

Joint Submission to the Committee against Torture

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BELGIUM

NANSEN

European Network on Statelessness

Institute on Statelessness and Inclusion

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Statelessness



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Joint Submission for the 71st session of the Committee against Torture

on the rights of stateless persons and human rights
challenges pertaining to statelessness

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Introduction

1. NANSEN,¹ the European Network on Statelessness (ENS)² and the Institute on Statelessness and Inclusion (ISI)³ welcome the opportunity to make this joint submission to the Committee against Torture (hereinafter the “Committee”), on the rights of stateless persons and human rights challenges pertaining to statelessness in Belgium. The submission focuses on:
 - I. Liberty and security of the person and arbitrary detention
 - II. Deprivation of nationality on national security grounds
 - III. Statelessness determination and the rights of stateless persons
2. The submission provides additional information ahead of the consideration of Belgium’s fourth periodic report at the Committee’s 71st Session in July 2021, particularly as it relates to and affects stateless people and the right to a nationality, taking into account the list of issues and Belgium’s reply to the list of issues. This submission partially draws on information and analysis from ENS’s Statelessness Index, which covers Belgium.⁴
3. In light of Belgium’s obligations under the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (hereinafter “Convention against

¹ NANSEN is a centre of independent expertise on refugee law based in Brussels. Its mission is to develop and make available quality legal aid for all those in need of international protection so that their fundamental rights are effectively upheld. To achieve this objective, NANSEN combines technical legal expertise with an interdisciplinary approach to asylum. NANSEN was set up in 2017 by a group of lawyers and academics experienced in the field of refugee, human rights, and migration law. For more information about NANSEN, see: <https://nansen-refugee.be/en/>.

² The European Network on Statelessness (ENS) 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 170 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 support to a range of stakeholders, including governments. For more information about the European Network on Statelessness, see: www.statelessness.eu.

³ The Institute on Statelessness and Inclusion (ISI) 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 70 country specific UPR submissions on the human rights of stateless persons, of which over 20 have been submitted in collaboration with the European Network on Statelessness. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 38th UPR Sessions. For more information see: www.institutesi.org.

⁴ The Statelessness Index on Belgium can be accessed at: <https://index.statelessness.eu/country/belgium>.

Torture”) and the importance of eradicating statelessness as expressed by UNHCR’s #IBelong campaign,⁵ the submitting organisations hope the Committee will raise these matters and address recommendations to Belgium to further prevent and reduce statelessness. Further information on the legal framework and the situation of stateless people in Belgium is provided in Annex I.

International Obligations

4. Belgium has acceded to the Convention against Torture and to most relevant human rights treaties. It therefore has a clear obligation to protect the rights, liberty and security of stateless people on its territory, including through the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the prevention of arbitrary detention of stateless persons, and arbitrary deprivation of nationality on national security grounds.
5. Through several recommendations made to other States, the Committee has demonstrated the importance of considering the impact of statelessness and nationality in assessing States’ international obligations under the Convention against Torture, particularly in the context of forced displacement and non-refoulement. It has recommended Romania consider establishing a statelessness determination procedure,⁶ and North Macedonia and New Zealand adopt measures to ensure that stateless persons whose asylum claims have been refused are not held in detention indefinitely.⁷ It noted that obstacles to birth registration in Montenegro, in particular for Roma, Ashkali and Egyptians, put them at risk of statelessness and recommended the establishment of a simplified and accessible procedure for birth registration.⁸ The Committee also recommended that Bolivia should establish a framework to determine whether a person is stateless in order to ensure that the State is fulfilling the international commitments assumed under the Convention relating to the Status of Stateless Persons (1954 Convention), and grant its nationality to persons who were not born on Bolivian territory but who would otherwise be stateless. It noted that Bolivia should particularly ensure that people are not wrongfully returned at the border and that persons in need of international protection are identified, especially in the context of mixed migration flows.⁹
6. Furthermore, the right to liberty and security of the person is enshrined in Articles 3 and 9 of the Universal Declaration of Human Rights (UDHR), Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), Article 37 of the Convention on the Rights of the Child (CRC), Article 16(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW), Article 14 of the Convention of the Rights of Persons with Disabilities (CRPD), Article 5 of the European Convention on Human Rights (ECHR), and Article 6 of the Charter of Fundamental Rights of the European Union, among others. The Human Rights Committee’s General Comment No. 35 (para. 18) stipulates that “the inability of a State party to carry out the

