European Network on Statelessness

PROTECTING STATELESS PERSONS FROM ARBITRARY DETENTION

IN MALTA

aditus
accessing rights

“ Today, I don’t even know what to call home.

IBRAHIM SUZO, ORIGINALLY FROM SIERRA LEONE

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LIST OF ABBREVIATIONS

AIDA	Asylum Information Database
AWAS	Agency for the Welfare of Asylum Seekers
ECtHR	European Court of Human Rights
EU	European Union
IAB	Immigration Appeals Board
MHAS	Ministry for Home Affairs and National Security
RefCom	Office of the Refugee Commissioner of Malta
UNHCR	United Nations High Commissioner for Refugees

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INTRODUCING THE INTERVIEWEES

Ibrahim was born in Sierra Leone. He grew up in the countryside with his grandparents but eventually his parents sent him to his maternal aunt in Gambia. He lived there most of his life, in a refugee camp. When he arrived in Malta he applied for international protection, failed, and consequently remained in detention for 18 months. He was released from detention as an undocumented migrant, a status that offers nothing in terms of social protection or entitlements and that has no long-term prospect of regularisation. The authorities of Sierra Leone visited him twice on the request of the Maltese Immigration Police, and refused to take him back or to confirm him as a Sierra Leonean national. He has nowhere to go.

Davin was born in the Kurdish region of Syria. He says that, along with many other ethnic Kurds from Syria, he has been stateless since birth. Wanted by the authorities for having organised a gathering in the Kurdish community, and having being arrested several times and beaten up severely, Davin decided to leave his country and his family and look for safety. Upon reaching Malta in 2012, he was detained for seven months. At one point he unsuccessfully tried to escape to another European country as he found detention too hard to cope with. He was recognised as a refugee in 2013 but remains stateless.

Kafil is a Rohingya Muslim, born in Rakhine State of Myanmar. The Rohingya were arbitrarily deprived of their nationality through a discriminatory citizenship law in 1982. They are stateless, despite the fact that they have been living in the Rakhine state for generations. The Rohingya also suffer significant discrimination, abuse and persecution in Myanmar. Threatened with arbitrary arrest, Kafil escaped his country alone. Trying to reach Italy, he arrived in Malta and was detained for four months and 10 days before he was recognised as a refugee. He continues to live without a nationality.

Tsegaye was born in Addis Ababa, to an Eritrean mother. After being deported to Eritrea with her family, she escaped to Sudan when she was just a teenager in order to avoid compulsory conscription. After crossing the desert and the Mediterranean Sea, she ended up in detention in Malta for eight months although she was still a minor at the time. Finally released on account of her age, but rejected by the Office of Refugee Commissioner, she was adopted by a Maltese family when she was 17 years old, thereby becoming a Maltese citizen. Without this adoption, she would not have been recognised by any state.

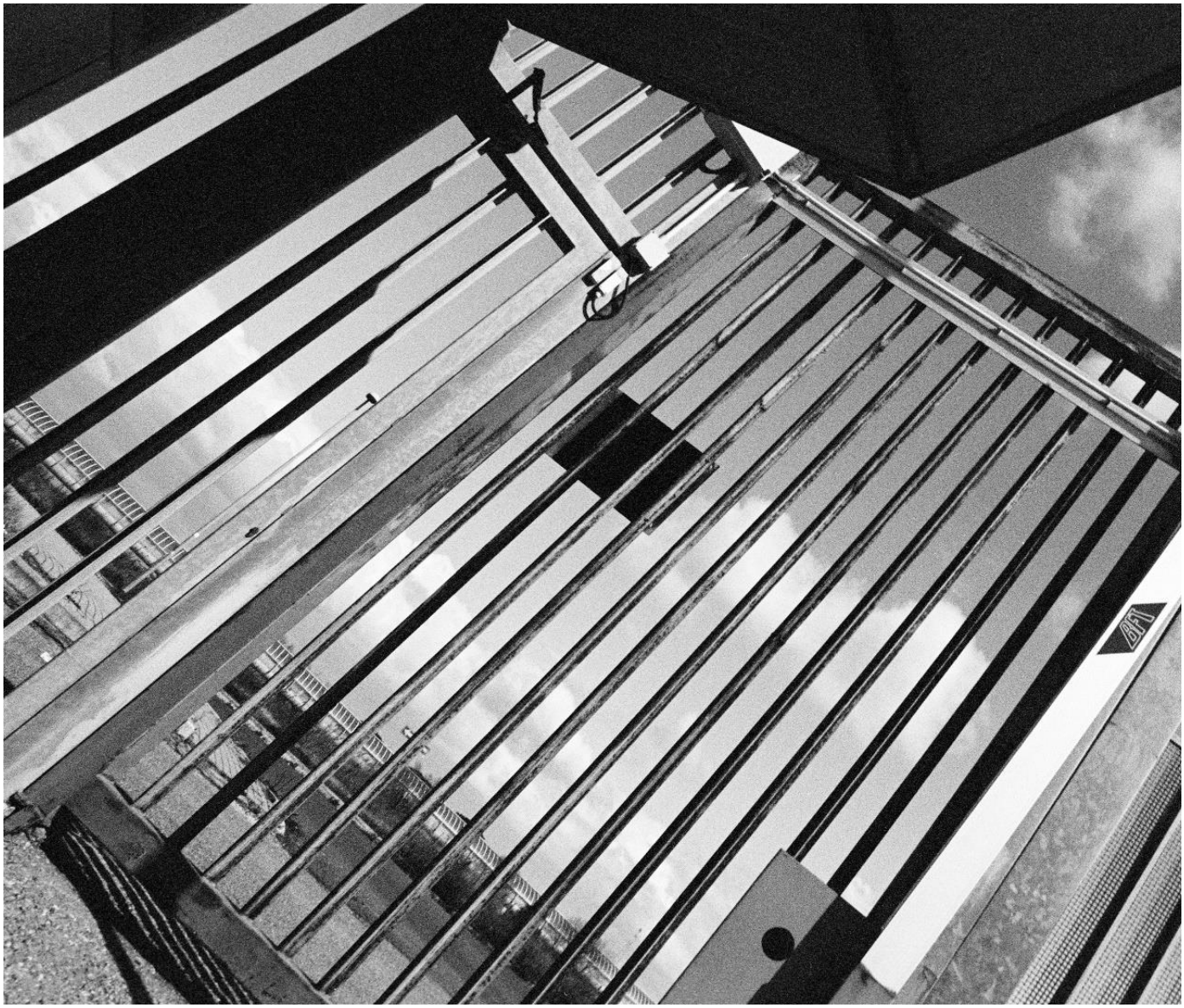
IBRAHIM SUZO'S STORY

Ibrahim was born in Sierra Leone and grew up with his grandparents in the countryside, where his grandfather hunted for bush meat. In order to offer him more opportunities in life, and to protect him from the dangerous situation in Sierra Leone, his parents decided to send him to is aunt in the Gambia.

