

Joint Submission to the  
Human Rights Council

# Universal Periodic Review

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## MALTA

aditus foundation

European Network on Statelessness

Institute on Statelessness and Inclusion

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**aditus**  
accessing rights



European  
Network on  
Statelessness



Institute on  
Statelessness and  
Inclusion

**Joint Submission**  
**to the Human Rights Council**  
at the 45<sup>th</sup> Session  
of the Universal Periodic Review.

**MALTA**

## Introduction

1. aditus foundation, the European Network on Statelessness (ENS), and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Malta.
2. This submission focuses on:
  - I. Data on the stateless population;
  - II. Statelessness determination and access to rights;
  - III. Arbitrary detention;
  - IV. Children's right to a nationality.
3. aditus foundation<sup>1</sup> is a non-governmental organisation established in 2011 with a mission to monitor, report and act on access to human rights in Malta. Named for the Latin word for 'access', our work is focused on the attentive analysis of access to human rights recognition and enjoyment. Our work promotes a society where all persons are able to access and enjoy all their fundamental human rights, and access to justice and remedies should be provided in case of violations. Our focus is primarily Malta, but we also work towards highlighting the regional & international dimensions of human rights in Malta.
4. The [European Network on Statelessness](https://www.statelessness.eu) (ENS)<sup>2</sup> is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 180 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and

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<sup>1</sup> For more information, see <http://www.aditus.org.mt/>.

<sup>2</sup> For more information, see <https://www.statelessness.eu>.

support to a range of stakeholders, including governments. This submission partially draws on information and analysis from ENS's Statelessness Index, which covers Malta.<sup>3</sup>

5. The [Institute on Statelessness and Inclusion \(ISI\)](#)<sup>4</sup> is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI's mission is to promote inclusive societies by realising and protecting everyone's right to a nationality. The Institute has made over 100 country specific UPR (joint) submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 43<sup>rd</sup> UPR Sessions.

## Previous UPR and UN Treaty bodies' recommendations to Malta

6. In the Third Cycle of the Universal Periodic Review (31<sup>st</sup> session, 2018), Malta received recommendations from Austria, Costa Rica, Côte d'Ivoire, Montenegro, and Sweden to accede to the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention), which it noted.<sup>5</sup> It also received similar recommendations by the Committee on the Elimination of Discrimination Against Women<sup>6</sup> and the Committee on the Rights of the Child (CRC).<sup>7</sup> Malta received a recommendation from Mexico to establish a mechanism to identify stateless persons and guarantee their rights and protection, which it noted.<sup>8</sup> In the Second Cycle (17<sup>th</sup> session, 2013), Malta received a recommendation from Sierra Leone to ensure birth registration for all children born in Malta, which it accepted,<sup>9</sup> and the CRC made similar recommendations.<sup>10</sup>
7. The CRC also recommended in 2019 that Malta strengthen efforts to establish the nationality of children with undetermined nationality and establish a statelessness determination procedure with an identification and referral mechanism for children who are undocumented and at risk of statelessness. In 2013, the CRC recommended that children born in Malta to foreign parents who are unable to pass on their nationality, to stateless parents, or to parents with unknown nationality are granted nationality.<sup>11</sup>

## Malta's International obligations

8. In line with the recommendations received under the UPR and the pledge made at

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<sup>3</sup> ENS, Statelessness Index: Czech Republic, <https://index.statelessness.eu/country/czech-republic>.

<sup>4</sup> For more information, see <https://www.institutesi.org/>

<sup>5</sup> Human Rights Council (HRC), Report of the Working Group on the Universal Periodic Review, 18 December 2018, A/HRC/40/17, paragraphs 111.9 (recommendation from Austria), 111.10 (recommendation from Sweden), 111.11 (recommendation from Côte d'Ivoire, Costa Rica and Montenegro).

<sup>6</sup> Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations, 9 November 2010, CEDAW/C/MLT/CO/4, paragraph 39.

<sup>7</sup> Committee on the Rights of the Child (CRC), Concluding observations on the combined third to sixth periodic reports of Malta, 26 June 2019, CRC/C/MLT/CO/3-6, paragraph 23.d.

<sup>8</sup> HRC, Report of the Working Group on the Universal Periodic Review, 18 December 2018, A/HRC/40/17, paragraph 111.39.

<sup>9</sup> HRC, Report of the Working Group on the Universal Periodic Review, 4 December 2013, A/HRC/25/17, paragraph 102.97.