⁵ UNHCR, #IBelong Campaign to End Statelessness (launched in November 2014), see: <https://www.unhcr.org/ibelong/>.

⁶ CAT, Concluding observations on the second periodic report of Romania, 5 June 2015, CAT/C/ROU/CO/2.

⁷ CAT, Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia, 5 June 2015, CAT/C/MKD/CO/3; and CAT, Concluding observations on the sixth periodic report of New Zealand, 2 June 2015, CAT/C/NZL/CO/6.

⁸ CAT, Concluding observations on the second periodic report of Montenegro, 17 June 2014, CAT/C/MNE/CO/2.

⁹ CAT, Concluding observations on the second periodic report of the Plurinational State of Bolivia as approved by the Committee at its fiftieth session, 14 June 2013, CAT/C/BOL/CO/2.

expulsion of an individual because of statelessness or other obstacles does not justify indefinite detention”.

7. The prohibition of arbitrary deprivation of nationality is set out in Article 15(2) UDHR and is subsequently enshrined in different international and regional legal instruments. Article 18(1)(a) CRPD obliges States Parties to ensure that persons with disabilities “have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability”. Article 9(1) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also provides that “States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband”. Article 7 CRC sets out children’s right to acquire a nationality, and Article 8(1) provides that States “undertake to respect the right of the child to preserve his or her identity, including nationality, [...] without unlawful interference”. The UN General Assembly has reiterated the importance of the prohibition of arbitrary deprivation of nationality by noting that it constitutes a “fundamental principle of international law”. Furthermore, the European Court of Human Rights has held that arbitrary denial or revocation of nationality might, in certain circumstances, raise an issue under Article 8 of the ECHR because of the impact of such a denial on the private life of the individual.¹⁰
8. The principle of prohibition against torture or other inhuman and degrading treatment, as established in the Convention against Torture, is also enshrined in the UDHR (Article 5), the ICCPR (Article 7), the CRC (Article 37(a)), the ECHR (Article 3), the Charter of Fundamental Rights of the European Union (Article 4), and the Geneva Conventions (Common Article 3). The Committee against Torture also states that the prohibition against torture is a fundamental principle of customary international law.¹¹

Previous recommendations by human rights bodies

9. Belgium was previously reviewed during the 11th, 24th and 38th sessions of the Universal Periodic Review, in 2011, 2016 and 2021 respectively. In the second cycle, the Office of the United Nations High Commissioner for Refugees (UNHCR) recommended that Belgium should (i) adopt a specific, accessible, fair and effective procedure for the recognition of statelessness, or improve the existing procedure, in accordance with the 1954 Convention relating to the Status of Stateless Persons (“1954 Convention”) and the guiding principles of UNHCR, (ii) grant a residence permit to recognised stateless persons in Belgium, (iii) grant a temporary residence permit to applicants pending the statelessness determination procedure, and (iv) issue travel documents to all stateless persons lawfully residing in Belgium.¹²
10. In 2019, the Committee on the Rights of the Child welcomed Belgium’s efforts to accede

¹⁰ E.g. European Court of Human Rights, *Ramadan v. Malta*, application no. 76136/12, judgment of 21 June 2011; *Ghoumid and others v. France*, applications no. 52273/16, 52285/16, 52290/16, 52294/16 and 52302/16, judgment of 25 June 2020; *K2 v. the United Kingdom*, application no. 42387/13, decision of 7 February 2017.

¹¹ UN Committee against Torture, General Comment No. 2: Implementation of article 2 by State parties, 2008, CAT/C/GC/2, para. 1.

