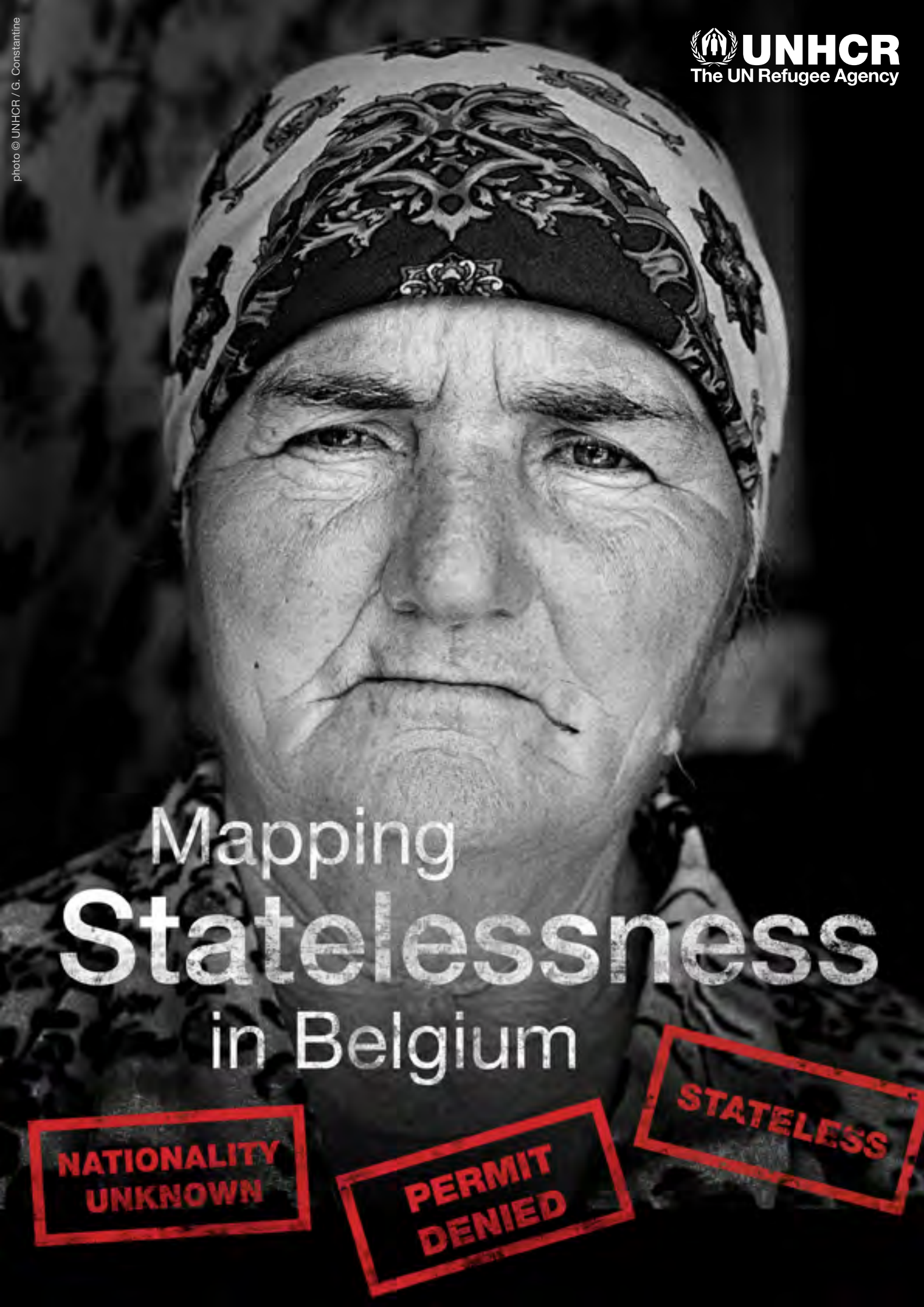
photo © UNHCR / G. Constantine
UNHCR
The UN Refugee Agency
Mapping
Statelessness
in Belgium
NATIONALITY UNKNOWN
PERMIT DENIED
STATELESS

UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Brussels, October 2012

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October 2012

CONTENTS

ABBREVIATIONS

BNC	Belgian Nationality Code
CALL	Council for Aliens Law Litigation
Cd&V	Christen-Democratisch & Vlaams (Flemish Christian Democrats)
cdH	Centre démocrate humaniste (Democratic Humanist Centre)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CGRS	Commissioner General for Refugees and Stateless Persons
CJEU	Court of Justice of the European Union
CPAS/OCMW	Public welfare centre (Centre public d'action sociale / Openbaar Centrum voor Maatschappelijk Welzijn)
CRC	Convention on the Rights of Child
CRTD–A	Collective for Research and Training on Development – Action
DEMO-UCL	Centre de Recherche en Démographie et Sociétés-Université catholique de Louvain (Centre for Social and Demographic Research–Catholic University of Louvain)
DG-SIE/AD-SEI	Direction générale Statistique et information économique/Algemene Directie Statistiek en Economische Informatie (Federal Public Service, Foreign Affairs)
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECN	European Convention on Nationality
ECOSOC	Economic and Social Council (UN)
ECtHR	European Court of Human Rights
ETS	European Treaty Series
EUDO	European Union Observatory on Democracy
ExCom	Executive Committee of the High Commissioner's Programme
GA	(UN) General Assembly
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ILC	International Law Commission
IOM	International Organization for Migration
MR	Mouvement Réformateur (Reforming Movement)
NGO	Non-governmental organization
Open VLD	Open Vlaamse Liberalen en Democraten (Open Flemish Liberals and Democrats)
PS	Parti socialiste (Socialist Party)
SPF Affaires Etrangères	Federal Public Service Foreign Affairs
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

TABLES

FIGURES

1. INTRODUCTION

1. People who are stateless are "not considered as a national by any State under the operation of its law", as defined in the 1954 Convention relating to the Status of Stateless Persons (1954 Convention).[1] Without a nationality they lack what has been described as "the right to have rights". They can face serious problems in all areas of their lives, from being able to access their right to education or healthcare, to opening a bank account, being able to travel or to marry.

2. As one young man born in Iran to parents of Afghan origin and seeking recognition as stateless in Belgium, who was interviewed for this report said, "I want to be recognized as human. I have no right to do anything now. I don't have any rights."[2] A woman of Palestinian-Egyptian origin who was born in Lebanon and also interviewed said simply, "I want to be recognized as a human being."[3]

3. This study was launched at the time of the fiftieth anniversary of the 1961 Convention on the Reduction of Statelessness (1961 Convention).[4] In commemoration, the Office of the United Nations High Commissioner for Refugees (UNHCR) encouraged states to strengthen their resolve to tackle problems related to statelessness. At the ministerial meeting to commemorate this anniversary in Geneva in December 2011, ministers expressed their concern that "millions of people live without a nationality which limits enjoyment of their human rights". They also pledged to "work towards addressing statelessness and protecting stateless persons, including, as applicable, through national legislation and strengthening mechanisms for birth registration".[5]

4. Belgium, already a state party to the 1954 Convention, was among the states that announced its intention and later pledged to accede to the 1961 Convention and to introduce a new procedure for the determination of statelessness to be conducted by the Commissioner General for Refugees and Stateless Persons (CGRS),[6] thereby contributing to what the UN High Commissioner for Refugees António Guterres described as "a real breakthrough, a quantum leap, … in relation to the protection of stateless people". As he remarked, "now we have a duty to take advantage of this momentum and to make preventing and reducing statelessness a major global priority in the coming period".[7] This study seeks to help sustain this momentum in the Belgian context.

5. Statelessness is not confined to the developing world or distant countries. It is a global problem affecting an estimated 12 million people worldwide. While the largest concentration of stateless people is to be found in Asia, all across the globe there are people who live or survive without the elementary benefits of a nationality. Belgium is no exception.

6. Anecdotal evidence derived from UNHCR's involvement in resolving individual situations of statelessness and its engagement with stakeholders suggests that statelessness has been a hidden issue. In an attempt to gain a greater understanding of the situation facing stateless people in Belgium, UNHCR undertook this interdisciplinary research project, which examines socio-demographic and legal aspects of statelessness.

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1 UN General Assembly (UNGA), Convention relating to the Status of Stateless Persons, 28 September 1954, United Nations Treaty Series (UNTS), Vol. 360, p. 117 (1954 Convention), available at http://www.unhcr.org/refworld/docid/3ae6b3840.html, Article 1(1). As of 22 October 2012, there were 76 state parties to the 1954 Convention. This and following hyperlinks were accessed on 23 October 2012.

2 Khan, Participant No. 10, who was born in Iran to parents of Afghan origin and is in his mid-20s. At the time of his interview, he had been refused recognition as stateless and was appealing against this decision. The Court of Appeal rejected this appeal in December 2011 and he is now awaiting the outcome of a cassation procedure brought by the Aliens Office before the Council of State against the subsidiary protection status he has been granted.

3 Jenna, Participant No. 1, a woman of Palestinian-Egyptian origin in her late 20s. Her applications for asylum, recognition as stateless and for regularization were pending at the time of the interview and were still unresolved in July 2012.

4 UNGA, Convention on the Reduction of Statelessness, 30 August 1961, UNTS, Vol. 989, p. 175 (hereinafter 1961 Convention), available at http://www.unhcr.org/refworld/docid/3ae6b39620.html. As of 22 October 2012, there were 48 state parties to the 1961 Convention.

5 UN High Commissioner for Refugees (UNHCR), Ministerial Communiqué, Intergovernmental Event at the Ministerial Level of Member States of the United Nations on the Occasion of the 60th Anniversary of the 1951 Convention relating to the Status of Refugees and the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness, HCR/MINCOMMS/2011/6, 8 December 2011, available at http://www.unhcr.org/4ee210d89.html (in English) and http://www.unhcr.fr/4ee228ff9.html (in French).

6 Commissariat général aux réfugiés et aux apatrides/Commissariaat-generaal voor de Vluchtelingen en de Staatlozen. For more information see http://www.cgra.be.

7 UNHCR, Closing Remarks by the UN High Commissioner for Refugees, UNHCR Intergovernmental Meeting at Ministerial Level, Geneva, 8 December 2011, available at http://www.unhcr.org/4ef094a89.html.

7. The research aims to provide greater clarity on how many stateless people there are in the country and their protection needs. Available statistics, primarily from census and administrative data, were gathered and analysed. Interviews with people who are stateless (or potentially stateless) helped give these statistics a human face and identify the protection and other problems they may face. The research also analyses existing legislation and procedures governing the determination of statelessness and the enjoyment of rights under the 1954 Convention. With respect to the prevention and reduction of statelessness, the report examines the compatibility of national legislation with the 1961 Convention.

8. UNHCR hopes this report will increase awareness of statelessness at the national level, promote synergies among relevant actors, and help improve the daily life and prospects of people in Belgium who are stateless.

1.1 The structure of the report

9. A Summary Report, available in English, French and Dutch, brings together the key research findings and recommendations arising from the research. The full report here is divided into seven chapters. The majority of these end with specific conclusions and recommendations.

10. Chapter 1 sets out the definitions used in the study and its scope. It also describes the methodology used in the research. Chapter 2 provides a brief overview of the global causes and consequences of statelessness, as well as of UNHCR's mandate regarding statelessness. Chapter 3 is a demographic inquiry into the scale of statelessness in Belgium and interprets the available statistical material. Based on its findings, it seeks cautiously to identify the stateless population in Belgium. Chapter 4 gives the results of the interviews held with stateless and potentially stateless people. Chapter 5 provides a legal analysis of the determination of statelessness in Belgium and examines whether, and to what extent, the country lives up to its obligations under the 1954 Convention, which it ratified in 1960. Chapter 6 looks at the status of individuals recognized as stateless and those awaiting determination of their status under the 1954 Convention. Chapter 7 analyses the international, regional, and national legal framework that aims to prevent and reduce statelessness, and the extent to which Belgium meets international standards and obligations in this regard.

11. The report ends with some brief concluding remarks and three appendices.

1.2 Definitions and scope

12. The question of who is a stateless person is central to understanding the scope and scale of statelessness in Belgium. According to Article 1(1) of the 1954 Convention, a stateless person is someone "who is not considered as a national by any State under the operation of its law".[8] The International Law Commission considers that this definition constitutes customary international law.[9] The term "stateless person" is given this meaning in this report. As for the terms "nationality" and "citizenship", these are used interchangeably.

13. UNHCR issued the first of a series of Guidelines on Statelessness in February 2012.[10] These provide guidance on the interpretation of the term "stateless person" in Article 1(1) of the 1954 Convention and their development was informed by an expert meeting.[11] When interpreting the term, it is essential to keep in mind the treaty's object and purpose which, as the Convention's preamble and *travaux préparatoires* indicate, is "to ensure that stateless persons enjoy the widest possible exercise of their human rights".

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8 Information on the exclusion clauses contained in Article 1(2) of the 1954 Convention can be found at paras 265–276.

9 See International Law Commission, *Commentary on the Draft Articles on Diplomatic Protection,* 2006, p. 49, available at http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf.

10 UNHCR, Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, 20 February 2012, HCR/GS/12/01 (hereinafter UNHCR Guidelines on Statelessness No. 1), available at http://www.unhcr.org/refworld/docid/4f4371b82.html (in English) and http://www.unhcr.org/refworld/docid/50879dec2.html (in French).

11 UNHCR, Expert Meeting – The Concept of Stateless Persons under International Law (Summary Conclusions), May 2010, available at http://www.unhcr.org/refworld/docid/4ca1ae002.html, p. 5 (hereinafter UNHCR Prato Summary Conclusions). This was a first of a series of expert meetings convened by UNHCR in the context of the fiftieth anniversary of the 1961 Convention with the purpose of drafting guidelines under UNHCR's statelessness mandate. The Summary Conclusions from these meetings are compiled in UNHCR, *Commemorating the Refugee and Statelessness Conventions - A Compilation of Summary Conclusions from UNHCR's Expert Meetings*, May 2012, available at http://www.unhcr.org/refworld/docid/4f461d372.html (in English and French).

14. As the 2012 UNHCR Guidelines note, "Persons who fall within the scope of this Article of the 1954 Convention are sometimes referred to as 'de jure' stateless persons even though the term is not used in the 1954 Convention."[12]

15. As a result, persons who strictly speaking have a nationality but enjoy none of the benefits normally associated with it (such as the right to reside, leave and return, receive diplomatic protection abroad, etc.) are not considered to be stateless. Some scholars have nevertheless argued that a purely technical nationality that is in many or all respects ineffective, is in practice equivalent to having no nationality at all.[13] Persons in this situation are commonly referred to as de facto stateless persons, but this group is much less clearly delineated and much more conceptually ambiguous than stateless persons as defined by the 1954 Convention.[14]

16. Put simply, one is considered to be de facto stateless when one's nationality is ineffective. There is, however, no consensus as to when this criterion of ineffectiveness is met. Even if this were the case, no legal imperatives exist to grant rights to de facto stateless persons on grounds of their statelessness, even though the Final Act to the 1961 Convention includes a resolution recommending that "persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality". The utility of the concept thus remains rather limited. Whereas the absence or denial of a nationality is covered by the two conventions on statelessness, the denial of rights attached to a nationality (de facto) is an issue addressed by the existing human rights regime.[15]

17. That said, some categories of persons regarded as de facto stateless may well actually be de jure stateless. Indeed, as the UNHCR Guidelines on Statelessness No. 1 state, "Care must be taken that those who qualify as 'stateless persons' under Article 1(1) of the 1954 Convention are recognized as such and not mistakenly referred to as de facto stateless persons as otherwise they may fail to receive the protection guaranteed under that Convention."[16]

18. In the absence of an international treaty regime to regulate de facto statelessness and of a shared interpretation of the concept, the terms "de jure" and "de facto" stateless have not been used further in this report.

19. For the purposes of this report the researchers identified not only stateless persons recognized as such by a Belgian tribunal or court, but also persons in a procedure, whether to determine their statelessness or their need for international protection, or whose nationality was ineffective. The report thus covers not only stateless persons but also to some extent persons who are in a stateless-like situation and/or are at particular risk of statelessness.

20. This report also takes account of people registered as being of unknown (*"indéterminé"* or *"onbepaald"*) nationality, or as persons from the "Soviet Union", the "Federal Republic of Yugoslavia", or as from "Palestine", Syria, Lebanon, or Bhutan.[17] Some of them may be at risk of statelessness, although that conclusion may not yet have been drawn by the competent authorities in the individual case. Even though some persons considered as "unreturnable"[18] may be stateless or at risk of statelessness, limited time and resources did not allow them to be included in the scope of the study.

21. Thus the present report does not pretend to be exhaustive, but, rather, seeks to shed light on a situation that has until now been largely hidden.

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12 UNHCR, Guidelines on Statelessness No. 1, above note 10, para. 8.

13 Batchelor, C. A., "Stateless Persons: Some Gaps in International Protection", *International Journal of Refugee Law,* Vol. 7, No. 2, 1995, p. 180. See also Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons,* London: Equal Rights Trust, July 2010, p. 78, available at http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf.

14 See also UNHCR, *Mapping Statelessness in the Netherlands,* November 2011, available at http://www.unhcr.org/refworld/docid/4eef65da2.html, p. 6.

15 Ibid. See also van Waas, L., *Nationality Matters: Statelessness under International Law,* Antwerp: Intersentia, 2008, p. 25.

16 UNHCR, Guidelines on Statelessness No. 1, above note 10, para. 8; UNHCR, Prato Summary Conclusions, above note 11, p. 5.

17 See Geobel, *Nomenclature des pays,* 2011, available at http://statbel.fgov.be/fr/statistiques/collecte_donnees/nomenclatures/geobel/. These categories are as used for 2011, although different categories have existed previously as well. The category "Palestine" is defined in this publication as relating to persons from the West Bank, including East Jerusalem, and Gaza.

18 Persons who are unreturnable are considered to be foreigners who have no legal permission to stay on the territory and who cannot effectively be removed, either in fact or by law. Such persons find themselves in a legal limbo beyond the mechanisms that would normally uphold their fundamental rights. "On entend par 'inéloignables' les étrangers qui n'ont pas de statut de séjour légal sur le territoire européen mais qui ne peuvent pas être effectivement éloignés, pour des raisons de fait ou de droit. Ces personnes se trouvent dans des limbes juridiques, en dehors des dispositifs de protection de leurs droits fondamentaux." Centre for Equal Opportunities and Opposition to Racism, *Rapport annuel 2009 Migration,* May 2010 (in French), available at http://www.diversite.be/index.php?action=publicatie_detail&id=117&thema=4&select_page=216, p. 43 and http://www.diversiteit.be/?action=publicatie_detail&id=117&thema=4&select_page=216&setLanguage=1 (in Dutch).

1.3 Methodology

22. The present research project began in November 2010 and two consultants worked on the project until July 2011. The information gathered then has since been updated and includes developments up until October 2012.

23. Of the two researchers, one was a lawyer and the other a demographer. The lawyer worked under UNHCR's direct supervision. The demographer worked under the supervision of the Centre for Equal Opportunities and Opposition to Racism[19] (referred to in this report as "the Centre"), in collaboration with the Research Centre in Population and Societies of the Catholic University of Louvain. The progress made by the researchers was thus regularly monitored by UNHCR and the Centre.

24. An expert consultative panel was also established, both to inform the research and to ensure the broad engagement of relevant actors in the project. It included academics, a member of the Constitutional Court, statisticians, lawyers, and representatives of federal and local authorities, non-governmental organizations (NGOs), the Centre and UNHCR. These experts provided guidance to the researchers, based on questions and draft reports presented to them, and allowed the researchers to gain a better understanding of both the reality of the situation of stateless persons in Belgium and the national and international legal framework regulating the question of statelessness. Three expert panel meetings were held during the course of the research.

25. The methodology used for this research combined a desk-based analysis of quantitative and legal data, meetings with stakeholders, the review of administrative files, and interviews with individuals covered by the research. These different approaches combined form a strong foundation for the evaluation and recommendations arising from the study.

1.3.1 Meetings with stakeholders

26. The research benefited greatly from meetings held with government, administrative, judicial, NGO, and other stakeholders, as listed in full in Appendix II of this report.

27. A member of the Cabinet of the then Secretary of State for Migration Policy and Asylum, M. Melchior Wathelet, informed the researchers of developments concerning the statelessness determination procedure in the current political and governmental context. At the administrative level, the researchers met several times with the Director of the Aliens Office and staff of several departments, including the Asylum Directorate[20] and the Identification Unit,[21] which provided statistical information and explained how the Aliens Office examines a regularization claim.

28. Meetings were also held with the CGRS, during which its role in the current statelessness determination procedure was discussed. The researchers also benefited from its assistance in identifying recognized stateless persons willing to take part in interviews.

29. At the judicial level, meetings were held with different Crown Prosecutors' Offices in Antwerp, Brussels, and Namur, in order to gain a better understanding of the way in which an application for recognition of statelessness is assessed by different tribunals of first instance. The researchers met with two judges – one from the Brussels Tribunal of First Instance and one from the Antwerp Court of Appeal – in order to learn more about the reasons for either recognizing individuals as stateless or refusing to do so. The researchers also had fruitful contacts with other tribunals, such as those in Bruges, Termonde, and Mons.

30. UNHCR also met the Federal Mediator and learned about its work on behalf of stateless persons in Belgium.[22] Meetings with lawyers and NGOs, including, notably, the Belgian Refugee Council,[23] allowed a better understanding of the reality of the situation of stateless persons.

31. Finally, in the context of promoting Belgium's accession to the 1961 Convention, UNHCR and the researchers met with Ministry of Justice officials to assess any possible obstacles to such accession and discuss how they might be overcome. Further information about the registration of children born in Belgium was gathered from a meeting with a civil registrar who served as the vice-chair of an organization which brings together regional civil registrars.[24] Lastly, the researchers interviewed by telephone a member of the Naturalization Commission of the Parliament, thereby gaining insights into the procedure for stateless persons wishing to acquire Belgian nationality.

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19 Centre pour l'égalité des chances et la lutte contre le racisme/Centrum voor gelijkheid van kansen en voor racismebestrijding. For more information see http://www.diversite.be.

20 Direction asile/Directie Asiel.

21 Cellule d'identification/Cel Identificatie.

22 For more on the work of the Federal Mediator, see http://www.mediateurfederal.be and Médiateur fédéral, *Rapport annuel 2011,* 2012, available at http://www.mediateurfederal.be/sites/1070.fedimbo.belgium.be/files/jv2011-fr.pdf (in French) and http://www.mediateurfederal.be/sites/1070.fedimbo.belgium.be/files/jv2011-nl.pdf (in Dutch).

23 Comité belge d'aide aux réfugiés/Belgish Comité voor Hulp aan Vluchtelingen. For more information see http://www.cbar-bchv.be/.

24 Groupement des Agents de la Population et de l'Etat Civil (GAPEC). For more information on this francophone body, see http://www.gapec.be/.

1.3.2 Quantitative methodology

32. The statistical information provided in this study is primarily based on census and administrative data. Other sources or methods, such as specific surveys, could have been used to provide a more comprehensive overview of the stateless population in Belgium, but this would have required greater resources than were available. Given the constraints, using existing data was considered the best methodology to provide a first statistical overview of the stateless population in Belgium.

33. The first of the two data sources used was census data from 1910 to 1981. These data provide a historical representation of statelessness in Belgium. The second source was administrative data, including the National Register. This provides more comprehensive and more recent information on the population registered in Belgium. Both data sources provide information on two groups: persons registered as stateless and persons of unknown nationality.

34. Given the limitations of these two sources, complementary elements of methodology were also developed to enrich and broaden the picture of the target group.

1.3.3 Qualitative methodology: interviews with stateless persons

35. Another element of the methodology was to encourage the participation in the research of stateless persons, persons of unknown nationality, and persons in a similar situation, in order to obtain a better understanding of their situation and profile. In all, UNHCR and the researchers interviewed 20 stateless or potentially stateless persons to hear their stories and, with their permission, obtained and reviewed their immigration file. Nine of their stories are given in more detail at relevant points throughout the report. All the participants' names have been changed to protect their anonymity. These interviews took place between February and June 2011, and information about their situation has been reverified since then. For further details see Appendix II.

36. Given the small sample available, this "participatory assessment" does not pretend to give a representative overview of the situation of the stateless population in Belgium. Rather, the information gathered is illustrative and tells us about the background of these (potentially) stateless people, their experiences, and the challenges they have encountered on their journey to Belgium and while living in Belgium.

37. The fact that part of the (potentially) stateless population is hidden posed a methodological challenge. To locate participants it was necessary to approach stakeholders, asking them to identify stateless individuals, regardless of whether they had initiated a statelessness determination procedure or whether these individuals had been recognized as stateless. Contacts were made with the CGRS, the Ghent Department of Population and Integration, lawyers, and NGOs. These actors, as well as the Centre and UNHCR, identified 34 persons or families, which resulted in 20 interviews being conducted. Fourteen persons or families could not be interviewed. Some did not correspond to the required profile or later decided that they did not wish to be included in the research, while others could not be reached.

38. In order to put the participants at ease, they were given a choice of venue for the meeting. Interviews usually lasted no more than two hours,[25] and an interpreter was provided if the participant did not speak French, Dutch, or English. Interviews were sound-recorded and stored electronically by UNHCR. A consent form explaining the project, issues of confidentiality, anonymity, the possibility for withdrawal of consent, and the way in which the interview would be conducted was given to, and signed by, the participants before the start of the interview. The form also contained a request for the participants' permission to consult files in the Aliens Office and the CGRS.

39. Interviews were semi-structured around themes including causes of statelessness, the journey to Belgium, procedure(s) in Belgium, daily life, possible acquisition of nationality, and expectations for the future. Following the interview, each interviewer drafted a two-page report. The information gathered has been used throughout this report to illustrate the experiences of stateless people in Belgium. An overview of the main findings is given in Chapter 4.

40. The researchers complemented the interviews by examining the participants' immigration files to ensure the accuracy of the data recorded as well as to gain additional insights into the Aliens Office's engagement with participants, and, when relevant, rulings of the Council for Aliens Law Litigation (CALL)[26] in this field. The detailed review of case files was considered important, given the inherent limitations on the extent of information that it is feasible to obtain from one interview. For various reasons, including the limited time available and/or lack of consent, it was not possible to obtain the paper files of all the participants interviewed. The researchers reviewed the files of 17 of the 20 persons interviewed.

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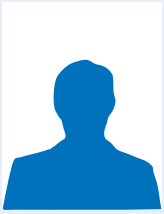
25 Where interviews were conducted with the help of an interpreter, they lasted one or two hours longer.

26 Le Conseil du Contentieux des Etrangers/De Raad voor Vreemdelingenbetwistingen. For more information see http://www.cce-rvv.be/.



Name: Anil (Participant No. 7)
Age and sex: 20s, male
Country of origin: Bhutan
Status when interviewed: Rejected asylum-seeker, seeking recognition as stateless
Current status: Unchanged

Anil* was born in Bhutan and belongs to the Nepalese minority there. In 1990, when he was only five years old, an ethnic conflict obliged the Nepali-speaking population of southern Bhutan to flee. During the upheaval his father died and his mother was killed.

His uncle fled to Nepal and took the boy with him. In Kathmandu, Anil's uncle worked and the boy went to school, where, although children mocked him for being a Bhutanese refugee, he studied hard and was among the best students. When Anil was 12, his uncle died and the boy had to leave school and work for a living, washing dishes in restaurants and cafes. But Anil says he studied hard by himself after work and spoke several languages by the time he was 17, enabling him to work as a tourist guide.

Soon Anil realized that without identity documents he would be unable either to find regular employment or to get married. He met people who provided him with a false passport and left for Belgium. There, he spent a few days in Antwerp discovering Belgium and, at first, felt great. Then he applied for asylum and was moved to a reception centre and later to a centre for the homeless, where his morale weakened by the day. He soon realized that Belgium did not offer him the normal life he had been expecting.

Anil found the asylum interview very difficult. He says that he was insistently asked to prove his identity and his statelessness, but he just could not prove it. He was also pressed to recount exactly what happened to his mother. Anil knows that she was abused and killed, but he does not want to talk about it. So he became angry during the interview and lost his temper.

After that Anil became so depressed that he needed to be hospitalized. Of the five years he has spent in Belgium, two have been in psychiatric hospitals. He is currently living in a specialized centre for people with psychiatric needs. Due to his medication he suffers from amnesia.

By now, Anil has applied several times for asylum but his claim has been rejected each time, mainly because the authorities have doubts about his origin. The main problem for him today is to find evidence of his identity and nationality. With the help of his lawyer, he has tried to clarify his nationality with the embassies of Nepal and Bhutan. The Embassy of Nepal said he was Bhutanese and could not go back to Nepal without Nepali documents, while the Bhutanese Embassy refused to receive him.

Anil finds it hard to grasp the intricacies of the Belgian legal system. He is not sure exactly whether he has applied for recognition as stateless or for regularization, or at which stage he is in the procedure. In fact, the only thing he knows is that his lawyer and social worker are dealing with his case and trying to find evidence of his identity or nationality. The young man does not want to know more about how his procedure is progressing because it makes him so unwell.

He is scared of going into the city and especially of taking the train, as he says that there are police everywhere who may want to check his papers. He has been stopped by them three times and only released after two to three hours once they had called the reception centre. He is afraid of becoming homeless again.

Anil has tried to integrate into Belgian society. He has done voluntary work but even if he tries to be active, he cannot work or live alone outside the centre, nor can he travel or get married. Anil is a sociable person and loves being with people. He feels lonely and says his daily life is quite empty. "I am my own family," he says. He had several relationships with women in Belgium but they broke up due to the lack of prospect of starting a family.

Anil gets €7 pocket money per week. When he feels particularly depressed, he walks into a shop, buys something, goes to the post office, packs his purchases into a big parcel, and sends them – to himself. A few days later, he feels happy when residents in the centre come to tell him that there's a parcel for him.

Anil would be happy if he could have a nationality – any nationality. His dream is to go back to Nepal, where he grew up, or even to Bhutan. But without documents this is not possible. Today, he feels as though he has lost five years of his life and that he has no future.

* Not his real name.

1.3.4 Legal research

41. Extensive legal research examined Belgian law, policy and practice relating to stateless persons in order to evaluate the extent to which Belgium's international legal obligations regarding statelessness are being met, as well as the compatibility between national legislation and the 1961 Convention. Evidence obtained in the quantitative and qualitative work also informed this analysis.

42. The main national sources of law are the Belgian Constitution,[27] the Belgian Civil Code,[28] the 1980 Aliens Act,[29] and its associated royal decrees and instructions as regards regularization criteria, the 1984 Belgian Nationality Code (BNC)[30] and its numerous related royal decrees, circulars, and legislative modifications. The most recent change to the BNC was made in 2006 and further amendments were under negotiation during the course of the research.

43. The international instruments examined for this research include two UN conventions: the 1954 Convention, to which Belgium is a party, and the 1961 Convention, to which it has not yet acceded. Other relevant international human rights instruments include the 1948 Universal Declaration of Human Rights,[31] the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention),[32] the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD),[33] the 1966 International Covenant on Civil and Political Rights (ICCPR),[34] the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR),[35] the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[36] the 1989 Convention on the Rights of the Child (CRC),[37] and the 2006 Convention on the Rights of Persons with Disabilities.[38]

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27 Constitution [Belgium], containing revisions up to April 2012, available at http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/grondwetEN.pdf (in English), http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1994021730&table_name=loi (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1994021730&table_name=wet (in Dutch).

28 Civil Code [Belgium], 1804, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1804032130&table_name=loi (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1804032130&table_name=wet (in Dutch).

29 Law of 15 December 1980, sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers [Belgium], *Moniteur belge,* 31 December 1980, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1980121530&table_name=wet (in Dutch).

30 Nationality Code [Belgium] (BNC), 1984, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1984062835&table_name=loi (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1984062835&table_name=wet (in Dutch).

31 Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at http://www.unhcr.org/refworld/docid/3ae6b3712c.html.

32 Convention Relating to the Status of Refugees, 28 July 1951, UNTS, Vol. 189, p. 137, available at http://www.unhcr.org/refworld/docid/3be01b964.html. Belgium is a party to the Convention, which it signed on 28 July 1951 and ratified on 22 July 1953.

33 International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, available at http://www.unhcr.org/refworld/docid/3ae6b3940.html. Belgium is a party to the Convention, which it signed on 17 August 1967 and ratified on 7 August 1975.

34 International Covenant on Civil and Political Rights, 16 December 1966, available at http://www.unhcr.org/refworld/docid/3ae6b3aa0.html. Belgium is a party to the Covenant, which it signed on 10 December 1968 and ratified on 21 April 1983. Reservations were made to Articles 10, 14, 19, 20, 21 and 22, and declarations regarding Articles 20 and 23.

35 International Covenant on Economic, Social and Cultural Rights, 16 December 1966, available at http://www2.ohchr.org/english/law/cescr.htm. Belgium is a party to the Covenant, which it signed on 10 December 1968 and ratified on 21 April 1983. Interpretative declarations were made regarding Article 2.

36 International Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, available at http://www.unhcr.org/refworld/docid/3ae6b3970.html. Belgium is a party to the Convention, which it signed on 17 July 1980 and ratified on 10 July 1985.

37 Convention on the Rights of the Child, 20 November 1989, available at http://www.unhcr.org/refworld/docid/3ae6b38f0.html. Belgium is a party to the Convention, which it signed on 26 January 1990 and ratified on 16 December 1991.

38 Convention on the Rights of Persons with Disabilities, 13 December 2006, available at http://www.unhcr.org/refworld/docid/45f973632.html. Belgium is a party to the Convention, which it signed on 30 March 2007 and ratified on 2 July 2009. It made the following declaration upon signature: "This signature is equally binding on the French community, the Flemish community, the German-speaking community, the Walloon region, the Flemish region and the region of the capital-Brussels."

44. Regional conventions dealing with statelessness and nationality were also examined. The two most relevant Council of Europe conventions are the 1997 European Convention on Nationality (ECN)[39] and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession,[40] although Belgium is not a party to either of these conventions. Regional human rights instruments are also relevant for stateless persons and include the 1950 European Convention on Human Rights.[41]

45. Jurisprudence concerning the statelessness determination procedure was gathered during meetings with stakeholders at various tribunals and courts (such as judges at the tribunals of first instance and courts of appeal, and members of the Crown Prosecutor's Office), online,[42] and from specialized journals and several articles and reports on statelessness. Some decisions were communicated by lawyers.

46. Concerning the regularization procedure, UNHCR obtained permission to consult the Aliens Office's files on participants who gave their consent (see above paragraph 39). Some jurisprudence was also gathered online from the CALL.[43]

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39 European Convention on Nationality, 6 November 1997, European Treaty Series (ETS) 166, available at http://www.unhcr.org/refworld/docid/3ae6b36618.html. Belgium is not a party to this convention.

40 Convention on the Avoidance of Statelessness in Relation to State Succession, 15 March 2006, ETS 200, available at http://www.unhcr.org/refworld/docid/4444c8584.html. Belgium is not a party to this convention.

41 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), ETS 5, 4 November 1950, available at http://www.unhcr.org/refworld/docid/3ae6b3b04.html. Belgium is a party to the Convention, which it signed on 4 November 1950 and ratified on 14 June 1955.

42 Juridat, available at http://www.cass.be/.

43 CALL, *Rapport annuel 01/09/2009–31/08/2010,* Brussels, 2010, available at http://www.rvv-cce.be/rvv/rapportannuel0910.pdf (in French) and http://www.rvv-cce.be/rvv/jaarverslag0910.pdf (in Dutch).

2. STATELESSNESS ACROSS THE GLOBE AND UNHCR'S ENGAGEMENT

2.1 Introduction

47. Statelessness is a global problem affecting an estimated 12 million people worldwide. While some regions have larger stateless populations than others, every state and continent is, or is potentially, affected by statelessness. This chapter provides a brief overview of the global causes and consequences of statelessness, as well as of UNHCR's mandate regarding statelessness.

48. Statelessness was recognized as a global problem during the first half of the twentieth century, when an increased incidence of the phenomenon became apparent. Since then, instead of disappearing, statelessness has emerged in new situations.

49. The scale of the problem has fluctuated over the years, with improvements in some regions offset by new problems in others. The large numbers at the beginning of the 1990s were gradually reduced as the successor states to the former Soviet Union and the former Yugoslavia granted citizenship to several hundred thousand people. Numbers then increased again, however, including as a result of developments in other parts of the world and of improved statistical coverage. Giving the number of stateless people globally a precise figure is inherently difficult, because few countries have procedures to identify stateless persons or collect comprehensive and reliable data in this field. Nevertheless, the population data published by UNHCR in June each year include available official statistics or estimates.[44]

50. The full scope of statelessness across the globe is only just becoming known. The problem is particularly acute in south-east Asia, central Asia, eastern Europe, the Middle East and various countries in Africa. Because most of the countries of Latin America grant citizenship to all born on their territory, that region has the lowest incidence of people with no nationality.

51. Countries with the greatest numbers of stateless people, for which estimates are known, are Brunei, Estonia, Iraq, Kenya, Kuwait, Kyrgyzstan, Latvia, Malaysia, Myanmar, Nepal, Russian Federation, Saudi Arabia, Syria, Thailand, Turkmenistan, and Ukraine.[45] The situation and rights of stateless persons in each country vary significantly and are not always easily compared.

52. Before elaborating on the consequences of statelessness, it is useful to understand how people become stateless.

2.2 Causes of statelessness

53. The reasons for statelessness can be grouped into three categories: (i) causes linked to the dissolution and separation of states and the transfer of territory between states; (ii) causes linked to the complex technical operation of citizenship laws or administrative practices; and (iii) causes linked to discrimination, for instance, on account of gender, age, ethnicity and/or race, or the arbitrary deprivation of nationality.[46]

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44 See UNHCR, *UNHCR Global Trends: 60 years and still counting,* June 2011, available at http://www.unhcr.org/4dfa11499.html, pp. 28–29. UNHCR data are based on census counts, surveys, and other government data and estimates.