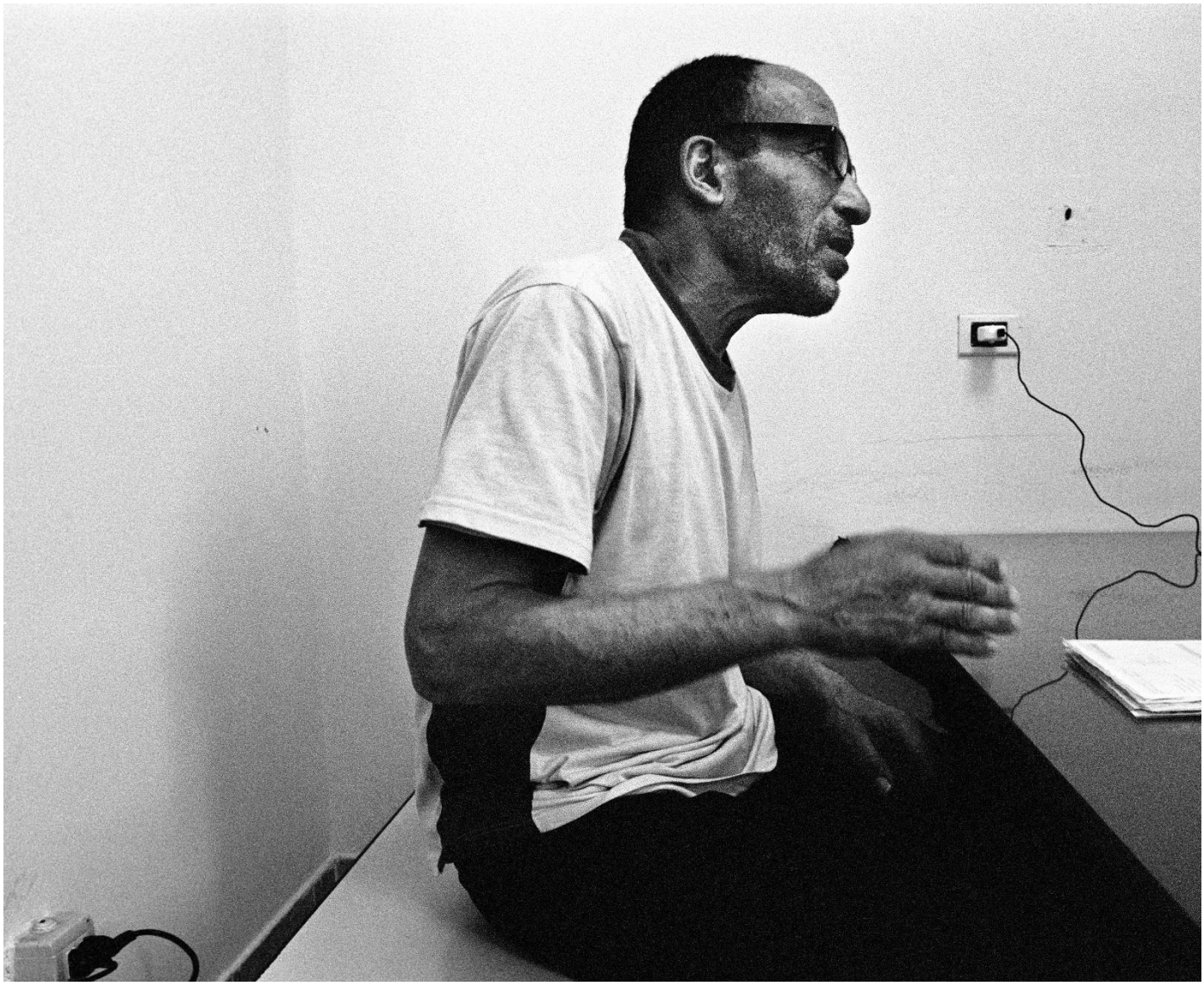
There he spent a few years living in a refugee camp with his relatives. Despite his several applications to be resettled, he was not chosen. He decided to leave this country of refuge to move northwards, to Europe, where to him everything seemed possible and human rights were respected.

After travelling in rough conditions and surviving the crossing of the Mediterranean Sea, Ibrahim arrived in Malta where he was placed in a detention centre. The conditions were simply horrible. One day, a group of detained minors complained about their time in detention and, faced with silence as to their fate, a riot erupted in the centre. The Malta Armed Forces quashed the riot violently, beating, tear-gassing and shooting rubber bullets at the detainees. Ibrahim was one of the detainees who were arrested after this riot and put in prison for an additional 6 months. Criminal proceedings are on-going.

He twice met representatives of the Sierra Leonean authorities, with a view to confirming his nationality, and twice they did not recognise him as a national. Ibrahim was eventually released from detention after 24 months, but the Maltese authorities are unable to deport him. He is left in a legal limbo, a failed asylum-seeker and without a nationality



1. INTRODUCTION



1.1 STATELESSNESS AND DETENTION

The increasing use of immigration detention, including for punitive purposes, and the criminalisation of irregular migration by a growing number of states, is a concerning global and European trend. This results in increasing numbers of persons being detained for longer than they should, or for reasons that are unlawful. While arbitrary detention is a significant area of concern in general, the unique characteristics associated with stateless persons and those at risk of statelessness make them more likely to be detained arbitrarily, for unduly lengthy periods of time. As the European Court of Human Rights (ECtHR) held in *Kim v. Russia*, a stateless person is highly vulnerable to be "left to languish for months and years…without any authority taking an active interest in his fate and well-being".[1] This is mainly because immigration systems and detention regimes do not have appropriate procedures in place to identify statelessness and protect stateless persons.

All stateless persons should enjoy the rights accorded to them by international and regional human rights law. Their rights should be respected, protected and fulfilled at all times, including in the exercise of immigration control. The circumstances facing persons with no established nationality – including their vulnerability as a result of their statelessness and the inherent difficulty of removing them – are significant factors to be taken into account in determining the lawfulness of immigration detention. The process of resolving the identity of stateless persons and a stateless person's immigration

status is often complex and burdensome. Lawful removal of such persons is generally subject to extensive delays and is often impossible. In many European countries, stateless persons detained for removal purposes are therefore vulnerable to prolonged and repeat detention. These factors in turn make stateless persons especially vulnerable to the negative impact of detention. The emotional and psychological stress of lengthy–even indefinite–periods of detention without hope of release or removal is particularly likely to affect stateless persons throughout Europe.

It is evident that the failure of immigration regimes to comprehend and accommodate the phenomenon of statelessness, identify stateless persons and ensure that they do not directly or indirectly discriminate against them often results in stateless persons being punished for their statelessness. Thus, the European Network on Statelessness has embarked on a two year project aimed at better understanding the extent and consequences of the detention of stateless persons in Europe, and advocating for protecting stateless persons from arbitrary detention through the application of regional and international standards. Among the outputs of this project are:

- A regional toolkit for practitioners, on protecting stateless persons from arbitrary detention – which sets out regional and international standards which states are required to comply with and practitioners can draw on in their work;[2] and
- A series of country reports investigating the law, policy and practice related to the detention of stateless persons in selected European countries and its impact on stateless persons and those at risk of statelessness. These reports are meant as information resources but also as awareness raising and advocacy resources that we hope will contribute to strengthening protection frameworks in this regard. In year 1 of the project (2015), three such country reports (including this one) have been drafted on Malta, the Netherlands and Poland. In year two, further reports will be published on other countries.[3]

1.2 RESEARCH OBJECTIVES, METHODOLOGY AND LIMITATIONS

The goals of this study are two-fold:

1. filling an information gap on statelessness and detention in Malta; and
2. to serve as an advocacy tool to promote greater protection for stateless persons and those at risk of statelessness from arbitrary detention, including through improved identification and determination of statelessness.

To this end, the present first chapter provides an overview of the research objectives and introduces the reader to the Maltese context. The second chapter is concerned with law and policy and existing (statistical) data on statelessness and detention. Then, in chapter three, key issues of concern are identified. The report concludes with a summary of findings and recommendations for improvement.

On the basis of desk research, a presentation is provided of the existing international, regional and national legislation pertaining to Malta's immigration control context, the specificity of statelessness, and an overview of the link between these issues. Following this preliminary analysis of Malta's legal obligations, an assessment of practice was made by interviewing various stakeholders from the public and private sectors, as well as four people identified as being stateless or at risk of statelessness. With regard to these interviews, it should be noted that no extensive legal analysis or fact check of each individual case was conducted. These stories and personal experiences are meant to inform and illustrate broader research findings. A useful meeting was also held with the Minister for Home Affairs and National Security.

Research on the legal frameworks of countries of origin, although limited, was mostly relevant to assess gaps between the practice of return (and therefore the consequential implementation of a decision to detain) and the actual feasibility of such measures. In this regard, the interviewees' accounts of their experiences in Malta and of the several countries travelled or lived in from birth, and the appreciation of each of these states in contributing to the difficulties linked to their identity, were essential to shaping this report. Notably, stakeholders generally commented that: "*there are almost no stateless people in Malta*". This report would tend to support this perception that there are only a negligible amount of people that are stateless in Malta, with higher numbers falling within the 'at risk of statelessness' category. It also seems that the lack of awareness about statelessness among stakeholders in Malta may itself be contributing to a failure to identify relevant cases.