¹² UNHCR, Submission for the universal periodic review of Belgium, 2nd cycle, 24th session, p. 15, available at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2427&file=EnglishTranslation>.

to the 1961 Convention on the Reduction of Statelessness (“1961 Convention”).¹³ The Human Rights Committee recommended that Belgium adopt legislation to grant nationality or residence permits to persons recognised as stateless.¹⁴

11. In 2012, UNHCR also made important recommendations to Belgium as part of its mapping study on statelessness in Belgium. In 2014, UNHCR issued its Handbook on Protection of Stateless Persons¹⁵ intended to guide government officials, judges and practitioners, as well as others involved in addressing both statelessness determination and the development and implementation of law and policies relating to the protection of stateless persons. UNHCR’s most recent recommendations to Belgium highlight the need to strengthen the protection of stateless persons, including by granting a temporary residence permit to applicants pending the statelessness determination procedure (SDP), a resident permit to recognised stateless persons, and introducing an SDP in law with full procedural safeguards.¹⁶

ISSUE 1 – Liberty and security of the person and arbitrary detention

12. 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.¹⁷ Moreover, arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed.¹⁸
13. In Belgium, there is no dedicated mechanism in place to identify stateless persons or persons at risk of statelessness in detention, yet there is systematic detention of people seeking international protection at the border, including on grounds of statelessness.¹⁹ There is evidence that some stateless persons are being detained (including Kuwaiti Bidoon), but data is extremely scarce due to the absence of mechanisms to identify stateless persons and collect reliable data. There is no mechanism in place to assess vulnerability prior to the decision to detain and statelessness is not mentioned among the categories of vulnerable persons in immigration law.²⁰ As such, stateless persons

¹³ Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth reports of Belgium, 1 February 2019, CRC/C/BEL/CO/5-6, para. 3 at <https://undocs.org/CRC/C/BEL/CO/5-6>.

¹⁴ Human Rights Committee, Concluding observations on the sixth periodic report of Belgium, 6 December 2019, CCPR/C/BEL/CO/6, para. 30, available at <https://undocs.org/CCPR/C/BEL/CO/6>.

¹⁵ UNHCR, Handbook on Protection of Stateless Persons, 2014

<http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

¹⁶ UNHCR, Améliorer la protection des réfugiés et des apatrides en Belgique et dans le monde, Mémoire du HCR, August 2019, available at: <https://www.unhcr.org/be/wp-content/uploads/sites/46/2019/09/M%C3%A9morandum-2019-HCR-Am%C3%A9liorer-la-protection-des-r%C3%A9fugi%C3%A9s-et-des-apatrides-en-Belgique-et-dans-le-monde.pdf>

¹⁷ European Network on Statelessness, Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, 2017, available at:

https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf

¹⁸ European Network on Statelessness, Protecting Stateless Persons from Arbitrary Detention: A regional toolkit for practitioners, 2017, available at:

https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf

¹⁹ For more information, please visit the Statelessness Index on Belgium:

<http://index.statelessness.eu/country/belgium>.

²⁰ Article 1, 12° of the Immigration Law; NANSEN, ‘Vulnérabilités en détention. Motivation des titres de détention’, November 2020, available at: https://nansen-refugee.be/wp-content/uploads/2020/11/2.-Vulne%CC%81rabilite%CC%81s-en-de%CC%81tention-II.-Motivation-des-titres-de-de%CC%81tentiondef_clean.pdf

may face prolonged periods of detention and/or repeated detention. In practice, no alternatives are considered prior to detention.²¹ There is no automatic review of detention, but the person can initiate a procedure before the court to challenge detention and has access to legal aid. However, the court can only examine the lawfulness of the detention, and not whether it is an appropriate measure.²² If released from detention, stateless persons will not be granted a temporary residence permit and will likely receive an order to leave the territory. They are not entitled to any protection, except for access to urgent medical care. Before the court, they can claim financial support equivalent to social assistance.²³