45 Ibid., Table 1. The countries were all estimated to have stateless populations of 20,000 or more. See also *UNHCR Global Trends 2011: A Year of Crises,* 18 June 2012, available at http://www.unhcr.org/refworld/docid/4fdeccbe2.html and its annexed Table 7, available at http://www.unhcr.org/pages/49c3646c4d6.html, estimating the number of stateless persons at end 2011 and showing the same list of countries with stateless populations of 20,000 or more, except that Turkmenistan is now estimated to have a stateless population of 11,000.

46 UNHCR and Inter-parliamentary Union, *Nationality and Statelessness: A Handbook for Parliamentarians,* 20 October 2005 (updated August 2008), pp. 27–39, available at http://www.unhcr.org/refworld/docid/436608b24.html. See also UNHCR and Asylum Aid, *Mapping Statelessness in the United Kingdom,* pp. 22–27, available at http://www.unhcr.org/refworld/docid/4ecb6a192.html, and UNHCR, *Mapping Statelessness in the Netherlands,* pp. 9–12.

2.2.1 Causes linked to dissolution and separation of states and the transfer of territory between states

54. First, statelessness often arises in the context of state succession. The turbulent dissolution of the Soviet Union and of the Yugoslav federation caused internal and external migration that left millions of people stateless throughout eastern Europe and central Asia. Twenty years later, hundreds of thousands of people in the region remain stateless or at risk of statelessness.

55. The post-colonial formation of states has been another major cause. Large populations have remained without citizenship as a result of decades of such state-building processes in Africa and Asia, which involved defining who are citizens of the, by then independent, state.

2.2.2 Technical causes

56. Second, people may become stateless as a result of the complex technical operation of citizenship laws or administrative practices. States have the right to determine whom they consider to be a citizen and have adopted a wide range of approaches to this field. Within this complex international maze of citizenship laws, many people find that they "fall through the cracks". An individual can, for example, become the victim of a conflict of laws, in which two states each claim that the other is responsible for the bestowal of nationality. This is especially likely to happen when a person's state of birth grants nationality by descent (*jus sanguinis*), while his or her parents were born in a state that attributes nationality by birth on its territory (*jus soli*). In addition, some states employ a mechanism whereby automatic loss of nationality occurs, for instance after a prolonged absence from the country (in some states as few as three or five years are considered to be a "prolonged absence").[47]

57. Failure or inability to undertake what might be considered a simple administrative endeavour can also lead to statelessness. Lack of registration of children at birth – a pervasive problem in many developing countries – leaves many children without proof of when and where they were born, who their parents are, or where their parents are from. Not having a birth certificate does not automatically indicate the lack of citizenship, but in many countries, and in today's increasingly mobile world, not having proof of birth, origins, or legal identity increases the risk of statelessness.

2.2.3 Causes linked to discrimination or the arbitrary deprivation of nationality

58. Third, underlying causes in most situations of statelessness are discrimination and the arbitrary deprivation of nationality. Ethnic and racial discrimination as well as discrimination affecting women and children are also particularly problematic.

59. For instance, in Syria an important part of the Kurdish population (mainly residing in the north-east of the country) have been stateless since the census organized in 1962. In this regard, the recent decision of the Syrian authorities to grant citizenship to part of the stateless Kurd population (i.e. those registered as *Ajanib* ("foreigners") in the civil records of the governorate of Hassake) constitutes a real breakthrough, as it brings resolution to a long-standing issue which affected some 150,000 people.[48] This decision does not, however, commit the Syrian authorities to reviewing the situation of other categories of stateless Kurds.

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47 UNHCR, *Nationality and Statelessness,* above note 46, p. 33.

48 According to official sources, as of 14 September 2011, around 59,000 applications concerning 103,000 beneficiaries were received and some 51,000 identity cards issued. Besides, 1,000 passports have been issued to Syrian Kurds who recovered their nationality.

Name: Canan (Participant No. 8)
Age and sex: 20s, male
Country of origin: Syria (Kurdish)
Status when interviewed: Asylum-seeker
Current status: Unchanged

Canan* is a Kurd from northern Syria, where his family has lived for many generations. He says that the trouble started in 1962, when some 150,000 Kurdish people were stripped of their Syrian nationality. Canan's family were among those who became foreigners in their own country, so his only identity document is a birth certificate issued to the "non-national Kurds" residing in Syria. This document states that it is not valid outside the country and that the holder cannot travel.

After school, Canan studied sociology at university. He began to research the situation of Kurdish people in Syria and became very interested in the situation of juvenile detainees in Syrian prisons. When the guards noticed that he was visiting more frequently than other students, they denied him further access to the prison. He had to abandon the project and became very depressed.

The young man's special interest in Kurdish issues did not go unnoticed by the authorities. At first they subjected him to various, milder, forms of harassment, but in 2007 they arrested and beat him. After his release he lived in constant fear, especially when the university authorities summoned and advised him to work on topics not related to the Kurdish question. He was issued a new student card that stated in red letters that he was a "foreigner". Canan explains that he was not the first family member to attract government hostility.

In early 2010, Canan could not take the pressure any longer. He left for Turkey, where he paid a smuggler to get him to Belgium by truck and by train. On the train he was arrested by the German police and detained for ten days before being handed over to Belgian police.

Canan filed an asylum application and ended up in detention for 45 days. Both his first application and the appeal were rejected and he was given an order to leave Belgian territory within five days.

For some three weeks Canan lived on the streets, sleeping rough and waiting for his father to send him identity documents from Syria. When the papers arrived he lodged another asylum application and was placed in an open reception centre. At the time of the interview he was living in the centre, waiting for a decision and killing time with household chores, watching television and learning French and Dutch. As of mid-2012, he was still in the reception centre and waiting for a decision on his asylum claim.

"Here in Belgium I suffered a lot", Canan says. He hopes to be recognized as a refugee but he believes the chances are slim. He says that he is really discouraged by the attitude of Belgian officials who tried to persuade him to return to Syria.

* Not his real name.

60. Another example is the Faili Kurds in Iraq, who were stripped of their Iraqi citizenship by a 1980 decree issued by Saddam Hussein, the then president. In Europe, while most Roma and other minority groups are citizens of the countries where they live, thousands continue to be stateless. In other parts of the world, as a consequence of states becoming independent or the establishment of new borders, certain ethnic groups have been excluded from citizenship, even though they have lived in the same place for generations. This is the situation of the Muslim residents (Rohingya) of the Northern Rakhine state in Myanmar, some hill tribes in Thailand, the Bidoon in the Gulf States, and various nomadic groups.

61. Often, such groups have become so marginalized that even when legislation grants access to citizenship and they become eligible in theory for citizenship, they encounter almost insuperable obstacles. These can include the high cost of actually obtaining citizenship and documentation or of travelling to the place where they can obtain it.

62. Nepal provides a case in point. In 2007 it amended its nationality laws to extend citizenship to anyone born in the country before April 1990, including various – previously stateless – minorities. While the authorities undertook a massive citizenship campaign in which they distributed almost 2.6 million certificates in the first four months of 2007, the poorest stateless people were nevertheless unable to acquire citizenship due to prohibitive fees and/or long distances that needed to be travelled to lodge an application. UNHCR monitoring missions also found that, in some communities, it was believed that some women and girls did not need certificates as their interests were viewed as being represented by their husbands or fathers and because men did not want to share rights to property. In addition, contrary to the law, some authorities required the cooperation of the husband or father when processing applications submitted by women (whether or not they were married) and girls.[49]

63. Statelessness also arises as a result of discrimination against women and/or children. In some countries, marriage or the dissolution of marriage may constitute a ground for automatic loss of citizenship. Additionally, while a number of countries in sub-Saharan and North Africa, the Middle East and Asia have started to introduce legislation to address this, there are still 26 countries where only men can pass their citizenship on to their children.[50] Children who are born of women from these countries who are married to foreigners, or who are born out of wedlock, may end up stateless if their father is stateless, if he cannot confer nationality under the nationality law of his state or is unable or refuses to take the necessary administrative steps with the authorities of his country on behalf of his children.

64. In Kuwait, for instance, nationality can by law be passed on only through the male line, although Kuwaiti nationality can be acquired by a foundling born in Kuwait and may also be granted by decree to any person born in or outside Kuwait to a Kuwaiti mother whose father is unknown or whose kinship to his father has not been legally established.[51] In Africa, four states – Burundi, Liberia, Sudan, and Togo – have enshrined the principle of gender equality in recent constitutions but have yet to reform the relevant provisions of their nationality laws.[52] Although these practices may be presented as legal technicalities, they in fact constitute a clear form of gender discrimination.[53]

65. One of the women interviewed for the research is affected by such discriminatory legislation.[54] She was born in Lebanon to a Palestinian father[55] and an Egyptian mother. At that time, Egyptian nationality law[56] did not permit her mother to pass on her nationality to Jenna. The law was reformed in a 2004 decree[57] permitting an Egyptian woman married to a foreigner to transmit her nationality to her children, while those born before 2004 were required to approach the Egyptian Ministry of the Interior to be naturalized. There were, however, problems regarding the application of this reform to Egyptian women married to Palestinians. It was only later in 2011 that an additional decree declared that this restriction was removed.[58]

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49 See UNHCR, *UNHCR Handbook for the Protection of Women and Girls,* January 2008, p. 190, available at http://www.unhcr.org/refworld/docid/47cfc2962.html. It should be noted in addition that draft constitutional provisions on citizenship and fundamental rights issued in Nepal in November 2009 further restrict access to citizenship, raising the prospect of a significant increase in the size of the stateless population in Nepal.

50 See UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness,* 8 March 2012, available at http://www.unhcr.org/refworld/docid/4f59bdd92.html.

51 See Nationality Law [Kuwait], 1959 (and subsequent amendments), Articles 2 and 3, available at http://www.unhcr.org/refworld/docid/3ae6b4ef1c.html. In the scenario of Article 3, the minister may afford such children the same treatment as that afforded to Kuwaiti nationals until they reach their majority.

52 UNHCR, *Background Note on Gender Equality,* above note 50, p. 4. See also Open Society Institute (OSI), *Citizenship Law in Africa: A Comparative Study,* October 2010, available at http://www.unhcr.org/refworld/docid/4cf76b192.html.

53 For more information on gender-related problems facing stateless women and girls, see UNHCR, *UNHCR Handbook for the Protection of Women and Girls,* above note 49, notably pp. 185–190.

54 Participant No. 1 (Jenna).

55 Article 3 of the Palestinian Citizenship Order of 1925 provides that a person born to a Palestinian father acquires the father's nationality, wherever the birth may occur. Article 6 further provides that minor children shall follow the nationality of their father.

56 Law No. 26 of 1975 Concerning Egyptian Nationality [Egypt], Official Journal No. 22, 29 May 1975, available at http://www.unhcr.org/refworld/docid/3ae6b4e218.html.

57 Decree No. 12025 of the Year 2004 Concerning Certain Provisions Enforcing Law No. 154 of the Year 2004 on Amendment of Certain Provisions of Law No. 26 of the Year 1975 Concerning the Egyptian Nationality [Egypt], 12025, 25 July 2004, available at http://www.unhcr.org/refworld/docid/432aaab74.html.

58 Decree No. 1231 of the Minister of Interior, Mansour al-Essawy, 2 May 2011, permitting Egyptian mothers married to Palestinian men to pass their nationality to their children. As a result, children born in or after 2004 were able to obtain Egyptian nationality automatically, while children born before 2004 had to submit an application to the Ministry of the Interior. On this and other recent changes enhancing women's rights to pass on their nationality in Arab countries, see also, UNHCR and Collective for Research and Training on Development – Action (CRTD-A), "A Regional Dialogue on Gender Equality, Nationality and Statelessness : Overview and Key Findings", January 2012, available at http://www.unhcr.org/refworld/docid/4f267ec72.html and M.W. Mansour, S.G. Abou Aad, "Women's Citizenship Rights in Lebanon", Issam Fares Institute for Public Policy and International Affairs, American University of Beirut, Working Paper Series No. 8, May 2012, available at http://www.aub.edu.lb/ifi/public_policy/rapp/Documents/working_paper_series/20120504ifi_rapp_hrp_wps08_womens_citizenship_rights_in_lebanon_english.pdf, pp. 17–18.

2.3 Consequences of statelessness

66. Statelessness costs people dearly. Stateless people are among the most vulnerable in the world. In principle, individuals are entitled to most human rights protections regardless of their citizenship status. In practice, statelessness often results in the denial of fundamental rights, which in turn results in disempowerment and marginalization, causes social and economic hardship and acute vulnerability, notably for stateless women and children. They are often at increased risk of discrimination, abuse, children labour, trafficking, and detention. While most stateless persons have never crossed borders, some may become forcibly displaced and/or be expelled.

67. The authorities may refuse to register the birth and issue a birth certificate to a child whose parents cannot prove that they hold the nationality of their country of residence. Without such a birth certificate, the child in question is much more likely to experience trouble in proving nationality or enjoying a host of fundamental rights in the future.[59]

68. Stateless people may experience similar obstacles obtaining personal identification documentation. This creates many additional problems, from not being able to work to being unable to marry or acknowledge filiation of their children. Access to housing is either difficult or barred completely. In addition, stateless people often cannot access national services such as public education, health care, and pensions. The right to own or inherit property may be restricted or fully denied. Similarly, it can be virtually impossible to start a business due to the inability to enter into contracts, obtain licences, or open a bank account.[60] In this way, poverty and marginalization become an integral part of stateless life. Sometimes stateless persons find themselves forced to obtain false identity documents or assume alternative identities in order to engage in day-to-day activities. Not being able to present an identity document may increase the incentive to shun participation in society altogether.

69. Some may face long periods of detention because they cannot prove who they are or where they come from. They may also face restrictions on freedom of movement, including travelling, and returning from, abroad. Legitimate international travel may not be an option, resulting in significantly increased exposure to human smugglers and traffickers – "an industry that thrives on the desperation of individuals".[61] Statelessness may even result in the denial of a person's right to reside in the country, which may place them at heightened risk of expulsion from the country where they have lived sometimes for years.[62] Alternatively, the discrimination, abuse, and ill-treatment to which they have been exposed may oblige them to flee in search of international protection.

70. On a wider level, statelessness may hamper social development efforts, because "the concept of statelessness introduces a power-dynamic that is particularly challenging for the design and delivery of effective pro-poor social development programmes".[63] Furthermore, the problem can become self-perpetuating because stateless parents cannot pass a nationality to their children. Apart from the misery caused to the people themselves, the effect of marginalizing whole groups of people across generations may severely affect their balanced integration in society and may represent a source of conflict.

2.4 UNHCR's engagement with statelessness

71. UNHCR has been involved in statelessness issues and with stateless persons since it began operations in 1950. The organization is mandated by the United Nations to protect refugees and to help them find solutions to their plight, and many refugees assisted over the years have been stateless.[64] Indeed, over the past decades, the link between the loss or denial of national protection and the loss or denial of nationality has been well established. It is also now generally understood that possession of an effective nationality and the ability to exercise the rights inherent to nationality help to prevent involuntary and coerced displacements of persons.[65]

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59 In most states, nationality is acquired automatically at birth.

60 UNHCR, Action to Address Statelessness: A Strategy Note, March 2010, available at http://www.unhcr.org/4b960ae99.html, p. 14.

61 Refugees International, "Statelessness: International blind spot linked to global concerns", *Refugees International Field Report,* 2 September 2009, available at http://www.refintl.org/sites/default/files/090209_stateless_0.pdf, p. 2.

62 See generally UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at http://www.unhcr.org/refworld/docid/45139c394.html.

63 Blitz, B. K., "Statelessness, protection and equality, in Refugee Studies Centre", Forced Migration Policy Briefing, No. 3, 2009, available at http://www.rsc.ox.ac.uk/publications/policy-briefings/RSCPB3-Statelessness.pdf, p. 3.

64 Statute of the Office of the UN High Commissioner for Refugees, A/RES/428(V), 14 December 1950, para. 6(A)(ii), available at http://www.unhcr.org/refworld/docid/3ae6b3628.html, and 1951 Refugee Convention, Article 1(A)2. Both sources refer to stateless persons who meet the criteria of the refugee definition.

65 See UNGA resolution A/RES/50/152, 21 December 1995, available at http://www.unhcr.org/refworld/docid/3b00f31d24.html.

72. Over the years, UNHCR's role in helping to reduce the incidence of statelessness and in assisting stateless persons has expanded. UNHCR is not explicitly mentioned in either the 1954 or the 1961 Convention. However, the UN General Assembly has designated UNHCR as the appropriate body to examine the cases of persons who claim the benefit of the 1961 Convention and to assist them in presenting their claim to the authorities under Article 11 of the 1961 Convention, and it has recognized UNHCR more generally as the UN institution with an international protection mandate for stateless persons.[66]

73. UNHCR's responsibilities regarding statelessness issues and stateless persons have been elaborated by UN General Assembly resolutions[67] and through the recommendations of the organization's own advisory body, the Executive Committee of the High Commissioner's Programme (ExCom).[68]

74. The UN General Assembly resolutions which set out UNHCR's mandate on statelessness are universal in scope and do not restrict UNHCR's activities to state parties to either the 1954 or 1961 Conventions. UNHCR's statelessness mandate covers all situations of statelessness.

75. There is some overlap between UNHCR's statelessness mandate and its refugee mandate because stateless refugees are protected under the provisions of the 1951 Refugee Convention. When refugee status ceases, however, former refugees may remain stateless and therefore of continuing concern to UNHCR. UNHCR's statelessness mandate also applies to stateless individuals who are internally displaced or not displaced at all.

76. In 2006, the General Assembly urged UNHCR to continue to work "in regard to identifying stateless persons, preventing and reducing statelessness, and protecting stateless persons".[69] These four areas govern UNHCR's statelessness-related efforts today.

77. The **identification** of statelessness includes continued efforts to identify populations who are stateless or of unknown nationality, improved sharing and collecting of statistical data on these populations, and undertaking and sharing research on the causes, scope, and consequences of statelessness "so as to promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem".[70]

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66 See UNGA resolutions A/RES/3274 (XXIX), 10 December 1974, available at http://www.unhcr.org/refworld/docid/3b00f17723.html; A/RES/31/36, 30 November 1976, available at http://www.unhcr.org/refworld/docid/3b00f1153c.html. See also generally, UNHCR, UNHCR's Role in Supervising International Protection Standards in the Context of its Mandate – Keynote Address by Volker Türk, 20 May 2010, available at www.unhcr.org/4bf406a56.html. See 1954 Convention, Article 33 (the Secretary-General is nominally mentioned but in practice this is to be read as UNHCR); see further UNGA resolutions A/RES/49/169, 23 December 1994, para. 20, available at http://www.unhcr.org/refworld/docid/3b00f30bc.html; A/RES/50/152, 21 December 1995, para. 14 (where it was clarified that UNHCR's activities on behalf of stateless persons are part of the Office's statutory function of providing international protection) and para. 15, available at http://www.unhcr.org/refworld/docid/3b00f31d24.html; A/RES/61/137, 19 December 2006, para. 4, available at http://www.unhcr.org/refworld/docid/45fa902d2.html.

67 UNGA resolutions A/RES/51/75, 12 December 1996, available at http://www.unhcr.org/refworld/docid/3b00f3484.html ; A/RES/53/125, 9 December 1998, available at http://www.unhcr.org/refworld/docid/3b00f52c0.html; A/RES/54/146, 17 December 1999, available at http://www.unhcr.org/refworld/docid/3b00f3571b.html; A/RES/55/74, 4 December 2000, available at http://www.unhcr.org/refworld/docid/3d60afcd4.html; A/RES/55/153, 12 December 2000, available at http://www.unhcr.org/refworld/docid/4ae9accb8.html; A/RES/56/137, 19 December 2001, available at http://www.unhcr.org/refworld/docid/3d60ab5d4.html; A/RES/57/187, 18 December 2002, available at http://www.unhcr.org/refworld/docid/3f43553e4.html; A/RES/58/151, 22 December 2003, available at http://www.unhcr.org/refworld/docid/4067d9c52.html; A/RES/59/34, 2 December 2004, available at http://www.unhcr.org/refworld/docid/426909f44.html; A/RES/59/170, 20 December 2004, available at http://www.unhcr.org/refworld/docid/42690c3b4.html; A/RES/61/129, 16 December 2005, available at http://www.unhcr.org/refworld/docid/45fa8bd12.html; A/RES/61/137, above note 66; A/RES/62/124, 18 December 2007, available at http://www.unhcr.org/refworld/docid/47b2fa642.html; A/RES/63/118, 11 December 2008, available at http://www.unhcr.org/refworld/docid/497841552.html; A/RES/63/148, 18 December 2008, available at http://www.unhcr.org/refworld/docid/4989619e2.html; A/RES/64/127, 18 December 2009, available at http://www.unhcr.org/refworld/docid/4c73cec02.html; and A/RES/65/194, 21 December 2010, available at http://www.unhcr.org/refworld/docid/4d9b0b272.html.

68 The Executive Committee of the High Commissioner's Programme (ExCom) is composed of representatives from countries (89 in June 2012) selected by ECOSOC on the basis of their demonstrated interest in finding a solution to refugee problems. See especially UNHCR, ExCom, Conclusion on prevention and reduction of statelessness and protection of stateless persons, No. 78 (XLVI), 1995, available at http://www.unhcr.org/refworld/docid/3ae68c443f.html (in English) and http://www.unhcr.fr/4b30a24f1d.html (in French); UNHCR, ExCom, Conclusion on identification, prevention and reduction of statelessness and protection of stateless persons, No. 106 (LVII), 2006, available at http://www.unhcr.org/refworld/docid/453497302.html (in English) and http://www.unhcr.fr/4b30a277e.html (in French).

69 UNGA resolution A/RES/61/137, above note 66.

70 UNHCR, ExCom, Conclusion on identification, prevention and reduction of statelessness and protection of stateless persons, above note 68, para. (c).

78. UNHCR's mandate is not limited to addressing cases of statelessness which have already occurred. It also includes **prevention**, by identifying and addressing risks of statelessness which may affect populations, notably by means of support for legislative changes that are needed. In this context, UNHCR provides technical and advisory services to support the preparation and implementation of nationality legislation, and promotes accession to the 1961 Convention.

79. Moreover, UNHCR encourages member states to ensure the **reduction** of statelessness, inter alia by pleading for the adoption of "measures to allow the integration of persons in situations of protracted statelessness", for "the right of every child to acquire a nationality, particularly where the child might otherwise be stateless" and for the dissemination of "information regarding access to citizenship".[71]

80. Lastly, UNHCR has a role regarding the **protection** of stateless persons, to help them to exercise their rights. It promotes accession to the 1954 Convention and is encouraged to "implement programmes … which contribute to protecting and assisting stateless persons".[72]

81. In the context of the fiftieth anniversary of the 1961 Convention on the Reduction of Statelessness in 2011 and bearing the same four areas in mind, UNHCR has placed statelessness issues at the centre of its advocacy work. It has also intensified its efforts to promote the accession of states to the international statelessness instruments.[73] The present study was initiated as part of these endeavours.

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71 Ibid., paras (p)–(r).

72 Ibid., para. (v).

73 UNHCR, Statement by Ms Janet Lim, UNHCR Assistant High Commissioner, High Level Segment of the 16th Session of the United Nations Human Rights Council, 2 March 2011, available at http://www.unhcr.org/refworld/docid/4d762e352.html. See also UNHCR, Commemoration of the Anniversary of the 100th Session of the HRC (Statement by UNHCR), 2010, available at http://www.unhcr.org/refworld/docid/4cd798752.html.

3. A DEMOGRAPHY OF STATELESSNESS IN BELGIUM

3.1 Introduction

82. Estimating the number of stateless people in Belgium is not an easy task. This chapter sets out the statistical and other information gathered to enable such an assessment despite the challenges posed. Censuses and the National Register provide some information on the stateless population, but they do not give a complete picture.

83. Information from national censuses provides a historical overview of statelessness in Belgium, in particular since the end of the Second World War. More recent developments over the last twenty years can be gleaned from the National Register and give an overview of the current situation for persons with a valid residence permit of more than three months. This shows that as of 1 January 2010, there were 637 recognized stateless people living in Belgium with such a residence permit and 4,823 lawful residents of unknown (*"indéterminé"* or *"onbepaald"*) nationality (that is, people not formally recognized as stateless whose nationality is unclear).

84. This is, however, only part of the picture. Subsequent sections examine how the profile of the stateless population and that of those of unknown nationality has evolved over time, showing how the age, sex, and place of birth and origin of these populations have changed. The research also attempts to identify populations, such as recognized stateless persons who do not have a residence permit, who are not included in administrative data.

85. The chapter ends with a number of recommendations intended to improve the quality of registration of persons in categories such as "stateless" and "unknown nationality", to standardize practice, and to help identify persons not currently visible in administrative data. It is hoped that a more complete and accurate picture of the stateless population can thereby be established.

3.2 The challenges of mapping the stateless population in Belgium

86. There are numerous challenges involved in estimating the number of stateless people in Belgium.

87. National censuses and the information contained in the National Register provide information on stateless persons and on persons of unknown nationality, and highlight certain key trends among such populations over the last century. Questions asked in censuses have not, however, always been consistent from one census to the next, and registration practice for such categories of persons differs from one municipality to another. This means that the information from these sources paints a picture that is neither complete nor clear.

88. In addition, an unknown number of stateless persons are not visible because they are living illegally in the country. People in a procedure before a tribunal or court to determine whether they are stateless do not automatically receive a residence permit. Even if they are recognized as stateless, they do not automatically have a right of residence in Belgium, nor are they guaranteed to receive such a residence permit at a later stage. This means that part of the stateless population in Belgium is not included in the administrative data contained in the National Register. Therefore, this report also examines statistics from the National Register that relate to specific foreign populations lawfully staying in Belgium for a period of more than three months, where statelessness may also be an issue. These include persons from the former Soviet Union or the former Yugoslavia and those registered as being from "Palestine", Syria, Lebanon, or Bhutan.[74]

89. The different definitions and perceptions of statelessness mentioned in section 1.2 above highlight another challenge to determining from administrative statistics the number of stateless people in Belgium. The existence of a procedure in Belgium to determine statelessness implies that those recognized as stateless can thereafter be registered as such by the civil registrar of their municipality of residence, but this is not done systematically. As for those not formally recognized as stateless whose nationality is unclear, it can happen that they are registered under specific administrative categories such as "unknown nationality", from "Palestine", or the former Soviet Union. The diversity of administrative groups under which the stateless population can be registered adds to the complexity of the mapping exercise, since it reflects neither commonly used definitions nor more particularly the definition set out in the 1954 Convention.

[74] See above note 17.

3.3 The evolution of statelessness in Belgium

3.3.1 Statelessness 1910–1981

90. A picture of the number of stateless persons in Belgium can be gleaned from national censuses, which are in principle carried out every ten years. These collect demographic data and socio-economic data through a questionnaire sent to all residents in the territory on a regular basis. Foreigners counted in such censuses are thus those residing legally on Belgian territory and registered in local population registers.

91. A question regarding the nationality of the respondent was asked for the first time in the 1890 census. Since then, socio-demographic data have been available for each nationality at the census date.[75] The 1910 and 1920 censuses show that there were residing in Belgium 591 and 787 foreigners respectively, whose nationality was unknown. In 1930, this population increased to 1,778 persons and just after the Second World War, about 14,000 foreigners of unknown nationality were counted (Table 1). This large number can be explained by the international context of the time. An estimated 35 million people were displaced outside their countries in Europe just after the Second World War, as a result of the conflict, redrawn national boundaries, and the onset of the Cold War. Many of them were Germans, Poles, Soviets, and Baltic peoples.[76]

92. Different censuses have asked different questions regarding respondents' nationality. Before the 1961 census, the questionnaire used the term "unknown nationality" to identify the population without a nationality, and the term "stateless" did not exist as such as a category. In 1961 "stateless" was introduced as a specific category in census questionnaires, and this specific category was used in 1961 and 1971 to identify the stateless population.[77] In 1961 this self-declared stateless population stood at around 8,760; ten years later, it reached 14,560. The main cause of the recording of a high number of stateless persons in these two censuses is the introduction in the 1961 and 1971 censuses of a specific category of "stateless" in the question on nationality.

93. According to the 1981 census, by contrast, the stateless population dropped to only 1,781. The main reason for this fall was that the question on nationality was an open one and required the respondent to write his or her nationality or lack of nationality.[78] The fact that the census thereby relied on each individual's self-declaration as stateless combined with the way in which the question as to the nationality of the respondent was phrased probably influenced the nature of the responses received. In fact, a question which uses the term "stateless" may encourage people to use this term when they have doubts as to their nationality, even if it is not necessarily applicable.

94. The considerable variations in the number of stateless persons recorded in these censuses shows that respondents' understanding of the term "stateless" differs from one individual to another. Indeed, incorrect self-identification is one of the main challenges that needs to be overcome when compiling census data, particularly when seeking to ensure comparability between different years and/or between states.[79] It is thus not easy to make a link between answers given in the census and definitions of statelessness commonly in use. For example, some people may self-identify as stateless when they are not, while others may consider they have a particular nationality when they do not. Any analysis of these statistics must therefore take account of the way in which the data has been collected.

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75 Eggerickx, T., Perrin, N. and Thomsin, L., Les sources statistiques et démographiques sur l'immigration et les populations étrangères en Belgique du 19e siècle à nos jours, in M. Martiniello, A. Rea, and F. Dasseto (eds.), *Immigration et intégration en Belgique Francophone: Etat des savoirs,* Louvain-La-Neuve: Academia Bruylant, 2007.

76 Caselli, G., Vallin, J. and Wunsch, G., *Démographie: analyse et synthèse. Les déterminants de la migration,* Paris: Institut National d'Etudes Démographique, 2003.

77 In 1961 and 1971, individuals had to choose from 13 categories relating to nationality (from 01. "Belgian", 02. "Dutch", to 13. "Stateless"). If the individual did not come under one of these categories, there was also a category called "Other (specify)".

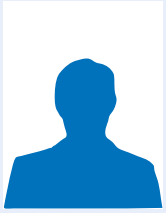
78 In the 1981 census, the question about the respondent's nationality was "What is your effective nationality?", which the individual had to answer by writing his or her nationality or lack of nationality. As a consequence, far fewer people than in previous years answered the question.

79 UNHCR, Measuring Statelessness through Population Census. Note by the Secretariat of the United Nations High Commissioner for Refugees, 13 May 2008, ECE/CES/AC.6/2008/SP/5, para. 13, available at http://www.unhcr.org/refworld/docid/4a705e4b2.html.

Table 1. The stateless population and those of unknown nationality in Belgium

Year	Unknown nationality	Stateless population	Total
1910	591	-	591
1920	787	-	787
1930	1,778	-	1,778
1948	14,030	-	14,030
1961	355	8,762	9,117
1971	448	14,566	15,014
1981	62	1,781	1,843

Source: 1910, 1920, 1930, 1948, 1961, 1971 and 1981 censuses.



Name: Bernard (Participant No. 20)
Age and sex: 70s, male
Country of origin: Belgium
Status when interviewed: Belgian national
Current status: Belgian national

Bernard* was born in Belgium in the 1930s to a Lithuanian father and Polish mother during Lithuania's brief period of independence. Towards the end of the 1940s, when he was fifteen, he was required by Belgian law to undergo registration in Belgium. Bernard remembers this incident well, and explains: "Lithuania had been annexed by the Soviet Union since 1940. In a way, Lithuania didn't exist anymore! Yet, the Belgian authorities registered me as a Lithuanian because the Western countries at that time wouldn't recognize the annexation. In the eyes of the Belgian authorities, I was an alien, but in reality I was stateless."

However, as he said: "I was young and had no idea of what being a stateless person really meant until I tried to travel with my youth movement and had to cross the Belgian border to go to Luxembourg. When I was on the train, the gendarme told me that I couldn't cross into Luxembourg because I didn't have a passport." Later, his parents approached the United Nations to obtain a travel document for their son and he was granted one. Bernard eventually became a Belgian citizen. "Since then, I have been able to travel freely. You only realize how lucky you are to have this right when you don't have it, for instance if you are stateless," Bernard says.

* Not his real name.

95. Since the 1981 census, "nationality" has been one of variables used to categorize the migrant population residing in Belgium, and as such has helped identify stateless persons or persons of unknown nationality. For the last two categories, however, this variable provides no information as regards their origins. For this, the indicator "country of birth", which has also been collected in successive censuses, represents one way of determining the geographical origin of self-identified stateless persons.

96. Table 2 below shows that, in 1971, 33 per cent of the self-identified stateless population registered in Belgium were born there. Available data by age show that about 89 per cent of this population was less than 20 years old and were born in the country after the Second World War. Of this native stateless population, 55 per cent were male and 45 per cent female.

97. Of the remaining 67 per cent of the self-identified stateless population in 1971 who were born in a foreign country, 91 per cent were born in a European country.[80] The main foreign country of origin these self-identified stateless persons reported themselves as coming from was Poland (18.6 per cent of the stateless population), followed by persons born in countries of the former Soviet Union (10.9 per cent), Hungary (8.7 per cent), the former Yugoslavia (5.3

[80] Includes countries of the former Soviet Union and Turkey.

per cent), and Germany (5 per cent). As already mentioned, the historical context of the Second World War and the following Cold War resulted in large-scale population displacements. Often, those concerned no longer considered themselves nationals of their country of origin. With 62 per cent of the immigrant population being male, the male–female ratio was higher than that of the Belgian-born self-identified stateless population. About 31 per cent of the immigrant population was over 60 years of age, 13 per cent were under 25, and 51 per cent were aged between 25 and 60. More precisely, the stateless population born abroad was mainly in the age group 35–45 or were slightly younger or slightly older than this.

98. By 1981, 66 per cent of the stateless population were recorded as being born in Belgium, as against 33 per cent ten years earlier. This change, however, is not least related to the fact that, in the 1981 census, the question regarding the nationality of the respondent was an open one. In effect, this census presupposed that respondents were aware of the existence and meaning of the term "stateless", whereas in the two preceding censuses participants had had the possibility of choosing a specific category of "stateless". This had the consequence that the number of persons recorded as stateless in the census decreased considerably. Their distribution by country of birth was also different. In 1981, only 34 per cent of the stateless population were born abroad, and the main countries of origin were the Soviet Union (7.1 per cent of the stateless population), followed by Poland (3.3 per cent) and Romania (2.4 per cent). Of the 66 per cent of the stateless population born in Belgium, their nationality was determined by international private law governing their acquisition of nationality on the basis of the nationality code applicable to their parents. At that time, there were no provisions in Belgium to prevent cases of statelessness among children born in the country, although these have since been incorporated in Article 10 §1 of the BNC.[81] According to information from the Aliens Office, in the 1960s and 1970s many cases of statelessness arose because the children of non-Belgians who were born in Belgium were unable to obtain one or other of their parents' nationality. This could, for instance, be because the nationality laws of their parents' country of origin only permitted nationality to be passed on to children born in that country or because discriminatory laws prevented the mother from passing on nationality to her children.[82]

99. Compared with the 1971 census, both the distribution by country of birth and the age structure of the stateless population were different by the time of the 1981 census. The average age was 37.5 years in 1971, compared with 30.7 a decade later. In 1981, the proportion of stateless people under 19 years of age was higher than in 1971, while the population aged between 40 and 74 was relatively larger in 1971 than in 1981 (Figure 1). The significant increase in the proportion of stateless people born in Belgium explains this younger profile. Indeed, in 1981, about 71 per cent of stateless people born in Belgium were under 20 years old.

Table 2. Country of birth as declared in the 1971 and 1981 censuses

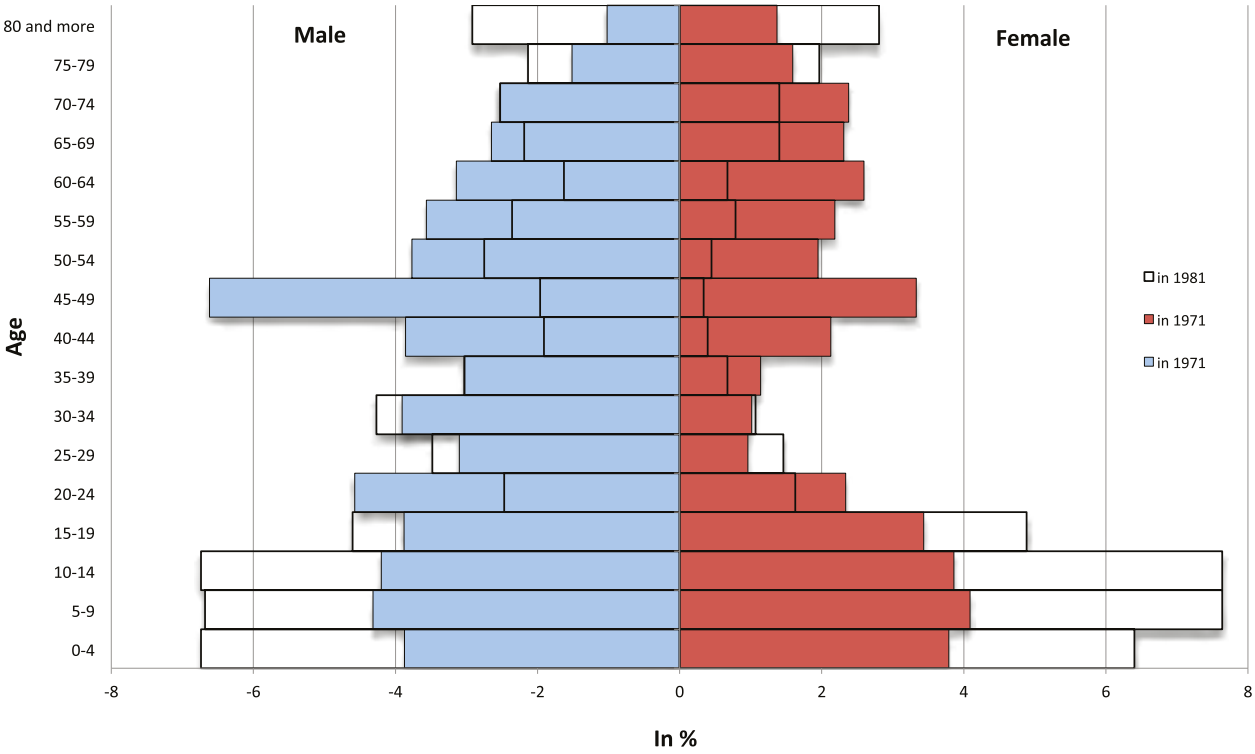
	%	
	1971	1981
Belgium	33.1	65.8
Poland	18.6	3.3
Soviet Union	10.9	7.1
Hungary	8.7	1.1
Federal Republic of Yugoslavia	5.3	0.4
Germany	5.0	0.8
Unknown	5.6	9.6
Romania	2.3	2.4
Czechoslovakia	2.0	0.8
Other	8.6	8.6

Source: 1971 and 1981 censuses.

