelessness #4 2012: ...where a child who would otherwise be stateless is born in a Contracting State to parents of another Contracting State but does not acquire the nationality of the State of birth automatically and either misses the age limit to apply for nationality or cannot meet the habitual residence requirement in the State of birth... responsibility falls to the Contracting State of the parents to grant its nationality to the child (or children) of its national... where children of a national of a Contracting State who would otherwise be stateless are born in a non-Contracting State... the Contracting State of the parents [is required] to grant its nationality to the child (or children) of its nationals born abroad... Article 4 of the 1961 Convention must be read in light of developments in international human rights law, in particular the right of every child to acquire a nationality... and the principle of the best interests of the child ... • Genovese v. Malta (ECTHR) Application No. 53124/09, 11 October 2011: While the right to citizenship is not as such a Convention right and while its denial in the present case was not such as to give rise to a violation of Article 8, the Court considers that its impact on the applicant’s social identity was such as to bring it within the general scope and ambit of that article. Maltese legislation expressly granted the right to citizenship by descent and established a procedure to that end. Consequently, the state which has gone beyond its obligations under Article 8 in creating such a right [. . .] must ensure that the right is secured without discrimination within the meaning of Article 14. • ENS (2015), No Child Should Be Stateless: States are free to impose additional conditions [to Ius Sanguinis conferral], as long as these are not discriminatory in nature... safeguards should again be in place to ensure that statelessness does not result.... 	<p>Under the Citizenship Act, Maltese nationality is automatically conferred to children born to Maltese citizens either in Malta or abroad, but there are discriminatory limitations in the Section 17 of the Act, which exclude children born out of wedlock to a Maltese father.</p> <p>Under the limitations, in the case of unmarried parents, a child born in Malta on or after 1 August 1989 shall only 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, as long as the safeguard against children born stateless on the territory is not implemented in practice.</p> <p>Under these same limitations, children born abroad to a Maltese father and foreign mother out of wedlock on or after 1 August 1989 would also fail to acquire Maltese</p>	<p>Citizenship Act, Chapter 188 Section 5(2)&(3) in conjunction with Section 17(1)(a), available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1</p> <p>UNHCR: <i>Mapping Statelessness in Malta</i>, August 2014, pp. 36-38, available at: http://www.refworld.org/docid/546dae5d4.html</p>
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PRS	3	c		Can children of a parent who is a national, born outside the country, access nationality by descent (ius sanguinis) if they would otherwise be stateless? Are there any conditions? Could these conditions be regarded as discriminatory?	As above	No, since the parent needs to be born in Malta. There is no mention of prevention of statelessness.	
PRS	4	a	Access to birth registration	Does the law provide that all children are registered immediately upon birth? Can children	<ul style="list-style-type: none"> • Convention on the Rights of the Child 1989: 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. 	It is compulsory for all parents, irrespective of nationality or legal status, to register the birth of their child within fifteen days	Civil Code, Chapter 16, Section 272, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580