A serious limitation to this research was the reluctance of some public authorities to participate or to give access to information. Coupled with this, access to detention was also problematic. Authorisation to visit a detention centre was initially denied, and although subsequently granted, this delayed the research process. Due to several factors, explored below, the issue of statelessness seems invisible to most stakeholders, possibly explaining their reluctance to participate in the research process.

It is also relevant to note that up to mid-2014 no specific research on statelessness in Malta had been conducted.

1.3 STATELESSNESS AND DETENTION IN MALTA

According to the Maltese Citizenship Act, 'stateless' means "destitute of any nationality".[4] The Act confers Maltese nationality *jus sanguinis* – or by descent - (with the exception of children born out of wedlock to a Maltese father) but since the 1980's no longer confers nationality *jus soli* – or by birth on the territory.

As a consequence, a child born of a Maltese father and a non-Maltese mother, but remaining unrecognised by the father, will not have access to Maltese nationality. This matter was successfully raised before the European Court of Human Rights, yet Maltese law remains unchanged today.[5] Similarly precarious is the situation of children born to foreign parents in Malta, as they are presumed to acquire the nationality of their parents,[6] without any individual assessment as to the legal and practical possibility of this being the case.

The Malta office of the United Nations High Commissioner for Refugees (UNHCR) conducted the first research into statelessness in Malta on the occasion of the 60th anniversary of the 1954 Convention relating to the Status of Stateless Persons.[7] The report, pursuant to UNHCR's mandate to prevent and reduce statelessness, aimed at promoting Malta's accession to the 1954 Convention and the 1961 Convention on the reduction of Statelessness. The report was presented to key government counterparts. While no definite commitments were expressed by the government, it seems that generally the response to UNHCR's report was rather positive, and there is at least some receptiveness to instigating necessary reforms.

Malta is not party to either of the statelessness Conventions, and there is currently no dedicated identification or determination procedure for stateless persons or people at risk of being stateless, nor legislation regarding entitlements and obligations of such persons. However, as mentioned above, the Ministry for Home Affairs and National Security (MHAS) is looking into the provisions of the Conventions and the possibility of acceding to these instruments and incorporating them into Maltese law.[8]

The Republic of Malta is an archipelago measuring around 320 km² and is extremely densely populated. When it joined the European Union in 2004, it became its southernmost frontier in the Mediterranean Sea. Immigration to Malta has an extremely long history, yet from 2002 a migration influx from North Africa started at an alarming rate, particularly in the context of the island's size and readiness to cope with such arrivals.[9] Emergency policies – including in relation to the use of immigration detention - were quickly set up, triggering serious concerns regarding the lack of safeguards to protect against violations of human rights. Although the statelessness issue was and remains almost invisible in the country, the few known occurrences and risks are largely related to these irregular migration flows.

In the summer of 2012, Mr. Mamadou Kamara died when under the care of the Detention Service, after being beaten to death by personnel of the Detention Service and the Armed Forces of Malta. Following outrage expressed by a group of non-governmental organisations,[10] the Prime Minister ordered an independent inquiry into the conditions of detention centres and the death of Mr. Kamara. Two years later, the findings of the inquiry were published, highlighting the appalling conditions of detention centres, the negligence of the Detention Service officers and the use of excessive force by the officers. It recommended a revision of the detention policy and resources allocated. It also emphasised the need for the duration of detention to be regulated, and on the fact that detention conditions and the length of detention negatively affected detainees and also the Maltese population. Although the general public reaction was not welcoming of the report's conclusions and recommendations, the Government seems to be taking steps to reform the system.[11]

The Mare Nostrum operation, a naval operation that started in October 2013 at the initiative of Italy to deploy naval and aerial patrols *"to tackle the dramatic increase of migratory flows during the second half of the year and consequent tragic ship wreckages off the island of Lampedusa"*,[12] had a direct impact on the number of sea arrivals in Malta, with the result that the detention centres emptied almost immediately. In 2015, although the Mare Nostrum operation ended,[13] the number of arrivals by boat dropped to 93 people. Nonetheless, the Office of the Refugee Commissioner (RefCom) has said that almost 500 asylum applications were presented since the beginning of 2015,[14] mainly asylum-seekers arriving by plane. At the time of writing, Malta's detention centres are almost entirely empty.[15]

The issue of statelessness appears invisible in this national context, in both legislation and in the perspectives of interviewed stakeholders. Stateless people or those at risk of being stateless are therefore generally mainstreamed with other third-country nationals (TCNs) and offered the same treatment, primarily the possibility to apply for international protection

2. LAW AND POLICY CONTEXT

2.1 INTERNATIONAL AND REGIONAL OBLIGATIONS PERTAINING TO STATELESSNESS AND DETENTION

The right to a nationality is enshrined as an inalienable right in Article 15 of the Universal Declaration of Human Rights. Malta is party to several Conventions protecting against discrimination in the context of nationality, such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)[16] that reiterates the right to a nationality and condemns discrimination against any nationality in case of naturalisation or citizenship; the International Covenant on Civil and Political Rights (ICCPR);[17] and the 1989 Convention on the Rights of the Child (CRC).[18] The latter two instruments both stipulate that every child has the right to acquire a nationality.

However, Malta has failed to fulfil its obligations under the CRC and ICCPR, causing the UN Committee on the Rights of the Child, in its 2013 Concluding Observations on Malta[19] to urge *"the State party 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. Furthermore, the Committee urges the State party to ensure that a child born in the State party to parents who are foreigners, but unable to pass on their nationality, or to parents who themselves are stateless or whose nationality is unknown, is granted citizenship"*.

Malta is also party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[20] that prohibits discrimination against women in relation to acquiring, retaining and passing on their nationality; and the Convention on the Rights of Persons with Disabilities (CRPD),[21] which protects people with disabilities from being discriminated against in relation to acquiring a nationality.

Malta also acceded to the 1930 Convention on Certain Questions Relating to the Conflict of National Laws and its 1966 protocol, and submitted reservations on a

relevant point. The notification of succession contains the following declaration:

"In accordance with article 20 of the Convention, the Government of Malta declares that:

(b) Article 16[22] of the Convention shall not apply to an illegitimate child born outside Malta."[23]

With regard to the Council of Europe, Malta signed the 1997 European Convention on Nationality in 2003. However, it is yet to ratify the Convention. Also, Malta did not sign or ratify the 2006 Convention on Avoidance of Statelessness in relation to State Succession.

Most importantly, Malta has not acceded to the 1954 Convention relating to the Status of Stateless Persons or to the 1961 Convention on the Reduction of Statelessness, which respectively define statelessness and the entitlements of stateless people, and prescribe reduction and prevention measures. The present administration, in power since 2013, seems willing to consider accession. [24]

As already mentioned, the issue of statelessness in Malta is often intertwined and confused with the issue of irregular migration and asylum. It is therefore relevant to mention that Malta has been a party to the 1951 Geneva Convention relating to the Status of Refugees[25] and its 1967 Protocol, since 1971 and has ratified them in 2001.[26]

Administrative detention of migrants in an irregular situation is a practice regulated by several international and regional instruments to which Malta is also a party. The European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR)[27] regulates deprivation of liberty and the prohibition of torture and inhuman treatment, often associated with deprivation of liberty measures. Specific European Union Directives also have an impact on the national detention regime. The Return Directive[28] was first transposed into national law in 2011, followed by further amendments in 2014.[29] The latter amendments, discussed below, introduced compulsory regular reviews of detention of persons awaiting return. Furthermore, the summer of 2015 will see another reform in Malta's use of administrative detention with the transposition of the Recast Reception Conditions Directive.[30] In essence, the Reception Conditions Directive provides specific guarantees for the detention of asylum-seekers,[31] as does the Procedures Directive.[32]

2.2 NATIONAL LAWS, POLICIES AND JURISPRUDENCE PERTAINING TO STATELESSNESS AND DETENTION

As Malta is not party to the 1954 and 1961 Stateless Conventions, no identification procedures are in place and therefore stateless people or those at risk of statelessness have no dedicated institution to approach. Since the phenomenon is mainly linked to irregular or forced migration, people claiming to be stateless are mainstreamed with the asylum-seeking population. The process is mainly seen as a border control one: either migrants are rescued at sea on their way to Europe from Libya and brought ashore, or after arriving by plane, they claim asylum. There is a difference of treatment between these two scenarios.