81 The BNC was adopted in 1984 and entered into force on 1 January 1985. Under Article 10 of the BNC, children born in Belgium are Belgian if they would otherwise be stateless (before the age of 18 or majority). For further details see chapter 7.3, "The national legal framework and the Belgian Nationality Code", including notably paras 503, 511, and 512.

82 Aliens Office, Brussels, meeting, 13 January 2011.

Figure 1. Stateless population by age and sex in 1971 and 1981



Source: 1971 and 1981 censuses.

100. This historical analysis thus reveals two important findings. First, after the Second World War, there were significant population displacements from eastern and central European countries. Those displaced essentially came from Poland, the Soviet Union, Hungary, Yugoslavia and Germany, all of which were countries whose boundaries changed after the War. This created a considerable stateless population, or at least a population that considered the protection of their sometimes still existing nationality as ineffective.[83] Second, an increasing proportion of the stateless population in Belgium was born there. By 1981, there were 1,172 stateless people who had been born in Belgium. Chapter 7 also refers to the situation of these stateless populations and more particularly to initiatives to reduce the number of such stateless people through the adoption of the BNC in 1984.

3.3.2 Statelessness since the 1980s

101. Since 1985, Belgium has had a centralized population register which is a compilation of the 365 municipal registers. It was, however, only after 1987 that this National Register produced sufficiently reliable population data. Since then it has constituted the official record of the lawfully resident population in Belgium, and subsequent official population censuses have been based on this data source. Administrative data are thus now the main statistical tool available for data on the population lawfully resident in Belgium.

102. The subsection which follows explains how the different categories of stateless persons and persons of unknown nationality are registered in the National Register. Subsequent subsections provide more detailed information on populations covered by administrative data. These include (i) recognized stateless persons with a valid residence permit of more than three months; (ii) persons of unknown nationality with a valid residence permit of more than three months; and (iii) stateless persons with a valid residence permit of more than three months registered under specific administrative categories. The final subsection suggests possible sources of information regarding populations not included in this data.

[83] UNHCR, *Global Trends 2008: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, 2009, available at http://www.unhcr.org/4a375c426.html.

3.3.2.1 National Register data on stateless persons and persons of unknown nationality

103. Each Belgian municipality is responsible for recording or updating information, including on nationality or the lack of it, that relates to persons registered as lawfully resident on their territory.[84] The Law on Access to the Territory, Residence, Settlement, and Expulsion of Foreigners of 15 December 1980 specifies that "an alien admitted or allowed to stay for longer than three months in the Kingdom must be registered in the Register of Foreigners by the municipal authorities of his place of residence".[85] Therefore if someone is registered in the National Register this constitutes proof of legal stay in the country with a valid residence permit issued for more than three months.

104. The stateless population registered in the National Register is defined as follows: the population recognized as stateless by a tribunal or a court with a valid residence permit issued for a period of more than three months. When stateless persons are recognized as such by a tribunal or a court and receive a right of residence, they can be registered as "stateless" by the local administration in which they reside. For this to happen, the person concerned must apply to their municipality of residence to be registered as stateless and present a court decision or an attestation of statelessness issued by the CGRS. There may nevertheless be other people already residing lawfully in Belgium who are later recognized as stateless, who do not then need to regularize their stay. This means that some stateless persons may be registered under another administrative category if they have not asked to be registered as "stateless" at the municipal authority. Such people could, for instance, be registered as persons from the "Soviet Union", the "Federal Republic of Yugoslavia", or as from "Palestine", Syria, Lebanon, or Bhutan.[86]

105. Other administrative categories are also used to identify persons who have difficulties proving their identity or nationality. Specific categories of registration have, for instance, been created for foreigners whose nationality has not yet been definitively established or for specific groups such as Palestinians. These categories are set out in paragraph 107 below.

106. Besides this lawfully resident recognized stateless population, other groups of stateless people are not taken into account by the National Register. They include (i) persons recognized by a tribunal or a court as stateless who do not have a valid residence permit or have a residence permit issued for less than three months; (ii) individuals in a procedure for recognition of statelessness who do not have a valid residence permit or have a residence permit issued for less then three months; and (iii) other individuals who may be stateless but who are not in a procedure and who do not have a valid residence permit or have a residence permit issued for less than three months.

107. In summary, populations covered by administrative data from the National Register include:

- recognized stateless persons who have a valid residence permit of more than three months;
- persons of unknown nationality with a valid residence permit of more than three months;
- stateless persons with a valid residence permit of more than three months who are registered under a specific administrative category, such as persons from the "Soviet Union", the "Federal Republic of Yugoslavia", or as from "Palestine", Syria, Lebanon, or Bhutan.[87]

108. Conversely, persons not covered by administrative data in the National Register include:

- persons who are in a procedure to determine statelessness who do not have a valid residence permit or have a residence permit issued for less than three months;
- persons recognized as stateless who do not have a valid residence permit, whether they are in a regularization procedure or not or have a residence permit issued for less than three months;
- stateless persons in the asylum procedure;[88] and
- other persons who are stateless but who are not in a procedure and who do not have a valid residence permit or have a residence permit issued for less than three months.

109. Further information about these different categories is given below in section 3.3.2.2 "Populations covered by administrative data" and section 3.3.2.3 "Populations not covered by administrative data".

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84 Royal Decree of 3 April 1984 on Access of Certain Public Authorities to the National Register of Natural Persons and Maintenance and Control of Information [Belgium], *Moniteur belge,* 21 April 1984, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1984040331 (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1984040331&table_name=wet (in Dutch).

85 Law of 15 December 1980, *sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* [Belgium], *Moniteur belge,* 31 December 1980, above note 29, Article 12.

86 See above note 17.

87 See above note 17.

88 Such persons are registered in the Waiting Register until they are recognized as in need of international protection, are regularized, or are removed from the territory.

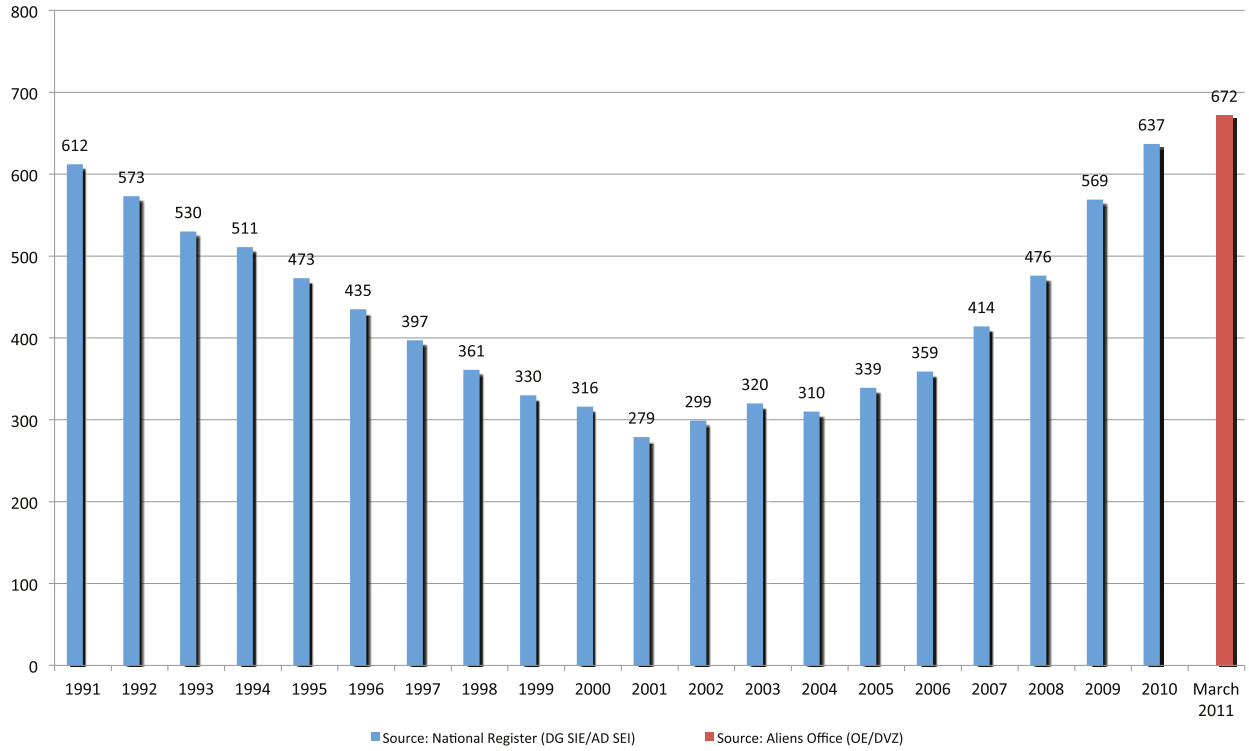
110. Before analysing this data in more detail, however, it is important also to clarify that asylum-seekers have since 1995 been registered in a specific register, known as the Waiting Register (Registre d'attente/Wachtregister). Since this time, asylum-seekers have been excluded statistically from the lawfully resident population and are included neither in the immigration statistics nor in those regarding the officially resident population. Asylum-seekers only appear in the official population register once they are recognized as being in need of international protection (whether as refugees or as beneficiaries of subsidiary protection) or are regularized for another reason.[89] A specific "inflow"[90] called "changes of registers" reflects the number of asylum-seekers officially registered in the legal population. This "changes of registers" has been published by Belgian Statistics (DG SIE-AD SEI) as an immigration "inflow" for each nationality group since 2008. Before this date, only the immigration of stateless persons who had not submitted an asylum application was taken into account in official immigration statistics.

3.3.2.2 Populations covered by administrative data

Recognized stateless persons with a valid residence permit of more than three months

111. Between 1991 and 2011, the changes in the **recognized stateless population with a valid residence permit of more than three months** have been characterized by two distinct phases. During the first phase, from 1 January 1991 to 1 January 2001, the stateless population with a valid residence permit decreased from 612 to 279 persons. During the second phase, from 1 January 2001 to March 2011 – the most recent date for which data were available – the lawfully resident population recognized as stateless increased from 279 to 672 persons (Figure 2).[91]

Figure 2. Recognized stateless population with a valid residence permit of more than three months



Source: National Register (DG SIE/AD SEI) and Aliens Office (OE/DVZ).

89 This includes, notably, humanitarian regularization based on Article 9bis (Law of 15 December 1980, above note 29), medical regularization based on Article 9ter (Law of 15 December 1980), and other forms of regularization, such as family reunification.

90 See below note 92 for further explanation of this term.

91 The statistics published by the Aliens Office (as at March 2011, the most recent date for which data are available) take into account all residence permits, including those valid for less than three months, such as the "attestations d'immatriculation" delivered to asylum-seekers in procedure (18 persons in March 2011).

112. In Belgium the "stock"[92] of lawfully resident stateless persons is reduced by three "outflows":

- **Deaths of stateless persons.** These were relatively significant compared with the number of registered stateless persons. Indeed, between 1991 and 2005, the average annual mortality rate[93] was 32 deaths per 1,000 stateless persons lawfully residing in Belgium (as compared with 5.6 deaths per 1,000 foreigners lawfully residing in Belgium). This finding is essentially linked to the greater age of the stateless population, particularly at the beginning of the 1990s (see paragraph 135).
- **Acquisition of Belgian nationality or registrations in the National Register under another administrative category used to register nationality.** In the 1990s, an average of 5.3 per cent of the stateless population acquired Belgian nationality annually. That proportion increased to 7.6 per cent during the 2000s.[94] The number of stateless persons who were registered under another foreign nationality was limited to 23 cases in the 1990s, and during the first half of the 2000s only five such cases were recorded. Both indicators explain the decrease in the number of lawfully resident stateless persons during the 1900s.
- **Emigrations.** These reflect both the departure of persons and the expiry of resident permits.[95] For the stateless population, the probability of leaving the country (or of being deleted from the National Register) is relatively low. Since the beginning of the 1990s, 2 per cent of the lawfully resident stateless population have on average left the country annually.

113. The stock of lawfully resident stateless persons is increased by three inflows:

- **Births of children registered under the stateless category.** Such cases are now rare because Article 10 §1 of the BNC is intended to avoid such cases.[96] According Article 10 of the BNC, which entered into force on 1 January 1985, a child born in Belgium is Belgian if he or she would otherwise be stateless (before the age of 18 or majority) should the child not already have this nationality. New-born children who lack a nationality can, however, be registered under the category "unknown nationality" (see paragraph 136).
- **Foreigners already registered in the National Register subsequently recognized as stateless and registered as such.** During the 1990s, a total of 45 foreigners lawfully residing in Belgium were recognized as stateless and were registered as such. During the first half of the 2000s, 86 lawfully resident foreigners registered under a specific administrative category became stateless. This increase mainly concerns persons born in Romania (30 per cent of cases), in the former Yugoslavia, and in the former Soviet Union (17 per cent and 16 per cent of cases respectively).
- **Immigration.** This reflects the administrative registration of aliens and more precisely their being issued valid residence permits for more than three months. Before 2008, as mentioned above (see paragraph 110), only legal registrations of stateless persons who had not submitted an asylum application were published in official immigration statistics.[97] During the 1990s, the annual average immigration rate was 2.1 per cent.[98] This rate increased to 6.8 per cent during the first half of the 2000s. This increase has occurred mainly in 2001 and 2002 and can be seen as a consequence of the Regularization Act of 1999.[99] In 2008 and 2009, 94 and 117 stateless persons respectively immigrated to Belgium and the immigration rate thereby grew respectively to 23 per cent and 18 per cent. The introduction of the parameter "changes of registers" in immigration statistics explains this growth to a large extent. Indeed, 90 per cent of stateless persons administratively registered in 2008 and 2009 were former asylum-seekers who had changed register. The increase in the legal registration of stateless persons can also be seen, however, as a consequence of the implementation of new regularization instructions.[100] Data on the issuance of residence permits in 2010 show that the number of legal registrations of stateless persons remained on the same statistical level as the two previous years.

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92 In demography, the number of people residing in a country on a given date is referred to as the "stock". The ways by which individuals are added to or deducted from the population are respectively referred to as "inflows" and "outflows". Population stocks are affected by inflows and outflows from one date of determination of the population stock to another.

93 Mortality rate = deaths per year/average population of the year.

94 Acquisition of Belgian nationality rate = annual acquisitions/average population of the year. See also below "Table 7. Number of acquisitions of Belgian nationality by stateless persons or persons of unknown nationality", which gives the annual number of acquisitions of Belgian nationality by stateless persons.

95 A foreigner is "automatically deleted" from registers when his or her resident permit expires.

96 Five births of stateless babies have, however, been recorded since the beginning of the 1990s. These cases are due to a misapplication of the provisions of Article 10 §1of the BNC.

97 Since 2008, Belgian Statistics (DG SIE-AD SEI) has published the inflows "changes of registers" by nationality.

98 Immigration rate = immigrations per year/average population of the year.

99 Law of 22 December 1999 relative à la régularisation de séjour de certaines catégories d'étrangers séjournant sur le territoire du Royaume/ Wet betreffende de regularisatie van het verblijf van bepaalde categorieën van vreemdelingen verblijvend op het grondgebied van het Rijk, available at http://www.ejustice.just.fgov.be/mopdf/2000/01/10_1.pdf (in French and Dutch). The Act permitted foreigners living in Belgium at the time to regularize their situation on the basis of various criteria including if they were unable for reasons outside their control to return to their country of habitual residence or of nationality.

100 Belgium, Ministry of the Interior, Instruction relative à l'application de l'ancien article 9 §3 et de l'article 9bis de la loi sur les étrangers, 19 July 2009. For more details see also below paras 373–378.

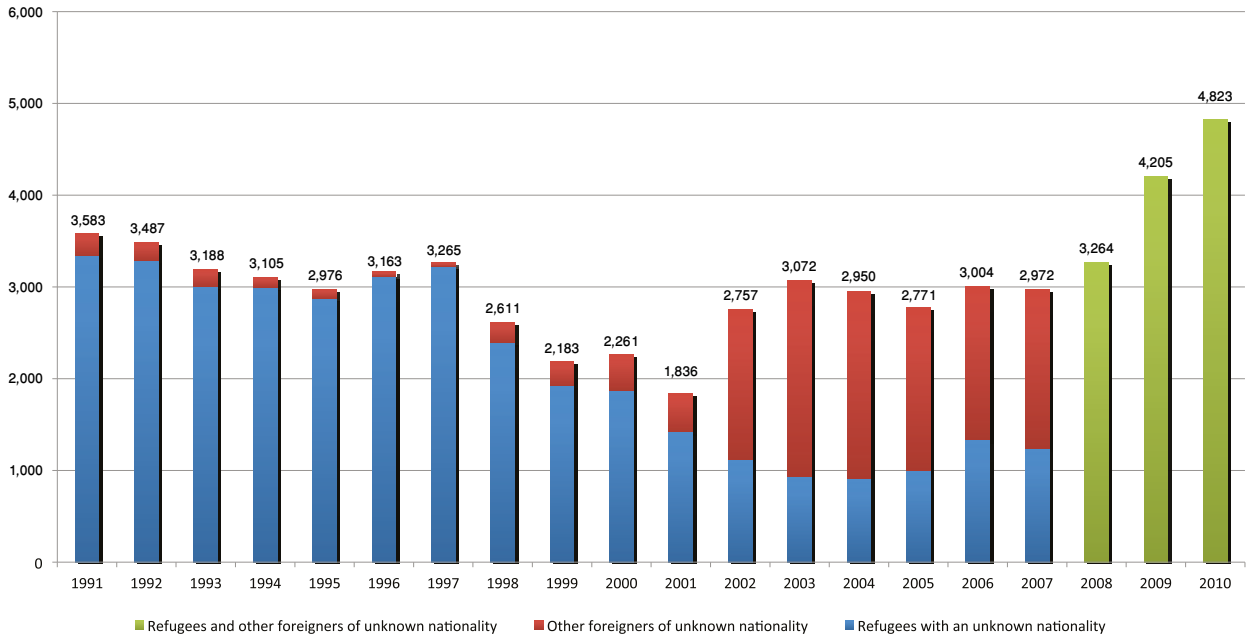
114. During the 1990s, statistical outflows of the stateless population outnumbered the inflows, mainly due to the high number of people acquiring Belgian nationality and to the relatively high number of deaths, which itself reflects the ageing of the stateless population. During the 2000s, despite a higher rate of acquisition of Belgian nationality, the number of recognized stateless persons who had a valid residence permit issued for more than three months increased. This has particularly been the case since 2006 and can be linked to two factors. First, more applications for recognition as stateless have been submitted to tribunals, in particular from 2006 to 2008 (see paragraph 120). Second, the number of regularizations has increased, particularly in 2009 and 2010, due to the implementation of new regularization instructions (see below paragraph 122).[101]

Persons of unknown nationality with a valid residence permit of more than three months

115. The National Register distinguishes between two populations of **unknown nationality** who are lawfully residing in Belgium (and have a valid residence permit issued for more than three months): (i) refugees of unknown nationality[102] and (ii) other foreigners of unknown nationality. On 1 January 2010, the most recent date for which data are available, these two populations totalled 4,823 people.

116. As for the number of other foreigners whose nationality is unknown who had a valid residence permit, statistical data show a decrease during the 1990s (Figure 3). This decrease was essentially due to the high rate of acquisition of Belgian nationality by refugees whose nationality had previously been unknown (see "Figure 12. The rate of acquisition of Belgian nationality, 1991–2009", in Chapter 7 below). The increase observed in Figure 3 below on 1 January 2002 is linked to the Regularization Act of 1999.[103] Since 2007, the lawfully resident population of unknown nationality has increased again. This development may be linked to an increase in the number of people of unknown nationality who have been recognized as refugees and/or to an increase in the number of foreigners regularized by the Aliens Office.[104]

Figure 3. Number of persons of unknown nationality as at 1 January, 1991–2010[105]



Source: National Register (DG SIE/AD SEI).

101 Ibid.

102 It should be emphasized that stateless persons can also be refugees if they find themselves outside their country of habitual residence and have a well-founded fear of persecution. They should be covered by the 1951 Convention and not by the 1954 Convention, as the former instrument grants them a higher level of protection.

103 A new administrative category was created to register the foreign persons of unknown nationality who were regularized during this campaign. Currently, this administrative category is still used to register the legal population of unknown nationality.

104 Regularizations based on Article 9bis or 9ter, or on the former Article 9(3) of the 1980 Aliens Act.

105 Since 2008, Belgian Statistics (DG SIE- AD SEI) no longer distinguishes between refugees of unknown nationality and other foreigners of unknown nationality.

Stateless persons with a valid residence permit of more than three months registered under specific administrative categories

117. Sometimes people who already have a residence permit may subsequently be recognized as stateless. Indeed, a lawful resident can submit an application for recognition as a stateless person (as can someone who is not lawfully resident). It is also possible for a positive decision on regularization to be made while a statelessness procedure is ongoing before the tribunal. As a result, it can be that such potentially stateless people lawfully residing in Belgium are registered under other administrative categories, including for instance as persons from the "Soviet Union", the "Federal Republic of Yugoslavia", or as from "Palestine", Syria, Lebanon, or Bhutan.[106] Between 1991 and 2005, 131 people residing legally in the country were recognized as stateless and asked their municipality of residence to register them as such (paragraph 113). Lawfully resident recognized stateless persons remain registered under their previous administrative category if they do not ask to be registered as stateless. Moreover, some stateless people remain registered under a specific administrative category because they have not applied to be recognized as stateless. For example, a stateless person may be recognized as a refugee and be registered under the nationality they gave during their first (asylum) interview with the authorities, even if this nationality has since been found not to be effective.

118. An analysis of the origins of the stateless population shows a number of groups among which cases of statelessness may arise. As at 1 January 2008, 865 stateless people residing lawfully in Belgium were from the former Soviet Union.[107] On 1 January 2010, the National Register indicated the registration of 8,206 persons from the former Yugoslavia, 338 from "Palestine", 1,809 from Syria, 1,840 from Lebanon, and 102 from Bhutan. This information gives us an indication of the size of groups in which statelessness may arise, but it is impossible to determine the exact number of stateless people among these lawfully resident populations from this data. (See also paragraph 138 below.)

3.3.2.3 Populations not covered by administrative data

119. As mentioned above, people in a statelessness procedure are not exhaustively covered by administrative data.[108] In 2005, this finding was confirmed by the answer of the Ministry of Justice to a parliamentarian question, which stated, "There are no overall statistics on the number of applications for recognition of stateless status before the tribunals and courts."[109] Some tribunals provide data about stateless cases within their jurisdiction (e.g. Antwerp, Brussels, and Bruges), but others do not distinguish cases of statelessness from other requests (e.g. Dendermonde/Termonde). In addition, some statistics provided count the number of applications while others count the number of decisions. The multiplicity of tribunals combined with the lack of statistical harmonization with regard to indicators underlines further the difficulties encountered in estimating the number of people in a statelessness procedure.

120. Prosecutors interviewed within the framework of this study stated that they systematically ask the Aliens Office and CGRS for an opinion on the situation and/or country of origin of the applicant in a statelessness determination procedure. According the Aliens Office, tribunals asked for about 60 opinions in 2005, 250 in 2006, 273 in 2007, 121 in 2008, and fewer than 121 in 2009. The increase observed in 2006–07 was linked to the increase in the number of stateless applicants from Kosovo in the administrative district of Namur (43 per cent of applications for recognition as stateless were submitted in this district).[110] This number fell as a result of the changing international situation and Belgium's almost immediate recognition of Kosovo's declaration of independence in February 2008. Finally, in 2010, the CGRS reported that tribunals requested 85 opinions. Except for the years in which the number of applicants from Kosovo was significant, these data suggest that approximately 100 applications for recognition as stateless are introduced annually before tribunals and courts. Annual statistics on opinions requested from the Aliens Office and CGRS nevertheless have two limitations. First, prosecutors are not obliged to request such an opinion, thus suggesting the annual number of requests for opinions may be less than the number of applications. Second, it cannot be excluded that some of these requests were presented more than a year after the introduction of the application before the tribunal.

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106 See above footnote 17.

107 Since 1 January 2009, these persons with a passport from the former Soviet Union have been counted in official statistics as part of the Russian population.

108 Only aliens issued with a valid residence permit of more than three months are registered in the National Register. For example, an asylum-seeker also in statelessness procedure before a tribunal may be granted a temporary residence permit (*attestation d'immatriculation/attest van immatriculatie*) of less than three months and renewable during the asylum procedure. This person shall not be included in the National Register.

109 Belgium, Senate, Question No. 3-3900 by Ms Christine Defraigne, 12 December 2005, *Sénat Bulletin* 3-56, available at http://www.senate.be/www/?MIval=/publications/viewSTBlok&COLL=B&DATUM=12/20/2005&DOSID=50343095&MINID=214&LEG=3&NR=56&VTYPE=svid&LANG=fr (in French) and http://www.senate.be/www/?MIval=/publications/viewSTBlok&COLL=B&DATUM=12/20/2005&DOSID=50343095&MINID=214&LEG=3&NR=56&VTYPE=svid&LANG=nl (in Dutch).

110 For more details on applications submitted in the district of Namur see below paras 248–249.

121. Other stateless persons not exhaustively covered by administrative data are recognized stateless persons who do not have a valid residence permit. As mentioned above, it cannot be excluded that lawfully resident foreigners are recognized as stateless and then ask their municipality to register them as such (paragraph 113). At the same time, a significant number of recognized stateless persons are living illegally in Belgium and must therefore apply for a residence permit.[111] In 2008 and 2009, 52 and 140 first residence permits valid for more than three months were issued respectively to recognized stateless persons.[112] Almost 80 per cent of these first permits were issued after a positive regularization decision based on Articles 9bis or 9ter, or on the former Article 9(3) of the 1980 Aliens Act (for more details see section 6.3.2, "The regularization procedure").[113]

122. In recent years, the regularization of illegally staying stateless persons has considerably increased, from 10 stateless persons regularized in 2007 to 122 in 2009, 143 in 2010, and 49 in 2011. This reflects the overall rate of regularization of foreigners, which also increased during the same period.[114] In 2007, about 42 per cent of regularization decisions concerning stateless persons taken by the Aliens Office were positive. This rate increased to 67 per cent in 2008, 59 per cent in 2009 and as high as 92 per cent in 2010. In 2011, however, it fell back to 53 per cent.[115]

123. These data show that humanitarian regularization (regularization based on Article 9bis or 9ter, or on the former Article 9.3 of the 1980 Aliens Act) is the main procedure used to legalize the stay of stateless persons. The implementation of new regularization criteria in July 2009 enabled numerous stateless people to regularize their status. A consequence of this high number of regularizations, particularly in 2010, has certainly contributed to reducing the number of recognized stateless persons who do not have residence permits. Given the fact that recognition as stateless does not currently result in the issuance of a residence permit, the possibility of regularization represents an important way for stateless persons, who frequently have no other possibility of living legally in another country, to be able to legalize their stay in Belgium.

124. There are nevertheless no exhaustive data allowing us to estimate the current number of recognized stateless persons without a residence permit. Given that a large majority of recognized stateless persons initiate a regularization procedure, usually under Articles 9bis or 9ter of the 1980 Aliens Act, the number of pending decisions before the Aliens Office on the regularization of stateless persons should provide one indicator of the number of stateless persons living without a residence permit in Belgium. As mentioned at paragraph 462 below, only 56 applications for regularization made by recognized stateless persons were outstanding at the end of 2011.

125. In addition to this relatively low figure it should, however, be remembered that it may well be that there are also stateless persons, whether recognized or not, who are living illegally in Belgium. They would include those whose application for regularization has been rejected or who have not sought regularization. Such persons are thus completely unrecorded and "under the radar".

3.3.3 An overview of the current situation

126. Despite the methodological limitations encountered in seeking to give a complete overview of the stateless population in Belgium, information collected in this study provides an initial framework for analysing the characteristics of the target group. It shows us that, as at 1 January 2010, among persons with a valid residence permit of more than three months, there were 637 recognized stateless people living in Belgium and 4,823 lawful residents of unknown nationality.[116]

127. To obtain a complete overview of the stateless population, it is not enough to consider only the recognized stateless population and the population of unknown nationality. It is also necessary to determine the number of stateless persons registered under other administrative categories and the number of illegal stateless persons in a procedure, whether before a tribunal or not.

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111 Indeed, the 1954 Convention does not guarantee a right to stay to recognized stateless persons.

112 These data are the most recent available. According to Eurostat, a first residence permit is "a permit issued to a person for the first time. A residence permit is considered as a first permit also if the time gap between expiry of the old permit and the start of validity of the new permit issued for the same reason is at least 6 months, irrespective of the year of issuance of the permit". See http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/.

113 Family reunification is the second most common reason of issuance of first residence permits (17 per cent).

114 The overall rate = the number of persons regularized / (the number of persons regularized + the number of persons not regularized).

115 The Aliens Office took 60 decisions deemed to be "without object" because the individuals concerned had emigrated, died, or received a residence permit on another basis. See below "Table 5. Stateless persons regularized on the basis of Articles 9bis or 9ter, or of the former Article 9(3) of the 1980 Aliens Act".

116 Part of the population of unknown nationality was recognized as refugees and protected by the 1951 Convention (1,244 people on 1 January 2007, i.e. 42 per cent of the population of unknown nationality).

128. Stateless persons residing lawfully in Belgium may be administratively registered not only as persons from the "Soviet Union", the "Federal Republic of Yugoslavia", or as from "Palestine", Syria, Lebanon, or Bhutan.[117] The size of these groups varies from 102 Bhutanese to 8,206 people from the former Yugoslavia (see paragraph 117). However, it is impossible to determine the exact number of stateless people registered among these administrative groups in which cases of statelessness may occur.

129. The National Register does not include stateless persons who are in a procedure before a tribunal or court and who do not have residence permits. In 2010, prosecutors asked CGRS for 85 opinions in statelessness cases. Although it is not compulsory to do so, prosecutors who were met in the context of the research have nevertheless said that they systematically ask an opinion of Aliens Office and CGRS. On the basis of this information, we estimate that fewer than 100 applications for recognition as stateless in Belgium are made annually (except in the years 2006–07, when the number of applicants born in Kosovo was high in the district of Namur).

130. A second group of stateless people not covered by administrative data are persons recognized as stateless by a tribunal or court who do not have a valid residence permit. The implementation of new regularization criteria under an Instruction dated 19 July 2009 has helped to enable the regularization of stateless persons. These 2009 Instructions were, however, cancelled by the Council of State in December 2009, as explained in section 6.3.2, "The regularization procedure", below.[118] It is therefore not possible to determine the possibilities to which stateless persons may currently have access to regularize their stay. Recent practice, based on the new regularization criteria, has probably reduced the stock of recognized stateless persons without a residence permit. The number of pending regularization applications introduced by stateless persons should give an overview of this number of recognized stateless persons without valid residence permits, although such information is not at present published.

3.4 The evolution of the demographic profile of stateless persons in Belgium

131. This section outlines the evolution of the average age and the male–female ratio in the lawfully resident populations that are stateless and of unknown nationality in Belgium. As is outlined in greater detail below, the average age of the recognized stateless population has fallen over the last two decades. On 1 January 2010, it was 38 years, which is similar to the average age of the rest of the foreign population. The proportion of males to females among the lawfully resident stateless population increased during the 1990s but has fallen during the 2000s. At 62 per cent on 1 January 2010, it remains significantly above that of the foreign and indeed the Belgian population (Figure 5).

132. At the beginning of the 1990s, the average age of the recognized stateless population residing lawfully in Belgium was 49 years as compared with 32 years for other foreigners residing lawfully in Belgium. The evolution of this age indicator shows a negative relationship as compared with the growth of the stateless population. Indeed, the lawfully resident stateless population has been getting younger since this population started to increase at the beginning of the 2000s (Figure 4). By 1 January 2010, the average age of the recognized stateless population with a valid residence permit had, at 38 years, become even younger than that of the Belgian population.

133. The evolution of the gender ratio among the stateless population shows an increasing proportion of males to females during the 1990s and a decreasing proportion during the 2000s. Despite this "feminization" process,[119] the stateless population remains predominantly male, 62 per cent being male as at 1 January 2010 (Figure 5). Recent statistics on immigration inflows show that 45 per cent of stateless persons officially registered among the lawfully resident population in 2008 and 2009 were female. In consequence, the feminization process of the stateless population stocks suggests that outflows are mainly of males.

134. In comparison with the stateless and foreign populations, the population of unknown nationality is characterized by a low average age (19 years in 1991 and 23 years in 2010). The population of unknown nationality is also predominantly male (56 per cent in 1991 and 54 per cent in 2010). The proportion of males of unknown nationality nevertheless remains lower than that of stateless males.

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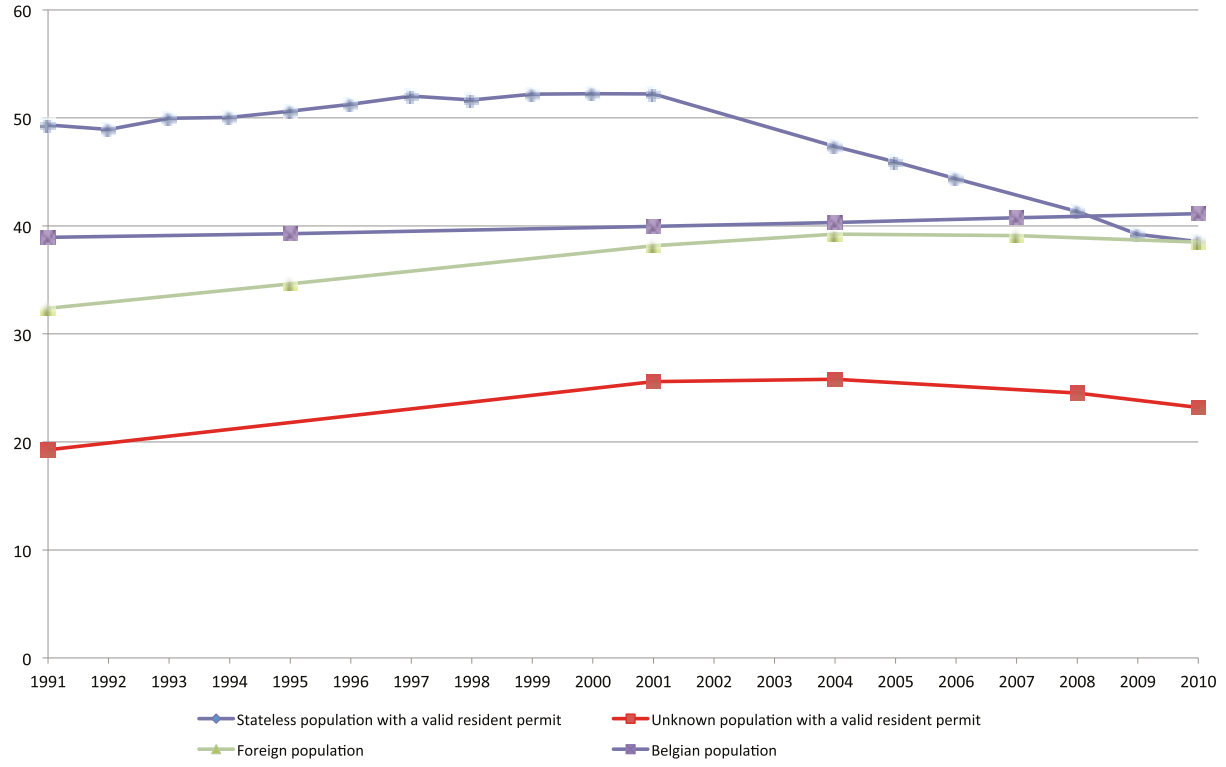
117 See above footnote 17.

118 Belgium, Conseil d'Etat/De Raad van State (hereafter Council of State), No. 198.769, 9 December 2009, available at http://www.raadvst-consetat.be/arr.php?nr=198769 (in Dutch).