<sup>10</sup> CRC, Concluding observations on the combined third to sixth periodic reports of Malta, 26 June 2019, CRC/C/MLT/CO/3-6, paragraph 23.a.; CRC, Concluding observations on the second periodic report of Malta, adopted by the Committee at its sixty-second session, 18 June 2013, CRC/C/MLT/CO/2, paragraph 35.

<sup>11</sup> CRC, Concluding observations on the second periodic report of Malta, adopted by the Committee at its sixty-second session, 18 June 2013, CRC/C/MLT/CO/2, paragraph 35.

UNCHR's High Level Segment on Statelessness,<sup>12</sup> Malta acceded to the 1954 Convention in 2019. However, it retains significant reservations to Article 11, Article 14, and Article 32, and the Convention does not have direct effect. Malta is still not State party to the 1961 Convention.

9. Malta has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party, including:<sup>13</sup>
  - International Covenant on Civil and Political Rights (see Article 24.3);
  - International Covenant on Economic, Social and Cultural Rights (see Articles. 2.2 and Article 3);
  - Convention of the Rights of the Child (see Articles 2, 3, 7 and 8);
  - Convention on the Elimination of All Forms of Discrimination against Women (see Article 9);
  - International Convention on the Elimination of All Forms of Racial Discrimination (see Article 5(d)(iii));
  - Convention on the Rights of Persons with Disabilities (see Article 18);
  - International Convention for the Protection of All persons from Enforced Disappearance (see Article 25.4).

Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights. Malta is not a party to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

10. Malta retains several significant reservations to these conventions. For example, its reservation to Article 13 of the International Covenant on Civil and Political Rights relates to protection from unlawful expulsion. Other reservations relate to the criminal justice system and protections from hate speech and incitement to violence. Malta made reservations to the Convention on the Elimination of all Forms of Discrimination Against relating to reproductive rights, family and property law, and the payment of certain social security entitlements to 'the head of the household presumed to be the husband'. These reservations impact all women in Malta, including stateless women who risk being disproportionately affected as they already face significant challenges in these areas due to the lack of nationality.
11. Malta has signed but not acceded to the European Convention on Nationality and is not State party to the Convention on the Avoidance of Statelessness in Relation to State Succession. Malta is party to the European Convention on Human Rights. It is also bound by the EU Returns Directive.

## Issue 1 – Data on the stateless population

12. Based on limited data, stateless populations could include, in a migratory context, people of Palestinian origin, or people from Eritrea, Syria and Ethiopia. However, Malta does not have a procedure for identifying and determining statelessness, and statelessness is not identified or assessed in any of the procedures available. This results

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<sup>12</sup> UNHCR, High-Level Segment on Statelessness: Results and Highlights, at <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

<sup>13</sup> See: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

in limited population data on statelessness as a comprehensive mapping of the stateless population in Malta is difficult.<sup>14</sup>

13. There is no 'stateless' category in the census. The census in 2011 and 2021 provided limited opportunity for respondents to self-identify as 'stateless'. According to the 2021 census report, there are 171 stateless people in Malta. The data is disaggregated by residence, gender, and age. The National Statistics Office Annual Demographic Review has included a 'stateless' category since 2008 in its data on acquisition of Maltese nationality. From 2008-2010, 24 stateless individuals are reported to have obtained Maltese nationality. In 2014, 1 stateless person and 5 people with 'unspecified' nationality acquired Maltese nationality. The International Protection Agency (formerly the Office of the Refugee Commissioner) reported that, in 2022, 1 asylum-seeker self-identified as stateless whilst 32 asylum applications were filed by Palestinians. UNHCR conducted a mapping study in 2014, which provides a detailed commentary on the legislative framework on statelessness in Malta, including examples of different profiles of stateless people and those at risk of statelessness in the country.
14. The Government does not publish data on stateless people in detention or systematically record statelessness across agencies, and it does not routinely publish statistics on immigration detention. The Immigration Police collects some data on individuals released from immigration detention who could not be removed, but they do not publish this.
15. These statistics do not provide an accurate or reliable overview of Malta's stateless population. The indications are that the stateless population in Malta may be underreported 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.