In the first scenario, migrants are apprehended by the Immigration Police so as to prevent an irregular entry. In the second scenario, migrants may or may not have a visa to enter regularly and temporarily. In case of attempt to enter irregularly or of persons found to be in an irregular situation, migrants become *"prohibited migrants"* according to the Immigration Act:[33]

"Any person, other than one having the right of entry, or of entry and residence, or of movement or transit under the preceding Parts, may be refused entry, and if he lands or is in Malta without leave from the Principal Immigration Officer, he shall be a prohibited immigrant."

This prohibition also applies to people who originally entered regularly but who eventually contravened immigration restrictions. These restrictions are wide-ranging and some of them are problematic. They include, people who cannot prove sufficient means available to sustain themselves and their families during their stay; those who suffer from a mental disorder or from a contagious disease; those who have been found guilty of trafficking persons or drugs or are prostitutes; and dependants of prohibited migrants.[34]

Any person considered a prohibited immigrant by the Principal Immigration Officer will be issued with a removal order. *"Upon such order being made, such person against whom such order is made, shall be detained in custody until he is removed from Malta."*[35] Such detainees *"shall be deemed to be in legal custody and not to have landed,"* preventing therefore the actual irregular entry into the country. The Immigration Act does not specify a maximum length of detention for prohibited migrants more specifically than *"until he is removed from Malta."* A maximum duration was only set up by a (then) Ministry for Justice and Home Affairs 2005 Policy Document: 'Irregular Immigrants, Refugees and Integration'. This policy document provides that no one is to be kept in detention for longer than 18 months. Malta's procedural guarantees related to a detention measure were found to

be insufficient by the European Court of Human Rights.[36] The Court also condemned Malta under Article 5(1) for not protecting the claimant against arbitrary detention.[37]

In another case, whilst condemning Malta's failure to provide an effective remedy for detained persons to question the legality of their detention, the Court also reiterated that detention for purposes of removal is only justified under the Convention when removal proceedings are being carried out with due diligence. Where returnability is no longer an option, the migrant's continued detention becomes unjustified:

"…the Court considers that it must have become clear quite early on that the attempts to repatriate him were bound to fail as the applicant had refused to cooperate and/or the Algerian authorities had not been prepared to issue him documents. Detention cannot be said to have been effected with a view to his deportation if this was no longer feasible."[38]

This latter point is clearly directly relevant to stateless persons, and is discussed in further detail below. As no account of possible statelessness is taken into consideration when detention measures are being imposed on the basis of a return decision and removal order, it is evident that current practice mainstreams stateless people and those at risk of statelessness in relation to their detention without consideration of their unreturnability.

In this regard, the EU Directive on common standards and procedures for returning illegally staying third-country nationals[39] was first transposed into subsidiary legislation in 2011 (Return Regulations, Legal Notice 81). This legislation allows the period of detention to be extended up to 18 months on account of (1) lack of cooperation by the detainee; or (2) delays in obtaining the necessary documents from the third country only for prospects of return.

The 2014 amendments to the transposing Regulations added automatic review of detention at reasonable intervals not exceeding three months, in line with the Directive. According to the amendments, these reviews are to be conducted by the Principal Immigration Officer and could lead to the release of persons where their return is no longer foreseeable. Observed practice reveals that the reviews conducted on the basis of these amendments are largely based on the person's nationality and its relevance to the probability of the person's return at the end of the asylum procedure. The reviews conducted have in fact resulted in the release from detention of several groups of persons, with end 2014 seeing a radical drop in the number of detained persons in Malta's two detention centres.

Under the transposing Regulations, the six months period for detention remained, with the possibility to extend it for another 12 months if need be.[40]

Applying for asylum has the effect of suspending the removal order but not its main consequence of administrative detention. In fact, the detention of asylum-seekers is not regulated by national law. The 2005 policy document specifies that detention can last as long as the asylum determination procedure. In practice, a national interpretation of the first EU Reception Conditions Directive sets a maximum detention duration of 12 months for asylum-seekers. The initial Directive provided that asylum seekers should have access to the labour market after 12 months, which was reduced to nine months in the recast.[41] As it is impossible to access the labour market while being detained, applicants are released after one year if no final decision on their application for refugee status is reached within a year of their arrival.

Detainees can be released in any of the following three situations: when they are granted a form of international protection and in this case the removal order ceases to have effect and the person is immediately released after medical clearance; when they are determined to be vulnerable adults or unaccompanied minors by the Agency for the Welfare of Asylum-Seekers, and in case of positive assessment are released after medical clearance; the lapse of the maximum period of 18 months in the case of failed asylum-seekers, with the subsequent possibility of re-detention when removal proceedings become feasible.

It is pertinent to note that with the amendments to the transposition of the Return Directive, anyone found to be unreturnable is released automatically. It ought to be emphasised that this system is rather new so little information and data is available regarding its detailed implementation.

The national asylum procedure remains the only procedure available for a stateless person to request determination of refugee status and international protection, where relevant.[42] In fact statelessness is only seen as a component of a potential persecution claim,[43] the starting point of which must be the country of former habitual residence.[44] RefCom, although not entrusted with determining of statelessness, has encountered cases of people claiming to have no nationality. It seems that after assessing the merits of the case, RefCom may recognise the need to protect in relation to the situation of statelessness. Yet this is done on a discretionary basis as there is no mandatory legal obligation. Although these situations are rare, in comparison to the total amount of applications, RefCom would 'recognise' statelessness when there is a risk of persecution directly linked to

statelessness or the risk of being stateless, and on that basis grant international protection.[45]

As there is no formal recognition of statelessness, a stateless person or someone at risk of statelessness has no entitlements linked to his/her particular situation. The individual will remain a third-country national[46] (although this wording sounds rather incongruous for a stateless person), either with a residence permit linked to protection under the Refugees Act, or with leave to remain from the Immigration Police in the case of failed asylum-seekers, or with no documentation if no contact is made with the authorities (e.g. persons overstaying their visas yet remaining undetected). The leave to remain does not equal a residence permit but acknowledges the individual's tolerated stay on the territory pending removal. In the case of persons to be removed, the Immigration Police systematically sends a request for documentation to the countries of origin of migrants, although in practice very few of these are actually concluded by an effective removal.[47]

Non-Maltese nationals have the opportunity to apply for citizenship through naturalisation. Detailed provisions on citizenship were originally found in Chapter III of the Constitution of Malta,[48] eventually transferred to the Maltese Citizenship Act,[49] which thereby became the main law regulating citizenship, while the Constitution now only contains the general principles on citizenship. In fact, there are no legislative provisions relating to statelessness apart from those found in the Citizenship Act of 1965, providing for children born stateless in Malta.[50]

According to these provisions, a child born out of wedlock to a Maltese father and registered with 'unknown father' shall not be a citizen of Malta. It is significant to note that children born in Malta of foreign parents are automatically recorded in Malta as having the nationality of their parents. However no individual assessment is conducted as to whether or not the parents – one or both – can actually transmit their nationality to the child. For example, Somali mothers are unable to transmit nationality to their children according to Somali Nationality Law.[51] Therefore if the father is registered as 'unknown', for whatever reason, the nationality supposedly acquired from the mother would not materialise, rendering the child stateless.

According to the Maltese Citizenship Act, *"'stateless" means destitute of any nationality and "stateless person" shall be construed accordingly"*. [52] Substantial reforms to the Maltese Citizenship Act modified the process related to acquisition of citizenship but not that related to naturalisation. A stateless person may apply for citizenship through naturalisation if he proves:

"that he has resided in Malta throughout the period of twelve months immediately preceding the date of application; and

that, during the six years immediately preceding the said period of twelve months, he has resided in Malta for periods amounting in the aggregate to not less than four years; and

that he has an adequate knowledge of the Maltese or the English language; and

that he is of good character; and

that he would be a suitable citizen of Malta."[53]

The final decision on such a request remains at the entire discretion of the Ministry, with no duty to give reasons and no appeals/remedies in cases of negative decisions.