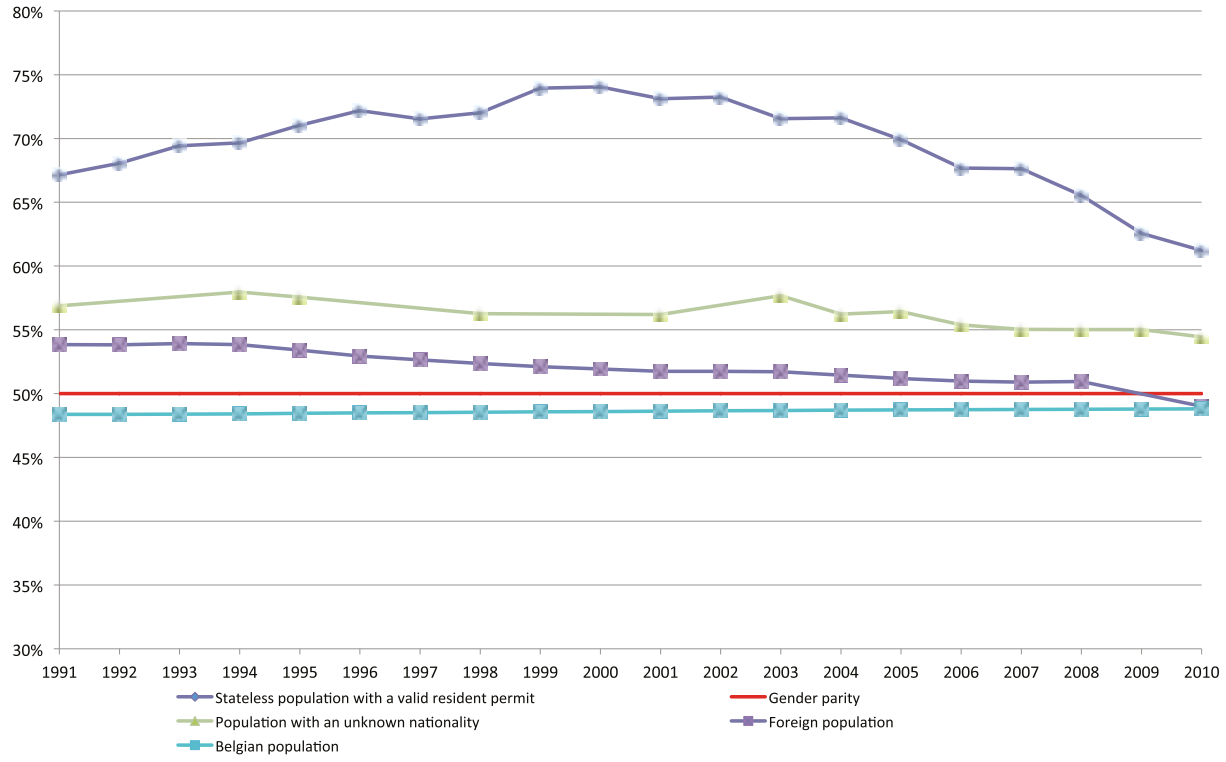
119 A feminization process occurs when the proportion of females vis-à-vis males increases within population stocks.

Figure 4. Average age of persons with a valid residence permit, classified as either stateless, of unknown nationality, or foreign



Source: National Register (DG SIE/AD SEI).

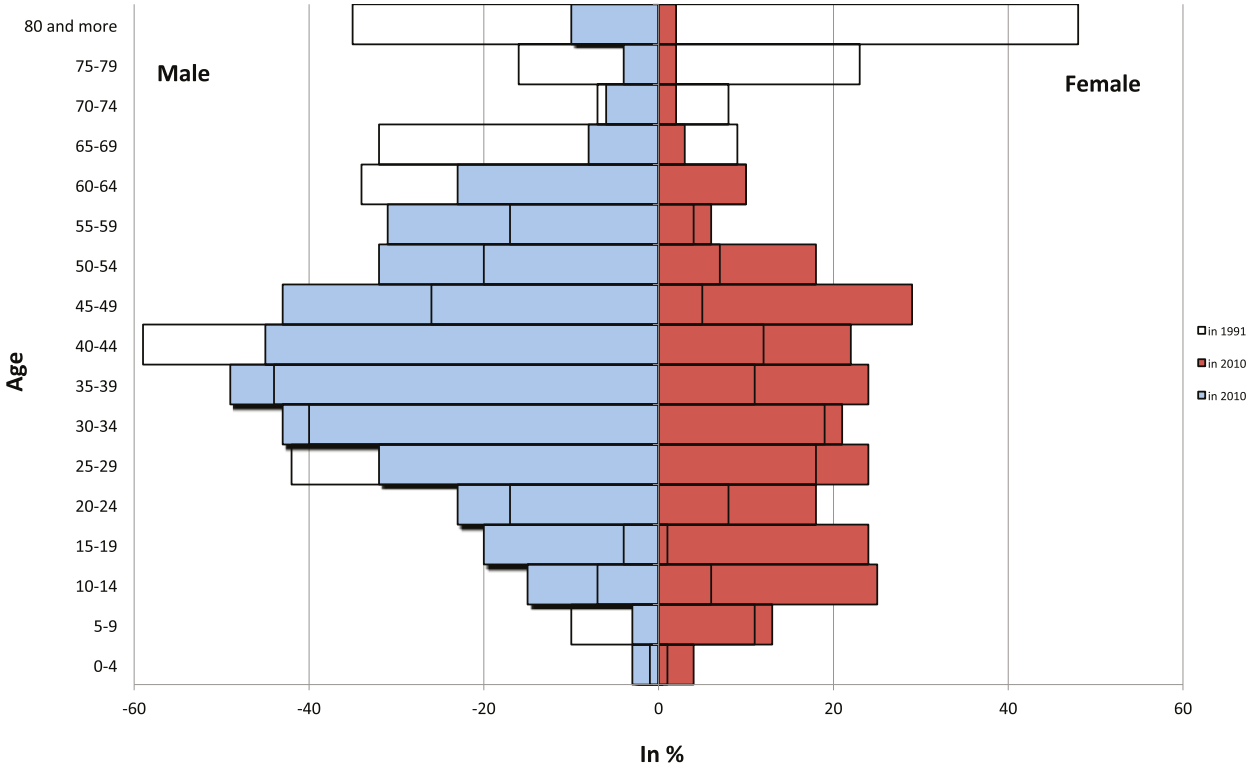
Figure 5. Proportion of males (%) with a valid residence permit, classified as either stateless, of unknown nationality, or foreign



Source: National Register (DG SIE/AD SEI).

135. As at 1 January 2010, one third of the people recognized as stateless who had a valid residence permit were men between 30 and 50 years of age. Another third of this population were females aged between 10 and 50 years. The stateless population is also characterized by a small proportion of people aged over 65 years or under 10 years. Between 1991 and 2010, the stateless population over 60 years of age decreased considerably, in particular among women (Figure 6). As highlighted above, the high mortality rate of the stateless population is related to the age structure of this population, which at the beginning of the 1990s was notably older (see paragraph 132).

Figure 6. Structure by age and sex of the stateless population with a valid resident permit, as at 1 January 1991 and 1 January 2010



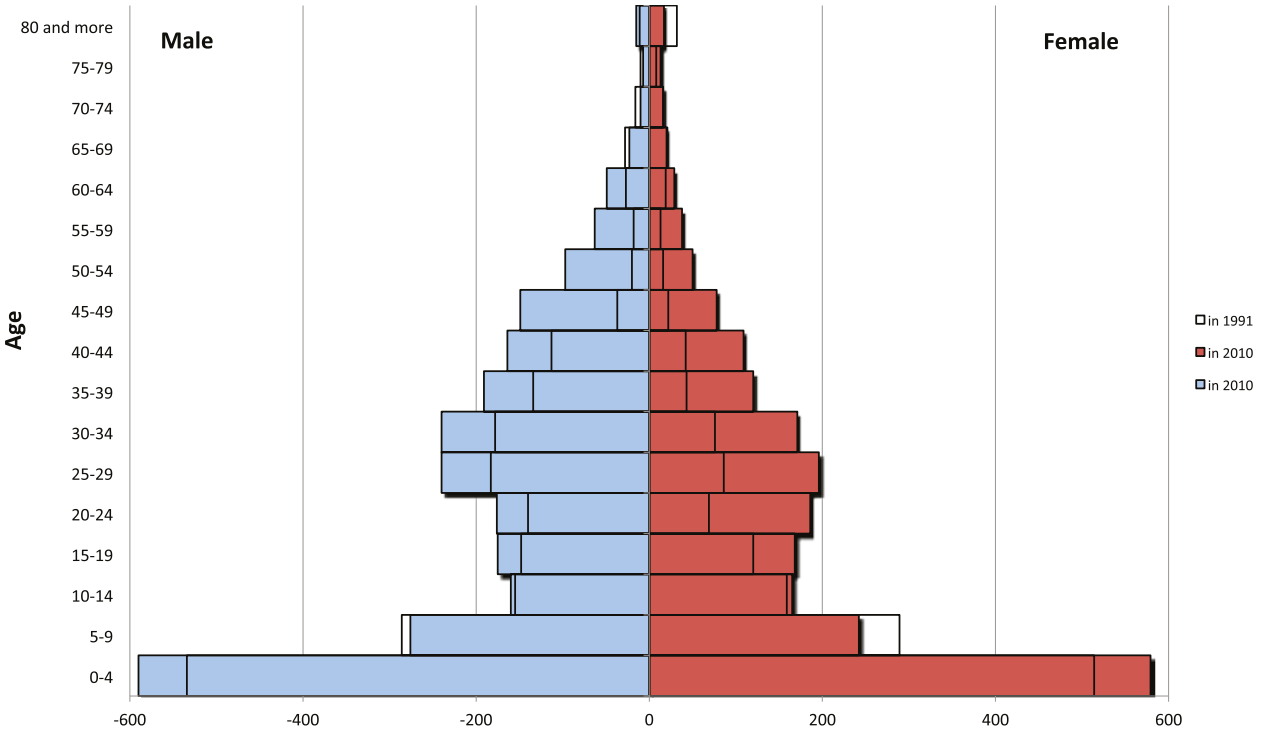
Source: National Register (DG SIE/AD SEI).

136. The age structure of the population of unknown nationality is clearly defined. The proportion of children aged under 5 years old is very high (almost a quarter of this population group). Moreover, 10 per cent were aged 5 to 9 years. This finding may be linked to the registration of children who lack a nationality (Figure 7). Some municipalities have reported that children are registered as "refugee of unknown/undetermined nationality" (if their parents are recognized as refugees) or under the code 901 as "nationality not yet determined" until (i) proof of the child's identity is issued, (ii) proof of the child's statelessness is issued, or (iii) an instruction is received from the Aliens Office as to the child's nationality. Between 1991 and 2010, no significant evolution was observed in the age structure of the population of unknown nationality.

137. It appears that children whose nationality has not yet been definitively established are administratively registered under the category "unknown nationality", while children born in Belgium are no longer registered under the category "stateless". Indeed, if the civil registrar certifies a child as stateless, the municipality applies Article 10 of the BNC, which provides that children born in Belgium are Belgian if they would otherwise be stateless, and the child receives Belgian nationality.[120] These findings show the importance of analysing in more detail practice regarding the registration of foreign children whose nationality is not clear. Qualitative data collected through interviews with stateless people emphasize the difficulties encountered by some parents in registering the nationality of their children (see section 4.1.4, "The situation of children born in Belgium who lack a nationality").

[120] For more details, see paras 506–508 and section 7.3.1 "The impact of the BNC in reducing statelessness among children born in Belgium".

Figure 7. Structure by age and sex of population of unknown nationality and with a valid resident permit as at 1 January 1991 and 1 January 2010



Source: National Register (DG SIE/AD SEI).

3.5 The origins of stateless persons in Belgium

138. When collecting migration data, the variable "nationality" is a central criterion indicating the origins of most foreigners. For stateless people, however, this criterion offers no information about their geographical origins. In their case, "country of birth" is a more useful variable for indicating the geographical origin of stateless persons and persons of unknown nationality lawfully residing in the country.

139. As of March 2011, about 14 per cent of recognized stateless persons who have a valid residence permit were born in Belgium. This reflects the decrease of the native stateless population since the adoption of the BNC in 1984, which provides in Article 10 §1 that children born in Belgium are Belgian if they would otherwise be stateless (before the age of 18 or majority), as explained in greater detail in Chapter 7.[121] Indeed, since the introduction of Article 10 §1 of the Code children born in Belgium are no longer registered under the category "stateless".[122]

140. As of March 2011, 63 per cent of the recognized stateless population lawfully residing in Belgium were born in other European countries. A quarter of them were born in a territory in what was formerly the Soviet Union (25.89 per cent), 23 per cent in a territory in the former Yugoslavia and 5 per cent in Romania. Almost 20 per cent of the lawfully resident recognized stateless population were born in a Middle Eastern country, mainly in Lebanon, Israel, the Occupied Palestinian Territories, or Syria. Since 2009, the Belgian authorities have distinguished three groups of Palestinians for the purposes of their administrative registration: (i) Palestinians recognized as refugees in Belgium and registered as such, (ii) Palestinians not recognized as refugees from territories in the Occupied Palestinian Territories who can contact the representation of the Palestinian Authority in Brussels, and (iii) Palestinians not recognized as refugees and not from territories under Palestinian Authority. (The Belgian authorities define these three groups of Palestinians as persons with no nationality.)[123] Finally, as of March 2011 only 2 per cent of the lawfully resident stateless population were born in an African country.

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121 See in particular Sections 7.3, "The national legal framework and the Belgian Nationality Code", and 7.4, "Statistical data from the National Register on conferral of Belgian nationality".

122 Newborns whose nationality has not yet been established can, however, be registered under the category "unknown nationality". As explained above in note 97, five births of stateless babies have also been recorded since the beginning of the 1990s, suggesting that these cases are due to a misapplication of the provisions of Article 10 §1of the BNC.

123 See Instructions from the Ministry of the Interior sent to Civil Registrars.

Table 3. Country of birth of legally staying recognized stateless persons as at March 2011

Country of birth	Number	%
Belgium	**94**	**13.99**
Rest of Europe	**425**	**63.24**
Former Soviet Union	174	25.89
Former Yugoslavia	156	23.21
Romania	30	4.46
Germany	10	1.49
France	10	1.49
Other Europe	45	6.70
Asia/Middle East	**133**	**19.79**
Lebanon	54	8.04
Israel/Occupied Palestinian Territories	39	5.80
Syria	10	1.49
Other Asia/Middle East	30	4.46
Africa	**13**	**1.93**
Americas	**4**	**0.60**
Unknown	3	0.45
Total	672	100.00

Source: Aliens Office.

141. If we consider the stateless population and the formerly stateless population with Belgian nationality residing lawfully in Belgium as at 1 January 2006, about 275 people were registered between 1991 and 2005.[124] Among these recent immigrants, 63 per cent were born in Europe, including 22 per cent born in the former Soviet Union, 21 per cent in Romania,[125] and 20 per cent in a country of the former Yugoslavia. Finally, 14 per cent of stateless persons registered between 1991 and 2005 were born in Israel, the Occupied Palestinian Territories or Lebanon and are probably Palestinians recognized as stateless and residing legally in Belgium.

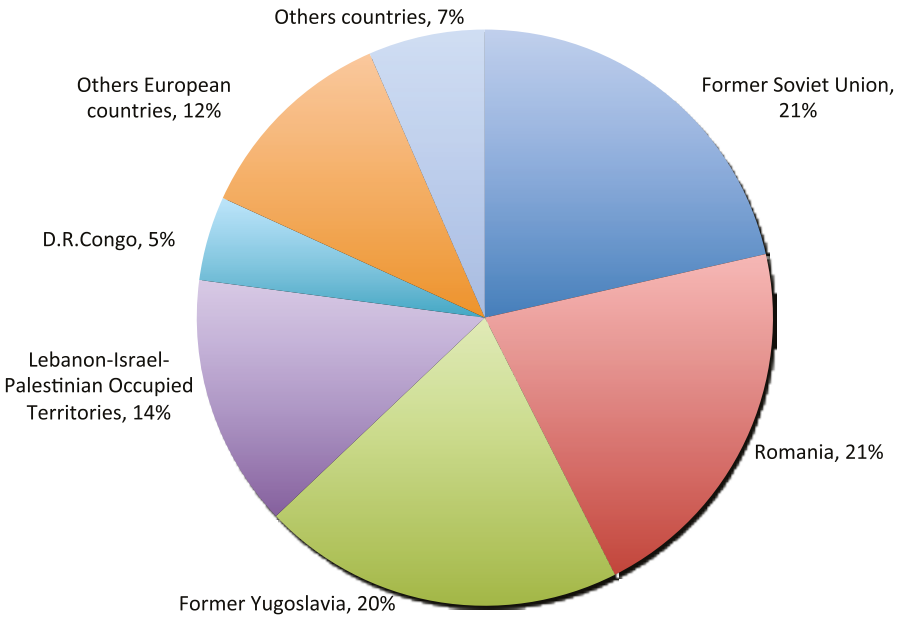
142. These geographical origins of the stateless population in Belgium confirm key trends observed by different stakeholders as to the origins of applicants seeking recognition as stateless in recent years (prosecutors, judges, or Aliens Office). The Brussels prosecutor interviewed for this study said that the majority of applicants are primarily ethnic Albanians from Kosovo, Palestinians from Lebanon, and former Soviet citizens, notably from Kazakhstan. Others are people of diverse geographical origins and atypical life courses. The CGRS records the country of origin when an opinion on the status and geographical origins of the individual is requested by tribunals of first instance. In 2010, tribunals asked CGRS for 85 opinions. About 25 per cent of these concerned persons born in the Occupied Palestinian Territories or in countries where displaced Palestinians are numerous (Lebanon, Jordan, or Syria).[126] About 22 per cent of these opinions concerned persons born in a country of the former Soviet Union (notably Azerbaijan, the Russian Federation, Uzbekistan, Kazakhstan, Ukraine, and Latvia), and 14 per cent concerned applicants from a country of the former Yugoslavia (notably Kosovo, Bosnia-Herzegovina, and the former Yugoslav Republic of Macedonia).

[124] Stateless persons residing legally on 1 January 2006 and who acquired Belgian nationality before this date are also taken into account. The date of 1 January 2006 is the most recent for which this data was available to the researchers.

[125] Persons in this group from Romania were essentially registered as stateless persons from 2001 to 2004, mainly because some persons of Romanian origin renounced their nationality.

[126] The opinions concerning persons from Syria may not only concern Palestinians born in Syria but also Kurds born in Syria. In 1962, the Syrian authorities conducted a special population census and about 150,000 people of Kurdish origin were stripped of their Syrian citizenship.

Figure 8. Stateless immigrants as at 1 January 2006 by country of birth



Source: National Register, DG-SEI (statistical treatment: IACCHOS-UCL).

143. As for people recorded as being of unknown/undetermined nationality, it may be useful to see if they were born in broadly the same countries as those in which stateless people with a valid residence permit were born. The answer may help to identify whether such people are at risk of statelessness.

Table 4. Country of birth of persons of unknown nationality as at 1 January 2006[127]

Country of birth	Number	Percentage
Belgium	**919**	**30.6%**
Europe (excluding Belgium)	**1,064**	**35.4%**
Former Soviet Union	392	13.1%
Former Yugoslavia	357	11.9%
Russian Federation	90	3.0%
Romania	53	1.8%
Other	27	5.6%
Africa	**763**	**25.4%**
Democratic Republic of the Congo	221	7.3%
Rwanda	106	3.5%
Republic of Congo	74	2.4%
Angola	64	2.1%
Other	298	10.1%
Asia/Middle East	**258**	**8.6%**
Iran	41	1.4%
Iraq	39	1.3%
Afghanistan	29	1.0%
Other	149	4.9%
Total	3,004	100%

Source: National Register, DG-SEI (statistical treatment: IACCHOS-UCL).

[127] This table comprises (i) people recognized as refugees whose nationality is undetermined, and (ii) other foreigners whose nationality is undetermined.

144. Table 4 shows, however, that there are significant differences between these two groups. Some 30 per cent of persons of unknown nationality in Belgium as at 1 January 2006 were born in Belgium, while Figure 4 above shows that they were in their twenties. By contrast, any stateless persons born in Belgium at that date were not less than 18 years old, since the BNC had been introduced in 1984 (see section 7.3, "The national legal framework and the Belgian Nationality Code"), and were on average in their forties (Figure 4 above). This suggests that children born in Belgium with a nationality that has not yet been established are registered as persons of unknown nationality.

145. Of persons of unknown nationality with a valid residence permit who were born outside Belgium, as at 1 January 2006, 35 per cent were born in Europe (excluding Belgium), primarily in countries of the former Soviet Union and the former Yugoslavia (Table 4). By contrast, among stateless immigrants with a valid residence permit as at 1 January 2006, a much higher percentage (63 per cent) was born in Europe, not only primarily in countries of the former Soviet Union and Yugoslavia, but also in Romania (Figure 8). Of persons of unknown nationality born outside Europe as at 1 January 2006, a large proportion were born in Africa, particularly in the Democratic Republic of the Congo, Rwanda, the Republic of Congo, and Angola (Table 4). While Figure 8 shows that 14 per cent of stateless immigrants were born in Lebanon, Israel, and the Occupied Palestinian Territories, this group is not visible among those of unknown nationality. Finally, almost 9 per cent of the population of unknown nationality lawfully residing in Belgium were born in Asia or the Middle East, mainly in Iran, Iraq and Afghanistan. These are countries of origin which do not feature among countries of birth for stateless persons.

146. The geographical origin of the population of unknown nationality can thus be seen to be generally quite different from that of the recognized stateless population with a valid residence permit. First, babies born in Belgium who are not Belgian tend to be registered as being of "unknown nationality" rather than as stateless. Second, while the population of unknown nationality mainly comes from specific countries in Africa, Asia and the Middle East, this does not apply to stateless persons. Third, and by contrast, persons of unknown nationality who were born in countries of the former Soviet Union and the former Yugoslavia may share certain common characteristics with stateless persons from these countries, since these countries of birth are strongly represented in both groups.

3.6 The geographical distribution of stateless persons on Belgian territory

147. As at 1 January 2008, almost 45 per cent of the recognized stateless population lawfully resident in Belgium lived in Wallonia. About 39 per cent were living in Flanders and only 14 per cent in the Brussels-Capital Region. By contrast, as at 1 January 2008, 30 per cent of all foreigners resided in Brussels. The four main cities which together accounted for a third of the stateless population were Charleroi, Antwerp, Ghent, and Namur (Figure 9).

148. The geographical distribution of the lawfully resident population of unknown nationality is quite different from that of stateless persons. As at 1 January 2008, almost 43 per cent of those of unknown nationality lived in the Brussels-Capital Region; 19 per cent of them lived in Brussels city. As at that same date, almost 40 per cent of those of unknown nationality lived in Flanders, of whom 9 per cent lived in Antwerp and 7 per cent in Sint-Niklaas, and 18 per cent of those registered as of unknown nationality lived in Wallonia.

149. The relatively lower number of stateless people living in the Brussels-Capital Region, as compared with the much higher number of people of unknown nationality living in the same area, may call into question the quality of registration of stateless people in some municipalities in the Brussels-Capital Region. It may also reflect other factors including the fact that, even though persons of unknown nationality may initially have been registered in the Brussels-Capital Region, they may have moved, for instance to Flanders if they also initiated an asylum procedure which resulted in their being allocated reception facilities there. Alternatively, if they are francophone, they might decide to move to Wallonia once recognized as stateless.

150. More broadly, the variations in the geographical distribution of persons who are stateless and those of unknown nationality may also indicate that the understanding of who should be registered under these categories varies from one municipality to another. It may be that some municipalities are encountering difficulties registering people accurately. For instance, young children whose nationality is not clear at birth may be registered as being of unknown nationality even though they may subsequently be able to acquire either Belgian nationality or indeed another nationality. In addition, when someone is recognized as stateless by a tribunal or court, this recognition is not reflected automatically by the relevant municipality. Rather, the person must ask the municipality where they live to register them as stateless. This means that if a recognized stateless person does not approach their municipality to request this, they may still be registered as being of unknown nationality or indeed under another category, such as a person from the "Soviet Union", the "Federal Republic of Yugoslavia", or as from "Palestine", Syria, Lebanon, or Bhutan.[128]

[128] See above footnote 17.

Figures 9 and 10. The geographical distribution of the recognized stateless population with a valid residence permit and of the population of unknown nationality in Belgium as at 1 January 2008

Stateless population **Population of unknown nationality**

Source: National Register, DG-SEI / AD-SEI.

3.7 Conclusions and recommendations

3.7.1 Conclusions

151. This study has used the statistical tools currently available, notably the census and National Register, to identify the stateless population in Belgium. As in other countries,[129] establishing a complete statistical overview of the stateless population in Belgium is not straight forward.

152. First, part of the stateless population is living illegally in Belgium and is therefore not included in these data sources. This is because persons in a statelessness determination procedure are not granted any temporary legal stay, while those who are recognized as stateless and do not otherwise have a lawful stay and protection (including outside Belgium) are not regularized automatically. Second, there appears to be uncertainty about who can be registered as stateless. Interpretations of this category by municipalities and the judiciary vary and highlight the challenges of mapping the stateless population in Belgium. Finally, the multiplicity of administrative categories used to classify recognized stateless persons and persons who may be stateless makes it difficult to identify the stateless population in Belgium from national statistics.

153. The historical analysis nevertheless shows first that, after the Second World War, population displacements from eastern and central European countries (essentially Poland, the Soviet Union, Hungary, Yugoslavia and Germany, the boundaries of which all changed at that time) created a significant self-declared stateless population or at least a population whose members may have had a nationality but considered it to be ineffective. Second, an increasing proportion of the stateless population in Belgium was born there. By 1981, there were 1,172 stateless persons in this category. Since the adoption of the BNC in 1984, however, the fact that Article 10 §1 of the BNC attributes Belgian nationality to children born in Belgium if they would otherwise be stateless means that the number of stateless persons born in Belgium has fallen. The remaining stateless population born in Belgium concerns people who were over 18 years old when the BNC was adopted and it continues to decrease.

154. With regard to **stateless persons with a valid residence permit**, there were 637 recognized stateless persons with a valid residence permit of more than three months in the National Register as of January 2010. As of March 2011, there were 672 stateless persons with a valid residence permit according to the Aliens Office database. Unlike the data from the National Register which concerns only persons with a residence permit valid of more than three months, this latter statistic includes also stateless persons with permits valid for less than three months, such as the "attestations d'immatriculation" delivered to asylum-seekers in procedure (of whom there were 18 in March 2011).

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[129] See UNHCR, *Mapping Statelessness in the United Kingdom;* UNHCR, *Mapping Statelessness in the Netherlands,* above note 46.

155. Since the beginning of the 2000s, when the lawfully resident stateless population was around 300, and in particular since 2006, this lawfully resident stateless population has more than doubled. This increase is probably related to the increase in the number of applications for recognition as stateless submitted to tribunals, particularly in 2006–2008. It may also be related to an increase in the number of regularizations, particularly in 2009–2010 due to the implementation of new regularization instructions from July 2009.[130] Despite this increase, the stateless population remains numerically small compared with the number of asylum-seekers, refugees, and other groups of foreigners.[131] Since the beginning of the 2000s, the stateless population has contained a growing number of females and has become younger. Nevertheless, the lawfully resident stateless population remains predominantly male (61 per cent were male in 2010) and of working age (75 per cent were aged between 20 and 60).

156. With regard to the **population of unknown nationality** with a valid residence permit of more than three months, 4,823 people were registered as such in the National Register as at 1 January 2010 (the most recent date for which data were available). A significant number of them were recognized refugees (42 per cent of this population as at 1 January 2007),[132] who are subsequently able to acquire Belgian nationality under the facilitated naturalization provisions currently contained in the BNC for refugees and stateless people. This acts to reduce the numbers of people registered as being of unknown nationality with a valid residence permit.

157. This population of unknown nationality with a valid residence permit recorded in the National Register was over 3,000 during most of the 1990s, but fell at the end of the decade to less than 2,000 by 2001. In 2002 it again approached 3,000 and remained at around this number until 2009 and 2010 when it was over 4,000, as set out in Figure 3 above. There has thus been an increase since 2002 in the number of people registered as being of unknown nationality with a valid residence permit. This is linked to increases in the number of people recognized as refugees and to people of unknown nationality who have been able to regularize their status when regularization procedures were initiated (such as after the implementation of the Regularization Act of 1999 and of the regularization Instructions in July 2009).

158. This population of unknown nationality has a rather younger age structure than the stateless population. As at 1 January 2010, a quarter of this population was under the age of five (1,169 children). No stateless children born in Belgium have been registered under the category "stateless" since the introduction of the BNC in 1984, which in Article 10 §1[133] provides that children born in Belgium are entitled to Belgian nationality if they would otherwise be stateless. It is however possible that some children born in Belgium have been registered as being of "unknown nationality".

159. There are also an unknown number of **stateless persons who are not visible in national statistics**. In addition to the populations mentioned above, which are administratively registered and residing lawfully in Belgium, it is not known how many illegal and unregistered stateless persons there are. They would include stateless persons in a procedure before a tribunal or court who do not have residence permits and are not included in the National Register. Extrapolating from the number of legal opinions sought by prosecutors from the Aliens Office and CGRS, it is estimated that the number of applicants for recognition as stateless is around 100 per year (except during the years when the number of applicants from Kosovo was high). Comprehensive data regarding such applications for all tribunals and courts in Belgium are not, however, available. Identifying the number of pending applications per court or tribunal could be used to give a statistical indication of the number of people who are in a statelessness determination procedure.[134] Similarly, identifying the annual number of new stateless applications and the number of recognitions and refusals given by tribunals and courts should improve understanding of judicial practice in determining statelessness cases.

160. A second group of stateless people not covered by administrative data consists of recognized stateless persons without a valid residence permit. Since recognition as stateless does not result in the granting of a residence permit, a significant number of them initiate a regularization procedure, usually under Article 9bis or Article 9ter of the 1980 Aliens Act. Until an eventual positive decision on their regularization, applicants are not granted any residence permit. The fact that they are recognized as stateless is irrelevant. The implementation of an Instruction with new regularization criteria on 19 July 2009 resulted in an increased number of regularizations of stateless people, which has helped to reduce the number of illegally resident recognized stateless people.[135] The Instruction was, however,

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130 Belgium, Ministry of the Interior, *Instruction relative à l'application de l'ancien article 9 §3 et de l'article 9bis de la loi sur les étrangers,* 19 July 2009. For more information see below paras 373–378 and Table 5. Stateless persons regularized on the basis of Articles 9bis or 9ter, or of the former Article 9(3) of the 1980 Aliens Act".

131 See generally Centre for Equal Opportunities and Opposition to Racism, *Migrations et populations issues de l'immigration en Belgique: étude statistique et démographique 2009,* Bruxelles (2010), available at http://www.diversite.be/?action=publicatie_detail&id=125&thema=4 (in French) and http://www.diversiteit.be/?action=publicatie_detail&id=125&thema=4&setLanguage=1 (in Dutch).

132 Since 2008, the refugee population of unknown nationality and that of other foreigners of unknown nationality have no longer been distinguished in statistics published by Statistics Belgium (DG SIE/AD SEI).

133 For further details, see para. 506.

134 It is not excluded that some of these applicants are residing lawfully in the country.

135 For further information see below paras 373–378. In addition, regularization procedures facilitated by legislation, such as those in 1999 and 2009, have resulted in an increase in the number of persons registered as being of unknown nationality.

cancelled by the Council of State in December 2009,[136] and it is not known what future practice will be regarding regularization for stateless persons. Indeed, in 2011 only 49 stateless persons residing illegally in Belgium were able to regularize their stay, while the regularization rate fell to 53 per cent. The fact that there were 56 persons registered as stateless in the National Register whose application for regularization was still pending and that only 32 stateless persons applied to be regularized in 2011 suggests that the number of recognized stateless persons without valid residence permits is relatively low.[137]

161. Another group of stateless persons not reflected in the National Register are stateless persons who are in the asylum procedure. They are registered in a Waiting Register until they are recognized as being in need of international protection, are regularized or are removed from the territory. Thus, asylum-seekers, including stateless asylum-seekers, only appear in the official population register once they are recognized as being in need of international protection (whether as refugees or as beneficiaries of subsidiary protection) or are regularized for another reason. In addition, persons who have inaccurately been attributed a nationality do not show up in official statistics as stateless even though they may be stateless.

162. With regard to the **origins of stateless persons in Belgium**, despite the challenges faced in identifying stateless persons in Belgium, statistical data and interviews with individuals who are stateless or in a situation of statelessness indicate that stateless persons in Belgium often have similar origins. Of the lawfully resident recognized stateless population in Belgium, almost two thirds were born in Europe. More than a quarter were born in a territory that was once part of the Soviet Union (in particular Azerbaijan, Uzbekistan, Kazakhstan, the Russian Federation, Ukraine, and the Baltic states) and 23 per cent were born in a territory of the former Yugoslavia (notably Kosovo, Bosnia-Herzegovina and the former Yugoslav Republic of Macedonia). There are also a significant number of lawfully resident stateless persons of Palestinian origin who are either from Israel or the Occupied Palestinian Territories or are Palestinians born in neighbouring countries in the region (Lebanon, Jordan, and Syria). There are also small numbers of stateless persons who were, for instance, born in Romania (who essentially arrived during the mid-2000s), who come from Bhutan, or who are Kurds (mainly from Syria).

163. Finally, the **geographical distribution** of lawfully resident recognized stateless persons and persons of unknown nationality on Belgian territory contrasts with that of persons of unknown nationality on Belgian territory. As set out in Figures 9 and 10 above, of the lawfully resident recognized stateless population, almost 45 per cent lived in Wallonia, 39 per cent in Flanders and only 14 per cent in the Brussels-Capital Region in January 2008 (the latest date for which data are available). A third of the lawfully resident recognized stateless population was living in Charleroi, Antwerp, Ghent and Namur at that time. By contrast, of the lawfully resident population of unknown nationality, only 18 per cent lived in Wallonia, almost 40 per cent lived in Flanders, and almost 43 per cent lived in the Brussels-Capital Region in January 2008.

164. The reasons for this different distribution are not clear. It may call into question the quality of the registration of stateless persons in some municipalities in the Brussels-Capital Region. It may also indicate that, even though persons of unknown nationality may initially have been registered in the Brussels-Capital Region, they may subsequently move to another Region, for instance, if they initiate an asylum procedure resulting in their being allocated reception facilities there. Alternatively, if they are francophone, they may decide to move to Wallonia once recognized as stateless. More broadly, the variations in the geographical distribution of persons who are stateless and those of unknown nationality may also indicate that the understanding of who should be registered under these categories varies from one municipality to another. It may be that some municipalities are encountering difficulties registering people accurately. Further research would be needed to determine the validity of such possible reasons.

[136] Belgium, Council of State, No. 198.769, above note 118.

[137] For more information see below para. 398 and Table 5. Stateless persons regularized on the basis of Articles 9bis or 9ter, or of the former Article 9(3) of the 1980 Aliens Act.

3.7.2 Recommendations

165. Given the various challenges in establishing a clear picture of the stateless population in Belgium and the shortcomings identified in registration practice, UNHCR makes the following recommendations. The aim is to identify the statistical tools and data that would be useful to develop and make available, so as to encourage improved practices and provide a more accurate overview of the stateless population in Belgium.

1

Variations in the different municipalities' registration practices call for practice to be standardized, in particular regarding the registration of persons in the National Register under categories such as "stateless" and "unknown". To ensure a consistent approach, avoid the risk of incorrect registration of nationality and thereby assist the protection of stateless persons and help prevent and reduce statelessness, it is therefore recommended that the Ministry of the Interior:

(a) work to identify the main difficulties encountered by different municipalities in registering persons as stateless or as of unknown nationality; the research should also encompass challenges faced in the registration of children's nationality;

(b) provide official guidelines to municipalities on the registration of stateless persons and persons of unknown nationality; these should take into account UNHCR's February 2012 Guidelines Statelessness No. 1 on the Definition of a "Stateless Person"[138] and ensure respect for international standards in terms of prevention and reduction of statelessness; and

(c) review the categories that the National Register currently uses for stateless persons, paying special attention to the category of "unknown "; address the issue of the use of certain categories, which may not correspond to the individual's nationality or lack of it, such as "Palestine", Syria, Lebanon or Bhutan; and in particular envisage removing categories that refer to nationalities that no longer exist, such as the Soviet Union, and redistributing the statistics under other more applicable categories.

2

It is also recommended that registry staff in the **municipalities** be provided training to ensure that such guidelines on the registration of stateless persons and persons of unknown nationality are effectively implemented.

3

It is further recommended that the **Ministry of the Interior** and the **Ministry of Justice** put mechanisms in place to ensure that if people are registered in the National Register, their registration is automatically changed to "stateless" when the relevant authorities reach a final decision recognizing them as such; and that stateless people who have not been registered in the National Register and who are to be registered upon regularization by the Aliens Office are properly registered as stateless.

4

There are many different tribunals and courts determining statelessness and a global overview of the statelessness determination procedure is lacking at judicial level. Until such time as a dedicated procedure is established, it is therefore recommended that the **Ministry of Justice** ask each jurisdiction engaged in determining statelessness to provide annual statistics disaggregated by country of origin/birth, age and gender on:

(a) the number of new applicants seeking recognition as stateless,

(b) the outcomes of decisions, including length of procedure in months; and

(c) the number of pending applications for recognition as stateless.

5

There is no overview of the number of stateless people without a valid residence permit who have been recognized as stateless by a tribunal or a court, even though a significant number of recognized stateless persons initiate a regularization procedure, usually under Article 9bis or Article 9ter of the 1980 Aliens Act. In order to give an overview of the numbers of recognized stateless people and of applicants seeking recognition as stateless who are also seeking regularization, it is therefore recommended that the **Aliens Office** publish annually:

(d) the number of pending regularization applications introduced by recognized stateless persons and by applicants seeking recognition as stateless by country of birth/origin, age and gender;

(e) the number of regularization applications introduced by recognized stateless persons and of applicants seeking recognition as stateless; and

(f) the number of such regularization decisions that are positive, negative and the number of dossiers closed as being "sans objet".

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[138] UNHCR, Guidelines on Statelessness No. 1, above note 10.

