

COUNTRY BRIEFING
SEPTEMBER 2021

Portugal



INTRODUCTION

A stateless person is "a person who is not considered as a national by any State under the operation of its law".¹ Statelessness has a wide range of causes, among which discriminatory practices regarding acquisition and loss of nationality (e.g. based on gender or ethnicity), and conflicts of laws.

Its consequences are varied and deep. Stateless persons are often subject to severe violations of human rights such as absence of identity and travel documents, and inability to access basic services (such as education and healthcare). Furthermore, stateless persons face severe obstacles in actions such as opening a bank account or accessing housing. Notwithstanding, statelessness can be easily addressed through the implementation of adequate legal safeguards and policies at national level.²

The [Statelessness Index](https://index.statelessness.eu) (<https://index.statelessness.eu>) is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#),³ a civil society alliance of over 170 organisations and individuals in 41 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS and the Portuguese Refugee Council (CPR) worked together to research, compile and analyse information on statelessness in Portugal. This briefing summarises the main findings in five thematic areas - International and Regional Instruments, Stateless Population Data, Stateless Determination and Status, Detention, as well as Prevention and Reduction – and makes key recommendations to the Portuguese Government to advance the protection of stateless persons, and to reduce and prevent statelessness.

INTERNATIONAL AND REGIONAL INSTRUMENTS

Portugal is State Party to the [1954 Convention on the Status of Stateless Persons](#) and to the [1961 Convention on the Reduction of Statelessness](#). At regional level, it is also party to the [European Convention on Nationality](#) but not the [Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession](#). Portugal is party to all other relevant regional and international human rights instruments except for [the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#). The Conventions have direct effect.

As a result, Portugal has specific obligations under international and regional law to protect the right to a nationality, to protect stateless persons and to prevent statelessness.

The Portuguese Government should consider acceding to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.



STATELESS POPULATION DATA

The collection of reliable quantitative and qualitative data on stateless populations is critical to designing and implementing effective legislation and policy.

The 2011 Census in Portugal included 'stateless' as a nationality category. The results indicate a total population of 553 stateless people. A new Census has been conducted in 2021. The 'stateless' category included a brief explanation of the concept. Statistics Portugal data on the resident population also includes information on the number of stateless people (33 in 2019), people with unknown nationality (none),

and people recorded as “other non-classifiable” (56). Data from the Immigration and Borders Service (SEF) for 2019 indicated a resident population of 33 stateless people and 11 people with unknown nationality. The same source reported a resident population of 30 stateless people and 29 people with unknown nationality in 2020.

Official data on stateless populations in Portugal is therefore limited and the collection of reliable data hampered by the lack of a dedicated statelessness determination procedure. The absence of reliable data makes it difficult to plan and implement adequate measures to protect stateless people and prevent and reduce statelessness in Portugal.

The Portuguese Government should take steps to improve the collection and publication of quantitative and qualitative data on stateless populations, namely by harmonising and clarifying statistical categories and ensuring adequate training for officials on the identification and registration of stateless persons.



STATELESSNESS DETERMINATION AND STATUS

To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure (SDP).

The identification of stateless persons stands out as one of the most significant gaps in Portugal as there is no SDP in place. Stateless people may be encountered in administrative procedures in Portugal, but none amounts to formal identification. Furthermore, there is no stateless protection status nor specific rights attached to being considered stateless by the authorities.

During the Global Refugee Forum in December 2019, the Portuguese Government committed “to establish mechanisms to identify, protect, prevent and reduce statelessness in Portugal” and to “provide the issuance of Convention travel documents for refugees and stateless persons according with international standards”.⁴

The Human Rights Committee recently recommended that Portugal “[e]stablish an effective mechanism for the identification of vulnerable applicants, in particular stateless persons”.⁵

The Portuguese Government should establish a dedicated statelessness determination procedure in line with UNHCR guidance and ensure that stateless people have access to adequate protection in line with the applicable international and regional obligations.



DETENTION

Stateless persons and persons at risk of statelessness face heightened risks of arbitrary detention.⁶

Portugal is bound by the EU Returns Directive, which requires particular attention to be paid to the situation of vulnerable persons; and the EU Returns Handbook requires attention to be paid to the specific situation

of stateless persons, ensuring that there is a reasonable prospect of removal *prior to detaining* or prolonging a person’s detention.

Powers for immigration detention in Portugal are provided for in the Constitution and in the Immigration and Asylum Acts. However, there is no obligation in law to identify a country of removal prior to detaining someone. According to the available information, statelessness is not considered juridically relevant in detention decisions, and there is little general awareness of its relevance in the detention context.