			<p>be registered if parents are undocumented and/or not legally residing in the country (by law)?</p>	<ul style="list-style-type: none"> • International Covenant on Civil and Political Rights 1966: Art 24(2) • Council of Europe, Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children: register the birth of all children born on their territory, even if they are born to a foreign parent with an irregular immigration status or if the parents are unknown, in order to safeguard their right to a nationality. The registration of birth should be free of charge and be performed without delay, even if the period within which the birth should have been declared has already expired. • UNHCR Guidelines on Statelessness #4 2012: ... registration of the birth provides proof of descent and of place of birth and therefore underpins implementation of the 1961 Convention and related human rights norms. Article 7 of the CRC specifically requires the registration of the birth of all children and applies irrespective of the nationality, statelessness or residence status of the parents. • UNHCR Global Action Plan to End Statelessness 2014-24: Action 7 Ensure birth registration for the prevention of statelessness. • UN Sustainable Development Goal 16: By 2030, provide legal identity for all, including birth registration. • UN Human Rights Council, Resolution A/HRC/RES/20/4: Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child, and underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of his or her immigration status and that of his or her parents or family members, which can contribute to reducing statelessness, as well as reducing vulnerability to trafficking in persons and other abuses and violations of their human rights. 	<p>of the birth. In default of both parents, the duty falls on the physician, surgeon, midwife or any other person in attendance of the birth or in whose house the baby was born.</p> <p>The obligation to register is however not well enforced, with a number of births remaining unregistered until action is taken. Examples include where the parents fail/refuse to register the birth.</p>	<p>Aditus foundation casework/practice.</p>
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PRS	4	b		<p>Are there credible reports that suggest that children are prevented from registering <i>in practice</i> because of lack of documentation and/or parents' legal residence?</p>	<ul style="list-style-type: none"> • Convention on the Rights of the Child 1989: Art 7(1) • International Covenant on Civil and Political Rights 1966: Art 24(2) • Council of Europe, Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children: as above. • UNHCR Guidelines on Statelessness #4 2012: as above. • UNHCR Global Action Plan to End Statelessness 2014-24: Action 7 • UN Sustainable Development Goal 16 • UN Human Rights Council, Resolution A/HRC/RES/20/4: as above 	<p>The Committee on the Rights of the Child noted in 2013 its concern “<i>that there continue to be cases of children, including those in irregular migration situations, who are not provided with birth registration</i>” and “<i>urge[d] [Malta] to ensure that all children born in its territory are registered at birth, regardless of the status of their parents, with particular attention to children in single parent families and/or irregular migration situations</i>”.</p> <p>UNHCR is not aware of any cases where the authorities prevented children from being registered in practice because of lack of documentation.</p>	<p>UN Committee on the Rights of the Child, Concluding Observations on the second periodic report of Malta, adopted by the Committee at its sixty-second session (14 January–1 February 2013), 18 June 2013, CRC/C/MLT/CO/2, paras. 34-35, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&Lang=en</p> <p>UNHCR Country Office, Malta.</p>
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PRS	4	c		<p>Are there mandatory reporting requirements for authorities which would deter undocumented parents coming forward to register their children (e.g. medical authorities required to report undocumented migrants)?</p>	<ul style="list-style-type: none"> • UNICEF, Access to Civil, Economic and Social Rights for Children in the Context of Irregular Migration, 2012: While there is generally a separation between civil registries and immigration enforcement, undocumented parents may also fear detection, particularly in countries where civil servants have a duty to report undocumented migrants... • PICUM, Rights of Accompanied Children in an Irregular Situation, 2011: Certain barriers that prevent access to basic rights for children in an irregular migration situation arise across the registry, health, education and housing sectors. National legislation is often below the standards set out in human rights law, inexplicit or contradicted by other rules and practices, such as the duty to denounce or administrative requirements. 	No.	
PRS	5	a	Late Birth Registration	<p>Is there a statutory deadline before which birth registration should be completed? If yes, what is it? Is late birth registration possible by law?</p>	<ul style="list-style-type: none"> • UNHCR Global Action Plan to End Statelessness 2014-24: Low levels of birth registration can be difficult to correct subsequently because procedures for late birth registration have not been established or are lengthy, costly and complex and therefore inaccessible to undocumented populations... States also need procedures for late and delayed birth registration and may consider undertaking campaigns to register older children and adults. Birth registration needs to be free, accessible and undertaken on a non-discriminatory basis. • UN Human Rights Council, Resolution A/HRC/RES/20/4: as above. • Council of Europe, Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children: as above. • ENS (2015), No Child Should Be Stateless: One of the ways in which states have sought to deal with an intergenerational lack of documentation is by simplifying the procedures for the late registration of births, making it easier for adults who do not have a birth certificate to acquire one, which can subsequently be used to register their own children's births... 	<p>Yes, In Malta, it is compulsory for parents to register the birth of their child within fifteen days of the birth with the Public Registry office. Since this obligation may at times be difficult to meet, in practice the timeframe is relaxed, and no penalties incur within the first weeks past the deadline. Later registration is allowed, with no cut-off date.</p>	<p>Civil Code, Chapter 16, Subtitle II, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580</p>

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PRS	5	b		Is late birth registration possible in practice?	<ul style="list-style-type: none"> • UNHCR Global Action Plan to End Statelessness 2014-24: as above. • UN Human Rights Council, Resolution A/HRC/RES/20/4: as above. • Council of Europe, Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children: as above. • ENS (2015), No Child Should Be Stateless: as above. 	Yes, in practice the timeframe is relaxed, and no penalties incur within the first weeks past the deadline.	Civil Code, Chapter 16, Subtitle II, available at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580
PRS	5	c		Are there any additional requirements (e.g. fee) for the late birth registration procedure? Are these problematic or do they cause lengthy delays?	<ul style="list-style-type: none"> • UN Human Rights Council, Resolution A/HRC/RES/20/4: as above. 	No, and this is problematic since there is no monitoring system to ensure that births are actually registered.	
PRS	6	a	Awareness of birth registration	Does the government have programs in place to promote birth registration? If yes, please provide details. Does the government have programs in place to promote birth registration? If yes, please provide details.	<ul style="list-style-type: none"> • ENS (2015), No Child Should Be Stateless: as above. • UNHCR Global Action Plan to End Statelessness 2014-24: Action 7 • Council of Europe, 3rd European Conference on Nationality, 11-12 October 2004: Taken together Art 7 & 8 ECHR should be understood to encourage States Parties not only to take positive steps to avoid statelessness – including the promotion of birth registration – but also to grant citizenship to children who would otherwise be stateless and to foresee effective remedies for the child to challenge a decision (or lack of decision) by the state in this regard. 	Identity Malta and Gov.mt provide clear and easy-to-understand information (English and Maltese) on their websites in relation to birth registration for new parents and the details on where to register the child and services for birth registration in Malta. However, apart from this information, there are no campaigns promoting birth registration.	Identity Malta website [accessed Feb 2018]: https://identitymalta.com/public-registry/ Gov.mt website [accessed Feb 2018]: https://www.gov.mt/en/Life%20Events/Pregnancy%20and%20Birth/Pages/Birth-And-Life.aspx
PRS	6	b		Are there sections of the population believed to be unregistered? Please provide details and		Apart from the report by the Committee on the Rights of the Child and individual cases there are no noted sections of the population	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