4. THE FACE OF STATELESSNESS

4.1 Introduction

166. Too little is known about the lives of the people behind the statistics analysed in the previous chapter. This chapter seeks to give a human face to the question by reporting on the results of a number of interviews with people who are either recognized as stateless, who are seeking recognition as stateless or who share similar problems to stateless persons. They were asked how they saw their situation and their future and about the challenges they face. They showed how their lack of (effective) nationality often results in an accumulation of problems and how the uncertainty of their situation affects their lives and wellbeing. These perspectives are intended to complement the report's analysis of relevant data, legislation and practice relating to statelessness.

167. In total, 20 interviews were carried out (as also explained in paragraphs 35–39 of the report). This relatively small sample means that issues identified are not necessarily representative of the situation of all stateless people in Belgium. A number of common themes nevertheless emerged from the interviews, suggesting that these issues may be recurrent and significant.

168. Of the 20 people interviewed, 15 were men and five were women. Their ages ranged from the early 20s to over 70; 10 of them were in their 20s, five in their 30s, and the rest aged over 40. In terms of their geographical origins, there were five Palestinians from Lebanon and Gaza, four Kurds from Syria, one Kurd of Iraqi/Iranian origin, and three people who were born in Bhutan. The other participants were of mixed origins and came from the former Soviet Union (Kazakhstan and Belarus), from Iran/Iraq/Afghanistan, Kenya/India, and Somalia/Lebanon.[139]

169. A large majority of the cases concerned people who arrived in Belgium in recent years.[140] Almost all (18 out of 20) had applied for asylum, sometimes more than once. Of the 20 participants, 12 had applied to be recognized as stateless, of whom one had been rejected, three had been recognized, seven were awaiting an outcome to their application, and one had withdrawn his application as he had been recognized as a refugee.

170. Although 20 interviews were held, the accounts they gave also concerned other stateless people. Some participants were married to someone in a situation of statelessness[141] and/or had children who were in a situation of statelessness.[142] Five of the participants had a total of 10 children. Of these children, two had Belgian nationality as a result of being born in Belgium; three other children were born in Belgium and were stateless at the time of the interview, although two subsequently acquired the nationality of another country; one child had the nationality of another member state of the European Union; and four who had been born outside Belgium were recognized as stateless by Belgium.

171. The interviews were semi-structured and encouraged participants to speak about their reasons for leaving the country in which they had been living and their journey to Belgium; the judicial and/or administrative procedures they had initiated; their daily life; the situation of any children born in Belgium who lack a nationality; and their hopes and expectations for the future. These different issues are set out briefly below. The recommendations they made in the interview as to how their situation could be improved are reflected in subsequent thematic chapters and are therefore not repeated as recommendations here.

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139 These causes of statelessness are discussed above in section 2.2 Causes of statelessness. As seen above in Table 3. Country of birth of legally staying recognized stateless persons as at March 2011", administrative data indicate that stateless persons living in Belgium also come from other regions.

140 Of the 20 participants, 13 had arrived in the last five years with a total of four children. The others had arrived in Belgium between 1999 and 2004.

141 One of the 20 participants was married to an individual recognized as stateless.

142 Five of the 20 participants had a total of 10 children who lacked a nationality; two of these children were granted Belgian nationality at birth because they would otherwise have been stateless, according to Article 10 of the BNC.

4.1.1 Reasons for leaving and the journey to Belgium

172. Almost all the participants gave living conditions which had become unbearable and intolerable for them as the reason why they left their country of origin or habitual residence. Many said they faced discrimination on account of their minority or ethnic status, for example, as Kurdish, Palestinian, ethnic Nepali in Bhutan, or ethnic Russian in Kazakhstan.[143] Several said they had been arrested, interrogated, and even tortured,[144] while two had fled fighting or conflict.[145] One person had been expelled from his/her country of birth.[146]

173. Why did they come to Europe? One reason commonly evoked was the hope of finding better protection of their rights, which they said were violated in their country of origin or in another country to which they had moved because of their lack of nationality. For instance, a 41-year-old Kurd from Syria arrived in Belgium hoping to "find better human rights protection and less racism". Although he had been born in Syria, he had never been registered and had never had a nationality, which led to many difficulties in his academic and professional life.[147] As for a 25-year-old man from Bhutan, he decided to come to Belgium "to have a better life... or just a normal life". As he put it, "This means being able to take something from society and to give something back."[148]

174. Almost all had arrived illegally in Belgium. Six said that they had reached Europe with the help of smugglers, as they had no identity documents or passport which would have allowed them to take the necessary steps to obtain visas or other documents needed to travel legally.[149] Some explained that they had been given false passports to reach Europe.[150] For instance, one woman was expelled from Bhutan, was unable to obtain a secure status in the region, came to Belgium, and has now been recognized as a refugee. She said: "I recognize that it was wrong to pay smugglers in this way, but I had no other choice to reach Europe."[151] Some participants explained that they had reached Belgium via Turkey and/or Greece,[152] and some said that they had been detained in these countries.[153] Others had stayed in France, Germany, or the Netherlands before arriving in Belgium.

175. Only two participants had come legally to Belgium: one was a Palestinian woman who had travelled on a student visa to Lithuania and had used this visa to come to Belgium and the other was a Palestinian man who had received a study permit allowing him to come to Belgium with his family.[154]

4.1.2 Judicial and administrative procedures

176. When it comes to procedures, given that recognition of statelessness offers no rights as such, some participants were advised by their lawyers to apply under both the asylum and statelessness procedures almost simultaneously. Indeed, many participants had applied under both. Sometimes they were even recognized under both procedures. Others had not been aware until much later of the existence of a statelessness determination procedure. In terms of the statelessness determination procedure itself, a key challenge was the difficulties faced gathering evidence to prove their lack of nationality. Some participants said that the tribunals did not understand the reality of their situation. For those rejected under the asylum procedure, there was a risk of detention. Those recognized as stateless had to apply for regularization before the rights to which they are entitled under the 1954 Convention could be activated, and this process generally took longer than a year. In the interim, this has had a significant destabilizing effect on their lives.

177. The first major finding as regards the procedures undertaken by the participants is that almost all of them (17 of the 20) applied for asylum after arriving in Belgium. This is explained by the fact that most of them did not know about the existence of a statelessness determination procedure. For example, a 58-year-old man from Belarus who arrived in Belgium in 1999 only heard about the statelessness determination procedure in 2005, after having been refused asylum three times. He said that the CGRS had never informed him about this other procedure. He was eventually recognized as stateless in 2007 by the Antwerp Tribunal of first Instance.[155]

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143 Participants Nos. 2 (Berzan), 3 (Gabir), 5, 7 (Anil), 10 (Khan), 11, 15, 18, and 19.

144 Participants Nos. 8 (Canan), 11 and 15.

145 Participants Nos. 7 and 9.

146 Participant No. 4.

147 Participant No. 15.

148 Participant No. 7 (Anil).

149 Participants Nos. 4, 7 (Anil), 8 (Canan), 11, 17, and 18.

150 Participants Nos. 7 (Anil), 17, and 18.

151 Participant No. 4.

152 Participants Nos. 2 (Berzan), 8 (Canan), 11, 15 and 17.

153 Participants Nos. 2 (Berzan), 11, and 17.

154 Participants Nos. 1 (Jenna) and 12 (Zaki) respectively.

155 Participant No. 6 (Sergey).

178. Furthermore, the majority of the participants said that the CGRS, which was responsible for examining their asylum application, had never informed them of the existence of another procedure – to be recognized as stateless – before the tribunals. On consulting certain participants' files, however, it was noted that this information was given by the CGRS in its decision rejecting one participant's asylum claim, suggesting that the decision was not always adequately explained to the individual concerned and/or had not been understood by him or her. There is nevertheless no indication that such advice is given during the asylum-seeker's interview(s) by the CGRS.

179. In the case of a 28-year-old Palestinian from Lebanon, when the CGRS asked her what her story was, she said she replied: "I don't have a story: my only story is that I don't have a country. Is that not enough for you? I have not been persecuted and I don't want to lie." She said she had not been informed by the CGRS after her asylum interview about the statelessness determination procedure before the tribunal. Her asylum claim was eventually rejected and an application for recognition as stateless was introduced, but this is still pending.[156] In such situations, it would appear that valuable time and resources could have been saved for both the applicant and the CGRS, if the woman had been made aware from the start of the existence of a procedure before the tribunal to be recognized as stateless.

180. Some participants said that their lawyers had never explained the stateless determination procedure to them and advised them only to apply for asylum. Some lawyers, however, argue in favour of introducing applications for asylum and statelessness almost simultaneously, as stateless persons can also be refugees.[157]

181. This was the case for a Palestinian family from Lebanon who were recognized as stateless in May 2010. They were also recognized as refugees in December 2010, as they had fled Lebanon due to threats received from an Islamic organization.[158] Another 28-year-old Kurdish man from Syria who has applied for both statuses feels that he is a stateless refugee.[159] Other participants with a strong statelessness profile, such as woman from Bhutan and a Kurdish man from Syria, have been recognized as refugees, but had not sought recognition as stateless.[160]

182. Moreover, since being recognized as stateless offers no rights, lawyers will usually introduce an asylum request for their client, since they will at least be granted a temporary residence permit and in principle access to reception during the examination of the claim. Of those interviewed, five had not initiated a statelessness determination procedure, but had only applied for asylum.[161] This was mainly because they had arrived quite recently in Belgium and had no information about this possibility.

183. If their asylum application is finally rejected, participants find themselves in a situation of illegality, even if they later go on to apply for recognition as stateless. Five had received at least one order to leave the territory,[162] but as is common with individuals with nationality problems, it was not possible to arrange their return to the country from which they had come.

184. Similar studies in the Netherlands and the United Kingdom have found that detention is a major problem for stateless persons or persons in a statelessness-like situation.[163] In Belgium, a quarter of those interviewed said that they had been detained in Belgium, in each case it seems in the context of the asylum procedure.[164] One woman spent two months in detention, during which time she withdrew her asylum application, but the authorities were unable to return her. She said, "Before [my detention] I had a good heart. Now I feel I have turned cold. I sometimes don't recognize myself in the mirror and still have nightmares about the detention."[165] Further research on detention in the context of statelessness would be useful to determine the extent of the problem more accurately.

185. Of the 12 participants who had applied for recognition as stateless, one had been rejected, three had been recognized, and one had withdrawn his application as he had been recognized as a refugee. The other seven were still waiting for a decision by the tribunal. Three of these seven had very recently applied for such recognition, soon after requesting asylum. The others expressed great frustration as regards the length of the procedure. For instance, a Palestinian woman waiting for a decision from the tribunal said: "Whether I get a positive or negative answer, I want an answer. I don't want to wait any more... I feel like someone has pressed 'pause' on my life while I wait for a decision... I am 28 and have nothing."[166]

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156 Participant No. 1 (Jenna).

157 At the time of the interviews, two people had been recognized as refugees and seven had a pending asylum claim.

158 Participant No. 18.

159 Participant No. 19.

160 Participants Nos. 2 (Berzan) and 4.

161 A 41-year-old Kurd from Syria was, however, busy assembling documents for the Tribunal with a view to being recognized as stateless (Participant No. 15).

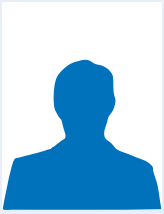
162 Participants Nos. 1 (Jenna), 3 (Gabir), 8 (Canan), 10 and 12 (Zaki).

163 See UNHCR, *Mapping Statelessness in the United Kingdom;* UNHCR, *Mapping Statelessness in the Netherlands,* above note 46.

164 Participants Nos. 1, 3 (Gabir), 8 (Canan), 11 and 17.

165 Participant No. 1 (Jenna).

166 Participant No. 1 (Jenna).



Name: Berzan (Participant No. 2)
Age and sex: 30s, male
Country of origin: Syria (Kurdish)
Status when interviewed: Asylum-seekers
Current status: Recognized refugee

Berzan,* grew up in northern Syria with his mother and siblings, his father having died. The family is Kurdish and belongs, like all Kurds, he says, to the economic underclass. "In Syria, where most of the economy is government-controlled, it is impossible for a stateless Kurd to get a job in the public sector, without bribing an official", he says. So he was unemployed until the family moved to Damascus in the late 1990s.

With the help of a friend, the young man found a low-level job. In parallel, he started working as a volunteer journalist for the Kurdish media. Some years later he began writing for several Arab media and making money from his articles. In them Berzan strongly criticized the regime, and his main employer fired him.

By then, Berzan was writing for several different newspapers and making a modest living for himself and his family. He became a well-known figure and had social contacts with intellectuals of different origins, but was also interrogated repeatedly by different secret services. After they raided his house, Berzan had to go into hiding for several months. Meanwhile, the international media began reporting his case.

Berzan says that he was born stateless because his family belonged to the group of 150,000 Kurds in Syria who lost their citizenship after the 1962 census. Some of his mother's family members live in Turkey, where they have Turkish nationality, but he does not know if he, too, could acquire it through his mother. Syrian legislation allows citizenship after five years of residence, but Berzan says that this rule does not apply to him and he has never had a passport. He once had a laissez-passer from the Syrian authorities, but it did not even allow him to go to neighbouring Lebanon.

By 2009 the situation had become untenable and Berzan had to flee. Just before his departure he got married in a religious ceremony, but could not officially register the marriage because he is stateless, nor would any children be registered.

Berzan left Syria via Turkey for Greece. There, he was caught by the police and sent back to Turkey where UNHCR recognized him as a refugee. However, he had no prospect of resettlement to another country and feared that he would be asked to settle close to the Syrian border. In the end, he decided to leave Turkey and went by truck to Belgium on a journey that lasted about a week.

He arrived in late 2010 and immediately applied for asylum. At the time of the interview four months later, the Aliens Office was examining his asylum application, which had not yet been transmitted to the CGRS. He had not been told that there was a separate procedure for the recognition of statelessness.

Berzan finds his living conditions in a Belgian reception centre very difficult, especially since he feels that he does not receive sufficient support because his sight is poor. He cannot work as he is not allowed to use his laptop and there is no access to the Internet at the centre.

His personal ambitions are quite modest: he wants to write, communicate with his family, learn Dutch, and get a status. "Any nationality would do – even Somali", Berzan says. What he really dreams of is democracy in Syria. He hopes that Kurdish human rights will one day be recognized and that he can return home and breathes freely. As he says, "Freedom is my oxygen."

Since the interview he has been recognized as a refugee and in mid-2012 he received permission for his wife to join him in Belgium.

* Not his real name.

186. Another issue concerns the practical difficulties stateless people face in gathering proof of their statelessness. This is notably due to the lack of cooperation by certain embassies and the Belgian authorities. For example, a 31-year-old refugee born in Iran to an Iraqi father and an Iranian mother,[167] the expiration of whose Iraqi identity card had been confirmed by the Iraqi embassy, had not been able to obtain this confirmation in writing.[168] He was therefore unable to present such evidence before the tribunal, weakening the strength of his application to be recognized as stateless. A 58-year-old man from Belarus complained that he had to pay to obtain certificates from different embassies stating that he was not a national of these countries and that he had not been assisted by any Belgian authority when doing so.[169]

187. Moreover, certain participants said that the tribunals lacked international expertise. They felt that the reality of their situation was neither well understood nor taken into account by the judiciary. For instance, in the case of a young man of Afghan origin who had lived in Iran for most of his life,[170] the Antwerp Tribunal of First Instance refused to recognize him as stateless, although its representative had been to the Afghan and Iranian embassies many times and managed to obtain certificates from each stating that he was not a national of that country. According to the applicant, the tribunal had not been convinced about his birth date, as it was given differently in several documents. The judge nevertheless refused his claim, holding that it was not possible he did not know his exact birth date; he could not understand the obstacles the applicant faced in obtaining more proof or information on this matter.

188. Of those interviewed who had been recognized as stateless, all had been granted a residence permit at the end of a regularization procedure which usually exceeded one year. For example, a 41-year-old woman from Bhutan and her two children were granted an unlimited residence permit two years after being recognized as stateless and introducing their regularization request.[171] Similarly, a 58-year-old man from Belarus was granted a temporary residence permit one year after being recognized as stateless. Before that, however, his procedure before the tribunal to be recognized as stateless lasted 2.5 years, during which time he did not receive assistance from the authorities but lived in a property owned by a church, which supported him.[172] After he was regularized he received a one-year renewable residence permit. In this context, it is important to remember that the July 2009 regularization exercise, as a result of which many recognized stateless persons were able to regularize their situation, was an exercise to which people who have since been recognized as stateless will not necessarily have access (for further details see Chapter 6, paragraphs 373–378).

189. Given that a residence permit – to which most rights are attached – is not granted to a person on recognition of his or her stateless status, these delays between recognition and regularization have a great impact on the daily lives of those who apply for recognition of their statelessness, as is outlined in the next section.

4.1.3 Daily life

190. There is a major difference as regards the participants' daily lives between, on the one hand, the situation of people seeking recognition as stateless and recognized stateless persons without a residence permit and, on the other, that of recognized stateless persons who have a residence permit.

4.1.3.1 Applicants for recognition as stateless and recognized stateless persons with no residence permit

191. As the vast majority of participants had asked for asylum, they benefit(ed) from the usual reception facilities provided to asylum-seekers pending a decision on their application. Several had experienced homelessness and/or had been obliged to live in hotels during that time, as there were not sufficient reception-centre places available.[173] Some participants were living in open centres for asylum-seekers and had no complaint about the centres and support.[174] Others found it hard – for instance, when a family of seven members had to live together in one room in a reception centre for a year,[175] or to stay in a reception centre with two children for five years, while two claims for asylum were rejected before they were eventually recognized as stateless.[176]

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167 Participant No. 3 (Gabir).

168 According to the Iraqi authorities, this identity card served as a temporary residence permit when he left Iran to study in Iraq.

169 Participant No. 6 (Sergey).

170 Participant No. 10.

171 Participant No. 14 (Ashmi).

172 Participant No. 6 (Sergey).

173 Participants Nos. 1 (Jenna), 8 (Canan), 11 and 17.

174 Participants Nos. 4 and 19.

175 Participant No. 18.

176 Participant No. 14 (Ashmi).

192. Several had experienced health problems, including psychological and mental health concerns, as a result of the uncertainty, the sense of exclusion, the lack of accepted identity, and/or fear of being stopped by the police and deported.[177] One, a 25-year-old ethnic Nepali born in Bhutan, had spent two of his last four years in Belgium in a psychiatric hospital and suffered from amnesia due to the medication prescribed.[178]

193. Many stressed the fact that they could not do anything while waiting for a decision on their asylum claim. They said they had no social life and longed for the opportunity to be able to work and contribute to society. For instance, a 23-year-old man of Palestinian origin, recognized as a refugee in Belgium, stated,

> "Waiting for three years for a permit was affecting my life: I could not study, because I had no residence permit. I could not work either. I could not do anything. I had to stay at home. I was 21 years old and this is a crucial period to do something. I did not want to live off Belgian society: I wanted to work for myself and improve my life."[179]

194. Those who had been refused asylum and were awaiting a decision on their stateless status also faced obstacles as regards housing. Introducing an application to be recognized as stateless does not affect their stay on Belgian territory and so they were in an illegal situation. Some participants had been staying with their boy- or girlfriend. Others expressed their sense of good fortune at being able to obtain help from churches that offered them housing.

195. The state of illegality in which they were living also prevented them from being able to work and "contribute to Belgian society". This frustration was raised by many participants. As one 31-year-old man born in Iran of mixed Iraqi-Iranian parentage, whose application for recognition as stateless was pending, said, "Currently I am at home and my wife works. For a man this is humiliating... I feel bad about it but I don't show it, I don't speak about it because I feel ashamed... Even my wife's family and friends don't know this."[180]

196. The situation is almost as difficult for those who have been recognized as stateless but whose situation has not yet been regularized. A Palestinian father of four admitted that he had to work illegally during the period between the recognition of his stateless status and the regularization of his stay.[181] He said, "I had to stop working on my doctoral thesis due to the psychological pressure caused by my state of permanent insecurity. I was constantly on edge, upsetting myself and the family. I felt like they had put us in a cage." Furthermore, with four small children, one of the most worrying consequences of his intermittently illegal status was the repeated withdrawal of medical insurance. As he explained, "Our insurance was terminated maybe ten times; we either had to pay for medical treatment or rely on the help of friends."

4.1.3.2 Recognized stateless persons with a residence permit

197. Participants recognized as stateless who have also been granted a residence permit said that now that a previous source of constant worry – their illegal situation – had disappeared, they could start looking to the future. Most of them were working and could afford to live in independent accommodation. As regards financial assistance, Ashmi, a 41-year-old woman from Bhutan whose story is set out after paragraph 402 below, was able to obtain financial support of €730 a month for her and her two children one year after being recognized as stateless.

198. Some have said that their inability to travel remains a major problem. One recognized stateless man with a limited residence permit, which must be renewed every year, complained that he had not seen his family in eastern Europe for more than ten years.[182]

4.1.4 The situation of children born in Belgium who lack a nationality

199. In total, there were three children born in Belgium who had no nationality at the time of the interview. Of these, two had been born to a Kenyan mother and Indian father. Their mother said: "It is frustrating for parents to see their children with no status; they are stateless and, for most things in life, you have to have a nationality."[183] The third child was a 16-month-old girl, born to a recognized stateless father and a Ghanaian mother.[184] The Belgian authorities had refused to give her Belgian nationality as they said she could acquire her mother's Ghanaian nationality if her parents asked for it at the Ghanaian embassy. The parents did not, however, wish to undertake such a measure as they said they believed their daughter was entitled to Belgian nationality since she had been born in Belgium.

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177 Participants Nos. 5, 15 and 17.

178 Participant No. 7 (Anil).

179 Participant No. 18.

180 Participant No. 3 (Gabir).

181 Participant No. 12 (Zaki).

182 Participant No. 6 (Sergey).

183 Participant No. 13 (Tamanna). As set out below in her story after para. 514, the children were later able to acquire Indian nationality.

184 Participant No. 6 (Sergey).

200. This situation highlights the fact that some parents may not be well-informed about the applicable Belgian legislation and the steps that need to be undertaken before their child can become Belgian under Article 10 of the BNC.[185] Parents need assistance from the municipalities in this regard if the latter refuse to register a child as Belgian. This may involve explaining how the current legislation applies to their family and that they have a responsibility as parents to approach their embassy so that their child can acquire the nationality to which he or she is legally entitled.

201. The difficulties some parents have encountered in obtaining proof of nationality or the absence of it from relevant consular authorities are illustrated by the story of the Kenyan mother of two children born in Belgium to an Indian father.[186] She said that the respective legislation of both parents' countries of nationality allowed the children to acquire Indian nationality only, and that the Indian Embassy had refused to recognize the children as Indian nationals.[187] What proved problematic in this situation was that the Indian embassy declined to put this refusal in writing, leaving the mother with no proof to show to the municipality. Since her several requests to the Belgian municipality to have her children recognized as Belgian according to Article 10 of the BNC had been rejected and since her children were not entitled to Indian nationality, they were stateless. She said: "We need to have stability. If you know where your status is, you can move on, you know your destiny." Since the interview, UNHCR has learned that the two children have been able to obtain Indian nationality, so that the situation has been resolved in this case.

202. In such situations, participants facing such problems suggested that a possible solution could be for the authorities to assist the parents in approaching the relevant embassy or embassies. While it may not be realistic for the Belgian authorities to accompany parents in order to note officially any possible unwillingness of the embassy concerned to register a child as their national, one could envisage the identification of a focal point or *point d'appui* on nationality and statelessness matters within the justice administration or at municipal level, which could provide closer advice and support.

4.1.5 Hopes and expectations for the future

203. The participants' hopes and expectations for the future depend on their administrative situation. If they have introduced an asylum or stateless application, they want a quick decision on their application(s). More generally, these people say that they want to obtain lawful residence in the country in order to work and travel and so that they no longer live in fear because of their illegal stay. As a 31-year-old man born in Iran of mixed Iraqi-Iranian parentage, who was waiting for a decision about his statelessness application, explained, "I am waiting for a National Register number and an identity card which would allow me to work."[188]

204. Many express the desire to be able to live a normal life, to earn a living, to be able to marry, found a family, acknowledge paternity of their child, travel and/or vote. They want, in short, to be seen as human beings, who are able and anxious to contribute to society.

205. The participants' desire to acquire Belgian nationality can be for different reasons, according to the administrative path they have taken. Those in a stateless determination procedure without a residence permit express less interest in acquiring Belgian nationality, since their wish to obtain a decision on their statelessness application or their stay predominates. For a 32-year-old woman from Bhutan recognized as a refugee, the fact of having an identity card was almost incredible, and she explained that she had not yet thought about nationality but "maybe one day if I can speak Dutch well enough and have learned about life in Belgium".[189]

206. The main reason given for acquiring Belgian nationality is a desire to become part of Belgian society and to be a citizen like any other. Belgian nationality evokes an idea of freedom and security. A 29-year-old Kurdish man from Syria said, "Of course I would take Belgian nationality, if I had the chance. People who have received Belgian nationality tell me that they get more security, that they can build a future."[190] Participants also mention their desire to acquire travel documents to travel and to visit their family.[191]

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185 For further details on Article 10, see below paras 510–511.

186 Participant No. 13 (Tamanna). For more details see her story below after para. 514.

187 Tamanna claims that the Indian embassy refused to give Indian nationality to her children because they were illegally staying in Belgium.

188 Participant No. 3 (Gabir).

189 Participant No. 4.

190 Participant No. 11.

191 Some stateless people are unaware of the possibility of receiving a travel document from the Federal Public Service of Foreign Affairs. See Chapter 6, paras 421–425.

4.2 Conclusions

207. The interviews conducted showed that the lives of many of the participants have been marked by discrimination, uncertainty and precariousness. Many had arrived in Belgium having left countries where their living conditions had become intolerable because of their lack of nationality. The interviews showed that the participants' lack of nationality had often resulted in their being discriminated against and marginalized and even being exposed to arrest, interrogation, or torture. They had thus often already endured tough conditions, as well as difficult journeys before reaching Belgium. Some confided that the denial of their identity and their experiences have affected their mental health.

208. It is clear that many participants claiming to be stateless are unaware of the existence of the statelessness determination procedure in Belgium, at least initially. They do not appear to be given information that they could apply to a Tribunal of First Instance to be recognized as stateless, or else this was not adequately explained or understood. In addition, given that recognition as stateless offers no rights as such, some participants had been advised, including by their lawyers, to apply both for asylum and for recognition as stateless almost simultaneously. Indeed, many participants had done so and were sometimes recognized under both.

209. Most applicants explained that the long delays in different procedures, whether these were before the Tribunal, the CGRS, the courts or the Aliens Office, had a negative impact on their lives. Applicants seeking recognition as stateless also emphasized the difficulties they faced obtaining relevant documents from the authorities of their country of former habitual residence origin or another country with which they had links. They suggested that the Belgian authorities needed greater understanding of the reality of their personal situation and of different countries' legislation and administrative practices regarding nationality. They asked the tribunals to take into account international geopolitical realities when deciding whether someone is stateless.

210. The fact that applicants seeking recognition as stateless (who unlike asylum-seekers have no entitlement as such to reception) and recognized stateless people are residing illegally in Belgium (unless they have managed to regularize their situation after recognition) was highlighted as a major cause of worry. If they applied for asylum, they were generally housed in open centres, although the different reception centres did not all offer the same support services to residents. If they were rejected in the asylum procedure this could result in the withdrawal of assistance and a risk of detention.

211. Moreover, even after being recognized as stateless by a Belgian tribunal or court, they often remained unable to enjoy the rights to which they are entitled under the 1954 Convention until they could also regularize their stay. The inability to work was particularly hard for them. The participants felt that they were not able to get on with their lives and that they could not become actively involved in Belgian society. Even if their stay had been regularized, some explained that they still had to wait until they had a permanent residence permit, before they could obtain travel documents to be able, for instance, to see their family.

212. For children born in Belgium who were currently without a nationality, the participants suggested that the authorities could provide assistance to parents. This could be both in terms of explaining the applicable legislation, for instance, in the country/ies of origin of the parent(s), and of accompanying them to the relevant embassy if they face obstacles registering their children (although implementing such a suggestion could require additional resources).

213. As regards the participants' hopes for the future, those who were in a stateless determination and/or regularization procedure hoped that they would get a decision in the near future. They were eager to get on with their lives and to be able to work and travel, and looked forward to the day when they would no longer live in fear and uncertainty. Those who wished to acquire Belgian nationality wanted to do so in order to become fully part of Belgian society and to acquire travel documents to visit their family and friends abroad.

214. The findings and recommendations emerging from this chapter are reflected in subsequent thematic chapters and are therefore not repeated here.

5. THE DETERMINATION OF STATELESSNESS

5.1 Introduction

215. This chapter addresses the question of the determination of statelessness and how it is undertaken in Belgium. It analyses the current procedure for determining statelessness. This includes a review of the sometimes varying practice of several Tribunals of First Instance in the country, an analysis of relevant jurisprudence regarding the assessment of statelessness, which is a factual evaluation rather than a historic or predictive exercise, the application of the exclusion clauses of the 1954 Convention, and practice regarding the standard and burden of proof. Finally, given the Belgian federal government's expressed commitment in December 2011 to set up a new statelessness determination procedure, the chapter also sets out issues in the current debate regarding which authorities should be responsible for determining statelessness.

216. This chapter is complemented by Chapters 6 and 7. Chapter 6 analyses the status of individuals who are awaiting a determination of their eligibility for protection under the 1954 Convention and of those who have been recognized as stateless persons. Chapter 7 examines the international, regional, and national legal framework that aims to prevent and reduce statelessness. All three chapters examine the extent to which Belgium meets international standards and obligations with regard to statelessness.

5.2 Belgium and the 1954 Convention

217. Belgium is a party to the 1954 Convention. It signed it on 28 September 1954 and ratified it without reservations on 12 May 1960.[192] As mentioned in Chapter 1, the Convention establishes the international legal definition of a stateless person, the obligations states have towards those who fall within this definition and the standards of treatment to which such individuals are entitled. Article 1(1) provides that a stateless person is a "person who is not considered as a national by any State under the operation of its law".

218. Following its ratification by (and thus the approval of) the Belgian Parliament in 1960, the 1954 Convention took direct legal effect in Belgium, Article 1 of the Law of 12 May 1960 stating that "the Convention and its Annexes will have full force and effect in Belgium".[193] This implies that even in the absence of specific national legislation implementing the provisions of the 1954 Convention in Belgium, individuals can directly benefit from them. States can, however, ensure the more effective implementation of an international convention by enacting specific legislation on relevant issues.[194] Such legislation would notably define a particular procedure, when needed to uphold the object and purpose of the convention, and designate the competent authority/ies responsible for its application. Thus far, however, there is no specific legislation in Belgium regulating the determination of statelessness and the rights to be accorded to recognized stateless persons, in contrast to the legislation that exists on the recognition of refugee status and subsidiary protection.

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192 Law of 12 May 1960, *portant approbation de la Convention relative au statut des apatrides, et de ses annexes, signée à New York le 28 septembre 1954, Moniteur belge,* 10 August 1960 (in French), entered into force on 20 August 1960. Article 1(1) provides, "La Convention internationale relative au statut des apatrides et les annexes, signées à New-York, le 28 septembre 1954, sortiront leur plein et entier effet."

193 See Article 167 §2 of the Belgian Constitution, affirming that, while the King concludes treaties, they only have effect once ratified by Parliament.

194 For example, the 1951 Convention is implemented notably via a specific title of the Aliens Act of 15 December 1980.

5.3 A statelessness determination procedure integral to the implementation of the 1954 Convention

219. The 1954 Convention is silent on the mechanism to identify stateless persons. As UNHCR's April 2012 Guidelines on procedures for determining whether an individual is a stateless person note, however, it is "implicit in the 1954 Convention that States must identify stateless persons within their jurisdiction so as to provide them appropriate treatment to comply with their convention commitments".[195]

220. While numerous countries have procedures to determine refugee status set out in legislation and extensively adjudicated by national and European courts, there are relatively few countries that have dedicated procedures to determine whether someone is stateless, although increased attention has been given to this issue in recent years. In the European context, France, Hungary, Italy, Latvia, and Spain all now have procedures in place to determine statelessness and a number of other EU member states are currently looking into establishing such procedures. At the 2011 ministerial meeting in Geneva a range of states around the world pledged to establish such procedures and Moldova and Georgia have now done so.

5.4 The current statelessness determination procedure

5.4.1 Context

221. At present the judiciary – and more specifically civil courts and tribunals – rather than the executive is responsible for determining statelessness in Belgium. Under Article 569(1) of the Judicial Code,[196] the Tribunals of First Instance are the competent authority in matters concerning personal status, including recognition of statelessness. Persons seeking recognition as stateless in Belgium must therefore apply to one of the 27 Tribunals of First Instance,[197] while an eventual appeal goes to one of the five Courts of Appeal.[198] Applicants have access to this procedure irrespective of their migratory status in the country. Unlike asylum-seekers, however, they are not given a temporary legal residency status for the duration of the procedure.

222. The competence of the Tribunals of First Instance to determine statelessness was confirmed in the leading judgment of the Brussels Court of Appeal in 2000.[199] This rejected the competence of the Ministry of Justice, ending several years of uncertainty and debate on the issue. The Court noted that no legislation had granted authority to the executive to determine statelessness, whether it be the Minister of Justice or any other executive power. It found that, although the Minister of Justice is, by virtue of law, the guardian of Belgian nationality, he or she is the guardian neither of other nationalities nor of statelessness. By holding that it was the judiciary's competence, and more specifically that of the Tribunal of First Instance – given its role in matters dealing with personal status – the Court of Appeal affirmed the predominance of the judiciary over the executive in this matter.

223. There is no record of how many people have applied to be recognized as stateless at the national level in Belgium. From interviews conducted for this study with Crown Prosecutors and judges, it appears, however, that there are relatively few applications each year. Some tribunals issue around 20 judgments a year, which suggests a low number of applications lodged annually, while others will only deal with around five applications. In addition, cases seem to have been on the decline since 2008.

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195 UNHCR, Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person, 5 April 2012, HCR/GS/12/02, available at http://www.unhcr.org/refworld/docid/4f7dafb52.html (in English) and http://www.unhcr.org/refworld/docid/5087a00d2.html (in French) (hereinafter UNHCR Guidelines on Statelessness No. 2), para. 1. These Guidelines were informed by an Expert Meeting – Statelessness Determination Procedures and the Status of Stateless Persons, December 2010, available at http://www.unhcr.org/refworld/docid/4d9022762.html (hereinafter UNHCR Geneva Summary Conclusions).

196 See http://www.droitbelge.be/codes.asp#jud (in French) and http://www.belgischrecht.be/codex.asp (in Dutch).

197 See http://www.belgium.be/fr/justice/organisation/tribunaux/tribunal_de_premiere_instance/ (in French) and http://www.belgium.be/nl/justitie/Organisatie/rechtbanken/rechtbank_van_eerste_aanleg/ (in Dutch).

198 See http://www.belgium.be/fr/justice/organisation/cours/cour_d_appel_et_du_travail/ (in French) and http://www.belgium.be/nl/justitie/Organisatie/hoven/hof_van_beroep_en_arbeidshof/ (in Dutch).

199 Belgium, Court of Appeal Brussels, 24 February 2000, *Revue du droit des étrangers,* 2000, p. 103, with comments of S. Saroléa, "Le Ministère de la Justice et l'apatride" (in French).

224. The duration of the procedure seems to vary from one tribunal to another, but generally appears to be long. The fact that the Crown Prosecutor's Office does not have a deadline by which it is required to submit its opinion has been highlighted as one cause for delays at the level of the Tribunals of First Instance. One 58-year-old stateless man from Belarus had to wait two and a half years before the Antwerp Tribunal of First Instance recognized him as stateless.[200] At the same tribunal, a negative judgment was issued on 23 March 2010 concerning the application of a person from Kosovo dating back to 17 July 2006 (three years and nine months earlier). A 41-year-old woman from Bhutan waited one year to be recognized as stateless by the Turnhout Tribunal of First Instance, while her children were only recognized as stateless 14 and 22 months later respectively, even though their applications had been made on the same day.[201] Lawyers have also indicated that procedures before the Liège and Charleroi tribunals are extremely long. Given that no temporary residence permit is provided to applicants seeking recognition as stateless, they remain on Belgian territory illegally while waiting for a decision, unless they may be authorized to stay on the territory on another basis. The length of the time that stateless persons may spend in limbo is aggravated by the multiplicity of procedures generally undertaken by stateless persons, which can include one or more asylum procedures before an application is made for recognition as stateless or for a regularization procedure.[202] All these factors have a significant impact on their daily life, as explained in paragraphs 190–196 above.

225. Besides the judge, a key actor in the current procedure is the Crown Prosecutor. He or she is part of the public prosecution service and is attached to one of the 27 judicial districts in Belgium. The Crown Prosecutor leads the public prosecution at the Tribunal of First Instance and is assisted by deputies. In civil matters, the public prosecution service will automatically intervene in cases as prescribed in legislation and whenever public order requires its intervention. In these cases, it will give an opinion (written or oral) on the case. The Deputy Crown Prosecutor will generally give an opinion on whether or not the applicant is stateless according to the 1954 Convention. From the consultations held throughout this research it appears that this opinion is generally followed by the judge.[203]

226. In order to produce its opinion on whether the application is well founded, the Crown Prosecutor's Office can seek the help of the Aliens Office and the CGRS as regards the applicant's administrative situation, their identity, and other documentation and immigration history, as well as information regarding the situation in the country of origin. Although this is not obligatory, all the Crown Prosecutors' Offices personnel met during the research said that they requested such advice systematically, since they believed that both bodies have greater expertise and information on the subject.

227. An appeal against a decision of a Tribunal of First Instance can be lodged either by the Public Prosecutor if the applicant has been recognized as stateless contrary to his or her opinion, or by the applicant's lawyer if the applicant has not been recognized as stateless.