14. It is welcome that the new Belgian Government pledged in 2020 to make alternatives to detention more effective, limit the duration of detention and improve detention and return procedures. Another pledge relates to the situation of a “very limited group of people who, against their will, cannot return to their country of origin, even voluntarily, such as some stateless persons”.^{24D}
15. The Belgian Government should take steps to protect stateless people from arbitrary detention, including introducing a mechanism to identify (risk of) statelessness during the decision to detain, implementing a thorough assessment of vulnerability,²⁵ and ensuring the appropriateness of alternative measures in each individual case.²⁶ As noted by the Committee in its General comment No. 4(2017) on the implementation of article 3 of the Convention in the context of article 22:

*“Article 3 of the Convention [...] should be without prejudice to article 16 (2) of the Convention, in particular where a person to be removed would enjoy additional protection, under international instruments or national law, not to be deported to a State where the person would face the risk of cruel, inhuman or degrading treatment or punishment”.*²⁷

²¹ NANSEN, Demandeurs d’asile à la frontière: procédure à la frontière et détention, April 2018, available at: <https://www.nansen-refugee.be/wp-content/uploads/2018/12/demandeurs-asile-frontiere-procedure-frontiere-detention.pdf>. For more information, please visit the Statelessness Index on Belgium: <http://index.statelessness.eu/country/belgium>.

²² Articles 71-74 of the Immigration Law.

²³ For more information and sources, see Statelessness Index on Belgium:

<http://index.statelessness.eu/country/belgium>.

²⁴ Accord de gouvernement, 30 September 2020, available at:

https://www.belgium.be/sites/default/files/Accord_de_gouvernement_2020.pdf.

²⁵ Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (EU Returns Directive), Article 16(3).

²⁶ ICCPR, Article 9; UN General Assembly, Protection of migrants: resolution adopted by the General Assembly, 17 March 2009, A/RES/63/184, para. 9; UNHCR, Handbook on Protection of Stateless Persons, 2014, para. 113.

²⁷ UN Committee against Torture, General comment No. 4(2017) on the implementation of article 3 of the Convention in the context of article 22, 4 September 2018, para. 26.

Recommendations:

- 1) **Take concrete steps to improve the recording of statelessness, namely by harmonising quantitative data on stateless persons and ensuring that the statistical categories cover the entire stateless population in Belgium, including stateless people in immigration detention and removal procedures.**
- 2) **Improve the identification of stateless persons and persons at risk of statelessness in removal procedures and detention centres, including through staff training, and ensure access to the judicial procedure to determine statelessness.**
- 3) **Take concrete steps to protect stateless people from arbitrary detention, including introducing a mechanism to identify (risks of) statelessness during the decision to detain, and implementing a thorough assessment of vulnerability and appropriateness of alternative measures in each individual case.**
- 4) **Ensure that the treatment of stateless persons, including those in immigration detention, fully complies with its international obligations, and that alternatives to detention are implemented to protect against arbitrary detention in all circumstances.**

ISSUE 2 – Deprivation of nationality on national security grounds

16. Under international law, States have traditionally been granted broad discretion in the regulation of nationality matters. However, this is not an absolute discretion. States' prerogative in nationality matters has been gradually limited by the evolution of human rights law. The Principles on Deprivation of Nationality as a National Security Measure,²⁸ and the UNHCR Guidelines on Statelessness No 5: Loss and Deprivation of Nationality, provide important clarification,²⁹ respectively from a wider international law perspective and more specifically in relation to the 1961 Convention. Accordingly, State

²⁸ Principles on Deprivation of Nationality as a National Security Measure, March 2020, available at: <https://files.institutesi.org/PRINCIPLES.pdf>. The Principles were drafted by ISI in collaboration with the Open Society Justice Initiative and with support from the Asser Institute and Ashurst LLP. They were developed over a 30-month research and consultation period, with input from more than 60 leading experts in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas. At the time of submission, they have been endorsed by over 100 individual experts and organisations, including leading academics, UN Special Rapporteurs and Treaty Body members, litigators, judges, parliamentarians and diplomats. The Principles restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, regional and national law and practice. They articulate the international law obligations of States and apply to all situations in which States take or consider taking steps to deprive a person of nationality as a national security measure. More information is available here: <https://www.institutesi.org/year-of-actionresources/principles-on-deprivation-of-nationality>.

