

Joint Submission to the
Human Rights Council

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BELGIUM

NANSEN

European Network on Statelessness

Institute on Statelessness and Inclusion

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Network on
Statelessness



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Introduction

1. NANSEN, the European Network on Statelessness (**ENS**) and the Institute on Statelessness and Inclusion (**ISI**) make this joint submission to the Universal Periodic Review (**UPR**), on the right to a nationality and human rights challenges pertaining to statelessness in Belgium.
2. 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.¹
3. The European Network on Statelessness (ENS)² 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 150 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. This submission partially draws on information and analysis from ENS’s Statelessness Index, which covers Belgium.³
4. 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 36th UPR Sessions.⁴

¹ For more information about NANSEN, see: <https://nansen-refugee.be/en/>.

² For more information about the European Network on Statelessness, see: www.statelessness.eu.

³ The Statelessness Index on Belgium can be accessed at: <https://index.statelessness.eu/country/belgium>

⁴ For more information see: www.institutesi.org

5. The submission focuses on:
 - I. Statelessness determination and status
 - II. Liberty and security of the person and arbitrary detention
 - III. Children's right to a nationality

Previous UPR of Belgium under the First and Second Cycle

1. Belgium was previously reviewed during the 11th and 24th sessions of the UPR, in 2011 and 2016, respectively. During the first cycle, Belgium received one recommendation from Kyrgyzstan to accelerate the process of withdrawal of declarations under Article 2 of the Convention on the Rights of the Child concerning the non-discrimination principle, which limits the enjoyment of the Convention rights by children who do not have Belgian nationality. Belgium noted this recommendation.⁵ Belgium did not receive any recommendations related to nationality, statelessness, and birth registration during the second cycle.
2. 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 on the Status of Stateless Persons 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.⁶
3. In 2019, the Committee on the Rights of the Child welcomed Belgium's efforts to accede to the 1954 Convention on the Reduction of Statelessness.⁷ Also, the Human Rights Committee recommended that Belgium adopt legislation on statelessness for the granting of nationality or residence permits to persons recognised as stateless.⁸

International Obligations

4. Belgium has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of UN and regional treaties to which it is a party. These include the International Covenant on Civil and Political Rights (**ICCPR**) (see Article 24.3), the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) (see Articles 2.2 and 3), the Convention of the Rights of the Child (**CRC**) (see Articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) (see Article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**) (see Article 5(d)(iii)), the Convention on the Rights of Persons with Disabilities (**CRPD**) (see Article 18) and the

⁵ A/HRC/18/3, Para 102.7, Human Rights Council, eighteenth session, Universal Periodic Review.

⁶ 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>.

⁷ CRC/C/BEL/CO/5-6, Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth reports of Belgium, 1 February 2019, para. 3 at <https://undocs.org/CRC/C/BEL/CO/5-6>.

⁸ CCPR/C/BEL/CO/6, Human Rights Committee, Concluding observations on the sixth periodic report of Belgium, 6 December 2019, para. 30, available at <https://undocs.org/CCPR/C/BEL/CO/6>.

International Convention for the Protection of All Persons from Enforced Disappearance (**ICPPED**) (see Article 25).

5. Belgium is also party to regional treaties or declarations, including the 1950 European Convention on Human Rights and Fundamental Freedoms (**ECHR**) and the European Social Charter (**ESC**). It is however 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.
6. Belgium is a 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**).⁹ However, Belgium has reservations to the 1961 Convention.¹⁰ 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; and also 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.
7. In 2012, UNHCR made a number of important recommendations to Belgium as part of its mapping study on statelessness in Belgium. In 2014, UNHCR issued their Handbook on Protection of Stateless Persons¹¹ 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.¹²

Stateless Population Data

8. States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.¹³ The stateless population has never been comprehensively mapped in Belgium, and available data is fragmented.¹⁴ On 1 January 2019, there were 926 people registered as “stateless” in the national registry including 180 asylum seekers and 746 stateless persons who have been issued a long-term residence permit (e.g. on grounds of family reunification). On 1

⁹ The 1954 Convention entered into force in Belgium in 1960 and the 1961 Convention in 2014.