228. As highlighted in Chapter 4,[204] a real difficulty in Belgium seems to be that the statelessness determination procedure before the Tribunals is not well known. For instance, one 28-year-old Palestinian who claimed that she was stateless was advised to apply for asylum to the CGRS rather than to be recognized as stateless.[205] Even when her asylum application was rejected, she said she was not informed by the authorities that a separate statelessness determination procedure exists. Similarly, a young man from Afghanistan who had been born in Iran and had not been recognized as a national of either state said that he was not informed about the statelessness determination procedure after his asylum application had been rejected.[206]

229. In cases where applicants are aware of the statelessness determination procedure, they are sometimes advised by their lawyer to apply for asylum, as both asylum-seekers and recognized refugees have more rights than a recognized stateless person. This has an unfortunate consequence at the level of most tribunals, including Brussels: the Crown Prosecutor's Office treats applications for the recognition of statelessness warily, as they are often seen as a last chance of obtaining a right to stay in Belgium. Indeed, the Crown Prosecutor's Office noted that the applicant's profile is usually the same – that is, by the time they introduce their application, negative decisions have already been pronounced as regards any claim for asylum or regularization.

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200 Participant No. 6 (Sergey).

201 Participant No. 14 (Ashmi). In the case of the children, the delay appears to be due to the fact that the judge only recognized the children as stateless when they turned 18, although it should be noted that the definition of statelessness applies to all human beings irrespective of their age.

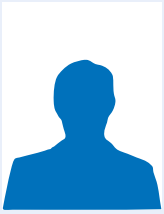
202 For example, Participant No. 6 (Sergey) applied for asylum unsuccessfully three times, before successfully seeking recognition as stateless and regularization; Participant No. 14 (Ashmi) applied unsuccessfully for asylum twice, before successfully seeking recognition as stateless once and then regularization. See also below paras 228–229.

203 One exception concerns the Tribunal of First Instance of Namur regarding applicants originating from Kosovo. See para. 248.

204 See 4.1.2 Judicial and administrative procedures, above at paras 176–181.

205 Participant No. 1 (Jenna).

206 Participant No. 10.



Name: Gabir (Participant No. 3)
Age and sex: 30s, male
Country of origin: Iran/Iraq
Status when interviewed: Rejected asylum-seeker, seeking recognition as stateless
Current status: Applicant for recognition as stateless and regularization

Gabir* has never known what his nationality is. He was born in Iran to a Kurdish Iraqi father and a Kurdish Iranian mother. He grew up in Iran with his family. Except for his Iranian mother, everyone in his family was considered an Iraqi refugee.

When he turned 18, he received a so-called green card, an identity document for refugees in Iran. He says that when he was in Iran, refugees, particularly Kurdish ones, were discriminated against and their freedom of movement limited: "I was told all the time, 'Go home, go back to your country.'"

One day, the Iranian authorities summoned him and asked him to inform on other Kurds in exchange for money. When he refused, he lost his job. With no income and no chance of studying, Gabir decided to go to Iraq to escape the daily discrimination and pressure. He received an Iraqi identity card and enrolled at a university.

With his identity card and his father's birth certificate he hoped that the city authorities would confirm his Iraqi citizenship. But they told him that he was Iranian, not Iraqi, and informed him that his new Iraqi identity card was only a temporary document.

"So I was a foreigner again and experienced the same discrimination as before", Gabir says. While he continued his studies in Iraq, a new law entered into force in Iran, allowing Iranian women married to foreigners to pass on their nationality to their minor children. For those above 18, an interview in Iran was required, during which the Iranian authorities offered Gabir work with their intelligence service. Again Gabir did not pursue this, even though it would have allowed him to finally receive a birth certificate. He returned to Iraq and decided to start working and saving money to leave for Europe.

Later Gabir arrived in Belgium and applied for asylum. "When they asked what my nationality was, I felt ashamed that I did not know what to say", Gabir says. He presented copies of his Iranian refugee card and birth certificate and his Iraqi identity card and student card. Following his interview at the Aliens Office, he says he was detained for periods of time totalling as much as eight or nine months (probably in the context of efforts to remove him) and then later placed in an open reception centre.

Gabir's asylum application was rejected two years after his arrival in Belgium. In their final decision, the Belgian authorities admitted that Gabir could not return to Iran because of his problems with the authorities but found that, with his Iraqi identity card, he could go back to northern Iraq.

With few options, Gabir decided to return to Iraq. He approached the Iraqi Embassy for travel documents but was sent away, since it considered him to be an Iranian citizen. So he returned to the Aliens Office, he says, "because I did not know where to go". A week later he received an order to leave the territory.

International organizations became involved. UNHCR found out through its office in Baghdad that Gabir's files had been erased from the Iraqi population register. Because he had no identity documents or travel documents, the International Organization for Migration (IOM) said that they could not assist his voluntary return.

Desperate, Gabir applied to be recognized as stateless but when the interview with UNHCR took place, his case was still pending. Indeed, his lawyer said in August 2012 that he is still waiting for a decision.

In Belgium, Gabir has a girlfriend who is an EU citizen and they have a child. If they could get married, this would resolve his problem, but without valid identity documents this is proving to be impossible. Without papers he cannot even acknowledge paternity of his child.

He has also applied for regularization of his stay and hopes to be able to obtain identity documents. He hopes that one of these avenues will work and that he can start a normal life. "I am a foreigner without an identity. I am afraid to go out. Everywhere I go I am afraid that someone will ask for my identity card", Gabir says.

* Not his real name.

5.4.2 An overview of tribunal practice in determining statelessness

230. Currently, the 27 Tribunals of First Instance each provide their own interpretation of the statelessness definition, which can lead to different judgments in comparable cases at the national level. In addition, Crown Prosecutors have noted that certain aliens will look for the more "favourable" jurisdiction and apply to a Tribunal of First Instance in a different area from that in which the individual is living to examine the application.[207]

231. The researchers met with the members of several Tribunals of First Instance[208] and examined some of their judgments. As set out below, the main tribunals consulted were those in Brussels, Antwerp, Ghent, Namur, and Bruges. Brussels and Antwerp have the largest population in their jurisdiction and receive the largest number of applications for recognition as stateless each year.

232. There is no centralized, publicly available depository of relevant case law. The information gathered from these meetings and related research, while as complete as possible given the resources available, does not pretend to be comprehensive.

5.4.2.1 Brussels

233. At the Brussels Tribunal of First Instance, three main groups of applicants emerge: ethnic Albanians from Kosovo, Palestinian refugees, and former citizens of the Soviet Union, notably from Kazakhstan.

234. The research showed that the position of the Tribunal regarding ethnic Albanians from Kosovo has evolved with the development of the situation in Kosovo. In 2003–2004, the Crown Prosecutor's Office would recognize applicants as stateless if they showed that they had never had Albanian nationality because they had no effective ties with the country, that they had lost their Yugoslav nationality as a consequence of the break-up of the country, and that they were not in a position to acquire the nationality of what was then Serbia and Montenegro as a result of the status quo regarding Kosovo established by the United Nations Interim Administration Mission in Kosovo (UNMIK).

235. The Crown Prosecutor's Office further held that ethnic Albanians from Kosovo registered with UNMIK did not fall under the exclusion clause foreseen in Article 1(2)(i) of the 1954 Convention,[209] as the protection offered by UNMIK was limited to the territory of Kosovo. The Crown Prosecutor drew an analogy with the situation of Palestinians registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and found that if ethnic Albanians from Kosovo were outside UNMIK's area of operations they could not be excluded from the benefits of the 1954 Convention.

236. This position changed in 2005–2008, however, in the light of new legislation in Serbia, which came into force at the end of 2004 and whose operation granted Serbian nationality to all former Yugoslav citizens from Kosovo.[210] The Crown Prosecutor's Office held during this period that Serbia's refusal to consider documents issued by UNMIK did not exclude the possibility that the applicant could be recognized as a national of the state, even if this would involve him or her returning to Serbia. It held that the mere absence of proof of possession of Serbian nationality did not imply the absence of that nationality.

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207 See, for instance, Belgium, Court of Appeal Liège, 19 February 2007, No. 2006/RO/48, unpublished, holding that the application for recognition as stateless had been submitted to a first instance judge who was not territorially competent and that the application was therefore inadmissible; Court of Appeal Liège, 4 June 2007, No. 2007/RO/5, unpublished, holding in similar circumstances not that the application was inadmissible but that the application should be referred to the competent Tribunal or, failing that, to the Municipal Court (*tribunal d'arrondissement/Arrondissementsrechtbank*) which would determine which Tribunal was competent. The Brussels Tribunal of First Instance has also referred cases to the Municipal Court of Brussels, when applicants registered as living in Antwerp or Wetteren had used their lawyers' address in Brussels. In these cases, the Municipal Court of Brussels referred the cases to the competent Tribunal, i.e. the Antwerp Tribunal of First Instance and the Termonde Tribunal of First Instance respectively (Brussels Municipal Court, 1 October 2007, No. 07/56/E, and 5 March 2007, No. 07/7/E, both unpublished).

208 The researchers met with the Brussels Deputy Crown Prosecutor and a judge at the Tribunal of First Instance, the Antwerp Crown Prosecutor and Judge at the Tribunal of First Instance, and the Namur Crown Prosecutor. Information regarding the practice of the Ghent Tribunal was provided by the Antwerp Crown Prosecutor, while the Bruges Crown Prosecutor provided information by mail. (For further details see Appendix I: Meetings with relevant stakeholders.)

209 Article 1(2)(i) reads, "This Convention shall not apply: (i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance."

210 For further information, see Rava, N., "Serbia: Elusive Citizenship in an Elusive Nation-State", University of Edinburgh, Europeanisation of Citizenship in the Successor States of the Former Yugoslavia Working Paper 2010/08, available at http://www.law.ed.ac.uk/file_download/series/284_serbiaelusivecitizenshipinanelusivenationstate.pdf.

237. As a result of Belgium's recognition on 25 February 2008 of Kosovo as an independent state, the Crown Prosecutor's Office is now of the opinion that the judge cannot ignore the existence of a state which has already acquired a state structure, is governed by a constitution and composed of the three traditional powers, such that it effectively affords state-like protection to its nationals (who are determined by a citizenship law), whether in Kosovo or in a foreign state, such as Belgium, that has recognized its independence. Applicants from Kosovo are consequently now not considered to be stateless.

238. As regards a number of Palestinians from Lebanon, the Crown Prosecutor's Office was initially of the opinion that they should be recognized as stateless, given that they were not able to obtain Palestinian nationality since a Palestinian state did not exist, and they could not obtain Lebanese nationality since the Lebanese authorities refused to naturalize Palestinian refugees. Furthermore, it considered that being registered with UNRWA did not exclude applicants from the benefit of the 1954 Convention, as once in Belgium they were no longer in UNRWA's area of operations.[211]

239. This position changed, however, when such an approach was not followed by the Tribunal and the Crown Prosecutor's Office began to issue negative opinions to Palestinians. It argued that, in the absence of a nationality, the protection afforded by UNRWA could serve as an alternative to nationality for Palestinians, as it included humanitarian assistance and the issuance of civil documentation and identity and travel documents, and that Palestinians leaving UNRWA's area of operation voluntarily do not cease to benefit from this protection. The situation changed again following a January 2009 judgment of the Court of Cassation (Cour de cassation/het Hof van Cassatie).[212] This determined that a Palestinian refugee no longer enjoys the protection or assistance of UNRWA if he or she leaves UNRWA's area of operations, with the result that the Crown Prosecutor's Office reverted to its initial position.

240. With regard to the claim of Kazakhs who have been refused asylum and have not been registered at the Kazakh Consulate for more than three years that they are stateless,[213] the Crown Prosecutor usually finds these claims unfounded, as the loss of Kazakh nationality is not automatic. Furthermore, in its opinion, such a loss would be exclusively the fault of individuals who remained in an irregular situation well after their asylum claim was finally rejected, thus knowingly allowing the three-year registration time limit to expire.

241. Both the Crown Prosecutor and the judge dealing with applications for recognition as stateless believe that these cases should not be dealt with by Tribunals, as they lack the required expertise and information.[214]

5.4.2.2 Antwerp

242. The number of applications is declining at the Antwerp Tribunal of First Instance.[215] The Crown Prosecutor's Office is of the opinion that the Tribunal used to recognize applicants as stateless quite readily when it first started to deal with this issue between 2000 and 2001. Since then, investigations have been more thorough and, as in Brussels, the opinions of the CGRS and the Aliens Office have been sought systematically. Requests are sometimes made to embassies and consulates, but it is difficult to obtain an answer. Here again, the Crown Prosecutor's Office is of the opinion that questions should be handled by a specialized authority, given that it does not itself hold the relevant information and the Tribunal does not have the required knowledge of the law and practice in other countries.

243. Applicants usually originate from the same countries as those applying to the Brussels Tribunal. The position of the Antwerp Crown Prosecutor's Office on Palestinians from Lebanon and Syria has been constant: the exclusion clause in the 1954 Convention is interpreted restrictively, as the question of whether or not the applicant is receiving protection or assistance from another UN agency is assessed at the time of the application. Concretely, this means that if a Palestinian introduces an application in Belgium, it will be examined. The Crown Prosecutor's Office further argues that since Palestinians from Lebanon and Syria are not granted the nationality of either of these countries because they are considered to be "Palestinian" by most Arab countries, a positive opinion must be issued as regards their applications for recognition as stateless. The position on Palestinians from the Occupied Palestinian Territories has evolved and is currently similar to that regarding Palestinians from Lebanon and Syria. By contrast, a negative opinion was always given as regards ethnic Albanians from Kosovo, both before and after Belgium's recognition of Kosovo as an independent state. This was because the Prosecutor's Office was of the view they could not prove that they could not possess the nationality of Serbia and Montenegro.

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211 For more information see below paras 265–271.

212 For more information see also below para. 270.

213 Kazakhstan, Law No. 1017-XII of 20.12.91 of the Republic of Kazakhstan, On Citizenship of the Republic of Kazakhstan (last amended 2002), 1 March 1992, available at http://www.unhcr.org/refworld/docid/3ae6b56a14.html, Article 21(4), depriving persons residing permanently outside Kazakhstan of nationality if they have not registered with the consulate for three years.

214 See above para. 226 and below para. 294.

215 See below para. 244.

244. The Antwerp Court of Appeal, which examines appeals from five Tribunals of First Instance, has adjudicated relatively few cases. From 1999 to 2005, there was a maximum of five cases per year. Although 12 appeals were made in 2006, the number has since decreased.[216] The Court does not usually take more than a year to issue its decision and sometimes a decision is taken within three months. The profiles identified in paragraph 234 above are also found before the Antwerp Court of Appeal, namely appellants from Yugoslavia/Serbia/Montenegro, the former Soviet Union and Palestinians from Lebanon. The majority of appeals made by Palestinians from Lebanon are accepted, as the Court acknowledges that Palestinian nationality is not recognized, that the appellants cannot acquire Lebanese nationality, and that they no longer enjoy UNWRA's protection.

245. Regarding the other profiles, the Court used to reject appeals, finding that appellants had not proved that they could not obtain a nationality. This appears to have changed after the 2007 Court of Cassation's decision overruling the Antwerp Court's refusal to recognize the applicant as stateless, arguing that even though it could not be confirmed that she had Georgian nationality,[217] she had not proved that she could not acquire Georgian nationality. The Court of Cassation therefore held that it was not necessary for the applicant to prove she could not acquire another nationality for her to be recognized as stateless.

5.4.2.3 Ghent

246. The Ghent Court of Appeal has rejected several requests for recognition as stateless in the last few years, mainly due to a lack of proof that the individuals concerned no longer possessed the nationality of their country of origin. In one case concerning an applicant from the former Soviet Union (from what is now Kazakhstan), time was given for the applicant to produce proof of registration of loss of nationality, which could have been obtained from the Kazakh Consulate. The Court of Appeal rejected the application, noting that the applicant had not undertaken any measures in that respect and concluded that the loss of Kazakh nationality had not been evidenced.[218]

247. In another case concerning an applicant born in Georgia who had acquired Russian nationality and a passport after the break-up of the former Soviet Union, the Tribunal of First Instance of Bruges had ruled that since his passport was valid for five years, the applicant had lost his nationality when the passport expired. However, the Court of Appeal in Ghent judged that the expiry of the passport did not entail loss of nationality and that since the applicant had not demonstrated how he had lost this nationality, he could not be recognized as stateless.[219]

5.4.2.4 Namur

248. The situation in Namur is quite specific. The vast majority of applicants between 2005 and 2009 were from Kosovo (around 100 per year). Until Belgium's recognition of Kosovo's independence in 2008, the Crown Prosecutor's Office systematically issued a negative opinion. It argued that applicants were legally in possession of a nationality, recognizing that the Embassy of Serbia and Montenegro did not readily give identity documents to persons originating from Kosovo. Despite these negative opinions, the judge automatically recognized these applicants from Kosovo as stateless and the decision would then systematically go to appeal, where the Liège Court of Appeal would quash the recognition. Since the Belgian recognition of Kosovo's independence, the judge no longer recognizes persons originating from Kosovo as stateless and the Tribunal now receives almost no applications for recognition as stateless, whether from individuals from Kosovo or elsewhere.

249. As for the Brussels and Antwerp tribunals, the Crown Prosecutor's Office said that it always asks for the advice of the Aliens Office and the CGRS, notably as regards the situation in the country of origin, the date of arrival in Belgium, and information on identity documents.

5.4.2.5 Bruges

250. The Bruges Tribunal of First Instance has not had to pronounce on many applications for recognition as stateless in the last few years. Indeed, there were only two judgments between 2008 and 2010. The Tribunal did, however, see an increase in applications from 2005 to 2007, when it delivered around 10 judgments per year.

251. In 2005 and 2007, the majority of applicants were ethnic Albanians from Kosovo, who were all refused recognition as stateless, as the Tribunal held that they still were in possession of their Serbian nationality. In 2006, two Palestinians and one applicant from Kazakhstan were recognized as stateless, the Tribunal noting that they had no nationality and that they could not obtain the nationality of the country with which they had ties.

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216 There were six appeals in 2007, seven in 2008, three in 2009, and two in 2010.

217 Belgium, Court of Cassation, 27 September 2007, No. C.06.0391.N, *Revue du droit des étrangers,* No. 146, 2007 (in Dutch). See also below para. 264.

218 Belgium, Court of Appeal Ghent, 29 April 2010, No. 2007/AR/2516, unpublished (in Dutch).

219 Belgium, Court of Appeal Ghent, 19 June 2008, No. 2006/AR/816, unpublished (in Dutch).

252. In 2006, the Tribunal also recognized as stateless an applicant born to Bhutanese parents of Nepalese origin. Although the Tribunal noted that the applicant would have been Bhutanese at birth according to Article 2 of the 1985 Bhutanese Citizenship Act, it highlighted that Article 6 of the same Act prescribes that a nationality acquired by this means would be lost if the person left the country without the authorities' knowledge and was not included in the National Register.[220] The Tribunal stated that it was practically impossible for the applicant to obtain proof from the Bhutanese authorities that he did not appear in the Nationality Register. It therefore concluded that, since the Bhutanese authorities did not allow ethnic Nepalese who had left the country to return to the territory because they considered that they did not have Bhutanese nationality, his statelessness was proven.

5.4.2.6 Other tribunals

253. The Mons Tribunal of First Instance explained that it had very few cases on this issue and that the Crown Prosecutor's Office systematically asked for the advice of the Aliens Office and the CGRS. The Termonde Tribunal does not keep track of applications to be recognized as stateless and was unable to provide further information. Queries made to the Liège and Ghent tribunals remained unanswered.

5.4.3 The interpretation of specific aspects of the statelessness definition

254. As already highlighted, there is no specific legislation in Belgium on statelessness. In addition, neither the 1980 Aliens Act nor the Belgian law on nationality provides a definition of statelessness. The definition applied is thus that contained in the 1954 Convention, ratified by Belgium.

255. Article 1 of the 1954 Convention provides the definition of a stateless person (see also on this topic above Chapter 1, paragraphs 12–17):

> "1. For the purpose of this Convention, the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law.
>
> "2. This Convention shall not apply:
>
> (i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;
>
> (ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;
>
> (iii) To persons with respect to whom there are serious reasons for considering that:
>
> (a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
>
> (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
>
> (c) They have been guilty of acts contrary to the purposes and principles of the United Nations."

256. In the two subsections which follow, relevant jurisprudence gathered regarding specific aspects of the statelessness definition shows diverging practice, first, regarding the factual character of the definition and, second, regarding the exclusion clauses.

5.4.3.1 The factual evaluation of who fulfils the statelessness definition

257. With regard to the inclusion element of the statelessness definition in Article 1(1), the situation of individuals who have voluntarily renounced their nationality and so find themselves without a nationality in Belgium is an issue of concern. In this context, the Prato Summary Conclusions note: "The definition in Article 1(1) refers to a factual situation, not to the manner in which a person became stateless. Voluntary renunciation of nationality does not preclude an individual from satisfying the requirements of Article 1(1) as there is no basis for reading such an implied condition to the definition of stateless person."[221]

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220 Bhutan, Citizenship Act, 1985, 10 June 1985, available at http://www.unhcr.org/refworld/docid/3ae6b4d838.html.

221 UNHCR, Prato Summary Conclusions, above note 11, para. 20.

258. UNHCR's 2012 Guidelines on Statelessness No. 1 similarly affirm:

> An individual's nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process for acquiring nationality but those procedures are yet to be completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention. Similarly, where requirements or procedures for loss, deprivation or renunciation of nationality have only been partially fulfilled or completed, the individual is still a national for the purposes of the stateless person definition.
>
> "… The treaty's object and purpose, of facilitating the enjoyment by stateless persons of their human rights, is equally relevant in cases of voluntary as well as involuntary withdrawal of nationality. Indeed, in many cases the renunciation may have pursued a legitimate objective, for example the fulfilment of conditions for acquiring another nationality, and the individual may only have expected a very short spell as stateless. The question of an individual's free choice is not relevant when determining eligibility for recognition as stateless under Article 1(1); it may, however, be pertinent to the matter of the treatment received thereafter. …"[222]

259. Thus the assessment does not as such concern the search for a solution to that situation, which might be acquiring or re-acquiring another nationality. As UNHCR has noted: "Efforts to secure admission or readmission [to another state] may be justified but these need to take place subsequent to a determination of statelessness."[223]

260. In Belgium, different tribunals have adopted different approaches. Some have adopted a factual approach in determining statelessness. For instance, in a 1996 judgment concerning a person of Romanian origin who had voluntary renounced her nationality, the Antwerp Tribunal of First Instance took note of a certificate issued by the Romanian Embassy confirming this renunciation.[224] It concluded that the applicant no longer had a nationality, that she thus fulfilled the definition in the 1954 Convention and should be recognized as stateless. It did not consider the question of the possible responsibility of the applicant in creating her statelessness.

261. Other judges have, however, taken a different approach, deciding not to recognize applicants who had voluntarily rendered themselves stateless. In another case in Antwerp, the judge held that recognition as stateless was exceptional and only intended for those who found themselves involuntarily denied a nationality.[225] Similarly, a judge in Tongres followed the opinion of the Crown Prosecutor's Office that had concluded that someone who had voluntarily lost his Turkish nationality could not be recognized as stateless.[226]

262. Lastly, some judges recognize that a person is stateless only if he or she has a well-founded reason to refuse to take the necessary steps to obtain or regain a nationality. The Liège Tribunal of First Instance decided along these lines in 2007, holding that, at the very least, the host must be able to recognize as valid the reasons why someone has renounced the protection of a country of which he or she was a national and that a mere choice guided by personal convenience of the applicant cannot suffice.[227] The Liège Court of Appeal had further ruled that it could not reasonably be argued that the 1954 Convention aimed to protect individuals who voluntarily refuse to acquire or recover the nationality of a state with which they have one or more ties and as regards which they have no fear, with the sole objective of acquiring a similar status to that of nationals of a country of their choice.[228]

263. The Court of Cassation, by contrast, took a different position in 2008, holding that "neither Article 1(1) of the 1954 Convention, which refers to the objective power of every state to determine in legislation who are its nationals, nor any other provision, permit states to refuse an alien recognition as stateless on the ground that they have not undertaken the measures needed to regain a nationality they have lost, even if they have voluntarily renounced it".[229]

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222 UNHCR Guidelines on Statelessness No. 1, above note 10, paras 43–44.

223 UNHCR Guidelines on Statelessness No. 2, above note 195, para. 64.

224 Belgium, Tribunal of First Instance Antwerp, 25 November 1996, *Rechtskundig Weekblad,* 1997, p. 190 (in Dutch).

225 Belgium, Tribunal of First Instance Antwerp, 20 November 1998, No. 96/10826/A, unpublished, mentioned in Stad Gent, *Staatlozen: nergens en nooit onderdaan, overal en altijd vreemdeling,* Ghent: Stad Gent, 2007, p. 23 (in Dutch).

226 Belgium, Tribunal of First Instance Tongeren, 15 November 2006, No. AR 06/820/B, unpublished, ibid., p. 23 (in Dutch).

227 Belgium, Tribunal of First Instance Liège, 13 March 2007, No. 2006/RF/38, unpublished (in French).

228 Belgium, Court of Appeal Liège, 13 June 2006, reference unknown (in French). The case was mentioned in a confidential report shared by CGRS.

229 Belgium, Court of Cassation, 6 June 2008, No. C.07.0385.F, available at http://www.unhcr.org/refworld/pdfid/499154412.pdf (in French) and http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20080606-4 (in Dutch). The Court ruled that neither Article 1(1) of the 1954 Convention, "qui se réfère au critère objectif du pouvoir de chaque Etat de déterminer par sa législation quels sont ses nationaux, ni aucun autre ne permet de refuser à un étranger la qualité d'apatride au motif qu'il n'a pas accompli les démarches devant lui permettre de recouvrir une nationalité qu'il a perdu, fût-ce parce qu'il y a renoncé" (in French) and "die verwijst naar het objectieve criterium van de bevoegdheid van elke Staat om via zijn wetgeving te bepalen wie zijn onderdanen zijn, noch uit enige andere kan de mogelijkheid worden afgeleid om aan een vreemdeling de hoedanigheid van staatloze te weigeren op grond dat hij niet de stappen heeft ondernomen om een nationaliteit die hij verloren was terug te krijgen, zelfs niet omdat hij ze heeft verzaakt" (in Dutch).

This approach is in line with that of UNHCR, as explained above. By contrast, some Crown Prosecutors said in interview that they would never give a favourable opinion to an applicant who had voluntarily lost his or her nationality, despite the Court of Cassation ruling.

264. An earlier Court of Cassation ruling of 2007 held that it was also not necessary for the applicant to prove that she could not acquire another nationality for her to be recognized as stateless.[230] This is in line with UNHCR's approach that views the assessment as neither a historic nor a predictive exercise. By contrast, the Antwerp Court of Appeal had not recognized the applicant as stateless, arguing that even though it could not be confirmed that she had Georgian nationality, she had not proved that she could not acquire Georgian nationality.[231]

5.4.3.2 The application of the exclusion clauses

265. Article 1(2) of the 1954 Convention sets out the circumstances which exclude individuals from its benefits.[232] These are referred to as the "exclusion clauses". They apply to individuals who are considered not to be in need, or not deserving, of international protection, even if they are stateless. For the most part, the wording of these exclusion clauses is very similar to those contained in Articles 1D, 1E and 1F of the 1951 Refugee Convention and their interpretation can usefully draw on that of these Articles. Like the exclusion clauses of the latter Convention, these clauses are listed exhaustively and should therefore be applied in a restrictive manner, with great caution, and only after a full assessment of the individual circumstances of the case.[233]

266. Two of the three clauses in Article 1(2) are worth mentioning in the Belgian context. The first clause concerns persons who "are at present receiving protection or assistance" from organs or agencies of the United Nations other than UNHCR. The second concerns persons "with respect to whom there are serious reasons for considering that … they have committed a serious non-political crime outside the country of their residence prior to their admission to that country".

267. The first issue concerns the interpretation of Article 1(2)(i) referring to "protection or assistance" being received from organs or agencies of the UN other than UNHCR, notably in the context of Palestinians seeking recognition as stateless. Persons receiving such protection or assistance can benefit from the protection of neither the 1951 Refugee Convention nor the 1954 Statelessness Convention as long as the assistance of the UN agency in question has not ceased. To determine the extent of this exclusion it is therefore important to define those falling under UNRWA's mandate. Created in 1949 to assist Palestinians displaced as a result of the 1948 Arab–Israeli conflict, UNRWA's mandate was later expanded to include Palestinians displaced from the 1967 Arab–Israeli conflict. UNRWA's area of operations is currently limited to the Occupied Palestinian Territories, Jordan, Syria, and Lebanon. It is only there that UNRWA provides protection or assistance.[234]

268. In the refugee context, persons falling within the scope of Article 1D are automatically entitled to the benefits of the 1951 Convention, provided that Articles 1C, 1E or 1F of the 1951 Convention do not apply. This is clear from the wording of paragraph 2 of Article 1D, which provides for an ipso facto entitlement when such protection or assistance has ceased for any reason. One question that must be assessed in determining whether an individual falls within the regime created by Article 1D is therefore whether the protection or assistance of UNRWA has ceased? It could not be said that protection or assistance has ceased if a refugee is able to re-avail of that protection or assistance. To assess whether this would be possible, it would then be necessary to determine whether the individual concerned could return (for instance, whether travel documentation would be made available and whether the person would be readmitted) and whether he or she would be safe and not encounter other protection problems if able to return.[235]

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230 Belgium, Court of Cassation, 27 September 2007, No. C.06.0391.N, *Revue du droit des étrangers,* No. 146, 2007 (in Dutch). See also above para. 245.

231 Belgium, Court of Appeal Antwerp, 18 January 2006, case number unknown, unpublished (in Dutch).

232 See above para. 255 for the full text of Article 1(2).

233 See in relation to the corresponding provisions in the 1951 Refugee Convention, UNHCR, Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, 4 September 2003, HCR/GIP/03/05, available at http://www.unhcr.org/refworld/docid/3f5857684.html, para. 2.

234 In this context, the Brussels Appeal Court recognized as stateless a man who had been born in Qatar to a Palestinian father and had subsequently lived in Egypt and other countries outside the Middle East, on the grounds that he was unable to obtain either the nationality of his country of birth or other subsequent countries of residence and that, although Palestinian, he had not lived in any of the countries of operation of UNRWA. See Belgium, Court of Appeal Brussels, 31 March 2000, No. RG 1994/AR/2238, available at http://www.unhcr.org/refworld/docid/5065d10c2.html.

235 See generally in relation to the corresponding provisions in the 1951 Refugee Convention, UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/1P/4/ENG/REV. 3, available at http://www.unhcr.org/refworld/docid/4f33c8d92.html (in English and French), para. 143; UNHCR, Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, October 2009, available at http://www.unhcr.org/refworld/docid/4add77d42.html.

269. It should be noted that the most significant difference between the exclusion clauses of the 1951 and 1954 Conventions is that there is no equivalent of the second paragraph of Article 1D of the 1951 Refugee Convention in Article 1(2)(i) of the 1954 Convention. The latter simply states that the Convention shall not apply to persons at present receiving protection or assistance from agencies such as UNRWA "so long as they are receiving such protection or assistance". By contrast, the former specifies further: "When such protection or assistance has ceased for any reason, without the position of such person having been definitively settled … these persons shall *ipso facto* be entitled to the benefits of this Convention."

270. The situation of Palestinians claiming to be stateless has been assessed by a number of Belgian tribunals. One interesting judgment was delivered by the Court of Cassation in 2009 regarding the interpretation of the exclusion clause provided in Article 1(2)(i) of the 1954 Convention in the case of a Palestinian from Lebanon.[236] The Court ruled that when a Palestinian refugee has left a territory covered by UNRWA's mandate, he or she no longer enjoys the protection or assistance of the agency and cannot thus be excluded from the application of the 1954 Convention on the grounds that his or her stay in Belgium is temporary. The judgment by the lower Brussels Court of Appeal had held that, having arrived from Lebanon, his stay in Belgium was only temporary and limited to the duration of his studies, with the result that in its view this did not end his right to benefit from UNRWA's assistance upon his return to Lebanon after finishing his studies. He had thus been excluded from the application of the 1954 Statelessness Convention under Article 1(2)(i).

271. The jurisprudence gathered in the overview of statelessness determination in several tribunals[237] seems to be in agreement with the interpretation of the Court of Cassation.

272. The second issue concerns the interpretation of Article 1(2)(iii) of the 1954 Convention, especially the sub clauses (a) and (b) referring to "serious reasons for considering" that an applicant has "committed crime against peace …." and "a serious non-political crime outside the country of their residence prior to their admission to that country".

273. As the consequences of these exclusions are severe, they ought to be interpreted in a restrictive manner. Belgian senators had actually expressed this concern during the *travaux préparatoires* to the Act approving the 1954 Convention, highlighting that this exclusion was "highly arguable", given its vague character. The Senate therefore considered that it would have been preferable to draft the text with more precision.[238]

274. Two cases came to light in the course of the research.

275. In one case, an applicant seeking recognition as stateless who had been deprived of his Turkish nationality for reasons linked to public order was found not to fall under the exclusion clauses of the 1954 Convention. He was of Kurdish origin and had refused to perform his military service in the Turkish army, which was interpreted as threatening public order.[239] It should be noted, however, that a threat to public order does not feature among the grounds for exclusion set out in Article 1(2)(iii) of the 1961 Convention.

276. In another case, however, a judge refused to recognize an applicant as stateless in the light of information received from the Aliens Office which had revealed that he had been convicted of drug trafficking.[240] This was considered by the judge to constitute a serious non-political crime, thus excluding the applicant from the 1954 Convention. From the information available it is not, however, clear whether what was considered to be a serious non-political crime was committed prior to his admission to Belgium. Depending on the answer to this question and on the seriousness of the offence, the interpretation provided in the latter case may or may not be a source of concern, as it might (or might not) go beyond the text of Article 1(2)(iii)(b).

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236 Belgium, Court of Cassation, 22 January 2009, No. C.06.0427.F, available at http://www.unhcr.org/refworld/docid/4a26475f2.html (in French) and http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20090122-11 (in Dutch). See also above para. 239.

237 See above Section 5.4.2 "An overview of tribunal practice in determining statelessness".

238 Belgium, Senate, *Projet de loi portant approbation de la Convention relative au statut des apatrides et annexes, signées à New York le 28 septembre 1945,* Doc. Parl. Sénat 1959–1960, session of 17 March 1960, No. 224, pp. 3, 199 (in French). See also Saroléa, S., "L'apatridie: Du point de vue interétatique au droit de la personne", *Revue du droit des étrangers,* 1998, No. 98, p. 199.

239 Belgium, Tribunal of First Instance Brussels, 8 April 1998, *Revue du droit des étrangers,* 1998, p. 231 (in French). It

240 Belgium, Court of Appeal Antwerp, 2 June 2004, unpublished but mentioned in Vandervoort, L., "De staatloze in Belgie: op zoek naar een status met rechten en plichten" (The Stateless in Belgium: Searching for a Status with Rights and Obligations), *Tijdschrift voor Vreemdelingenrecht,* No. 4, 2007, p. 252 (in Dutch).

5.4.4 The standard and burden of proof

277. As UNHCR's Guidelines on Statelessness No. 2 states, the definition of statelessness in Article 1(1) of the 1954 Convention

> "requires proof of a negative – that an individual is not considered as a national by any State under the operation of its law. This presents significant challenges to applicants and informs how evidentiary rules in statelessness determination procedures are to be applied."[241]

5.4.4.1 The standard of proof

278. With regard to the standard of proof or threshold of evidence necessary to determine statelessness, it is stated in the Guidelines that this "must take into consideration the difficulties inherent in proving statelessness, particularly in light of the consequences of incorrectly rejecting an application".[242] The UNHCR Geneva Summary Conclusions likewise affirms:

> "Determination procedures should adopt an approach to evidence which takes into account the challenges inherent in establishing whether a person is stateless. The evidentiary requirements should not be so onerous as to defeat the object and purpose of the 1954 Convention by preventing stateless persons from being recognized."[243]

279. UNHCR therefore advises states "to adopt the same standard of proof as that required in refugee status determination, namely, a finding of statelessness would be warranted where it is established to a 'reasonable degree' that an individual is not considered as a national by any State under the operation of its law".[244]

280. In this context, the Brussels Court of Appeal, in a judgment delivered on 27 April 1995, affirmed that applicants seeking recognition as stateless should be accorded the benefit of the doubt if the Court is satisfied that their explanations do not appear to be devoid of credibility.[245]

281. With regard to the states from which an applicant needs to provide evidence of lack of nationality, UNHCR indicates that the enquiry into whether someone is stateless should be "limited to the States with which a person enjoys a relevant link, in particular by birth on the territory, descent, marriage, or habitual residence. In some cases this may limit the scope of investigation to only one State (or indeed to an entity which is not a State)."[246] A finding of statelessness arrived at on that basis should stand unless the determining authority can point to "clear and convincing evidence that the individual is a national of an identified State".[247]

282. In Belgium, it is accepted that proof should be limited to those countries with which the applicant has "close ties". This concept was set out in a 1994 judgment of the Ghent Tribunal of First Instance. The Tribunal held that it must in particular examine whether the applicant possesses the nationality of his or her place of birth, that of his or her parents, his or her spouse, or his or her place of residence.[248]

283. There is, however, no clear consensus as to which documents constitute sufficient proof for the applicant to be recognized as stateless. In the case of a young Afghan who had lived in Iran for most of his life, the Antwerp Tribunal of First Instance was presented with a certificate from each country's embassy stating that he was not a national of that country, but these were not deemed to have sufficiently convincing elements to clear doubts about the applicant's date of birth, which might have been able to help clarify his identity and nationality. In Bruges, presenting documents from relevant foreign embassies used to be enough for the judge to assess the case, but, according to one lawyer, recent practice shows that it is now necessary to provide copies of applicable foreign legislation in the original language, which slows down the procedure.