²⁹ UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, May 2020, HCR/GS/20/05, available at: <https://www.refworld.org/docid/5ec5640c4.html>. The Guidelines provide authoritative guidance on the interpretation of Articles 5 – 9 of the 1961 Convention on the Reduction of Statelessness. They draw on the Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation held in Tunis, Tunisia on 31 October - 1 November 2013.

discretion in this area is subject to the individual right to nationality,³⁰ the prohibition of arbitrary deprivation of nationality,³¹ the prohibition of discrimination³² and the obligation to avoid statelessness.³³

17. The Belgian Nationality Code provides for deprivation of nationality on the grounds of serious violation of duties as a Belgian national, conviction for certain crimes, fraud, or after the annulment of a marriage of convenience if Belgian nationality was acquired through marriage.³⁴
18. Since January 2013, Belgian nationality can be revoked if the person concerned has been convicted of one of the crimes included in a list of the most serious crimes stipulated in Article 23/1 (1) of the Belgian Nationality Act. The list includes, among others, crimes linked to the violation of the domestic and international security of the State (which includes terrorism), attempts to kill the King or overthrow the Government, migrant smuggling, and high treason. Article 23/2 of the Belgian Nationality Act further expands deprivation of nationality powers by regulating deprivation of nationality following a conviction for a terrorist offence punished by at least five years of imprisonment.³⁵ It should be taken into consideration that in and of itself, deprivation of nationality may cause severe mental suffering, as the identity of the person concerned has been taken away and that person is left in a state of uncertainty. It was recognised by the Inter-American Court of Human Rights in *Maritza Urrutia v. Guatemala* that “the elements of the concept of torture [...] include methods to obliterate the personality of the victim in order to attain certain objectives, such as [...] intimidation or punishment”.³⁶ In *Trop v. Dulles*, the United States Supreme Court found that denaturalisation was cruel and unusual because “the punishment strips the citizen of his status in the national and international political community. [...] In short, the expatriate has lost the right to have rights”.³⁷
19. There is a safeguard against statelessness in all provisions permitting deprivation of Belgian nationality, except if nationality was acquired by fraud. In this case, even if the person does not have another nationality, deprivation of nationality will be ordered after the expiry of a reasonable period determined by the Court to allow the person to try and recover their original nationality. Under the Belgian Nationality Code, deprivation may not be requested for persons who hold Belgian nationality through one

³⁰ Human Rights Council Resolution 7/10, Human rights and arbitrary deprivation of nationality, 27 March 2008, A/HRC/RES/7/10; Human Rights Council Resolution 10/13, Human rights and arbitrary deprivation of nationality, 26 March 2009, A/HRC/RES/10/13; Human Rights Council Resolution 13/2, Human rights and arbitrary deprivation of nationality, 24 April 2010, A/HRC/RES/13/2; Human Rights Council Resolution 20/4, The right to a nationality: women and children, 16 July 2012, A/HRC/RES/20/4; Human Rights Council Resolution 20/5, Human rights and arbitrary deprivation of nationality, 16 July 2012, A/HRC/RES/20/5; Human Rights Council Resolution 26/14, Human rights and arbitrary deprivation of nationality, 11 July 2014, A/HRC/RES/26/14; Human Rights Council Resolution 32/5, Human rights and arbitrary deprivation of nationality, 15 July 2016, A/HRC/RES/32/5.

³¹ Principles on Deprivation of Nationality as a National Security Measure, March 2020, available at: <https://files.institutesi.org/PRINCIPLES.pdf>, Principle 7. See also, the Draft Commentary to the Principles, available at: https://files.institutesi.org/PRINCIPLES_Draft_Commentary.pdf.