## Issue 2 - Statelessness determination and access to rights

16. Identifying stateless people in the country is the first step to providing adequate protection and rights enshrined in the 1954 Convention. Although the 1954 Convention does not specifically provide for how statelessness should be determined, UNHCR guidance has confirmed that this is best fulfilled through a dedicated statelessness determination procedure with the necessary safeguards and procedural guarantees.<sup>15</sup> According to international norms and standards, statelessness determination procedures should lead to a dedicated protection status, including a residence permit, access to economic, social, civil, and political rights, the right to administrative assistance, exemption from requirements stateless people cannot meet because they are stateless, and other rights protected by the 1954 Convention. States should also establish a facilitated route to naturalisation so stateless people can acquire a nationality and resolve their statelessness.<sup>16</sup>

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<sup>14</sup> See [UNHCR, Mapping Statelessness in Malta \(2014\)](#), p. 46-48.

<sup>15</sup> UNHCR, Handbook on Protection of Stateless Persons, 2014: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>. See also [European Court of Human Rights, Hoti v. Croatia \(application no. 42321/15\), 26 July 2018](#), holding that a State has a positive obligation to provide an effective and accessible procedure enabling applicants to have their issues of further stay and status determined, paragraph 32.

<sup>16</sup> Statelessness Index, Statelessness Determination and Protection in Europe: Good Practice, Challenges, and Risks, 2021: [https://index.statelessness.eu/sites/default/files/ENS-Statelessness\\_determination\\_and\\_protection\\_in\\_Europe-Sep\\_2021\\_0.pdf](https://index.statelessness.eu/sites/default/files/ENS-Statelessness_determination_and_protection_in_Europe-Sep_2021_0.pdf).

17. While, since acceding to the 1954 Convention, the Maltese Government has publicly committed to establishing an administrative procedure to determine statelessness,<sup>17</sup> Malta does not currently have a dedicated SDP to identify stateless persons on its territory, determine their statelessness, and facilitate their access to rights. Furthermore, no training is provided to government officials, judges, or lawyers on statelessness.<sup>18</sup>
18. The definition of a stateless person in the Maltese Citizenship Act is not in line with the 1954 Convention definition, as it defines statelessness as "destitute of any nationality", but the Convention definition is referenced in the Immigration Regulations.<sup>19</sup> To ensure the adequate identification and protection of stateless people, it is important that Malta adopts and applies a consistent definition of a stateless person in line with international law.
19. There are some routes through which some stateless people may regularise their stay in Malta, but these are not adequate mechanisms to protect stateless people as statelessness is not identified or assessed in any of the procedures available. The routes available are:<sup>20</sup>
- 19.1. *Citizenship Act*: While the Citizenship Act mentions applications from stateless people, it is unclear how eligibility for such applications is determined and an application has never been processed under this route.
- 19.2. *Temporary Humanitarian Protection*: The International Protection Agency may grant Temporary Humanitarian Protection, usually where someone has been refused asylum but cannot be removed and there are exceptional humanitarian reasons. Positively, this form of protection used to be a discretionary policy but it was converted to law in 2020 and embedded in the International Protection Act. A person granted Temporary Humanitarian Protection can access a renewable residence permit for one year and is entitled to the same rights as beneficiaries of subsidiary protection, including a travel document, healthcare, and the labour market.
- 19.3. *Refugee status determination*: Statelessness may be identified during refugee status determination procedures as part of a person's claim for international protection, but this does not lead to a formal recognition of statelessness.
- 19.4. *Humanitarian residence permits*: The Immigration Police also has discretion

<sup>17</sup> Information provided by the Ministry for Home Affairs, Security, Reforms and Equality in response to Parliamentary Question 4690, on 17 January 2023, available at:

<https://pq.gov.mt/PQWeb.nsf/7561f7daddf0609ac1257d1800311f18/c1257d2e0046dfa1c125893a00450b41!OpenDocument>.

<sup>18</sup> UNHCR Country Office, Malta; Refugee Law and Statelessness: Practical Aspects, available at: <http://www.um.edu.mt/arts/studyunit/IRL5006>.

<sup>19</sup> Maltese Citizenship Act, Article 2, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8702&l=1>; Subsidiary Legislation 217.04, Immigration Regulations, 1 May 2004, Regulation 17(4), available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9559&l=1>.

<sup>20</sup> Maltese Citizenship Act, CAP. 188 of the Laws of Malta, <https://legislation.mt/eli/cap/188/eng/pdf>; International Protection Act, CAP. 420 of the Laws of Malta, Article 17A, <https://legislation.mt/eli/cap/420/eng/pdf>; Ministry for Home Affairs and National Security, and Parliamentary Secretariat for Reforms, Citizenship and Simplification of Administrative Processes, Policy regarding Specific Residence Authorisation, November 2018, <https://homeaffairs.gov.mt/en/media/Policies-Documents/Pages/Specific-Residence-Authorisation-2018.aspx>; Identity Malta, Updating of the Policy regarding Specific Residence Authorisation, 24 November 2020, <https://identitymalta.com/updates-of-the-policy-regarding-specific-residence-authorisation/>.

to grant *ad hoc* humanitarian residence permits.