¹⁰ UN Treaty Collections, Status of Treaties, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=en#EndDec

¹¹ UNHCR, *Handbook on Protection of Stateless Persons*, 2014

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

¹² 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>

¹³ Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>

¹⁴ Belgian authorities acknowledge that identification of the nationality may pose an acute problem in some cases. See Office des Étrangers, *Statistiques annuelles 2018*, p. 51,

<https://dofi.ibz.be/sites/dvzoe/FR/Documents/Statistiques/Statistiques%20sur%20les%20cartes%20et%20documents%202018%20v3%20FR.pdf>

January 2019 there were also 19,644 people registered as “undetermined nationality” and 2,134 as “Palestinian authority (West Bank and Gaza)”. It is likely that some people in these two categories are at risk of statelessness, if not stateless already.

9. 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. Figures for the number of asylum seekers registered as ‘stateless’ are recorded, published and available monthly in line with Eurostat requirements. Data on stateless people held in immigration detention is not routinely collected or published.

National Law

10. 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.
11. Belgium has a judicial procedure through which statelessness can be determined by one of six family courts. The Judiciary Code contains provisions governing the application for statelessness (material and territorial competence of the tribunal, rules of procedure).¹⁵ However, there are no specific procedural safeguards nor legislation on statelessness determination. There is no legislation on the rights that recognised stateless persons are entitled to, therefore a person recognised as stateless under the judicial procedure does not derive any additional rights (beyond those accessible to undocumented migrants) from this recognition (see further, para. 15).
12. In addition, there is no specific provision in the Belgian Immigration Act¹⁶ regarding the possibility for stateless persons to apply for a residence permit. Persons recognised as stateless by the tribunal must apply for a residence permit on humanitarian grounds¹⁷ (see further, para. 16).
13. The Belgian Nationality Act contains various provisions regarding the acquisition of Belgian nationality by stateless persons. A child born in Belgium who would otherwise be stateless shall be granted Belgian nationality,¹⁸ and persons recognised as stateless have facilitated access to Belgian nationality by way of naturalisation.¹⁹ The law has mechanisms to prevent a person who renounces, loses or is deprived of Belgian nationality from becoming stateless.²⁰

¹⁵ Art. 569, 572bis, 632bis and 1025 to 1034 of the Belgian Judicial Code

¹⁶ Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

¹⁷ 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.

¹⁸ Article 10 of the Belgian Nationality Act.

¹⁹ Article 19(2) of the Belgian Nationality Act.

²⁰ Articles 22, 23, 23/1 and 23/2 of the Belgian Nationality Act.

ISSUE 1 – Statelessness Determination and Status

14. Identifying stateless people in the country is 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.²¹
15. 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. However, because this procedure falls short of standards set out in the UNHCR Handbook on Protection of Stateless Persons in a number of areas, it cannot be considered a formal statelessness determination procedure. During the procedure, applicants are not protected against removal, and detention cannot be excluded. 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.
16. Recognition as stateless does not result in an automatic residence permit and the law does not provide for a procedure nor any procedural safeguards for a stateless person to acquire a residence permit. An application must be made to the Immigration Office for regularisation on humanitarian grounds. 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. Although a legislative proposal was introduced in the Belgian Parliament to establish criteria and a procedure for granting residence to recognised stateless persons, which was briefly discussed in May 2019, it is unclear whether or when discussions will resume.
17. 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.
18. The Belgian Government should introduce a dedicated statelessness determination procedure and protection status in law and in line with UNHCR guidance and good practice. In the meantime, applicants in the existing judicial procedure and recognised stateless persons should be granted a residence permit, effective remedies, and all rights protected under the 1954 Convention.

²¹ UNHCR, *Handbook on Protection of Stateless Persons*, 2014, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

ISSUE 2 – Liberty and security of the person and arbitrary detention

19. 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.²² Moreover, arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed.²³
20. 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.²⁴ There is no mechanism in place to assess vulnerability prior to the detention decision and statelessness is not mentioned among the categories of vulnerable persons in the Immigration Law. As such, stateless persons may face prolonged periods of detention and/or repeated detention. In practice, no alternatives are considered prior to detention. 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. 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.
21. 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 The Belgian authorities should improve the identification of people at risk of statelessness in removal procedures and detention centres, including through staff training, and ensure access to the statelessness determination procedure.