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				source of information.		that are believed to be unregistered.	January–1 February 2013), 18 June 2013, CRC/C/MLT/CO/2, paras. 34-35, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&Lang=en
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Jurisprudence and Training

Cat	Q	Sub	Subtheme	Question	International Norms/Good Practice	Answer	Source
LIT	1	a	Published Judgements	Number of published judgements adjudicating statelessness (broken down by level of jurisdiction). Please list.		<p>There are no clear published judgements adjudicating statelessness in Malta.</p> <p>There are several judgements on the question of discriminatory application of the right to citizenship of children born to Maltese fathers.</p>	<p>Database of the Courts of Law, available at: http://www.justiceservices.gov.mt/courtservices/default.aspx</p> <p>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.</p> <p>Appell Civili Nru 19/2002/1 Constitutional Court, judgment of 18 July 2006.</p> <p>Citazzjoni Nru 19/2002/2 Civil Court First Hall (Constitutional Jurisdiction), judgment of 4 November 2008.</p> <p>Appell Civili Nru 19/2002/2 Constitutional Court, judgment of 27 March 2009.</p> <p><i>Genovese v. Malta</i>, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, available at: http://www.refworld.org/cases,ECHR,509ea0852.html</p>
LIT	1	b		Number of published judgements mentioning statelessness (broken down by level of jurisdiction).		<p>Very difficult to trace since the search function of the Courts of Law provides very little functionality or key words in relation to statelessness.</p>	<p>Database of the Courts of Law, available at http://www.justiceservices.gov.mt/courtservices/default.aspx</p> <p>Ramadan Wahba Mabrouk Louay vs L-Onorevoli Vici Prim Ministru u Ministru għall-Gustizzja u l-Intern, id-Direttur tad-Dipertiment tac-Cittadinanza u tal-Expatriates, l-Avukat Generali, Constitutional Court, 25 May 2012.</p>

LIT	2	a	Legal training	Is there judicial training on statelessness? If yes, please provide details (e.g. provider, frequency).	<ul style="list-style-type: none"> • UNHCR (Good Practices Paper 6): officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels. • UNHCR Expert Meeting, Statelessness Determination Procedures and the Status of Stateless Persons 2010: It is recommended that States provide specialized training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations. 	No	UNHCR Country Office, Malta.
LIT	2	b		Is there training for lawyers on statelessness? If yes, please describe.	<ul style="list-style-type: none"> • UNHCR Expert Meeting, Statelessness Determination Procedures and the Status of Stateless Persons 2010: as above 	No, but of course individuals are free to attend publicly available courses offered overseas. Statelessness is not included in the University of Malta law course and no training is organised, but it is offered as of October 2017 as part of a course on humanitarian action.	Refugee Law and Statelessness: Practical Aspects, available at: http://www.um.edu.mt/arts/studyunit/IRL5006
LIT	3	a	Pro Bono	Are there specialised lawyers, law firms or organisations providing free advice to stateless persons or those at risk of statelessness? If yes, please describe.	<ul style="list-style-type: none"> • UNHCR (2014), Handbook on Protection of Stateless Persons: Applicants are to have access to legal counsel. • UNHCR (Good Practices Paper 6): Provides the example of Liverpool Law Clinic providing legal assistance to stateless clients in the UK. 	No, however NGOs offering legal advice to asylum-seekers and refugees also represent clients who are either stateless or at risk thereof: and.	JRS Malta: http://www.jrsmalta.org/ aditus foundation: http://aditus.org.mt/

LIT	4	a	Literature	Is there domestic legal academic literature on statelessness? If possible, please provide number of scholarly articles/references/bodies and hyperlinks etc.		Two studies are available.	<p>Protecting Statelessness Persons from Arbitrary detention, report on detention and Stateless Persons: ENS and aditus foundation, 2015, available at: http://aditus.org.mt/Publications/ENS_reports.zip</p> <p>UNHCR Refworld: <i>Mapping Statelessness in Malta, 2014</i>, available at: http://www.refworld.org/docid/546dae5d4.html</p>
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