284. Lawyers will usually assess the countries with which their client has possible ties and will produce legislation from these countries regarding nationality, as well as documents proving their client's identity. If available, they will also add answers received from the embassies and testimonies from others.

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241 UNHCR Guidelines on Statelessness No. 2, above note 195, para. 36.

242 Ibid., para. 39.

243 UNHCR, Geneva Summary Conclusions, above note 195, paras 4–18.

244 UNHCR, Guidelines on Statelessness No. 2, above note 195, para. 39, referring also to UNHCR, Handbook and Guidelines on Procedures and Criteria, above note 235, para. 42.

245 Belgium, Court of Appeal Brussels, 27 April 1995, *Revue du droit des étrangers,* 1995, p. 308 (in French).

246 UNHCR, Guidelines on Statelessness No. 1, above note 10, para. 11.

247 UNHCR, Guidelines on Statelessness No. 2, above note 195, para. 40. This paragraph goes on to state that "Such evidence of nationality may take the form, for example, of written confirmation from the competent authority responsible for naturalization decisions in another country that the applicant is a national of that State through naturalization or information establishing that under the nationality law and practice of another State the applicant has automatically acquired nationality there."

248 Belgium, Tribunal of First Instance Ghent, 24 November 1994, *Tijdschrift voor Vreemdelingenrecht,* 1995, p. 284 (in Dutch).

5.4.4.2 The burden of proof

285. As with the standard of proof, the question of who bears the burden of proof in establishing statelessness needs to take into account the challenges involved in proving lack of nationality. UNHCR's Guidelines on Statelessness No. 2 state that when determining statelessness,

> "the burden of proof is in principle shared, in that both the applicant and examiner must cooperate to obtain evidence and to establish the facts. The procedure is a collaborative one aimed at clarifying whether an individual comes within the scope of the 1954 Convention. Thus, the applicant has a duty to provide as full and truthful account of his or her position as possible and to submit all evidence reasonably available. Similarly, the determination authority is required to obtain and present all relevant evidence reasonably available to it, enabling an objective determination of the applicant's status. This non-adversarial approach can be found in the practice of a number of States that already operate statelessness determination procedures."[249]

286. This approach is similar to that adopted by the Brussels Court of Appeal in its 1995 judgment referred to in paragraph 280 above. This held that if it was for the individual seeking recognition as stateless to prove his or her statelessness, all parties involved must collaborate fairly in the administration of this proof.[250] In that particular case, the applicant, who had been born in a Palestinian refugee camp in Gaza, contended that he had never had a nationality. The court found that his explanations did not appear to be devoid of credibility and that the Belgian state had not put forward any element capable of establishing their accuracy, even though it had the necessary means of investigation to determine a possible tie to a specific country. The court thus recognized the applicant as stateless.

287. Despite this judgment of the Brussels Court of Appeal, the research shows that in practice the burden of proof lies almost entirely with the applicant. This can prove problematic when contacting the embassies or consulates to obtain certificates stating that they are not the national of a given country, as embassies frequently do not respond to applicants' queries.

288. One issue that emerged from participants' testimonies and interviews with stakeholders is the apparent reluctance of consular authorities to engage with individuals' requests to be documented and treated as a national, and/or to state in writing their conclusions as to whether or not the individual making the approach is a national. This reluctance or refusal to engage or respond in writing appears to be a particular problem where the participants themselves approached consular authorities.[251] That said, this may also be the case if the Belgian authorities make direct contact with the relevant consular authority. The challenges faced with regard to consular authorities have also been observed in similar studies covering other countries.[252]

289. In this regard, lawyers notably believe that a more active role could be assumed by the Crown Prosecutor's Office. They suggest, for example, that the Crown Prosecutors could also get in touch with embassies to establish for themselves any lack of cooperation on an embassy's part. This would also enable the Crown Prosecutor's Office to better assess the validity of the documents gathered by the applicant.

290. In this context, it should be remembered that states must ensure that confidentiality requirements are upheld in statelessness determination procedures if an individual is also seeking asylum or has been recognized as being in need of international protection. In such cases the "identity of a refugee or an asylum-seeker must not be disclosed to the authorities of the individual's country of origin" and, if need be, refugee status determination should proceed and consideration of the statelessness claim be suspended.[253]

291. The challenges in trying to establish an entitlement to nationality or consular protection are illustrated by the situation of Gabir, Anil, and Tamanna (participants nos. 3, 7, and 13).[254] They are also acknowledged in the UNHCR Geneva Summary Conclusions, in which it is stressed that

> "flexibility may be necessary in relation to the procedures or making contact with foreign authorities to confirm whether or not an individual is its national. Some foreign authorities will only accept inquiries that come directly from another State while others are only open to contact from individuals."[255]

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249 UNHCR, Guidelines on Statelessness No. 2, above note 195, para. 37.

250 Belgium, Court of Appeal Brussels, 27 April 1995, *Revue du droit des étrangers,* 1995, p. 308 (in French).

251 Participants Nos. 3, 7, 13.

252 A similar situation is observed in the UK. See UNHCR, *Mapping Statelessness in the United Kingdom,* p. 84.

253 UNHCR, Guidelines on Statelessness No. 2, above note 195, para. 27.

254 See their stories after paras 229, 40, and 514 respectively.

255 UNHCR, Geneva Summary Conclusions, above note 195, para. 18.

5.5 Establishing a formal statelessness determination procedure: debate on the competent authority and the 2011 governmental agreement

292. The Belgian federal government expressly committed in December 2011 to setting up a dedicated statelessness determination procedure and confirmed its willingness to give competence for determining statelessness to the CGRS.[256] This commitment had already been made in the federal government agreement of 18 March 2008,[257] but had not been implemented. UNHCR welcomes this renewed governmental commitment.

293. There still appear to be varying views as to which authorities should in future be competent for determining statelessness, whether at first instance or appeal. These different views are set out below, in the hopes that this will support a full resolution of the debate and the establishment of a dedicated statelessness procedure.

294. At present, as already mentioned, the Crown Prosecutor's Office appears generally to seek the advice of the administrative authorities regarding statelessness applications.[258] All four Deputy Crown Prosecutors[259] the researchers met within the framework of this research felt that the recognition of statelessness should not be dealt with by the tribunals, as they lack expertise on the very specific and often complex issue of statelessness. This view has also been expressed by at least one judge. The judiciary's apparent lack of expertise on the very specific and often complex issue of statelessness was also reflected in the situation of a young man of Afghan origin, as described in paragraph 187 above.

295. As for the CGRS, this independent administrative authority established in 1988 is thus far only competent to recognize refugee status or to grant subsidiary protection to persons seeking asylum. Its role regarding statelessness is limited to delivering to recognized stateless persons civil status documents they cannot otherwise obtain, such as birth or marriage certificates, as well as a stateless person certificate when they present a positive decision of the Tribunal of First Instance confirming their statelessness.

296. Those in favour of giving competence to the CGRS to deal with the recognition of statelessness, as the federal governmental agreement states, refer to its expertise in asylum matters and regarding countries of origin. Furthermore, they argue that granting this competence to one central authority rather than the 27 tribunals would allow for more consistent interpretation and thus greater clarity and legal security.

297. Others argue that there are constitutional obstacles to this proposal. Indeed, under Articles 144 and 145 of the Belgian Constitution, "disputes about civil rights belong exclusively to the courts". Unlike disputes about political rights, they cannot be subject to a derogation allowed by law (which would allow administrative bodies to be competent). Since recognition of statelessness touches on nationality and personal status, those holding this view believe it falls more within the sphere of civil than political rights.

298. In this context, it is interesting to note that the situation is different for asylum-seekers, whose status is determined by the CGRS. In a leading judgment, the Constitutional Court held in 1997 that when a state authority rules on the recognition of refugee status, bearing in mind the consequences of this decision as regards the right to stay in Belgium, the CGRS is acting in the exercise of a function which is so connected with public power prerogatives that it falls outside the sphere of disputes of a civil nature foreseen in Article 144 of the Constitution. It therefore held

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256 Belgium, Governmental Agreement, 1 December 2011, available at http://www.premier.be/sites/all/themes/custom/tcustom/Files/Accord_de_Gouvernement_1er_decembre_2011.pdf (in French) and http://www.premier.be/sites/all/themes/custom/tcustom/Files/Regeerakkoord_1_december_2011.pdf (in Dutch), which reads, "The Government will put in place a procedure for the Commissioner General for Refugees and Stateless Persons to determine statelessness. Recognition of statelessness will in principle result in the delivery of a (temporary) residence permit." ("Le Gouvernement mettra en place une procédure de reconnaissance du statut d'apatride via le Commissariat Général aux Réfugiés et aux Apatrides. La reconnaissance du statut d'apatride aura en principe pour conséquence la délivrance d'un titre de séjour (temporaire)" (in French at p. 134). "De regering zal een procedure instellen voor de erkenning van de status van staatloze via het Commisariaat-Generaal voor de Vluchtelingen en de Staatlozen. De erkenning van de status van staatloze zal in principe tot gevolg hebben dat een (tijdelijke) verblijfsvergunning wordt afgegeven. België zal het Verdrag van 1961 tot beperking van staatloosheid ratificeren" (in Dutch at p. 135).

257 Belgium, Governmental Agreement Concluded between the Negotiators of the Cd&V, MR, PS, Open VLD, CdH, 18 March 2008, p. 35, available at http://www.fedweb.belgium.be/fr/binaries/accord_gouvernement180308_tcm119-14855.pdf (in French) and http://www.fedweb.belgium.be/nl/binaries/regeerakkoord180308_tcm120-14855.pdf (in Dutch), "The Government will put in place a procedure for the grant of stateless status by the Commissioner General for Refugees and Stateless Persons. Recognition as stateless will in principle result in a right to (temporary) residence." ("Le Gouvernement mettra en place une procédure d'octroi du statut d'apatride par le Commissariat général aux réfugiés et aux apatrides. La reconnaissance en tant qu'apatride donnera en principe lieu à un droit de séjour (temporaire).")

258 See also above para. 226.

259 Two were met in Brussels, one in Antwerp, and one in Namur.

that a question regarding refugee status is one that deals with a political right.[260] As a result, the Court found that the Constitution allows derogation of this competence from the judiciary to an administrative body.

299. By contrast, some argue that since no right to stay is automatically attached to recognition as stateless, the same reasoning cannot be applied in the context of statelessness. They argue that, unlike refugees, stateless persons should seek recognition before the tribunals and courts.

300. A key element to be taken into consideration is that Articles 144 and 145 deal only with disputes, that is, contentious matters. However, the examination of, and decision on, a statelessness claim at first instance is not a contentious issue at that stage. The CGRS therefore argues that the uncertainty as regards the nature of the right to be recognized as stateless is not an obstacle to giving competence to an administrative authority to determine statelessness at first instance.

301. Some lawyers nevertheless fear that giving competence to an administrative authority would no longer allow for an adversarial process. In the current procedure, the applicant can respond to the Crown Prosecutor's opinion and submit his or her response to the judge at first instance. In an administrative procedure such as that before the CGRS, the applicant's response would be possible only after a first decision had already been made, as it would be only then that the applicant was informed of the administrative authority's arguments in reaching a particular conclusion. Responding to these conclusions would oblige the applicant already to have appealed the decision. There are benefits to a more collaborative approach with efforts to establish an individual's nationality more effectively shared at least at the stage of the initial decision, as set out by UNHCR. This would also help reach a solution for the person concerned, including the possibility of return to the country of nationality for people who can be confirmed as possessing the nationality, and enjoying the protection of, another state.

302. Deciding whether the determination of statelessness enables the exercise of a civil or a political right becomes decisive at the appeal stage. It affects whether competence to adjudicate litigation in statelessness cases should remain with the civil tribunals and courts or be transferred to the appellate body of the CGRS, the CALL, in addition to its competence regarding litigation related to the recognition of refugee status and the granting of subsidiary protection. In this context, the CALL ruled in June 2010 that it

> "does not have competence to adjudicate disputes relating to civil rights or to adjudicate disputes relating to political rights that the legislator has not expressly attributed to it. Disputes concerning someone's nationality not being a political right that the legislator has taken away from the courts and tribunals, the Council does not have competence to determine the nationality of an asylum-seeker, whether this be to decide which nationality he or she possesses, whether he or she has several or whether he or she is stateless."[261]

303. Neither jurisprudence nor doctrine has thus far provided a final answer on the nature of the right. Indeed, it has also been suggested that the debate could be somewhat artificial and that the need is mainly for a political decision in this regard.

5.6 Conclusions and recommendations

5.6.1 Conclusions

304. The 1954 Convention establishes the international legal definition of a stateless person and enumerates the rights to which such individuals are entitled, but it is silent as to how stateless persons are to be identified. It is nevertheless implicit in the 1954 Convention that state parties, such as Belgium, must be able to identify stateless persons within their jurisdiction so as to ensure that they are able to enjoy the rights to which they are entitled and that state parties are able to comply with their convention commitments.[262]

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260 Belgium, Constitutional Court, 18 March 1997, No. 14/97, available at http://www.const-court.be/public/f/1997/1997-014f.pdf (in French) and http://www.const-court.be/public/n/1997/1997-014n.pdf (in Dutch); Saroléa, S., "La nature civile du droit des réfugiés en droit belge et au sens de la Convention européenne des droits de l'homme. Essai de définition et analyse des enjeux. L'arrêt de la Cour d'arbitrage du 18 mars 1997", *Revue belge de droit international,* 1996, pp. 633–670 (in French).

261 Belgium, CALL, No. 45.396, 24 June 2010, available at http://www.cce-rvv.be/rvv/index.php/fr/arresten/arresten-rvv?ordering=newest&searchphrase=all&areas[0]=Arresten-Arret&areas[rvvarrestnummer]=45396&Arresten_Arret=Arresten-Arret&rvvcritselect=op&rvvarrestnummer=45396, para. 6.3, in French: "Le Conseil est … sans juridiction pour connaître des contestations qui portent sur des droits civils ou encore pour connaître des contestations qui portent sur des droits politiques que le législateur ne lui a pas expressément attribuées. Les contestations portant sur la nationalité d'une personne n'ayant pas pour objet un droit politique soustrait par le législateur à la juridiction des cours et tribunaux, le Conseil est sans juridiction pour déterminer la nationalité du demandeur d'asile, qu'il s'agisse de décider quelle nationalité celui-ci -ci possède, s'il en a plusieurs ou s'il est apatride."

262 UNHCR Guidelines on Statelessness No. 2, above note 195, para. 1.

305. Despite the fact that Belgium has ratified the 1954 Convention, no specific legislation has so far been adopted in this regard and there is **no dedicated or centralized procedure allowing a stateless person to be identified.** Currently, the judiciary rather than the executive is competent in Belgium to determine statelessness. Persons seeking to be recognized as stateless must therefore apply to one of the 27 Tribunals of First Instance in the country, while an eventual appeal goes to one of the five Courts of Appeal. Applicants have access to this procedure irrespective of their migratory status in the country. Unlike asylum-seekers, however, they are not given a temporary legal residency status for the duration of the procedure.

306. No information is currently available at the national level regarding the number of applications a year for recognition as stateless, the origins of applicants, and decisions taken.

307. Looking at the practice and jurisprudence of the tribunals, key findings include the fact that applications for recognition as stateless are relatively infrequent. Applicants appear to originate mainly from the former Soviet Union, the former Yugoslavia, and Lebanon (Palestinians), with a few also originating from Bhutan.

308. **Practice seems to vary quite widely** among tribunals in the interpretation of the statelessness definition. The report's analysis of relevant jurisprudence raises questions regarding the factual character of the statelessness definition, since the Convention's object and purpose of facilitating the enjoyment by stateless people of their human rights is equally relevant in cases of voluntary renunciation and involuntary withdrawal of nationality. It does not as such concern the search for a solution to that situation, which might be acquiring or re-acquiring another nationality. In this context, some Crown Prosecutors appear to be reluctant to follow the June 2008 ruling by the Court of Cassation. This had determined that states could not refuse to recognize aliens as stateless on the grounds that they had not undertaken steps to regain a nationality they had lost, even if they had voluntarily renounced it.

309. The analysis also raises questions regarding the application of the exclusion clause in Article 1(2)(i) of the 1954 Convention. On this issue, the tribunals appeared generally to be in agreement with the January 2009 Court of Cassation ruling in a case concerning a Palestinian. This determined that when a Palestinian refugee has left a territory covered by UNRWA's mandate, he or she no longer enjoys the protection or assistance of the agency and cannot thus be excluded from the application of the 1954 Convention on the grounds that his or her stay in Belgium is temporary.[263]

310. In addition, varying standards of proof are applied and the applicant usually bears the burden of proof. At the same time, the task of the applicant is made more difficult by the fact that some consular authorities appear reluctant to engage with individuals' requests to be documented and treated as nationals, or to state in writing that they are or are not nationals.

311. Crown Prosecutors interviewed for the research said that the Crown Prosecutor's Office, which leads the public prosecution in the tribunals, systematically asks for the opinions of the Aliens Office and the CGRS. The duration of the procedure varies depending on the tribunal but seems generally to be long (in some instances two to four years). Requests for recognition as stateless appear not to be processed quickly in the Crown Prosecutors' Offices.

312. A variety of factors means that applicants seeking to be recognized as stateless frequently also seek asylum and/or regularization either sequentially or simultaneously. This may be because of the lack of rights accorded both to applicants in the statelessness procedure and to people recognized as stateless. It may also be because of a lack of information on the procedure, and a lack of counselling particularly by the authorities which come into contact with potentially stateless people. Applying to be recognized as stateless is often used, or perceived to be used, as a measure of last resort.

313. The process of applying for asylum, for recognition as stateless and/or for regularization, as many stateless people find themselves obliged to do, takes up time – sometimes many years of their lives – before they can hopefully eventually find a meaningful status and a durable solution.

314. The present procedure has been debated for several years and the federal government agreement of 1 December 2011 recently confirmed the government's willingness to give competence for determining statelessness to the CGRS.[264] Despite this welcome commitment there still appear to be varying views as to which authorities should in future be competent for determining statelessness. As set out above, these focus on the need for relevant expertise in nationality and statelessness matters, whether determination of statelessness relates to a civil or a political right, and which body should be competent for hearing appeals.[265]

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263 See above paras 239 and 270.

264 See above note 256.

265 See above section 5.5, "Establishing a formal statelessness determination procedure: debate on the competent authority and the 2011 governmental agreement".

5.6.2 Recommendations

315. In light of the current procedure to determine statelessness and of the government's pledge in December 2011 to put in place a dedicated procedure to determine statelessness, UNHCR makes the following recommendations to strengthen existing practice and ensure the fair and efficient determination of statelessness in Belgium both under existing arrangements and in the future.

6

It is recommended that an accessible, dedicated, fair, and efficient statelessness determination procedure in accordance with the 1954 Convention, interpreted on the basis of UNHCR Guidelines, be established. A dedicated procedure can better identify stateless persons, thereby allowing for better tailored protection measures, improving statistical awareness of the scope of the issue, and enhancing Belgium's ability to fulfil its obligations under the 1954 Convention.

7

It is recommended that one centralized, independent authority be appointed to determine statelessness, at least at first instance. This would help ensure transparency, develop specialization, and enable greater unity of decision-making. Such an authority should have expertise in statelessness and nationality matters as well as the required financial and staff resources.

8

It is recommended that determination of statelessness be made in accordance with UNHCR's February 2012 Guidelines on Statelessness No. 1 on the Definition of a "Stateless Person". Particular attention should be paid to respect for the factual character of the statelessness definition (in line with a Belgian Court of Cassation ruling of June 2008) and to the proper application of the exclusion clauses under Article 1(2) of the 1954 Convention (in line with a Belgian Court of Cassation ruling of January 2009).

9

It is recommended that the design and operation of such a procedure also take into consideration UNHCR's April 2012 Guidelines on Statelessness No. 2 on Procedures for Determining whether an Individual is a Stateless Person, the experience in other countries where stateless determination procedures exist, and UNHCR's expert roundtable discussions and conclusions in 2010–2011.

Key elements it would be important to incorporate into the new procedure are set out below. Pending the implementation of a new procedure some of them should also be implemented under the existing procedure.

10

The statelessness determination procedure should be a collaborative one, in that efforts to establish an individual's nationality could be more effectively shared between the applicant and the relevant Belgian authorities. It should give due consideration to the applicant's need to have access to the file at an early stage. This would also help reach a solution for the person concerned, including the possibility of return to the country of nationality for individuals who can be confirmed as possessing the nationality, and enjoying the protection of, another state.

11

The statelessness determination procedure should contain **procedural guarantees**, including access to free legal advice and the right to an effective remedy where an application is rejected. Other relevant procedural elements include:

(a) With regard to the **standard of proof**, the 1954 Convention requires a negative to be proven: that an individual is not considered as a national by any state under the operation of its law. The procedure should therefore adopt an evidential approach which takes into account the challenges inherent in establishing whether a person is stateless. It is only necessary to consider nationality in relation to states with which an individual applicant has relevant links (in particular by birth on the territory, descent, marriage or habitual residence). The appropriate standard of proof to be applied is one of "reasonable degree" of likelihood that the individual is not considered a national by any state. An unduly high standard should not be imposed in the procedure. This would frustrate the object and purpose of the 1954 Convention, as it could prevent stateless persons from being recognized.

(b) All parties involved should share and collaborate in the administration of the **burden of proof** of the applicant's possible statelessness. While individuals are obliged to cooperate in establishing relevant facts, they will often face challenges accessing the relevant evidence and documentation needed to prove their absence of nationality. They should thus not bear sole responsibility for establishing relevant facts. Sharing the burden of proof will also recognize the role of the Belgian decision-maker in assisting the applicant to look for elements of proof of his or her possible statelessness, notably in queries to the relevant authorities of other states' embassies, should this be appropriate and relevant. (In this context see also Recommendation No. 32.)

12

Information and appropriate **counselling** should be made available on the statelessness determination procedure, notably to potentially stateless persons who apply for asylum and/or ask for regularization of their immigration status. More specifically, when relevant, possible cases of statelessness should be directed promptly to the competent determining authority and referral mechanisms should be developed.

13

Applications to be recognized as stateless should be treated within a **reasonable time frame**, in particular bearing in mind the vulnerable and precarious situation in which applicants often find themselves. Where, despite the cooperation of the individual, it is not possible to establish within a reasonable time that someone registered as being of unknown nationality does in fact possess a nationality, a determination of statelessness would be appropriate. Relevant authorities should be given the necessary resources to allow for the issuance of decisions within such a time frame.

14

To ensure adequate identification, it is recommended that officials responsible for determining statelessness in the relevant authorities (CGRS and members of the judiciary) be capacitated in nationality law and practice in principal countries of origin of applicants claiming to be stateless and in related international standards. Similarly, it is recommended that legal representatives be trained in statelessness matters, their treatment in Belgian law and related international standards.

15

Pending the finalization and implementation of a new determination procedure, it is recommended that a network for magistrates on the question of statelessness be developed with the aim of fostering coherent jurisprudence at the national level. The creation of one focal point selected from magistrates in each judicial district could be envisaged.

6. THE STATUS OF PERSONS RECOGNIZED AS STATELESS AND OF THOSE SEEKING RECOGNITION

6.1 Introduction

316. The status – as well as the rights and obligations attached – of recognized stateless persons and those awaiting determination of their eligibility for protection under the 1954 Convention is often a precarious one. Since persons applying to be recognized as stateless in Belgium do not receive a temporary stay permit while the procedure is ongoing, they and their families are generally living illegally in the country. Even if they are formally recognized as stateless, they do not receive a residence permit automatically.

317. While there have been some cases where Belgian courts have approved the granting of a stay permit to recognized stateless persons and even to applicants in the procedure, court practice is divergent and there is no common practice in this regard. Both applicants and persons recognized as stateless are thus likely to be illegally present in Belgium until such time as they may be able to regularize their status.

318. This chapter complements Chapter 5 on the determination of statelessness in Belgium, and examines the status of recognized stateless persons and those awaiting determination of their eligibility for protection under the 1954 Convention. It analyses if and to what extent Belgium lives up to its obligations resulting from its ratification of the 1954 Convention in this respect. The analysis focuses on the key question of a right of residence for stateless persons as well as on other rights and obligations.

319. The status granted to someone recognized as stateless under the 1954 Convention needs to provide, at the very least, an interim response respecting the rights set out in the 1954 Convention and human rights law generally in anticipation of a durable solution, which, for stateless persons, is the acquisition or reacquisition of nationality. Ensuring a legal residency status for stateless persons and relating it to a right of residence thus operates to bridge the gap that would otherwise exist between recognition of statelessness and a durable solution.[266] The latter is examined in Chapter 7.

320. The sections that follow examine, first, relevant international law provisions, then the status – the rights and obligations – of recognized stateless persons, and, finally, the status of applicants seeking recognition as stateless.

6.2 Relevant provisions of international law

321. The 1954 Convention sets out standards of treatment for stateless persons that contracting states are obliged to provide. The Convention does not, however, operate in isolation. The rights and obligations of stateless persons are also drawn from international human rights law, including international refugee law, if the latter applies.

322. In some cases international human rights law provisions replicate rights found in the 1954 Convention, while others provide for a higher standard of treatment or for rights not found in the 1954 Convention at all. A detailed analysis of international human rights law as it relates to stateless persons was, however, outside the scope of this research. Ensuring that stateless persons are treated appropriately requires both a proper awareness and commitment to applying international standards and an effective mechanism for identifying such persons. A full analysis of all relevant human rights – notably those deriving from international and European human rights law – was, however, beyond the scope of this research project.

[266] UNHCR, Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level, 17 July 2012, HCR/GS/12/03, available at http://www.unhcr.org/refworld/docid/5005520f2.html (in English) and http://www.unhcr.org/refworld/docid/5087a0af2.html (in French) (hereinafter UNHCR Guidelines on Statelessness No. 3), para. 28.

6.2.1 The 1954 Convention[267]

323. As set out in Chapter 1, Belgium is a party to the 1954 Convention. The treaty's object and purpose is, as indicated in the preamble, "to assure stateless persons the widest possible exercise of [their] fundamental rights and freedoms" and "to regulate and improve the status of stateless persons by an international agreement".

324. The 1954 Convention sets out the standards of treatment for stateless persons; these have many similarities with those foreseen in the 1951 Refugee Convention.[268] It "is based on a core principle: no stateless person should be treated worse than any foreigner who possesses a nationality".[269] As observed in the preceding chapter concerning statelessness determination procedures, while much attention has been paid to the scope and content of the equivalent provisions in the 1951 Refugee Convention, the same cannot be said of the entitlements of stateless persons in their country of recognition. Likewise, little attention has been devoted to the status of those awaiting determination of their eligibility for protection under the 1954 Convention.

325. The 1954 Convention contains provisions on non-discrimination, religious freedoms, juridical status (personal status, movable and immovable property, artistic rights and industrial property, right of association, and access to courts), gainful employment (wage-earning employment, self-employment, and liberal professions), welfare (rationing, housing, public education, public relief, labour legislation and social security) and administrative measures (administrative assistance, freedom of movement, identity papers, travel documents, fiscal charges, transfer of assets, expulsion and naturalization). Stateless persons also have obligations, notably to abide by the laws of the country in which they find themselves (Article 2).

326. Most of the rights set out in the 1954 Convention are qualified in terms of the degree of connection between an individual and the contracting state. As a result, while some provisions are unconditional and must apply to all stateless persons under the state's jurisdiction, others are dependent on the individual being " lawfully in", "lawfully staying" or "habitually resident" in the territory.[270]

327. Those rights which are triggered when an individual is subject to the jurisdiction of a state party include personal status (Article 12), property (Article 13), access to courts (Article 16(1)), rationing (Article 20), public education (Article 22), administrative assistance (Article 25), and facilitated naturalization (Article 32). Additional rights that accrue to individuals when they are physically present are freedom of religion (Article 4) and the right to identity papers (Article 27).[271]

328. They would also be entitled to the rights available to those "lawfully in" the state, if the state had explicitly authorized their entry by, for example issuing a student or tourist visa. Such rights include the right to engage in self-employment (Article 18) and freedom of movement within the state (Article 26) and protection from expulsion (Article 31). As UNHCR's Guidelines on Statelessness No. 3 note:

> "For stateless persons to be lawfully in a Contracting State, their presence in the country needs to be authorized by the State. The concept covers both presence which is explicitly sanctioned and also that which is known and not prohibited, taking into account all the circumstances of the individual. The duration of presence can be temporary. This interpretation of the terms of the 1954 Convention is in line with its object and purpose, which is to assure the widest possible exercise by stateless persons of the rights contained therein. As confirmed by the drafting history of the Convention, applicants for statelessness status who enter into a determination procedure are therefore 'lawfully in' the territory of a Contracting State. By contrast, an individual who has no immigration status in the country and declines the opportunity to enter a statelessness determination procedure is not 'lawfully in' the country."[272]

329. "Lawfully staying" rights would arise on recognition as stateless or on the grant of a residence permit, except perhaps where it is clear that the individual is likely to move to another country almost immediately following recognition. These entitlements include: the right of association (Article 15); the right to work (Article 17) and to practise a liberal profession (Article 19); the right to access public housing (Article 21) and public relief (Article 23); labour and social security rights (Article 24); travel documents (Article 28).[273]

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267 A primary source for this section is Mandal, R., "Discussion Paper no. 4: What Status Should Stateless Persons Have at the National Level?", Discussion papers series for the establishment of a UNHCR Handbook on the Determination of Statelessness, November 2010, para. 14 (on file with the authors). See also UNHCR Guidelines on Statelessness No. 3, above note 266.

268 Except for Article 33 (protection against *refoulement*), Article 31 (protection against penalties for illegal entry), Article 17 (employment), and Article 15 (right of association). The first two of these Articles have no similar provision in the 1954 Convention, and the last two are more restrictive in the 1954 Convention than in the 1951 Refugee Convention.

269 UNHCR, Protecting the Rights of Stateless Persons, The 1954 Convention relating to the Status of Stateless Persons, September 2010, available at http://www.unhcr.org/refworld/docid/4cad88292.html (in English and French), p. 4.

270 UNHCR Guidelines on Statelessness No. 3, above note 266, para. 13.

271 Ibid., paras 7, 14.

272 Ibid., paras 15–16 (footnotes omitted).

273 Ibid., paras 17–18.

330. With regard to the distinction between the terms "lawfully (in French *'se trouvant régulièrement'*) in their country" and "lawfully staying (in French *'résidant régulièrement'*) in the country", Nehemiah Robinson's Commentary on the 1954 Convention[274] finds that they "cannot be only verbally different" from one another. He writes that being "lawfully in" a country

> "must mean in substance something else, viz., the mere fact of lawfully being in the territory, even without any intention of permanence, must suffice. In other words, wherever 'lawful stay' is required, a stateless person just temporarily in the country would not enjoy the right granted under the condition of 'lawfully staying', on the other hand, where 'lawfully being' is sufficient, stateless persons temporarily in the country would enjoy the relevant rights."[275]

331. For its part, the Human Rights Committee has taken the view that someone whose expulsion has been ordered but who was allowed to stay in the country was "lawfully in the territory".[276]

332. Finally, there are a number of rights to be accorded to stateless persons who are "habitually resident" or "residing" in the state. These include protection of artistic rights and intellectual property (Article 14) and matters pertaining to access to courts such as legal assistance (Article 16(2)).[277]

6.2.2 International refugee law

333. Stateless persons seeking asylum in Belgium are entitled to be treated in accordance with the standards contained in the relevant EU Directives i.e. mainly those on reception[278] and procedures,[279] which have been transposed into national legislation.

334. For stateless persons who are entitled to international refugee or subsidiary protection, further obligations can be found in the 1951 Refugee Convention and its 1967 Protocol, as well as in EU law.

335. Stateless refugees should benefit from the protection offered by the 1951 Refugee Convention instead of that offered by the 1954 Convention, as the former instrument grants them a higher level of protection. This does not, however, mean that they cannot be stateless. As the UNHCR Prato Summary Conclusions conclude,

> "If a stateless person is simultaneously a refugee, he or she should be protected according to the higher standard which in most circumstances will be international refugee law, not least due to the protection from refoulement in Article 33 of the 1951 Convention."[280]

336. Indeed, the 1954 Convention provides no prohibition against *refoulement* (as set out in Article 33 of the 1951 Refugee Convention) and no protection against penalties for illegal entry when coming directly from the territory of another state (Article 31 of the 1951 Refugee Convention). No explicit competence is given to UNHCR (Article 35 of the 1951 Refugee Convention), and as regards employment, Article 17 of the 1954 Convention only guarantees treatment "not less favourable than that accorded to aliens generally" compared with the "most favourable treatment accorded to nationals of a foreign country" which refugees enjoy under article 17 of the 1951 Convention. Similarly, the provision on the right of association foreseen in Article 15 has a lower standard of treatment than the equivalent provision in Article 15 of the Refugee Convention.

337. It should be remembered, however, that not all stateless persons are refugees.

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274 UNHCR, Convention relating to the Status of Stateless Persons. Its History and Interpretation, A Commentary by Nehemiah Robinson, 1997, available at http://www.unhcr.org/refworld/docid/4785f03d2.html, commentary to Article 18.

275 Ibid.

276 HRC, *Celepli v. Sweden,* Communication No. 456/1991, CCPR/C/51/D/456/1991, 2 August 1994.

277 UNHCR Guidelines on Statelessness No. 3, above note 266, paras 19–20.

278 Council of the EU, Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States, 6 February 2003, 2001/0091 (CNS), available at http://www.unhcr.org/refworld/docid/3ddcfda14.html.

279 EU: Council of the EU, Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, 2 January 2006, 2005/85/EC, available at http://www.unhcr.org/refworld/docid/4394203c4.html.

280 See UNHCR, Prato Summary Conclusions, above note 11, p. 2.

6.2.3 International human rights law

338. Belgium also has obligations towards stateless persons under international human rights law. These stem from international and regional human rights instruments, including those already listed in paragraphs 43 and 44 and from the ratification of various universal treaties such as the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws.[281]

339. The status of a stateless person under Belgian law must reflect applicable provisions of these instruments. The vast majority of human rights apply to everyone irrespective of their nationality or immigration status and thus apply to stateless persons. Moreover, in respect of the application of individual human rights provisions, the principle of equality and non-discrimination generally prohibits any discrimination in their application based on the lack of nationality, although legitimate differentiation is permitted for groups who are in a materially different position.[282]

340. An examination of the rights and obligations of stateless persons and applicants for recognition as stateless under international and regional human rights law instruments was beyond the scope of this report.

6.3 The status of recognized stateless persons

341. This section examines the status, rights, and obligations of stateless persons who have been recognized as such by Belgian tribunals and courts. It addresses the key question of the right to stay in the country of recognition as well as other rights to which recognized stateless persons are entitled. It should be noted that rights under human rights law may also apply to recognized stateless persons, in addition to those set out in this section which focuses on rights deriving from the 1954 Convention.

342. In Belgium, formal recognition of statelessness is not as such associated with the grant of substantive rights. In the absence of an automatic right of residence for recognized stateless persons, and since the exercise of many rights is conditional on the acquisition of an authorization to stay on the territory, many recognized stateless persons find themselves obliged to initiate a regularization procedure.

6.3.1 The absence of an automatic right of residence

343. Being stateless does not automatically result in a right to reside in a particular state, nor does the 1954 Convention prescribe that states must grant stay a right to stay to all stateless persons. As noted in the Geneva Summary Conclusions, “the 1954 Convention is silent on perhaps the most important issue of all for stateless persons, a right of residence”.[283]

344. Article 7(1) of the 1954 Convention states that, except where this Convention contains more favourable provisions, a state party shall accord to stateless persons the same treatment as is accorded to aliens generally. This means that, in practice, the same conditions can be imposed on stateless persons as on other aliens as regards access to territory and residence on the territory. At the same time, however, Article 6 of the 1954 Convention provides that stateless persons cannot be asked to fulfil requirements which by their nature they are incapable of fulfilling. Indeed, granting persons recognized as stateless a right of residence is necessary if the individual concerned does not have legal residence elsewhere and state parties are to fulfil the object and purpose of the treaty. As the 2012 Guidelines on Statelessness No. 3 state: “Without a right to remain, the individual is at risk of continuing insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international human rights law.”[284]

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281 Belgium is a party to the 1930 Convention, which it signed on 12 April 1930 and ratified on 4 April 1939, excluding Article 16 of the Convention. UN treaty, Convention on Certain Questions Relating to the Conflict of Nationality Law, 12 April 1930, available at http://www.unhcr.org/refworld/docid/3ae6b3b00.html.

282 UNHCR, Guidelines on Statelessness No. 3, above note 266, para. 21; HRC, General Comment No. 18 (Non-discrimination), 1989, available at http://www.unhcr.org/refworld/pdfid/453883fa8.pdf, para. 13.

283 UNHCR, Geneva Summary Conclusions, above note 195, p. 6.

284 UNHCR Guidelines on Statelessness No. 3, above note 266, para. 28.

345. There may nevertheless be situations where protection may be available in another state. As the 2012 Guidelines on Statelessness No. 3 Note:

> "Where an individual recognised as stateless has a realistic prospect, in the near future, of obtaining protection consistent with the standards of the 1954 Convention in another State, the host State has discretion to provide a status that is more transitional in nature…
>
> "In these cases, care must be taken to ensure that the criteria for determining whether an individual has a realistic prospect of obtaining protection elsewhere are narrowly construed. In UNHCR's view protection can only be considered available in another country when a stateless person:
>
> - is able to acquire or reacquire nationality through a simple, rapid, and nondiscretionary procedure, which is a mere formality; or
> - enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible."[285]

346. In Belgium, formal recognition as stateless does not result in the provision of a residence permit. Thus, while Article 49 of the 1980 Aliens Act provides that a refugee is automatically admitted to stay in Belgium once recognized, a recognized stateless person is not covered by this Article and enjoys no similar authorization.