³² *Ibid.*, Principle 6.

³³ *Ibid.*, Principle 5.

³⁴ Article 23 of the Belgian Nationality Code.

³⁵ Wautelet, P., “Deprivation of Citizenship for ‘Jihadists’”, Analysis of Belgium and French practice and policy in light of the principle of equal treatment”, January 2016, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2713742.

³⁶ IACTHR, *Maritza Urrutia v Guatemala* (2003), Series C No. 103, para 94.

³⁷ United States Supreme Court, *Trop v Dulles*, 356 US 86 (1958), available at: <https://supreme.justia.com/cases/federal/us/356/86/>.

of their parents or who have become Belgian nationals at birth.³⁸

20. Article 2(2) of the Convention against Torture emphasises that ‘no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification of torture’. The Committee against Torture identifies threats of terrorist acts or violent crime to be among these exceptional circumstances that cannot constitute justification of torture.³⁹ By depriving persons of their nationality, States may violate the absolute and customary prohibition of torture, cruel, inhuman, or degrading treatment or punishment.
21. In practice, in Belgium, deprivation of nationality is a discriminatory measure as it does not apply to birthright citizens but is limited to naturalised citizens, including persons with a migrant heritage who are more likely to belong to ethnic, religious, and linguistic minorities. In this regard, the UN Special Rapporteur on racism has stated that:

*“States’ obligations to ensure equality and non-discrimination with regards to the enjoyment of nationality apply with regard to all citizenship deprivation decisions, not only in cases where deprivation of citizenship might result in statelessness.”*⁴⁰

Recommendations:

- 5) Protect everyone’s right to a nationality and amend national laws to comply with international obligations which prohibit the arbitrary deprivation of nationality, the prohibition of torture and cruel, inhuman or degrading treatment or punishment, and discrimination, while ensuring the avoidance of statelessness.**
- 6) Amend the Belgian Nationality Code to bring provisions on deprivation of nationality in line with best practice, international standards and the principle of non-discrimination.**

ISSUE 3 – Statelessness determination and the rights of stateless persons in Belgium

22. As mentioned above, stateless people face a heightened risk of arbitrary and lengthy detention, particularly where statelessness is not identified and the specific vulnerabilities of stateless people are not addressed. Identifying stateless people in the country and determining their statelessness is therefore the first step to providing adequate protection and enjoyment of the rights enshrined in the 1954 Convention. The co-submitting organisations recommend that this is best fulfilled through a dedicated statelessness determination procedure, in line with UNHCR’s guidelines.⁴¹

³⁸ For more information, visit the Statelessness Index on Belgium: <http://index.statelessness.eu/country/belgium>.

³⁹ Committee against Torture, General Comment No. 2: Implementation of article 2 by State parties, 2008, CAT/C/GC/2, para 5.

⁴⁰ UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, ‘Amicus Brief before the Dutch Immigration and Naturalisation Service’, 23 October 2018.

⁴¹ UNHCR, Handbook on Protection of Stateless Persons, 2014, available at: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