20. Statelessness is rarely identified or assessed in any of the procedures through which some stateless people could regularise their stay in Malta. Authorities are not obliged under the law to consider a claim of statelessness made within another procedure and there are no clear, accessible instructions for stateless people on how to claim their rights under the 1954 Convention. There is also no formal cooperation between agencies that may have contact with stateless people in Malta.<sup>21</sup>
21. Although these alternative routes to regularisation may provide some form of protection for some stateless people, no rights are granted to stateless people in Malta purely based on their statelessness. Stateless people also do not have the right to vote or contest any elections in Malta. There is no facilitated naturalisation for stateless persons, who may apply for naturalisation under the same conditions as other non-Maltese nationals, including residence in Malta for at least five years, language and good character requirements.<sup>22</sup>

### Issue 3 - Arbitrary detention

22. Stateless people face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.<sup>23</sup> Moreover, arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed.<sup>24</sup> According to international norms and standards, detention should be a measure of last resort, used in exceptional cases and only justified where other less invasive or coercive measures have been considered and found insufficient. The UN has called upon States to adopt alternative measures to detention.<sup>25</sup> Regarding immigration detention, powers need to be provided for in law and restricted to purposes allowed under international and European law.<sup>26</sup> A proposed country of removal should be identified prior to detention for removal and detention only maintained for as long as removal arrangements are in progress and executed with due diligence.<sup>27</sup> A maximum period of detention should be set in law and upon expiry the detainee must be automatically released. Judicial oversight of detention is necessary as well as access to legal representation.<sup>28</sup> Statelessness should also be a juridically relevant factor, which is considered in decisions to detain. Stateless people should be identified in order to protect their human rights and not be routinely detained on grounds of their

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<sup>21</sup> aditus foundation, <https://aditus.org.mt/>.

<sup>22</sup> Subsidiary Legislation 420.07, Procedural Standards for Granting and Withdrawing International Protection Regulations, 2015, Regulation 20(4), <https://legislation.mt/eli/sl/420.7/eng/pdf>; Ministry for Home Affairs, Law Enforcement and National Security, Policy regarding Specific Residence Authorisation: Updated Policy - October 2020, <https://identitymalta.com/wp-content/uploads/2019/10/SRA-updated-policy-Nov2020.pdf>; Maltese Citizenship Act, CAP. 188 of the Laws of Malta, Articles 5(1), 10(1), 10(6), 10(9), <https://legislation.mt/eli/cap/188/eng/pdf>; Community Malta Agency, Acquisition of Citizenship by Naturalisation, <https://komunita.gov.mt/en/services/acquisition-of-citizenship/#ByNaturalisation>.

<sup>23</sup> European Network on Statelessness, Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, 2017 [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS\\_LockeInLimbo\\_Detention\\_Agenda\\_online.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf).

<sup>24</sup> European Network on Statelessness, Protecting Stateless Persons from Arbitrary Detention: A regional toolkit for practitioners, 2017 [https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_Detention\\_Toolkit.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf).

<sup>25</sup> Article 9 of International Covenant on Civil and Political Rights, 1966; Article 5 of European Convention on Human Rights; Article 15(1) of EU Returns Directive; UN General Assembly, Protection of migrants, A/RES/63/184 (2009).

<sup>26</sup> International Covenant on Civil and Political Rights, 1966: Articles 7 and 9(1). Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment.

<sup>27</sup> European Convention on Human Rights, 1950: Article 5 (1). EU Returns Directive: Articles 15(1), 15(4) and 16(3).

<sup>28</sup> International Covenant on Civil and Political Rights, 1966: Article 9(4). European Convention on Human Rights, 1950: Article 5(4). EU Returns Directive: Articles 12, 13(3) and 15(5); HRC, Report of the Working Group on Arbitrary Detention (2010); UNHCR, Detention Guidelines (2012); UNHCR, Handbook on Protection (2014).

statelessness. Specific circumstances of stateless people should be understood and addressed, as are other experiences, characteristics and circumstances leading to vulnerability.