The Act also provides for the possibility to acquire Maltese citizenship by registration on the basis of marriage with a Maltese national, after five years of married life.[54] Although in an isolated case, an Egyptian national had renounced his Egyptian nationality and had married a Maltese national, and later applied for Maltese citizenship, which was granted. As he was condemned by the national Courts in a smuggling case, his citizenship was revoked as a consequence.[55]

Interestingly, in 2014 Malta introduced subsidiary legislation to the Citizenship Act offering the possibility to purchase Maltese citizenship for 650,000 Euros for the main applicants, together with a series of other pre-requisites such as the purchase of a real estate worth a minimum of 350,000 Euros, health insurance coverage, and investment obligations in a National Development and Social fund.[56] This scheme attracted criticism from Aditus foundation insofar as it highlighted the *"unworthiness of migrants and refugees who, for years, have been contributing to Maltese society in several ways by paying taxes and social security contributions, being employed in Maltese companies, establishing their own business ventures, engaging in social activities with Maltese people and generally doing their utmost to integrate into what is, ultimately, an extremely challenging environment for them to integrate in."* Aditus foundation stressed that this scheme perfectly captured Malta's treatment of migrants, particularly in relation to the possibility of them acquiring Maltese citizenship.[57]

2.3 DATA ON STATELESSNESS AND DETENTION

There is limited data on statelessness as no identification or determination procedure is in place. Available data is, at most, quite confusing in its use of terminology.

According to the 'Demographic Review 2013', published by the National Statistic Office, one stateless person acquired Maltese citizenship through naturalisation or registration,[58] although the document's section providing

definitions states, *"third-country national: also known as stateless person…"*[59] Furthermore, the latest statistics from RefCom in partnership with the National Statistics Office (June 2015) merge stateless persons with all other third-country nationals, without specifying data for the first category on its own.[60] In this document, one person who arrived irregularly by boat in 2014 is recorded as having an *"unspecified"* nationality.

The national population census conducted in 2011[61] initially showed 200 persons recorded as stateless, yet a cross-checking exercise conducted by the NSO itself revealed that they had a nationality recorded elsewhere.[62]

It is interesting to note, also highlighted below, that official records containing information on nationality seem to be based on original statements made by individuals. This is especially so with regard to migrants and refugees entering Malta by boat, where information provided during the initial interview with immigration officials remains attached to the individual through his/her stay in Malta. The possibility of declaring oneself to be stateless, or of expressing doubt as to one's nationality, seems limited. As noted below, this information is eventually referred to by the immigration authorities when exploring return modalities.

3. KEY ISSUES OF CONCERN

3.1 IDENTIFICATION & DETERMINATION PROCEDURES

Malta is not a party to the 1954 and 1961 Conventions, and there is no formal procedure of identification and determination of statelessness. However, UNHCR have highlighted that "a number of non-contracting States have introduced some form of statelessness determination procedure to address the situation of such persons in their territories, given their commitment under international human rights law. With respect to the latter, statelessness is a juridically relevant fact, for example in relation to protection against arbitrary detention."[63] Therefore, if Malta were to introduce an early identification procedure, this could result in protection of stateless people from arbitrary decision, in line with European and international standards.

In case of irregular arrivals of migrants, following disembarkation all persons are brought before the Immigration Police, which operates an identification process based on declaration. It is at this stage that the mainstreaming of stateless persons, or persons at risk thereof, commences. In fact, largely due to a lack of awareness of statelessness issues and related risks, stateless persons or persons at risk of statelessness are grouped with all other migrants and channelled to the detention and eventual asylum routes.

During this first registration of identity conducted by the Police, there is no real option for individuals to declare themselves as stateless. The Immigration Police declares that there have been no such claims in the past, although this is likely to be due to a general lack of awareness and training. In one incident, the Police faced a migrant (originally from Western-Sahara) claiming he had no country and it was problematic to register this person without recording a recognised state of origin.

If such a claim arises during an interview under an application for international protection, RefCom will assess the claim in the same manner it assesses claims for protection. The assessment is done in relation to the risk of persecution, in accordance with the 1951 refugee definition and relevant norms under the Common European Asylum System. RefCom states that such claims

(statelessness) very rarely occur during asylum interviews, with the Office defining a stateless person as "a citizen of no state".[64] No training on statelessness is currently offered at RefCom, with the Office explaining that this is due to the fact that it is not within its remit to determine such claims. Assessment of risk of persecution is conducted on a case-by-case basis, and protection granted accordingly.

In one known case, the claimants declared that they did not have a nationality and were subsequently granted a particular form of national protection - Temporary Humanitarian Protection - on the basis that they believed they were stateless. It is not clear whether this grant of national protection was based on a policy decision regarding stateless applicants, or whether it was a one-off decision. According to RefCom, when cases of possible statelessness appear to be clearly linked with a risk of persecution and the other elements of the refugee definition were present, international protection was granted/recognised.

Effectively, it is not the remit of the Immigration Police or RefCom to identify or confirm a nationality, and Maltese documentation and records will always be based on the declaration of the applicant. Therefore, if someone from Eritrea does not manage to prove his nationality to RefCom, he will be registered and remain registered as Eritrean, and the Immigration Police will continue contacting Eritrea for re-documentation and removal purposes. It is therefore evident that the early identification of stateless people is a key feature for their own protection but also in order to prevent useless, costly and inefficient procedures for the Police and other public authorities.

Malta's negative approach to the establishment of a statelessness determination procedure seems to be largely based on administrative and financial concerns, rather than on a failure to acknowledge the challenges faced by stateless persons. The Ministry for Home Affairs and National Security expressed concerns in relation to the potential pull-factor presented by such a procedure, particularly towards the population of failed asylum-seekers in Malta who, the Ministry fears, might seek to 'apply' for such a determination in the hope of being granted residence permits, or to delay return proceedings. Furthermore, the Ministry also explained its concerns in relation to the extent of rights it would be required to grant to persons recognised as being stateless, and also its reservations about the possibility of stateless persons acquiring Maltese nationality.[65]

3.2 DECISION TO DETAIN AND PROCEDURAL GUARANTEES

> "When we arrived in Maltese territory after the rescue operation, we were presented to the Immigration Police which was asking everyone their basic identification details. The Police woman could not believe me when I said I came from Myanmar, Burma. Nobody spoke my language and there were no translators, and I really had to insist that she write my country of origin properly. I could not yet speak English at that time, just a bit of the Bangladeshi language. I could understand though, that there might not be a lot of people from my country reaching Malta. I did not even know about Malta before I arrived there.
>
> Kafil Kafil, originally from Myanmar

Under Maltese law, there is no formal administrative decision to detain, and therefore no detention order in writing providing reasons in fact and in law for a person's detention. Administrative detention in the immigration context is an automatic measure for people against whom a removal order is issued by the Principal Immigration Officer, the above-mentioned "prohibited immigrant" in terms of Article 5 of the Immigration Act. As described above, once such an order is made, the person against whom it is issued shall be detained until removal.[66]

Migrants who apply for asylum before they are apprehended by the Immigration Police will however not be detained pending the outcome of their asylum application. This category was always a small percentage of annual asylum applications, yet in 2015 the trend changed tremendously with arrivals of Libyan and Syrian asylum-seekers entering Europe with Schengen visas. RefCom recorded more than 500 applications in the first five months of 2015.[67]

Persons who apply for asylum after they are taken into custody remain in detention until their asylum application is determined, or until any of the above-mentioned elements occur resulting in the person's release (e.g. vulnerability assessment). The Immigration Act states that an application for international protection suspends the removal order but not all of its effects, resulting in the continuation of the detention measure. In essence, therefore, Malta's current detention regime is automatically applied in a manner that is clearly in contravention of human rights law. The regime, in law and in practice, wholly ignores the principles of necessity and proportionality that require individual assessments in order to justify the deprivation of the migrant's liberty. In this regard, it is important to refer to the severe criticism levelled against Malta's detention regime by national and international human rights actors, calling for a radical review of the legal framework as well as of its practical implementation.[68] Reference should also be made to three judgements from the European Court of Human

Rights, severely reprimanding Malta for violating, primarily, Article 5(1)(f).[69]

Furthermore, given that an aspect of the detention regime is premised on the return of prohibited immigrants and that it is almost impossible to return a stateless person to his country of residence or to the country of origin,[70] it would be correct to conclude that this form of detention of stateless persons is not only in violation of the ECHR, but also of EU law, particularly the Return Directive. In fact, it is pertinent to refer to the above-described automatic review process introduced in 2014 following a more correct transposition of the Directive, resulting in an assessment of the returnability of detained migrants and their consequential release in cases of unreturnability.