23. In Belgium, the judiciary is competent to determine statelessness. Since 2017, a person can be recognised as stateless by one of the family courts established at the six seats of the courts of appeal. The Judiciary Code contains provisions governing the application for statelessness (material and territorial competence of the tribunal, rules of procedure).⁴² However, there are no specific procedural safeguards nor legislation on statelessness determination.
24. The existing procedure falls short of standards set out in the UNHCR Handbook on Protection of Stateless Persons in a number of areas, so cannot be considered a formal statelessness determination procedure. During the procedure, applicants are not protected against removal, and may be at risk of detention. As applicants are considered undocumented migrants, they have only limited rights. In the judicial procedure, the burden of proof lies almost entirely with the applicant, and the standard of proof and documents required from the applicant are unclear. Delays in decision-making vary between courts but can be up to 12 to 18 months. If the application is rejected, an appeal can be filed. Legal aid is available both in first instance and in appeal, under the same conditions.
25. Crucially, recognition as stateless under the judicial procedure does not result in an automatic residence permit and the law does not provide for a procedure for a stateless person to acquire a residence permit. Persons recognised as stateless by the court must apply to the Immigration Office for a residence permit on humanitarian grounds.⁴³ A person recognised as stateless under the judicial procedure does not derive any additional rights from this recognition (beyond those accessible to undocumented migrants). There is no right to temporary residence while the application is pending, and the applicant may only access urgent healthcare and is not permitted to work, access housing or social security. Regularisation for recognised stateless persons is generally difficult. An appeal against refusal of a residence permit can be filed before the 'Council for Immigration Law Litigation (CILL)', but this is not an effective remedy as CILL may only examine the lawfulness of the decision.
26. Stateless asylum seekers are – until determination of their claims – entitled to remain in Belgium, benefit from basic social assistance and have access to a range of other rights. If their asylum claim is refused, they lose the right to reside in Belgium as well as access to most other rights, with the exception of urgent medical care. There is no clear referral mechanism from the asylum procedure to the judicial procedure to determine statelessness.⁴⁴
27. A legislative proposal was introduced in 2019 in the Belgian Parliament to establish criteria and a procedure for granting a residence permit to recognised stateless people, but it has not been adopted.⁴⁵ The new Belgian Government announced its intention in 2020 to address the issue of residence permits for stateless people and its plans to grant a residence permit to stateless people who are unable to return to their country of origin

⁴² Art. 569, 572bis, 632bis and 1025 to 1034 of the Belgian Judicial Code.

⁴³ Art. 9bis of the Immigration Act. Article 98 of the Royal Decree of 8 October 1981 states that stateless persons and their families fall under general regulation.

⁴⁴ Statelessness Index on Belgium: <http://index.statelessness.eu/country/belgium>.

⁴⁵ Proposition de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en vue de régler le droit de séjour des apatrides, 24 janvier 2019, DOC54 3487/001 <https://www.dekamer.be/FLWB/PDF/54/3487/54K3487001.pdf>.

for reasons beyond their control.⁴⁶ In 2021, the State Secretary for Asylum and Migration appointed a commission led by two academic experts, to consider the adoption of a new migration code. Consultations with civil society are currently under way.⁴⁷

Recommendations:

- 7) Fully promote, respect, protect and fulfil its obligations towards stateless persons and the right to a nationality under international human rights law.**
- 8) Establish a dedicated statelessness determination procedure and protection status in law and in line with UNHCR guidance and good practice.**
- 9) Ensure that the procedure is fair, effective, and accessible to all persons in Belgium regardless of their legal status. This includes funded access to interpreting services and legal aid. The procedure should comply with international standards of due process and follow procedural safeguards.**
- 10) Amend the Belgian Immigration Act to allow for persons recognised as stateless by the courts to be automatically granted a residence permit, effective remedies, and all rights protected under the 1954 Convention relating to the Status of Stateless Persons.**
- 11) Amend the Belgian Immigration Act to allow for persons applying for stateless status to be granted a temporary residence permit and rights according to the 1954 Convention during the procedure.**
- 12) Provide specialised training on nationality law and international standards relating to statelessness to the judiciary and government bodies responsible for determining statelessness.**

⁴⁶ Chambre des Représentants, Exposé d'orientation politique. Asile, migration et loterie nationale: <https://www.dekamer.be/FLWB/PDF/55/1610/55K1610011.pdf>.

⁴⁷ NANSEN responded to the consultation with a submission calling for a specific residence status for persons recognised as stateless, and the granting of a temporary residence permit while the application for recognition as stateless and the application for a residence permit are pending.