23. Gaps exist in the legal framework and practice concerning the protection of stateless people from arbitrary detention in Malta, and the lack of a dedicated SDP further exacerbates the risk of arbitrary detention. Stateless people may be detained under different legal regimes, each with its own criteria, rights and guarantees. There is evidence that immigration detention is being used prior to all alternatives being considered, and civil society organisations have reported that Malta continues to have concerning policies on summary detention, detention without specified time limits, and limited procedural safeguards.<sup>29</sup>
24. There are some protections against the arbitrary detention of stateless people for removal, such as the requirement that someone is released immediately where removal cannot take place, and that detention ceases to be justified when a reasonable prospect of removal no longer exists, either for legal or other considerations. There have been instances of people being released from detention when, following interventions by NGO lawyers, 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. However, a country of removal does not need to be identified prior to detention, although requirements of necessity, proportionality, and due diligence could be interpreted as requiring this.<sup>30</sup>
25. Moreover, statelessness is not considered to be a juridically relevant fact during the decision to detain, and stateless people are detained in practice prior to the authorities initiating removal procedures. Nonetheless, on a positive note, there have been cases of people being released from detention because their nationality could not be determined or confirmed, following interventions by NGO lawyers.<sup>31</sup> There is a definition of ‘vulnerable persons’ in law, but statelessness is not included and is not considered a vulnerability factor. No vulnerability assessment is carried out prior to a decision to detain, except for those who are manifestly vulnerable such as very young children and people presenting visible vulnerabilities. Those claiming asylum in-country, arriving by plane, or denied access or detained pending removal, do not systematically undergo such assessment.<sup>32</sup>
26. Asylum-seekers released from detention are issued with documentation and rights under the EU Reception Directive, but people detained for removal are issued with an administrative record and tolerated stay, which generally permits access to the labour market and healthcare only if they can show social security contributions from the

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<sup>29</sup> For more information on immigration detention in Malta, see Asylum Information Database (AIDA) country report on Malta, at <https://asylumineurope.org/reports/country/malta/>; and the Global Detention Project country report on Malta, at <https://www.globaldetentionproject.org/countries/europe/malta#country-report>.

<sup>30</sup> 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>; 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>; aditus foundation.

<sup>31</sup> Times of Malta, Malians released after controversial three-month detention, <https://www.timesofmalta.com/articles/view/20170214/local/malians-to-be-released-after-controversial-three-month-detention.639627>.

<sup>32</sup> Returns Regulations, Regulation 2, <https://legislation.mt/eli/sl/217.12/eng>; Reception Regulations, Regulation 14, <https://legislation.mt/eli/sl/420.6/eng>; 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>; Asylum Information Database (AIDA) Country Report, Malta, 2020, available at: <https://asylumineurope.org/reports/country/malta/>.

preceding three months. There are no rules regarding the process of re-documentation and ascertaining nationality. Following the adoption of a government policy in 2021, refused asylum-seekers coming from any of the countries listed as 'safe' in the International Protection Act are not granted access to employment.<sup>33</sup>

## Issue 4 - Children's right to a nationality

27. Every child has the right to a nationality and to be registered immediately after birth.<sup>34</sup> These are core principles of international law, which, if applied in a comprehensive and non-discriminatory manner, would end childhood statelessness.<sup>35</sup> States should have provisions in law to prevent statelessness at birth, including granting nationality to all children born on the territory who would otherwise be stateless, children born abroad to non-national parents, foundlings, and following an adoption process.<sup>36</sup>
28. While there are some safeguards in Maltese law to prevent statelessness, implementation is problematic and there are some gaps. There is a non-automatic provision in the Citizenship Act for children born stateless in Malta to acquire nationality after five years' residence, provided that they have not been convicted of any offence against any State or sentenced to more than five years' imprisonment. There is no age limit in the provision, but a person may only submit an application once they have turned 18. The legal status or residence of the parents has no bearing on the right to acquire Maltese nationality of a stateless child born on the territory. However, this provision is little-known and there are no reports of it ever having been used.<sup>37</sup> Foundlings are deemed to be Maltese from birth, but the wording of the provision leaves open the possibility of statelessness arising later in life or if parents are identified.<sup>38</sup>
29. The Citizenship Act provides for Maltese nationality to be conferred through jus sanguinis to children born to Maltese nationals in Malta or abroad, but the Act distinguishes between children born in and out of wedlock. The acquisition of Maltese nationality by children born abroad on or after 1 August 1989 to an unmarried Maltese father and a foreign mother is dependent on the father's acknowledgement, even if pending this acknowledgement they would be stateless. Children born to a married Maltese father automatically acquire Maltese nationality. In 2011, the European Court of Human Rights found discriminatory the differential treatment of a child born abroad out of wedlock to a Maltese father and a foreign mother, who was then not able to acquire Maltese nationality.<sup>39</sup> Maltese law still contains these limitations distinguishing between children born in and out of wedlock and between children born to an

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<sup>33</sup> Regulation 5(1), Reception Regulations, available at:

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10662>; Information based on aditus foundation practice/casework; 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>.