Some procedural safeguards are in place, including a maximum detention period of 60 days under the Immigration Act and the Asylum Act. People who have been released can be subject to an additional detention period of 30 days. A person subject to immigration detention must be brought before a judge within 48 hours and there are regular, periodic judicial *ex officio* reviews.

Due to the lack of awareness and mechanisms to identify and determine statelessness in Portugal, it is likely that stateless people are detained in practice.

The Portuguese Government should take steps to protect stateless people from arbitrary detention, namely by introducing a statelessness determination procedure and appropriate referral mechanisms, embedding consideration of statelessness as a juridically relevant fact in all decisions to detain, and ensuring that relevant actors are adequately trained on statelessness.



PREVENTION AND REDUCTION

Portuguese law provides for the automatic acquisition of nationality by children born on the territory who do not have another nationality. In practice, if parents are not registered and documented as stateless, the child’s statelessness must be proven (through statements from relevant consular authorities). The burden of proof in such cases lies on the child and/or their representative.

The Nationality Act establishes that new-born foundlings are presumed to have been born in Portugal unless proven otherwise and, in practice, nationality is established at birth registration. Adoption by foreigners does not affect the Portuguese nationality of the child, and acquisition of nationality by a child adopted by Portuguese nationals is automatic in the case of a full adoption.

Children born to Portuguese parents abroad are Portuguese if their birth is registered in the Portuguese Civil Registry or if they/their representative declares willingness to be Portuguese. Birth registration is mandatory regardless of the legal status of parents and late birth registration is also possible. Nevertheless, according to media reports, restrictions to public services related with COVID-19 have resulted in gaps in birth registration. Withdrawal of nationality is only possible in case of renunciation or fraudulent acquisition, and safeguards against statelessness are established in the law.

With regards to reduction of statelessness, successive amendments to the Nationality Act have generally been positive with respect to acquisition of Portuguese nationality and there have been efforts to promote prompt birth registration. The Nationality Regulation has not yet been amended following the 2018 and 2020 amendments to the Nationality Act (as of 31/08/2021).

The Portuguese Government should design and implement evidence-based policies to reduce statelessness, ensure that officials are adequately trained to identify stateless people and those at risk of statelessness, and that accessible information on routes to acquisition of nationality is available.

The Portuguese Government should ensure that otherwise stateless children born on the territory acquire a nationality under existing legal safeguards by applying appropriate rules of evidence.

SUMMARY OF RECOMMENDATIONS

The Portuguese Government should:

- Consider acceding to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- Improve the collection and publication of quantitative and qualitative data on stateless populations, by harmonising and clarifying statistical categories and ensuring adequate training for officials on the identification and registration of stateless people.
- Establish a dedicated statelessness determination procedure in line with UNHCR guidance and ensure that stateless people have access to adequate protection in line with the applicable international and regional obligations.
- Take steps to protect stateless people from arbitrary detention by introducing a statelessness determination procedure and appropriate referral mechanisms, embedding consideration of statelessness as a juridically relevant fact in all decisions to detain, and ensuring that relevant actors are adequately trained on statelessness.
- Ensure that officials dealing with nationality matters are adequately trained to identify stateless people and those at risk of statelessness, and that accessible information on routes to acquisition of nationality is available.
- Ensure that otherwise stateless children born on the territory acquire a nationality under existing legal safeguards by applying appropriate rules of evidence.
- Design and implement evidence-based policies to reduce statelessness.

ENDNOTES

¹ 1954 Convention on the Status of Stateless Persons, available at <https://bit.ly/2BXyuvw>.

² See, for instance, UNHCR's special report *Ending Statelessness within 10 years*, available at <https://bit.ly/3fpDzzV>.

³ www.statelessness.eu

⁴ Statement from Portugal at the Global Refugee Forum (17 December 2019) is available at <https://bit.ly/38OHMdM>.

⁵ Human Rights Committee, *Concluding observations on the fifth periodic report of Portugal*, CCPR/C/PRT/CO/5, 2 April 2020, available at <https://bit.ly/32dwwkqL>.

⁶ UNHCR, *Stateless Persons in Detention – A tool for their identification and enhanced protection*, June 2017, available at <https://bit.ly/303pmSP>.

CONTACT

Inês Carreirinho

Legal Protection Coordinator, Portuguese Refugee Council

ines.carreirinho@cpr.pt

Rita Santos

Legal Protection Officer, Portuguese Refugee Council

rita.santos@cpr.pt

Nina Murray

Head of Policy & Research, European Network on Statelessness

nina.murray@statelessness.eu