ISSUE 3 – Children’s right to a nationality

22. The right to a nationality is a right that is ‘essential for the protection of every child’.²⁷ As signatory to the Convention on the Rights of the Child (CRC), Belgium must implement Article 7 to provide for the right of every child to be registered immediately after birth and acquire a nationality, and Article 8 to respect the right of the child to preserve his or her identity, including nationality, in compliance with its obligations under relevant international instruments. As a State party to the 1961 Convention, Belgium has further

²² European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, 2017 https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf

²³ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A regional toolkit for practitioners*, 2017 https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf

²⁴ For more information, please visit <http://index.statelessness.eu/country/belgium>.

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 UNHCR (2018) Ensuring the right of all children to acquire a nationality: Connecting the Dots between the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness: <https://www.refworld.org/docid/52206aa54.html>

obligations to prevent and reduce statelessness on its territory.²⁸ Obligations deriving from the 1961 Convention on the Reduction of Statelessness require Belgium to grant nationality to children who would otherwise be stateless and must be interpreted in light of the CRC.²⁹ This includes the underlying principles of non-discrimination (Article 2 of the CRC), and that all actions concerning children, including in the area of nationality, must be undertaken with the best interests of the child as a primary consideration (Article 3).

23. According to Belgian nationality law, a child born in Belgium is Belgian if they would otherwise be stateless at any moment before they reach the age of 18 or are emancipated. However, the law states that the child will not be Belgian if they can obtain another nationality through administrative measures before the authorities of their parents' country of nationality, initiated by their parent(s) or legal guardian(s). There is a safeguard for the children of refugees in such cases.³⁰
24. Belgian nationality law contains safeguards to prevent statelessness in the case of foundlings, adopted children, and children born abroad to Belgian nationals. However, the foundlings provision only applies to new-borns, and there may be a risk of statelessness in the adoption process due to rules on loss and acquisition of Belgian nationality.³¹ For a child born to Belgian parents abroad to acquire Belgian nationality automatically, at least one parent must also have been born in Belgium, otherwise the parents must take further action before the child turns five. All births must be registered in Belgium regardless of the parents' status, but civil registrars must report undocumented people to the immigration authorities, and subsequent registration in the National Registry (a precondition for access to other rights) is only possible if at least one parent (or the child) has legal residence.

ISSUE 4 – Deprivation of nationality on national security grounds

25. The Belgian Nationality Code provides for deprivation of nationality on the grounds of fraud, serious violation of duties as Belgian national, conviction for certain crimes, or after the annulment of a marriage of convenience if Belgian nationality was acquired through marriage.³²
26. 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, attempts to kill the King or overthrow the government, crimes linked to the violation of the domestic and international security of the State which includes terrorism, migrant smuggling and high treason. Article 23/2 further expands deprivation of nationality

²⁸ 1961 Convention; UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>; and also European Network on Statelessness, *No Child Should Be Stateless*, 2015, available at https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf.

²⁹ UNHCR Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness: <https://www.refworld.org/docid/50d460c72.html>

³⁰ Article 10 of the Belgian Nationality Code.

³¹ Article 10 of the Belgian Nationality Code.

³² Article 23 of the Belgian Nationality Code.

powers by regulating deprivation of nationality following a conviction for a terrorist offence punished by at least five years of imprisonment.³³

27. 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. Also, under the Belgian Nationality Code, deprivation may not be requested for persons who hold Belgian nationality through one of their parents or who have become Belgian nationals at birth.³⁴ This means that deprivation of nationality is in fact a discriminatory measure which does not apply to birthright citizens, but is limited to naturalised citizens, i.e. those with a migrant heritage who are more likely to belong to ethnic, religious and linguistic minorities.
28. Under international law, states have traditionally been granted broad discretion in the regulation of nationality matters. This is not, however, 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,³⁵ and the UNHCR Guidelines on Statelessness No 5: Loss and Deprivation of Nationality provide important clarification,³⁶ respectively from a wider international law perspective and more specifically in relation to the 1961 Convention.
29. Accordingly, state discretion in this area is subject to the individual right to nationality,³⁷ the prohibition of arbitrary deprivation of nationality,³⁸ the prohibition of discrimination³⁹ and the obligation to avoid statelessness.⁴⁰ In this regard, the UN Special Rapporteur on racism has stated that:

³³ 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.