<sup>34</sup> UN Convention on the Reduction of Statelessness, 1961, Articles 1 and 4; International Covenant on Civil and Political Rights, 1966, Article 24(2); Convention on the Rights of the Child, 1989, Articles 3 and 7; UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 7; UN Sustainable Development Goal 16.9.

<sup>35</sup> See Article 7 of the UN Convention on the Rights of the Child, read in conjunction with Articles 2 and 3.

<sup>36</sup> See, e.g., UN Convention on the Reduction of Statelessness, 1961: Articles 1-4. European Convention on Nationality, 1997: Articles 2 and 6.

<sup>37</sup> Maltese Citizenship Act, Chapter 188 Section 10, available at:

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

<sup>38</sup> Maltese Citizenship Act, Chapter 188 Section 17(3), & 5(1)(3) and Part VI, available at:

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

<sup>39</sup> [European Court of Human Rights, Genovese v. Malta, application no. 53124/09, 11 October 2011.](#)

unmarried Maltese mother and an unmarried Maltese father.<sup>40</sup>

30. States should also put in place measures to ensure universal birth registration, regardless of the residence or documentation status of their parents or family members, which is key to children effectively exercising their right to a nationality. Birth registration is vital because it provides official evidence of key facts such as birthplace and parentage, without which the child can face issues proving their entitlement to nationality.<sup>41</sup> In Malta, birth registration is not problematic in law, but there are reports of barriers to undocumented parents registering births in practice, or authorities refusing to register births where there are inconsistencies in the parents' documentation. The document provided at birth registration does not contain information about the child's nationality, although it contains information about the parents and place of birth, and there is no legal framework to determine the nationality of a child at birth or afterwards. These barriers to birth registration can result in challenges for children to either acquire or evidence their nationality, contributing to the risk of children growing up stateless in Malta.<sup>42</sup>

## Recommendations

31. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Malta:

- I. Accede to the 1961 Convention on the Reduction of Statelessness.
- II. Remove reservations to the 1954 Convention relating to the Status of Stateless Persons.
- III. Consider acceding to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the European Convention on Nationality and the Convention on the Avoidance of Statelessness in Relation to State Succession.
- IV. Improve the recording of statelessness by harmonising and defining statistical categories used by different agencies, counting stateless individuals in the national census, and ensuring that registration officials are trained to accurately identify and record statelessness.

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<sup>40</sup> Maltese 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>; UNHCR: Mapping Statelessness in Malta, August 2014, pp. 36-38, available at: <http://www.refworld.org/docid/546dae5d4.html>.

<sup>41</sup> European Parliament, Resolution on minimum standards for minorities in the EU (2018); UN Human Rights Council, The right to a nationality: women and children, Resolution A/HRC/RES/20/4 (2012); Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return; and Joint general comment No. 3 (2017) of the CMW and No. 22 (2017) of the CRC on the general principles regarding the human rights of children in the context of international migration; UNHCR, Guidelines on Statelessness No. 4 (2012); Global Compact for Safe, Orderly and Regular Migration; Global Compact on Refugees; Council of Europe: ECRI General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination (2016); Council of Europe, Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children (2009).

<sup>42</sup> Civil Code, Chapter 16, Section 272, Article 278, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580>; 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](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMLT%2fCO%2f2&Lang=en); UNHCR Country Office, Malta; aditus foundation.

- V. Further to its accession to the 1954 Convention, in line with UNHCR guidance and further to a public commitment in Malta's Parliament, establish a statelessness determination procedure and protection status in law, under the authority of the International Protection Agency, which includes the automatic right to reside, work, study, and facilitated naturalisation.
- VI. Take further steps to protect stateless persons from arbitrary detention by establishing a referral mechanism to a statelessness determination procedure, including statelessness as a vulnerability factor within vulnerability assessments, considering statelessness as a juridically relevant fact in all decisions to detain, and refraining from detaining migrants in respect of whom a returnable country of origin has not, or cannot, be established.
- VII. Amend the law to ensure that all children born on Malta's territory who would otherwise be stateless acquire a nationality as soon as possible after birth, and remove any discriminatory limitations in the acquisition of nationality based on the parents' marital status or other status.