Whilst it is impossible for this report to state whether this review actually had an impact on stateless persons, due to the extremely limited number of persons confirmed to be stateless, it is clear that the review would benefit this category of persons and also persons at risk of statelessness. In fact, it could be suggested that the second transposition effort of the Return Directive, in 2014, was a reaction to the condemnation from the European Court of Human Rights in the three above-mentioned cases (Louled Massoud, Aden Ahmed and Suso Musa).

At the time of writing this report, the Ministry for Home Affairs and National Security was in the process of transposing the recast Reception Conditions Directive. Although the report is not in a position to comment on the contents of the proposed transposing legislation,[71] the meeting with the Minister confirmed that the transposition process is intended to be a major reform of the detention system, shifting from a system of automatic detention to an individual assessment process resulting in decisions not to detain, to detain or to impose alternatives to detention. The Ministry also confirmed the strengthening of the procedural guarantees allowing a detained person to challenge the legality of his/her detention. Whilst this news is of course well received, it is too early to comment on these developments, also since it would be important to see how such changes will be implemented on the ground.

With regard to procedural guarantees available to detained persons (including the stateless or those at risk of statelessness) to challenge the legality of their detention, the three Strasbourg Court judgements clearly highlighted Malta's failures to comply with the basic guarantees required in ECHR Article 5(4).

"*In the instant case the Court considers that it is necessary, in view of its finding of a violation of Article 5(4), to indicate the general measures required to prevent other similar violations in the future. It observes that it has found a violation of Article 5(4) on account of the fact that none of the remedies available in Malta could be considered speedy for the purpose of that provision. Thus, the Court considers that the respondent State must above all, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism which allows individuals taking proceedings to determine the lawfulness of their detention to obtain a determination of their claim within Convention-compatible time limits, but which nevertheless maintains the relevant procedural safeguards. The Court reiterates that…it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question.*"[72]

First of all, in terms of Article 409A of the Criminal Code,[73] a detained person can lodge an application in order to request to the Court of Magistrates to examine the lawfulness of detention and order release from custody. The European Court agreed with the claimants in saying that the courts entrusted with hearing applications under the said Article have acknowledged their limited competence in holding that they were not competent to look into other circumstances which could render detention illegal, such as an incompatibility with the rights granted by the Constitution or the Convention, when there was a clear law authorising continued detention. Therefore this remedy did not provide an effective review of the lawfulness of detention.[74]

The second remedy existing under domestic law is an application to the Immigration Appeals Board if a detained migrant feels that his or her detention is no longer reasonable. Due to excessive duration of proceedings, as well as the limitations on the remedy the Board could give to applicants, these proceedings were considered by the European Court not to comply with the requirements of Article 5(4) of the Convention.[75]

Another remedy potentially available to detained individuals is a constitutional application before the Civil Court (First Hall), followed, if necessary, by an appeal to the Constitutional Court. However, in its jurisprudence the European Court of Human Rights held that this procedure was rather cumbersome and that lodging such a constitutional application would not ensure a speedy review of the lawfulness of the applicants' detention.[76] Consequently, in the cited cases the Court held that the applicants had not had at their disposal, under domestic law, a remedy for challenging the lawfulness of their detention under Article 5(4).

The 2014 amendments to the Return Regulations imposed an automatic review of detention at reasonable intervals, although in practice these reviews are not triggered by the individual who remains largely unaware of the review process and conclusion. It is most likely that this review will not fulfil the requirements of an effective remedy under ECHR Article 5(4).

3.3 LENGTH OF DETENTION

> "When I won the Court case against Malta for the fact that they had arbitrarily detained me for more than 18 months, I earned a lot of money. And I decided to send it all to my family. I did not keep a penny of it. I grew up in very harsh conditions, in mud hut and bare furniture, struggling to eat every day. I could not possibl enjoy all this money knowing how my family is living back there. I could have had a fresh start here but I would have never sleep peacefully."
>
> Ibrahim Suzo, originally from Sierra Leone

National policy, not law, sets the maximum detention period to 18 months, although it is not clear how this maximum detention duration operates with regard to migrants who, having already been detained for the maximum period, are re-detained in the context of return proceedings. Persons receiving a positive decision on their asylum applications are released upon receipt of the decision (following medical clearance) and persons found to be vulnerable or unaccompanied minors are released at these decisions (also following medical clearance). In practice, the length of detention is therefore associated with parallel procedures thereby emphasising its arbitrariness and highlighting its unlawfulness insofar as a person's detention is not based on the specific purpose of removal but more on the operation of other, intrinsically unrelated procedures.

With regard to pre-removal detention, Malta was condemned for the extended detention of a migrant without the ability to prove or demonstrate efforts to conduct the removal process.[77] The 2014 amendments to the Return Regulations added automatic review of detention at reasonable intervals not exceeding three months, with the obligation to release persons where their return is no longer foreseeable. Observed practice reveals that the reviews conducted on the basis of these amendments are largely based on the person's nationality and the reviews conducted have in fact resulted in the release from detention of several groups of persons long before the 18-month maximum period.

As 2015 did not see more than 100 arrivals at the time of writing, it is indeed difficult to assess the longer-term impact of this review and whether it will translate into a mainstream process with increased procedural guarantees.

3.4 REMOVAL AND RE-DOCUMENTATION

With regard to the procedural aspects of deportation proceedings, the main challenge for the Immigration Police is the lack of communication from authorities of the countries of origin. The standard procedure for return sees the Immigration Police, through the Ministry for Foreign Affairs, contacting the country of origin as declared by the migrant. If the national authorities reply, one to one interviews are organised between the migrant and the representative of the country of origin, with the assistance of interpreters where necessary.

During this interview, the representative of the country will assess the plausibility of the claim of nationality, through tests of language and general knowledge on the country. If the representative is satisfied that the migrant is from the claimed country, necessary documentation for travelling back will be issued and the person detained until the removal is realised. The Immigration Police does not work on the country of former residence, limiting itself to countries of origin. In view of the unlikelihood that stateless persons will receive documentation from any state, they are protected from being detained again after their initial detention upon arrival, where this occurred following irregular entry or apprehension.

As of early 2015 the Immigration Police has around 2800 pending requests for travel documents, some of which have been pending for years,[78] According to the same source, the top five nationalities (or claimed nationalities) awaiting such documentation are as follows

Pending requests for travel documents

Nationality	Pending requests
Ivory Coast	>500
Nigeria	>300
Ethiopia	>250
Eritrea	>200
Sudan	>200

Source: Immigration Police

Malta maintains regular communications with only a few African states, namely Nigeria and Ghana. It was reported that Gambia only cooperates with the Police when the return is voluntary. The understanding of the Ministry for Home Affairs and National Security, whilst acknowledging the need to explore the implications of acceding to the 1954 Convention, is that the main responsibility for these persons pending return lies with their countries of origin. This position is insensitive to the particular condition and vulnerabilities of the stateless.[79]

During the interview, the Immigration Police mentioned an interesting case regarding nationals from Nigeria. It seems that the Nigerian authorities would only issue re-entry documentation, in a removal context, to Nigerian children registered in Nigeria. Nigerian children born in Malta but not registered in Nigeria, for whatever reason, would not be issued such documentation, rendering the removal of entire families rather problematic. Clearly, the reasons for non-registration would need to be explored in individual cases in order to ascertain whether this is due

to, for example, non-cooperation, absence of information, practical difficulties, etc.

3.5 ALTERNATIVES TO DETENTION

Maltese law makes no provision for alternatives to detention, saving the possibility for detained migrants to request bail from the Immigration Appeals Board.[80] It is expected that the transposition into Maltese law of the recast Reception Conditions Directive will require Malta to introduce alternatives to detention into national law. Since, at the time of writing, the draft transposing law was not made available, no further information may be provided.