ANNEX I

Statelessness in Belgium

28. Belgium is State party to the 1954 Convention on the Status of Stateless Persons (1954 Convention) and to the 1961 Convention on the Reduction of Statelessness (1961 Convention).⁴⁸ According to Article 1 of the 1954 Convention, “a ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law”. Belgian law does not set out a definition of a stateless person, but since the 1954 Convention has direct effect, the 1954 Convention definition applies. Furthermore, Belgium has reservations to the 1961 Convention.⁴⁹ Regarding Article 2, Belgium considers that the category of “foundlings” concerns children who are believed to be new-born. Regarding Article 8(3), Belgium reserves the right to deprive a person of Belgian nationality if it was not acquired by virtue of a Belgian individual on the date of birth, or was not granted under the Belgian Nationality Code; in cases of fraud in the acquisition of Belgian nationality, violation of duties as a Belgian citizen, or sentencing of at least five years for a number of criminal offences.
29. Belgium is also State party to other relevant international and regional instruments, including the International Covenant on Civil and Political Rights (see Article 24.3), the International Covenant on Economic, Social and Cultural Rights (see Articles 2.2 and 3), the Convention of the Rights of the Child (see Articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (see Article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (see Article 5(d)(iii)), the Convention on the Rights of Persons with Disabilities (see Article 18) and the International Convention for the Protection of All Persons from Enforced Disappearance (see Article 25). Belgium is also party to regional treaties or declarations, including the 1950 European Convention on Human Rights and Fundamental Freedoms and the European Social Charter. However, it is not a party to the European Convention on Nationality nor the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.
30. The stateless population has never been comprehensively mapped in Belgium and available data is fragmented.⁵⁰ Some data on the stateless population in Belgium is available, and UNHCR published a mapping study of statelessness in the country in 2012.⁵¹ The Belgian National Registry records people who have been recognised as stateless and issued long-term residence permits in the country, but it also contains categories that may overlap with ‘stateless’ and does not count people awaiting determination of their statelessness, recognised as stateless but not granted a residence permit, stateless people holding a short-term residence permit, nor people recognised as stateless in the asylum procedure.
31. According to UNHCR's Mid-Year Trends 2020 Report, 10,933 persons are stateless or at

⁴⁸ The 1954 Convention entered into force in Belgium in 1960 and the 1961 Convention in 2014.

⁴⁹ UN Treaty Collections, Status of Treaties,

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=en#EndDec

⁵⁰ Belgian authorities acknowledge that identification of the nationality may pose an acute problem in some cases. See Office des Étrangers, Statistiques annuelles 2019, p. 51, <https://dofi.ibz.be/sites/default/files/2021-05/Cartes%20-%20statistiques%20%202019%20v3%20FR.pdf>

⁵¹ UNHCR, Mapping Statelessness in Belgium, October 2012, available at: <https://www.refworld.org/docid/5100f4b22.html>.

risk of statelessness in Belgium.⁵² On 1 January 2020, there were 1,134 people registered as “stateless” in the National Registry, including 183 refugees and 951 stateless persons who have been issued a long-term residence permit. This number includes people who obtained a residence permit on the basis of statelessness, but also for other reasons (for example, on grounds of family reunification).⁵³ On 1 January 2020 there were also 22,518 people registered as having “undetermined nationality” and 2,772 as “Palestinian authority”, and it is likely that some people in these two categories are stateless or at risk of statelessness. Figures for the number of asylum seekers registered as ‘stateless’ are recorded and published monthly in line with Eurostat requirements. Data on stateless people held in immigration detention is not routinely collected or published.

⁵² UNHCR, Mid-Year Trends 2020, available at: <https://www.unhcr.org/statistics/2020MYTannex.zip>.

⁵³ These figures do not accurately represent the total stateless population in Belgium and they reflect the challenges faced by the authorities in registering people whose nationality cannot be determined at birth, people without identity documents from their country of origin, and people of Palestinian origin. Many people are not included in the national registry, for example, those awaiting statelessness determination without a valid residence permit (or with a permit valid for less than three months), those recognised as stateless without a valid residence permit, and other stateless people not in any procedure, without a residence permit, or holding a permit for less than three months.