³⁴ https://cadmus.eui.eu/bitstream/handle/1814/19603/RSCAS_EUDO_CIT_2013_27.pdf?sequence=3&isAllowed=y.

³⁵ 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-action/resources/principles-on-deprivation-of-nationality>.

³⁶ 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.

³⁷ Human Rights Council Resolution 7/10, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/7/10 (27 March 2008); Human Rights Council Resolution 10/13, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/10/13 (26 March 2009); Human Rights Council Resolution 13/2, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/13/2 (24 April 2010); Human Rights Council Resolution 20/4, The right to a nationality: women and children, UN Doc A/HRC/RES/20/4 (16 July 2012); Human Rights Council Resolution 20/5, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/20/5 (16 July 2012); Human Rights Council Resolution 26/14, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/26/14 (11 July 2014); Human Rights Council Resolution 32/5, Human rights and arbitrary deprivation of nationality, UN Doc A/HRC/RES/32/5 (15 July 2016).

³⁸ 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.

³⁹ *Ibid.*, Principle 6.

⁴⁰ *Ibid.*, Principle 5.

“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.”⁴¹

30. The impact of nationality deprivation on the enjoyment of other human rights, humanitarian and refugee law obligations and standards must be taken into consideration when assessing the legality of citizenship deprivation. These include the right to enter and remain in one’s own country, the prohibition of refoulement, the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the liberty and security of the person, the right to private and family life, legal personhood and the rights of the child.⁴² Any measures to deprive a person of nationality must also comply with due process safeguards and the right to a fair trial.⁴³

Recommendations

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

- I. Fully promote, respect, protect and fulfil its obligations towards stateless persons and the right to a nationality under international human rights law.
- II. Develop a dedicated statelessness determination procedure and protection status in law and in line with UNHCR guidance⁴⁴ and good practices. 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 the procedural safeguards.
- III. 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.
- IV. Publish annual reliable, transparent and comparable statistics of judicial decisions on stateless status determination, on the number of applications for leave to remain made by recognised stateless people, as well as the number of decisions and types of residence permits granted by the Immigration Office.
- V. Improve the identification of persons at risk of statelessness in removal procedures and detention centres, including through staff training, and ensure access to the statelessness determination procedure.

⁴¹ 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).

⁴² Principles on Deprivation of Nationality as a National Security Measure, March 2020. Available at: <https://files.institutetsi.org/PRINCIPLES.pdf>, Principle 9.

⁴³ Ibid Principle 8.

⁴⁴ Please see UNHCR’s Handbook on Protection of Stateless Persons available at: https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf.

- VI. 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.
- VII. 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.
- VIII. Protect everyone's right to a nationality, and amend national laws to comply with international obligations which prohibit the arbitrary deprivation of nationality and discrimination, while ensuring the avoidance of statelessness.
- IX. Ensure that policies and practices relating to birth registration and the identification of stateless children take into account UNHCR guidelines and good practice to ensure that all children are correctly registered.⁴⁵
- X. Amend the Belgian Nationality Code to ensure that all children born abroad to Belgian nationals acquire nationality automatically at birth, remove any risk of statelessness arising in adoption procedures, and bring provisions on foundlings and deprivation of nationality in line with the 1961 Convention.
- XI. Amend the Belgian Immigration Act to allow for persons recognised as stateless by the courts to be automatically granted a residence permit, and to allow for persons applying for stateless status to be granted a temporary residence permit during the procedure.
- XII. Withdraw its reservations to the 1961 Convention and amend the Belgian Nationality Act to fully align with the Convention.
- XIII. Accede to the European Convention on Nationality and the Convention on the Avoidance of Statelessness in Relation to State Succession.

⁴⁵ 1961 Convention; UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>.