In the context of pre-removal detention, the national transposition of the Return Directive does mention the obligation of the Principal Immigration Officer to not detain individuals if *"other sufficient and less coercive measures are applicable"*, clearly requiring an individual assessment as to the feasibility of applying alternatives to detention. The Regulations do not provide examples of such possible less coercive measures, and none are known to have been resorted to in practice.[81]

3.6 CHILDREN, FAMILIES AND VULNERABLE GROUPS

"The police asked us many questions and I explained everything. I told them we were born in Addis Ababa and later sent to Dekemhare in Eritrea. They wrote down Ethiopia as my country of origin, which was true. I also told them we were minors, my sister and me. They took everything we were carrying, our money, our personal belongings, etc. I begged the police woman to leave my pictures with me, the only pictures I had from my mother. I tried to explain that to her but she looked me in the eye, and tore the pictures in such small pieces that I will never be able to stick them together. They brought us to a camp in some military barracks, but we did not know what will happen next, how long we would have to stay and why would they keep us locked up. After all we had went through, I could not believe I was in Europe."

Tsegey, originally from Ethiopia

Although the Maltese legislation does not provide for the identification of vulnerable groups, the public entity Agency for the Welfare of Asylum Seeker (AWAS) is responsible for the assessment and determination of vulnerability in the context of detention. These assessments are conducted through interviews by AWAS staff, generally social or care workers. AWAS also conducts interviews for determining whether persons claiming to be unaccompanied children are in fact below the age of eighteen. The Reception Regulations[82] contain specific provisions for people with special needs, minors, unaccompanied minors and pregnant women, also enshrining the principle of maintenance of family unity.[83]

Upon confirmation of vulnerability or minor age in the case or unaccompanied children, persons are released from detention.[84]

In this regard, the AIDA report on Malta states that: "Due to resource and infrastructural limitations some vulnerable individuals are either never identified or, once identified, are unable to access the care and support they require".[85] Amongst other things, this report highlights concerns relating to the age assessment and adult vulnerability procedures, with a focus on vulnerabilities that are less visible than others, such as mental health problems. The report comments that the release of vulnerable persons, particularly of this group of 'invisible vulnerabilities', could take up to eight months.[86]

3.7 CONDITIONS OF DETENTION

"I spent four months and 10 days in detention, four months and 10 days doing nothing but eating and sleeping. I could only communicate with the dozen Bangladeshi people detained with me. Sometimes there were people visiting detention but I could not understand or ask them anything. I could not even call my family with the five euros credit they would distribute to us every two months. It would take much more than that to reach the network in Rakhine state, where my family lives. Even the medical care was scarce in there. We were given just one tablet of paracetamol, whatever pain we may have. They brought me to the clinic in handcuffs as if I was a criminal but the doctor there asked them to remove the handcuffs and gave me treatment. I sort of understand why we were often sick. We were mainly fed pasta in detention. I don't eat much pasta as we mainly eat rice in my country. We never had any fruits or vegetables. But we did not have anything to do in detention, and the yard is so small for all the detainees, we did not get much physical activity. So you get easily sick if you have only pasta to eat and never move.

You feel like a baby in detention, not in the sense that you are cared for, but in the sense of the total deprivation of anything that makes you a man. We did not even had clothes other than what we were wearing when we arrived and two boxer shorts. To wash these clothes, you had to shower in them.

Kafil Kafil, originally from Myanmar

"But what a surprise when I arrived there. I could not believe I had finally reached Europe, the Human rights continent. They pushed us into small rooms packed with people of different nationalities. They called it B Block. It used to be a military barracks on which they had put barred windows and doors, with guards at the entrance after we entered a fenced off area full of military. The place was so dirty that I could not bring myself to shower for 25 days as I was disgusted by the

sanitary conditions. There were so many people packed in there that diseases started spreading and I got the scabies. I never thought that would ever happen to me. But I saw a doctor twice, and each time he gave me one single tablet. My health was getting worse and I could not take it anymore. I did not know how long that would continue. People around mentioned one year and half and I went mad. I had not slept in days and I knew that if I stayed, I would die."

Davin Mohamed, originally from Syria

According to a recent report on detention in Malta[87]:

"Asylum-seekers and other third country nationals, who have over-stayed their visa, are detained in the same military barracks, which are overcrowded, offer inadequate sanitation and hygiene facilities, and allow no privacy for the detainees. Whilst detainees are provided with a bed each, there is little space in between the beds and no place where they may store their personal possessions.

Detainees are provided with cleaning materials and are expected to take care of the cleaning of the centre. Although detainees are issued with basic items of clothing upon arrival, there is no systematic or consistent practice for the distribution of clothes which are weather-appropriate.

Most of the clothing which is provided to detainees is donated on a charitable basis to the detention service management and is then distributed accordingly. Moreover, there is little to no heating or ventilation, exposing migrants to extreme cold and heat."

In 2013, the European Court of Human Rights condemned Malta under Article 3's prohibition of cruel, inhumane or degrading treatment with regard to the conditions of the dormitories, the lack of female staff, the lack of access to open air, the exposure to heat and cold and the overall creation of suffering in this hostile environment:[88]

"In view of all the above-mentioned circumstances taken as a whole which the applicant, as a detained immigrant, endured for a total of fourteen and a half months, and in the light of the applicant's specific situation, the Court is of the opinion that the cumulative effect of the conditions complained of diminished the applicant's human dignity and aroused in her feelings of anguish and inferiority capable of humiliating and debasing her and possibly breaking her physical or moral resistance.

In sum, the Court considers that the conditions of the applicant's detention in Hermes Block amounted to degrading treatment within the meaning of Article 3 of the Convention".[89]

3.8 CONDITIONS OF RELEASE AND RE-DETENTION

"But in Malta, after everything that happened to me, detention, being beaten up, arrested, jailed and released, I had no more chance than in Gambia. Twice the Police called the Sierra Leonean Embassy, once when I was in prison, and then again when I was back in detention. Twice I cooperated and explained everything to them. Twice, they did not recognise me as one of them. But I stayed in detention nonetheless. I did my time, now, I would just like to be given a chance, a good job, an opportunity to start all over again."

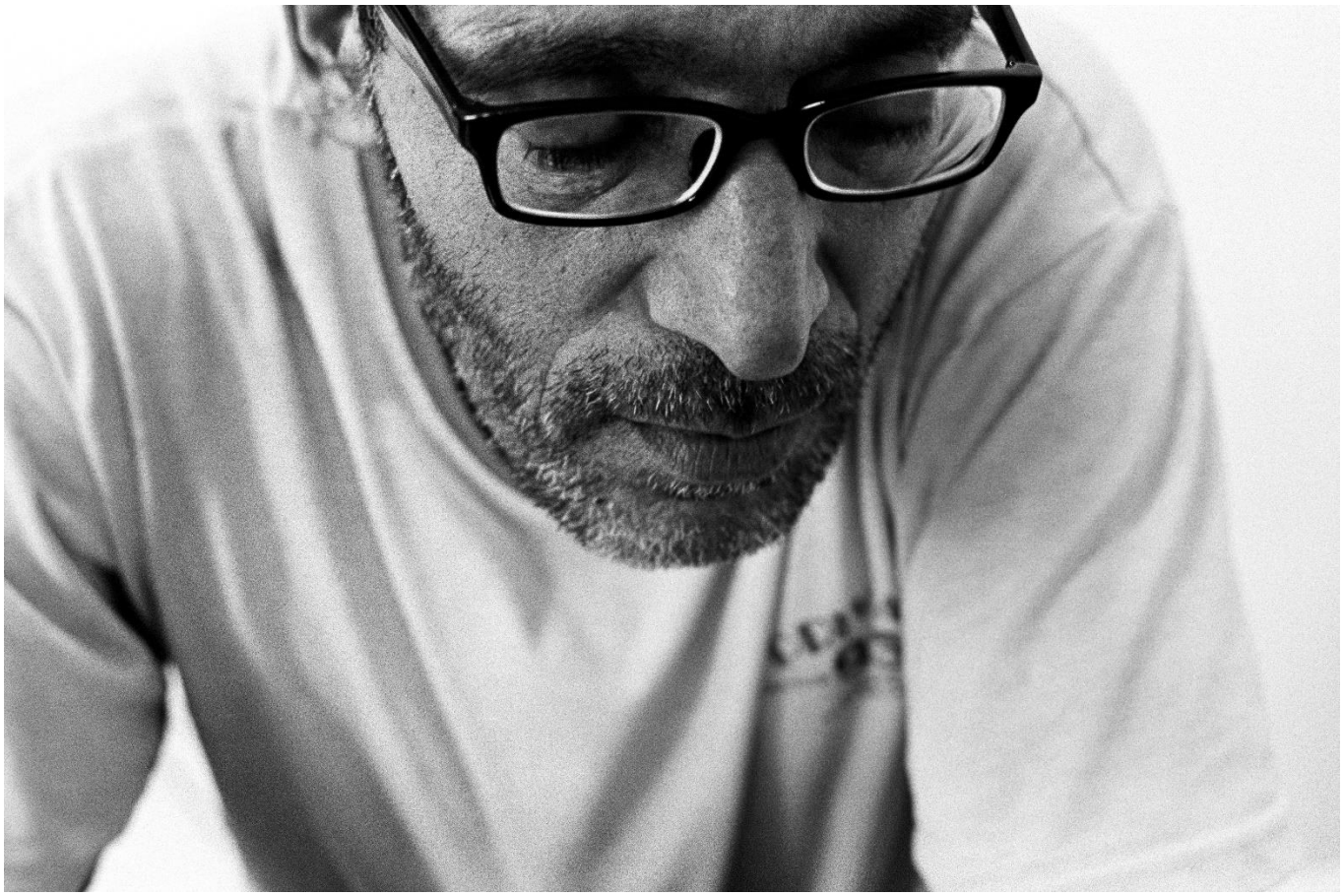
Ibrahim Suzo, originally from Sierra Leonne

As explained above, detained migrants may be released from detention for various reasons: determination of minor age or vulnerability; positive asylum decision; or duration of the asylum process. Failing any of these, the maximum detention period of 18 months would apply. It is also mentioned above that 2014 brought about important changes in law and practice that dramatically altered the operation of detention, by introducing a detention review that assesses a detainee's returnability (largely on the basis of nationality).

From the perspective of a stateless person, or someone at risk thereof, any of the first three release conditions is relevant. Questions may arise as to the applicability of the review process in the context of persons whose nationality, and therefore prospects of return, is unclear. Since registration procedures rely on personal declarations, as opposed to verified links with countries of origin, there are high risks of stateless persons 'failing' the review process on the basis of a presumed returnability, resulting in prolonged detention.

In relation to re-detention, it has been explained above that following release from detention – for whatever reason – Immigration authorities would apprehend and re-detain a person where the prospects for his/her return materialise. Technically this possibility should present no risk to a stateless person, in view of the 'due diligence' principle in return proceedings requiring real prospects of return for the migrant's detention to be in conformity with legal norms. However, in view of Malta's over-reliance on administrative detention, including with an unclear and arbitrary legal and policy framework, it would be unwise to rely on full compliance with this principle. Instead, a more cautious approach should be encouraged, with a view towards strict implementation of legal norms regulating pre-removal detention.

4. CONCLUSION AND RECOMMENDATIONS



In the Maltese context, it appears that the issue of statelessness is not yet visible enough to push the state to introduce a system of identification and protection specific to the needs of stateless people and persons at risk of being stateless. On the other hand, there is fear that accession to the Convention would lead to *"a strain of the system"*, in itself a paradox as the numbers appear so negligible. The specific situation of detained persons is in fact problematic due to the broader human rights concerns related to Malta's detention regime, with detention for purposes of removal presenting itself as particularly problematic in the case of stateless persons, or persons at risk thereof.

It is nonetheless positive to note *ad hoc* attempts at granting, as a minimum, national protection, to persons who although not formally identified and processed as stateless, present themselves as such. In this regard, the positive efforts of the Office of the Refugee Commissioner are noted. Also noted are the comments by the Ministry regarding possible accession to the 1954 Convention, and its openness at discussing details with civil society organisations.

On the basis of the above, the following recommendations are made. Both aditus and ENS stand ready to constructively engage in a technical discussion with the relevant stakeholders, and provide all relevant information and input:

1. State authorities should collect accurate data regarding stateless persons, including those in detention. Data on statelessness is necessary to ascertain the extent of the problem and to design

effective solutions. Accurate information is necessary in order to understand who the affected persons are, and how they are being treated.

2. Malta should accede to the Convention relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961, which provide part of the legal framework for the protection of the rights of stateless persons, as well as reducing and preventing statelessness. Malta should also fulfil its obligations by the stateless under international and regional human rights law, including obligations to not discriminate against and to not arbitrarily detain the stateless.
3. Malta should establish a dedicated statelessness determination procedure. In order to build on lessons learnt, to maximise limited resources, and to capitalise on existing expertise, the Office of the Refugee Commission readily presents itself as a viable option for the responsible authority. In order to avoid abusive applications, appropriate information ought to be provided to applicants in order to clarify the purpose and implications of the procedure, including the possibility of identifying a country willing to engage in a return process. Any procedure should enshrine all necessary procedural guarantees, including access to information, legal aid, and effective remedy.
4. Determination of statelessness in a dedicated procedure (see above) should unequivocally rule out detention, as it precludes the view to expulsion. This procedure should provide a possibility of regularisation of legal residence status of such persons and issuance of identity and travel documents. Accordingly, the law should set clear rules governing statelessness determination procedure providing inter alia, that everyone who wishes to request statelessness status can do so quickly and effectively.
5. Malta should finalise the move from an immigration regime based largely on automatic detention towards one based on individual assessments, and bring Malta's use of administrative detention in line with human rights standards. In particular, the circumstances facing stateless persons should be considered as a significant factors during the process of determining the lawfulness of immigration detention. The initial decision to detain should always be based on the individual circumstances and personal history of the person in question. Decisions should contain clear reasons why other non-custodial measures would be inadequate for the purpose and, in the light of existing alternative measures, there should be clear proportionality between the detention and the end to be achieved. In particular, when detention proceedings are carried out, state authorities should identify whether or not a person is stateless or at the risk of statelessness (*inter alia* due to the fact that a person claims to be from one of the countries known for generating statelessness) having in mind that the lack of appropriate documentation or presenting expired documentation should not per se justify the decision to detain and should not be equalled to a risk of absconding. Failure to do so is likely to render detention arbitrary.
6. Malta should ensure that detention is always used as a last resort, after all alternatives (starting with the least restrictive) are exhausted. Less restrictive measures must be shown to be inadequate before detention is applied. The choice of alternative to detention should be influenced by the individual assessment of the circumstances of stateless persons.
7. Malta should formalise the detention review procedure contained in the Returns Regulations, so as to more appropriately establish a transparent and accountable procedure that conforms to human rights standards. In this regard, the notion of *"due diligence"* in the context of return procedures, should be maintained as a key priority throughout detention – state authorities must be diligent enough to identify if people who they initially assessed as not being at risk of statelessness are now at risk – and act accordingly. Decisions to continue detention of a stateless person should always contain a detailed justification explaining what measures aimed at determining the nationality of the person in question were already taken, what the reaction of the diplomatic mission of the country contacted was and what the prospect of a successful return of this person to the country of origin/former habitual residence is.
8. In the case of failed asylum-seekers, particular attention ought to be paid to the relationship between the migrant and the presumed or claimed country of origin in order to ensure that where legal and/or practical returnability is not possible, detention is not resorted to. Furthermore, such individuals should be referred to the statelessness determination procedure.
9. Malta should raise the profile of statelessness and train those public authorities potentially engaging with this issue, in particular the Department for Citizenship and Expatriates Affairs.
10. Malta should conduct an internal assessment of those scenarios whereby Maltese law or practice related to, *inter alia*, citizenship, residence permits, and marriage creates or heightens risks of statelessness, and such gaps in the law and practice should be addressed.
11. Malta should ensure effective access to protection for stateless persons, through the provision of legal stay status and the formal recognition of their civil, political, economic, social and cultural rights.

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