347. The jurisprudence of different Belgian courts and tribunals regarding this issue has varied both over time and among courts and tribunals. As set out in greater detail below, the Council of State has on occasion suspended both orders to leave the territory and refusals to regularize status in cases involving recognized stateless persons. This approach has also been followed by some Tribunals of First Instance, which have ordered that recognized stateless persons be issued with a residence permit. These decisions were, however, subsequently overturned by the Court of Appeal in Liège. Most recently, the Constitutional Court has addressed the consequences of the lack of provision of a residence permit to recognized stateless persons and found that in this respect this constituted discrimination between refugees and stateless persons.[286]

348. The Council of State has on a few occasions addressed this issue of the lack of an automatic right of residence for stateless persons. A 1998 judgment concerned a person who had been staying illegally in Belgium since 1988 and was recognized as stateless in 1996.[287] He was not able to regularize his status and so was issued successive orders to leave the territory, which could not be implemented as he was unable to procure travel documents due to his statelessness. This meant that IOM could not assist him in returning to his country and he was unable to travel legally to any other country, even his country of origin. The Council of State found that this situation which obliged him to stay on Belgian territory without a residence permit amounted to inhuman and degrading treatment violating Article 3 of the European Convention on Human Rights, and annulled the order to leave the territory. The individual concerned, whose situation remained unresolved, appealed to the Council of State again in 2002.[288] This time the judgment ordered the suspension of a decision to refuse to regularize his stay and of an order to leave the territory.

349. In addition, in 2004 the Council of State examined another case concerning a recognized stateless person whose application to regularize his stay had been rejected.[289] He was also unable to procure travel documents from the Belgian authorities due to his illegal stay in Belgium and could not travel to his country of origin to seek regularization from there (as generally required under Belgian law).[290] The Council of State accepted that the rejection of his regularization request effectively required him to continue to reside illegally in Belgium indefinitely in violation of his rights under Articles 3 and 8 of the European Convention on Human Rights. It therefore ordered the suspension of the decision rejecting his request for regularization. Such cases appear, however, to be rare.

350. A number of Tribunals of First Instance have followed the Council of State's approach, but these tribunal decisions were later overturned by the Court of Appeal in Liège in judgments issued in 2006 and 2007.[291] For instance, in its judgment of 15 October 2007 concerning a recognized stateless man originating from Kosovo, the Court of Appeal in Liège overturned an earlier ruling by the Tribunal of First Instance in Namur, which had found a violation of

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285 Ibid., paras 34–35.

286 See below Section 6.3.1.1 "Constitutional Court findings of discrimination as regards the right of residence".

287 Belgium, Council of State, 23 September 1998, No. 75896, available at http://www.raadvst-consetat.be/?lang=fr&page=caselaw (in French).

288 Belgium, Council of State, 7 June 2002, No. 107.559, available at http://www.raadvst-consetat.be/?lang=fr&page=caselaw (in French).

289 Belgium, Council of State, 4 November 2004, No. 136.968, available at http://www.raadvst-consetat.be/?lang=fr&page=caselaw (in French).

290 For further information on regularization see below section 6.3.2, "The regularization procedure".

291 Belgium, Court of Appeal Liège, 15 October 2007, Order No. 2817, Repertoire No. 200715821. See also the following judgments by the same court: 26 April 2006, Order No. 1284, Repertoire No. 200612538; 5 November 2007, Order No. 2938, Repertoire No. 200716341; and 17 December 2007, Order No. 3273, Repertoire No. 200717449, the latter being available at (in French).

Article 3 of the European Convention on Human Rights and ordered the issuance of a residence permit awaiting the outcome of his regularization request. The Court of Appeal, by contrast, found that being recognized as stateless did not mean that Belgium had an obligation to issue a residence permit. Rather, it found that stateless persons are subject to relevant residency requirements under Belgian law. The Court also found no violation of Article 3 of the European Convention, since even though he could not work while awaiting the outcome of his application for regularization he was eligible for social aid and could also receive emergency medical treatment. Similarly, in a 2008 judgment, the Court of Cassation found that recognition of statelessness does not entitle a person to a residence permit.[292]

351. Since recognized stateless persons do not receive a residence permit on recognition, they are not on that basis alone entitled to work or to access social assistance or health care (except for urgent medical treatment) until such time as they can regularize their situation. There are nevertheless certain exceptions to this principle, arising from case law. These provide that social aid cannot be denied to aliens who cannot leave the country due to reasons or circumstances beyond their control.[293]

6.3.1.1 Constitutional Court findings of discrimination as regards the right of residence

352. The Constitutional Court has addressed the issue of the absence of an automatic grant of a residence permit for stateless persons in two judgments, in December 2009 and January 2012. Both judgments found that the difference in treatment as regards their right of residence between recognized refugees and recognized stateless persons who had involuntarily lost their nationality was discriminatory, since different treatment is applied to persons who find themselves in comparable situations. The first case concerned the right to benefit from a social integration allowance and the second the right to benefit from a family allowance.

353. In the first judgment, of 17 December 2009,[294] the case was that concerning the right to benefit from a social integration allowance. One of the conditions of entitlement to this allowance is to have effective residence in Belgium, which is dependent on having a residence permit, thus leading to a difference in treatment between categories of aliens. The Court noted the similarities in scope of various provisions of the 1951 Refugee Convention and the 1954 Convention, and held that recognized refugees and recognized stateless persons find themselves in generally comparable situations, not only because of the similarities between the two conventions, but also because of the fact that by recognizing someone as a refugee or as stateless, as the case may be, a duty towards them is acknowledged.

354. The Court further argued that, when stateless persons have been recognized as such because they have involuntarily lost their nationality and show that they cannot obtain a legal and durable residence permit in another state with which they have ties, the situation in which they find themselves is one which would violate their fundamental rights in a discriminatory way. It thus concluded that the difference in treatment between recognized stateless persons in Belgium in such a situation and recognized refugees as regards their right to stay was not reasonably justified.

355. The Court stressed that this discrimination did not stem from Article 49 of the 1980 Aliens Act, which deals only with recognized refugees in Belgium, but from the absence of any legislative provision granting persons recognized as stateless in Belgium a right of residence comparable with that enjoyed by refugees. Implicitly, the Court asks that action be taken, since it finds that the current situation discriminates against stateless persons, and attributes this discrimination to the absence of a specific provision in existing legislation addressing the issue of the right of residence of recognized stateless persons.

356. In a second judgment, the Constitutional Court reconfirmed this position on 11 January 2012.[295] In this case, the applicant, a recognized stateless person, had been refused a family allowance for his children solely because he did not have a residence permit. The Court found that the decision not to grant him this allowance had been a result of the legislative gap identified in its judgment of 17 December 2009. It noted that the legislator had not yet repaired this legislative gap by adopting a provision similar to Article 49 of the 1980 Aliens Act for stateless persons who have involuntarily lost their nationality and can prove that they cannot obtain a legal and durable residence permit in another state with which they have ties. The refusal to grant the applicant a family allowance thus resulted from a difference in treatment between recognized stateless persons and recognized refugees that could not reasonably be justified.

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292 Belgium, Court of Cassation, 19 May 2008, No. S.07.0078.N, *P.G. v. Centre Public d'Aide Sociale d'Ostende,* available at http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20080519-4 (in French) and http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20080519-4 (in Dutch).

293 Belgium, Constitutional Court, 30 June 1999, No. 80/1999, which held that it was discriminatory to treat alike persons whose situation was fundamentally different – that is, persons who can be expelled and persons who are unable to leave for medical reasons, available at http://www.const-court.be/public/f/1999/1999-080f.pdf (in French) and http://www.const-court.be/public/n/1999/1999-080n.pdf (in Dutch).

294 Belgium, Constitutional Court, 17 December 2009, No. 198/2009, available at http://www.const-court.be/public/f/2009/2009-198f.pdf (in French) and http://www.const-court.be/public/n/2009/2009-198n.pdf (in Dutch). See also Revue du droit des étrangers, No. 156, 2009.

295 Belgium, Constitutional Court, 11 January 2012, No. 1/2012, available at http://www.const-court.be/public/f/2012/2012-001f.pdf (in French) and http://www.const-court.be/public/n/2012/2012-001n.pdf (in Dutch).

357. The Court held that only the legislator can set the conditions under which stateless persons are entitled to acquire a residence permit. Until such time as this legislative gap is filled, however, courts that receive appeals against refusals to award family allowance to stateless persons are entitled to overturn those decisions if the refusal was based solely on the stateless person's unlawful residence in Belgium and if the individuals involved had involuntarily lost their nationality and could prove that he or she could not obtain a legal and durable residence permit in another state with which he or she had ties. For this clearly defined category of stateless persons, therefore, the absence of a provision in the Aliens Act guaranteeing them a residence permit has lost at least some of its adverse consequences. Moreover, it is not difficult to see how the Court's reasoning in this case could also be applied where involuntarily stateless persons are not lawfully resident in Belgium and face other consequences in terms of access to other forms of support.

358. At the time of writing the report, however, the situation remains unchanged in practice with respect to residence permits for stateless persons. This has consequences for stateless persons (and those seeking recognition as stateless) who are staying illegally on Belgian territory. They are likely to face problems exercising their fundamental rights, including those under the 1954 Convention. This could include a risk of detention and of removal or expulsion as outlined in greater detail in the next section.

6.3.1.2 Detention

359. Detention is a risk often faced by stateless persons, given the difficulties they face in obtaining identity documents and gaining lawful entry to, or presence in, countries. There are no provisions in the 1954 Convention on the issue of detention,[296] but member states of UNHCR's Executive Committee have called on states "not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law".[297] UNHCR's Guidelines on Detention also affirms that detention should be the exception, rather than the norm, for both asylum-seekers and stateless persons,[298] while international human rights law protects everyone from arbitrary detention.[299]

360. In-depth research into the issue of the detention of stateless persons and persons of unknown nationality in Belgium was outside the scope of the research, although five participants mentioned periods of detention in the context of their asylum procedure and/or in the context of attempted removal.[300] Stateless persons and persons of unknown nationality who are illegally present in Belgium may be at risk of longer periods of detention than other illegal immigrants, given that the Aliens Office is likely to face challenges establishing nationality in order to secure removal to another country or, indeed, may be unable to do so.[301] If detention did not appear at first sight to be a major problem in Belgium, this assertion would need to be confirmed through further research since, as observed at paragraph 185 above, similar studies in the Netherlands and in the United Kingdom have found that detention is a major problem for stateless persons or persons in a stateless-like situation.

6.3.1.3 Protection from expulsion or removal

361. As mentioned briefly in paragraph 336, the 1954 Convention does not contain a provision similar to Article 33 of the 1951 Refugee Convention on *non-refoulement.* Article 31 of the 1954 Convention only obliges state parties not to expel a stateless person *lawfully in* their territory (save on grounds of national security or public order). There are therefore no such safeguards under this convention for stateless persons, whether recognized or in a procedure, who are unlawfully in the territory of the state, although the principle of *non-refoulement* under international human rights law and customary international law would of course apply.

362. According to data provided by the Aliens Office, in recent years no person recognized as stateless has been forcibly removed. In addition, no Belgian case law was identified on the subject in the course of the research.

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296 By contrast, Article 31 of the 1951 Refugee Convention prohibits states from imposing penalties, on account of their illegal entry or presence, on asylum-seekers who have come directly from a territory where their life or freedom was threatened and enter or are present without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The Article also limits restrictions on the freedom of movement of such persons.

297 UNHCR ExCom, Conclusion No. 106 (LVII), 2006, above note 68, para. (w).

298 UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, available at http://www.unhcr.org/refworld/docid/503489533b8.html, Guideline 4.1. On detention of stateless persons, including those awaiting determination of their status, see UNHCR, UNHCR Brief on Statelessness and Detention Issues, 27 November 1997, available at http://www.unhcr.org/refworld/docid/4410638fc.html and The Equal Rights Trust, Guidelines to Protect Stateless Persons from Arbitrary Detention, 10 July 2012, available at http://www.unhcr.org/refworld/docid/5034f9ef2.html.

299 ICCPR, Article 9(1).

300 Participants Nos. 1, 3, 8, 11 and 17.

301 For more on the links between identification, nationality, detention, and removal, see Aliens Office, *Rapport d'activités 2010,* available at https://dofi.ibz.be/sites/dvzoe/FR/Documents/2010fr.pdf (in French), pp. 137–138 and https://dofi.ibz.be/sites/dvzoe/NL/Documents/2010nl.pdf (in Dutch), pp. 139–140.

6.3.2 The regularization procedure

363. In the absence of any automatic right of residence for recognized stateless persons who are not authorized to stay on the territory, such persons must apply for a residence permit in order to regularize their stay if they wish to reside in Belgium. These applications are examined by the Aliens Office.

364. The general principle for all aliens is that, in order to be admitted to stay for more than three months in Belgium, a specific request must be made at the diplomatic or consular Belgian post in the alien's country of residence.

365. Article 9bis of the 1980 Aliens Act provides for an exception to this rule by stating that "in exceptional circumstances and on condition that the alien has an identity document, a request for a residence permit can be made to the mayor of the Belgian locality where he or she is residing, who will transmit it to the Minister or to his deputy". Article 9ter provides for another exception and allows a request for a residence permit to be made to the Aliens Office in the event of a serious medical condition. Articles 9bis and 9ter replace the former "Article 9, paragraph 3" of the 1980 Aliens Act and apply to requests made from 1 January 2007 onwards. Article 9bis thus deals with regularization requests made for reasons other than medical ones, which are governed by Article 9ter of the Act.

366. The following sections set out how the procedure works for regularization applications made for both non-medical and medical reasons. To obtain a picture of how the Aliens Office assesses the admissibility and the merits of a regularization claim, the researchers were twice able to consult most dossiers at the Aliens Office of participants interviewed for the project, since most of them gave UNHCR permission to consult their files at the Aliens Office. It was not, however, possible in the course of the research to consult regularization requests by recognized stateless persons that were made anonymous and thereby obtain a more comprehensive overview of the Aliens Office practice. For this, the Aliens Office would have needed more time and resources to select relevant files and ensure applicants' confidentiality.

6.3.2.1 Regularization for non-medical reasons

367. A request for a residence permit of more than three months based on Article 9bis of the Aliens Act must be made to the mayor in the alien's place of residence. According to the Circulaire of 21 June 2007, the process of verification of his or her place of residence must be started within ten days of the request, although this process can take between six to ten months.[302] Should the person not be found to be living at the address given, the file is not forwarded to the Aliens Office. If the verification process is positive, the request is transmitted and the Aliens Office then examines both the admissibility of the request, including in relation to the identity documentation presented and the existence of exceptional circumstances, and the merits of the claim, that is, the grounds invoked by the applicant.

Admissibility criteria

368. With regard to the requirement that applicants have **identity documents**, as mentioned in paragraph 365 above, in addition to satisfying the "exceptional circumstances" condition, the alien must provide the Aliens Office with a national identity card, passport, or travel document for a regularization claim to be admissible under Article 9bis.[303] However, an alien who can validly prove that it is impossible to obtain the required identity document in Belgium is not required to do so.[304] The requirement to present an identity document may well pose problems for stateless persons, as it is unlikely that an embassy or other authority will issue such documentation.[305]

369. For recognized stateless persons, the problem is alleviated by the fact that the CGRS can issue civil status documents, such as birth or marriage certificates, which stateless persons cannot otherwise obtain due to their situation. The CGRS will usually issue a marriage certificate when both spouses are on Belgian territory, just as it does for refugees. Furthermore, when recognized stateless persons ask for a birth certificate, the CGRS will encourage them to obtain such a certificate themselves via the embassy of the country of birth. If they find it impossible or particularly difficult to do so, the CGRS will then issue the birth certificate. Indeed, the CGRS indicates that this happens in the majority of cases.

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302 Belgium, Ministry of the Interior, Circular of 21 June 2007 relative aux modifications intervenues dans la réglementation en matière de séjour des étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006, *Moniteur belge,* 4 July 2007, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2007062134 (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2007062134&table_name=wet (in Dutch).

303 As foreseen by Article 9bis of the 1980 Aliens Act, combined with Article 7 §1 of the Royal Decree of 17 May 2007 fixant les modalités d'exécution de la loi du 15 septembre 2006.

304 Article 9bis §1 of the 1980 Aliens Act. Asylum-seekers who have not yet received a definitive decision on their claim or who have made an appeal in cassation before the Council of State that has been declared admissible are also not required to provide such identity documentation.

305 See, for instance, the situation of Zaki, who applied for regularization while his application for recognition as stateless was still pending, described below after para. 378.

370. According to current practice, the Aliens Office considers that this certificate satisfies the requirement for an identity document. It has not been suggested that this condition raises any particular concern as regards recognized stateless persons.

371. The notion of **"exceptional circumstances"**, on the basis of which regularization may be granted, is not further defined in the Aliens Act. Article 9bis addresses procedural aspects and the Aliens Office has significant discretionary powers.[306] The notion of "exceptional circumstances" is essentially defined by jurisprudence and can cover, for example, situations where there is no Belgian diplomatic post abroad.[307]

372. Further clarification can be found in a 2007 administrative Circular from the Aliens Office,[308] which specifies that exceptional circumstances must be assessed case by case. To secure regularization, aliens must demonstrate that it is impossible or particularly difficult for them to go back to their country of origin or to a country where they are allowed to reside for reasons which may exist either in Belgium or abroad. The Circular further explains that long stay in Belgium or integration in Belgian society do not on their own constitute exceptional circumstances permitting the introduction of a request for authorization of stay for more than three months in Belgium. If aliens who have been living in Belgium for a long time and/or are well integrated in society want to regularize their stay, they must still prove that it is impossible or particularly difficult for them to go back to their country of origin or a country where they are allowed to reside.

373. On 19 July 2009, the Government gave some clarifications on the regularization criteria in an Instruction (referred to in this report as the 19 July 2009 Instruction).[309] It also set out a number of exceptional circumstances that can justify a request being made in Belgium (rather than the country of origin) and for granting authorization to stay. Applications that may be found admissible and accepted include those made by persons whose asylum procedure has been exceptionally long (three to four years depending on whether children at school are involved), those who can prove a durable local attachment (for example, aliens who can prove that their emotional, social, and economic centre of interest is in Belgium), and those who find themselves in certain urgent humanitarian situations. The latter criteria include parents of a Belgian child with whom a real and effective family life is shared, or spouses of different nationalities who come from countries which do not accept family reunification and whose return to their respective countries of origin would break up the family, especially if they have a child.

374. UNHCR and the Centre have highlighted, including at the time of the elaboration of these criteria, the need to pay special attention to persons who had been recognized as stateless by the tribunals but who did not have a residence permit in Belgium or elsewhere.

375. In practice, many stateless persons have greatly benefited from the new criteria, as a large number of them had been in an asylum procedure for years, had had children since their arrival in Belgium, and/or had a durable local attachment in Belgium. Indeed, the number of stateless people residing illegally in Belgium who have been able to regularize their situation increased from 10 in 2007 to 122 in 2009 and 143 in 2010, before falling to 49 in 2011.[310] This trend reflects a similar increase in the rate of regularization of foreigners during the same period.

376. At the same time it should be highlighted that the Instruction contains a number of deadlines for the introduction of the regularization requests.[311] Some of these have now expired and thus impede the introduction of certain new requests introduced after these deadlines. In addition, the Council of State annulled the Instruction in December 2009.[312] For claims introduced before this judgment, the criteria are still applied, if relevant. The Aliens Office also has considerable discretionary powers and remains free to continue to take into consideration those criteria beyond December 2009. It may not, however, base a negative decision solely on the Instruction's criteria, as this would breach the Aliens Office's discretionary power under Article 9bis of the Aliens Act.[313] Furthermore, a previous Instruction, from March 2009, still applies and lists many examples similar to those in the 19 July 2009 Instruction which can constitute "exceptional circumstances", such as the parents of Belgian children and those for whom the asylum procedure has been unreasonably long.[314]

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306 It nevertheless has to reason and adequately justify its decisions. See Belgium, Council of State, No. 107.621, 31 March 2002, unpublished.

307 Belgium, Council of State, No. 131.269, 11 May 2004, *Revue du droit des étrangers,* No. 128, 2004, p. 204.

308 See above note 302.

309 Belgium, Ministry of the Interior, Instruction relative à l'application de l'ancien article 9 §3 et de l'article 9bis de la loi sur les étrangers, 19 July 2009, published 18 August 2009, available at http://www.dbblaw.eu/fr/news.asp?NewsId=606, and more generally http://www.droitbelge.be/fiches_detail.asp?idcat=48&id=559 (both in French).

310 See below Table 5. Stateless persons regularized on the basis of Articles 9bis or 9ter, or of the former Article 9(3) of the 1980 Aliens Act".

311 Regularization requests based on the local attachment criteria had notably to be introduced within a time period of three months from 15 September 2009.

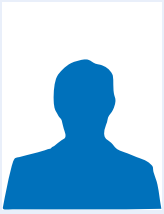
312 Belgium, Council of State, No. 198.769, above note 119.

313 Belgium, Council of State, No. 215.571, 5 October 2011, available at www.raadvst-consetat.be/arr.php?nr=215571 (in Dutch.)

314 Belgium, Ministry of the Interior, Instruction relative à l'application de l'ancien article 9 §3 et de l'article 9bis de la loi sur les étrangers, 26 March 2009, available at http://www.theux.be/ma-commune/services-communaux/population-etat-civil/population_theux/art_9_3et9bis090326.pdf (in French).

377. That said, the Aliens Office has indicated that the statelessness of the applicant is secondary: what it will look at is whether he or she can introduce the regularization request in his or her country of origin or habitual residence. A recognized stateless person legally residing in another country who makes a regularization request in Belgium will therefore not fall within Article 9bis and will have to introduce his or her request in that country.

378. In summary, since the December 2009 judgment of the Council of State, the situation concerning the interpretation of the "exceptional circumstances" and the regularization criteria remains unclear. It is not known what future practice will be regarding the regularization of stateless persons.



Name: Zaki (Participant No. 12) and his family
Age and sex: 30s, male
Country of origin: Palestine (Gaza)
Status when interviewed: Recognized stateless and regularized (unlimited residence)
Current status: unchanged

Zaki* and his wife are ethnic Palestinians from Gaza. They have four children, two girls born in Gaza, and two boys born in Belgium who are Belgian citizens, probably as they benefited from the application of Article 10 CNB.[315] In 2003, he moved to Belgium with his wife and two daughters to study. He was granted a scholarship and obtained a student visa to stay in Belgium.

After four years, Zaki obtained his degree as planned, after which his student status and residence permit expired. The family had always intended to return, but by 2007 the security situation in Gaza had deteriorated so much that this was no longer an option, so the couple applied for recognition as stateless persons for themselves and the two elder children.

They were recognized at stateless but still had no papers or legal residence in Belgium. So they applied for regularization of their stay based on being the parents of a Belgian citizen. That was denied on the ground that the baby boy was "not able to pay for his parents' stay in Belgium".

They made several attempts to regularize their status. Zaki had to stop writing his doctoral thesis and became constantly on edge as a result of their state of insecurity. With four small children, one of the most worrying consequences of his pending and intermittently illegal status has been the repeated withdrawal of medical insurance, Zaki said, "Our insurance has been terminated at least ten times. We had to pay for medical interventions or rely on the help of friends."

At one point they received orders to leave the country; "they instructed us to take two very young Belgian citizens to a war zone," said Zaki. The family continued fighting for regularization and legal stay. In 2010, he saw no other option than to apply for asylum to be able to remain in Belgium, although he in fact only wanted a regularized status.

Three weeks before the interview for the research project in March 2011, the family had their stay in Belgium regularized. They had already spent more than five years in the country and their statelessness had previously been recognized by the tribunal. At the time of the interview they were just about to receive their identity cards, thus bringing to an end a period of around four years of uncertainty about their legal status in Belgium.

Zaki says that he had already fulfilled those criteria several years earlier. He has the impression that the authorities drag out cases deliberately to demoralize people and make them leave Belgium. Indeed, he said that some of his stateless friends did leave, being unable to cope with the continuous threat of detention followed by deportation.

Waiting for a decision was difficult, both psychologically and economically, but, he says, he is lucky to come from a wealthy family who supported them from his place of origin.

According to Zaki, one of the most gratifying aspects of having a legal status is to be able to travel. Zaki and his wife have numerous relatives all over Europe, whom they have not been able to visit in many years: "our children do not know their own cousins".

Zaki and his wife already seem very well integrated. They have a pleasant flat on a canal and feel at home. All the children go to school and have many friends. They are fully bilingual in Dutch and Arabic, while the parents are studying Dutch at advanced level. With their newly acquired status, the family wants to apply for Belgian citizenship.

Now that the situation is resolved and the source of constant worries is gone, Zaki is thinking about resuming work on his thesis. The couple would like to open an organic food shop and are trying to get a licence. In parallel, he is applying for a position with one of the Belgian ministries. Zaki's wife dreams of running a day-care centre for small children.

* Not his real name.

315 Article 10 §1 of the BNC provides that a child born in Belgium is Belgian if he or she would otherwise be stateless at any moment before he or she reaches the age of 18 or is "emancipated".

379. The applicant must present **grounds for regularization**. These may be the same as those mentioned in paragraph 373. The Aliens Law does not, however, specify the grounds that would allow an alien to be regularized, since Article 9bis addresses procedural aspects. Again, the Aliens Office has significant discretionary powers, although it must provide adequate reasoning and justification for its decision.[316]

380. Someone seeking regularization is not provided with a **residence permit during the procedure**, but, if the regularization request is declared admissible and well founded, he or she is granted a permanent residence permit or a temporary one which may or may not be renewable. The alien usually receives a temporary residence permit, in the form of a registration certificate for the Aliens Register (A Card – Certificat d'inscription au registre des étrangers/ Bewijs van inschrijving in het vreemdelingenregister – valid for a year, as set out in Table 6 below). Annual renewal of the permit is possible subject to several conditions, such as proving that the alien has employment, that his or her children are still attending school, and so on, if those elements were decisive in granting the permit. After five years, a permanent residence permit is issued.

381. It is rare for a permanent residence permit that is automatically renewable every five years (a B Card) to be granted as early as the regularization decision. One exception has been for aliens regularized in the context of the 19 July 2009 Instruction, as they received permanent residence permits.[317] For more details on the type of permits granted see Table 6 below.

6.3.2.2 Regularization for medical reasons

382. As mentioned in paragraph 365, a specific procedure exists under Article 9ter of the Aliens Act for aliens residing in Belgium who suffer from an illness which would expose them to a real risk to their life or physical integrity or a real risk of inhuman or degrading treatment if they were to return to their country of origin or other country of residence where no adequate.[318] It may also be a basis on which recognized stateless persons or persons seeking recognition as stateless seek to regularize their stay in Belgium if other avenues are not open to them. As shown in Table 5 below, however, the number of regularizations of stateless persons under Article 9ter are far fewer than those under Article 9bis or the former Article 9(3).

383. In order to fulfil the **admissibility criteria**, the regularization request under Article 9ter of the 1980 Aliens Act must be introduced directly and by registered mail at the Aliens Office, and must be accompanied by an identity document, a medical certificate concerning the alleged illness, any other useful documents or information held by the applicant at the time of the request, and an indication of the address of effective residence on Belgian territory.

384. The request will be inadmissible if it is based on elements which have already been – or should have been – brought forward by the applicant in the context of an asylum claim, or if it rests on arguments already put forward during a previous regularization claim based on Articles 9(3), 9bis or 9ter.

385. Until January 2011, the requirement that the alien produce an identity document did not apply, inter alia, to those who could validly demonstrate that it was impossible for them to obtain such a document in Belgium.[319] Since then, however, this exception no longer applies unless the individual is still in an asylum procedure.[320] This may therefore cause particular problems for stateless persons. As mentioned in paragraph 368, the submission of identity documentation may well present challenges for stateless or persons in a stateless-like situation.

386. This is exemplified by the situation of a 25-year-old man originating from Bhutan, who was interviewed in the course of the project. He said that he had been awaiting the tribunal's judgment concerning his statelessness when he received a negative decision on his regularization application (based on Article 9ter) because he was unable to provide an identity document.[321] He claimed that he had indeed tried to contact both the Nepalese and Bhutanese embassies to help him obtain such a document, but to no avail. The Aliens Office further specified that the fact that he was in a procedure to determine his statelessness did not exempt him from the obligation to submit identification documents.

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316 See above note 306.

317 Except for those regularized because of durable local attachment, who received a renewable one-year permit.

318 Article 9ter §4 excludes from its application aliens for whom there are serious grounds for believing that they have committed a crime against peace, a war crime or a crime against humanity, acts contrary to the principles of the United Nations, or a serious crime. However, the *travaux préparatoires* of the law of 15 September 2006 modifying the 15 December 1980 Act specify that it is nonetheless evident that a seriously ill alien who is excluded from the benefit of Article 9ter for one of those reasons would not be expelled if his or her health is so poor that expulsion would constitute a violation of Article 3 of the ECHR (Doc. parl., Chambre 2005–2006, 51–2478/001, p. 35).

319 Article 9ter §1, al. 3 of the 1980 Aliens Act.

320 Article 9ter §2 of the 1980 aliens Act.

321 Participant No. 7.

387. With regard to the **grounds for regularization**, for claims found to be admissible, a civil servant medical doctor from the Aliens Office will evaluate the risk faced in the country of origin – that is, the intrinsic seriousness of the illness as well as the possibility of treatment in that same country.[322] On the basis of this opinion, the Aliens Office will then decide on the merits of the regularization request.

388. The applicant is not provided with a **residence permit during the procedure**, but if the request is admissible, the Aliens Office will instruct the municipality to register the alien in the Registre des Etrangers/Register van Vreemdelingen (hereafter Aliens Register) and grant him or her a Certificate of Registration Type A (Attestation d'immatriculation Modèle A), valid for three months. This certificate can be renewed three times, each time for the duration of three months. After one year, this document is renewed on a monthly basis.[323]

389. Should the decision be favourable on the merits of the claim, the alien will be granted a Certificate of Registration in the Aliens Register which will be limited in duration but must be for at least a year (the A Card mentioned in Table 6 below).[324] The authorization to stay on Belgian territory will become permanent after a five-year period following the regularization request.[325] For more details on the different types of permits granted, see Table 6 below.

6.3.2.3 Appeal against the rejection of the regularization request

390. Unsuccessful applicants can appeal to the CALL against a refusal by the Aliens Office to authorize their stay within 30 days of the notification of the decision of the Aliens Office. The CALL has thus ruled in a number of appeals brought by stateless persons against the rejection of their application for regularization.

391. One case concerned a woman who claimed that she was not registered in the former Yugoslavia, that she had fled the persecution and discrimination suffered by her people in the country, and that, given these circumstances, she could not ask the authorities of her country of origin to be regularized, as she did not have a country she could ask. In its judgment, the CALL revoked the negative decision of the Aliens Office, as this had only argued there was no proof of persecution and it had not addressed the question of the woman's claim that she could not seek to be regularized from her country of origin as she had no nationality.[326] In other cases, however, the CALL has on occasion refused claims by appellants based on their potential statelessness because they had not initiated a statelessness determination procedure, which meant that they could not be recognized as such according to Belgian law.[327]

392. Another case concerned a recognized stateless man of Romanian origin, who argued that he was obliged to make his regularization request in Belgium as he could not travel legally to any country in order to make a claim from there. In this case, the Aliens Office had held that under Romanian law, he could return to Romania if he wished to do so. The CALL overturned the Aliens Office decision, affirming:

> "[S]ince the appellant had been recognized as stateless, he no longer had a 'country of origin', i.e. a State authority to which he was linked by nationality in the legal sense of the word, and on whom he depended notably for the grant of identity and travel documents, which would allow him to undertake procedures to obtain a visa or residence permit, and to travel to do so."

393. The CALL held that the Aliens Office could not simply decide that the appellant could return to Romania to make his regularization request from there without further examining implications as obvious as the possibility of obtaining in Belgium the identity and travel documents he would need to be able to return and reside in his country of "origin" or "residence", in this case, Romania. It further found that the Aliens Office could not then require him go back to that country and once there ask the Belgian authorities to regularize his residence under the normal procedure. The CALL thus held that the negative decision of the Aliens Office had to be revoked, as it had not taken into account all the dimensions of the appellant's situation of statelessness.[328]

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322 Article 9ter §1, al. 2 of the 1980 Aliens Act. The doctor can ask an additional opinion from a medical expert, who will have 30 days from the date of this request to respond (Articles 4 §1 and 5 §2 of the 17 May 2007 Royal Decree).

323 Article 7 §2, al. 2, and §8 of the 17 May 2007 Royal Decree; Circular of 21 June 2007, relative aux modifications intervenues dans la réglementation en matière de séjour des étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006, point II, D.

324 Article 8–10 of the Royal Decree of 5 July 2010 fixant des modalités d'exécution de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. As set out in Articles 9–10 of this Decree, if the reasons for the grant of this authorization cease to exist or the persons' medical situation improves sufficiently radically and sustainable, the authorization is removed.

325 Article 13 §1, al. 2 of the 1980 Aliens Act.

326 Belgium, CALL, No. 59 136, 30 March 2011. For a revocation of a negative decision due to the absence of reasoning as regards the impossibility of a stateless person's obtaining a document in Belgium proving his identity, see also Belgium, CALL, No. 51 642, 26 November 2010. These cases are available in French at http://www.unhcr.org/refworld/docid/509403732.html and http://www.unhcr.org/refworld/docid/5094053b2.html respectively.

327 Belgium, CALL, No. 53 713, 23 December 2010, available at http://www.unhcr.org/refworld/docid/509405ad2.html and No. 44 160, 28 May 2010, available at http://www.unhcr.org/refworld/docid/509404582.html (both in French).

328 Belgium, CALL, No. 26.239, 23 April 2009, available at http://www.unhcr.org/refworld/docid/50940a6a2.html (in French).

6.3.2.4 The results of stateless persons' applications for regularization

394. Regularization on the basis of Articles 9bis or 9ter, or of the former Article 9(3) of the 1980 Aliens Act, is the main procedure used by stateless persons to legalize their stay in the country.[329] As shown in "Table 5. Stateless persons regularized on the basis of Articles 9bis or 9ter, or of the former Article 9(3) of the 1980 Aliens Act" below, in 2007 and 2008 almost all regularizations of illegal stay of stateless persons concerned applications lodged on the basis of the former Article 9(3) (that is, applications submitted before October 2006). In 2009, a third of the regularizations were granted based on Article 9bis and more than a half were still based on the former Article 9(3).

395. In 2010, of the 143 stateless persons regularized, 61 were regularized on the basis of Article 9bis, 24 on the basis of Article 9ter, and 58 on the basis of former Article 9(3),[330] while only 13 received a negative decision. This means that 40 per cent of stateless persons regularized in 2010 had submitted their application for regularization before June 2007, that is, at least two and a half years before the positive decision was made in 2010.

396. Confirming the general impression that many stateless persons have recently had their stay regularized in Belgium, the Aliens Office notes that there are currently few regularization requests by stateless persons that are pending and that many were able to benefit from the 19 July 2009 Instruction and have regularized their stay as a result. Indeed, as shown in Table 5, the number of stateless persons whose stay was regularized was four times greater in 2009 than in 2008 and this number increased slightly in 2010, although it fell again in 2011. Besides the increase in regularization of stateless persons in absolute numbers, available data show a particular increase in the regularization rate for stateless persons in 2010. There may be many factors influencing this trend.[331]

Table 5. Stateless persons regularized on the basis of Articles 9bis or 9ter, or of the former Article 9(3) of the 1980 Aliens Act

Positive decisions	2007	2008	2009	2010	2011
Article 9bis	0	0	40	61	n/a
Article 9ter	0	4	17	24	n/a
Former Article 9(3)	10	25	65	58	n/a
Total positive decisions	**10**	**29**	**122**	**143**	**49**
Negative decisions	14	14	84	13	44
Regularization rate	41.7%	67.4%	59.2%	91.7%	52.7%
Decisions "sans objet"[332]	0	5	21	30	9

Source: Aliens Office.

397. Table 5 highlights at least two points. The number of people regularized under former Article 9(3) in recent years suggests that there have been delays in decision making on regularization requests and also that before 2009, stateless persons encountered greater difficulties securing regularization, although the regularization rate fell again in 2011.

398. In addition, data the Aliens Office has been able to establish for 2011 (though not for earlier years) show that there were 56 persons registered as stateless in the National Register whose applications for regularization were still in the process of being assessed at the end of 2011. This relatively low figure appears not least to be as a result of the high number of regularizations of stateless persons in the two previous years. Also, this newly available data shows that only 32 stateless persons applied to be regularized in 2011, with six applications being made in the first few months of 2012.

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329 See also Chapter 3, paras 121–123.

330 In its 2010 annual report, the Centre for Equal Opportunities and Opposition to Racism nevertheless writes that around half of all regularization applications on medical grounds were granted on the basis of humanitarian criteria. This is because, when considering applications based on medical criteria, the Aliens Office assesses both medical and humanitarian grounds that may apply, with the result that regularization may in the end be granted on humanitarian grounds. See Centre for Equal Opportunities and Opposition to Racism, *Migration, Rapport Annuel 2010,* May 2011, available at http://www.diversite.be/index.php?action=publicatie_detail&id=131&thema=2, pp. 88–90.

331 Ibid., pp. 83–84. In any case, as mentioned above at paras 376–378, the Council of State cancelled the July 2009 Instruction in December 2009 and the situation concerning the interpretation of the regularization criteria remains unclear.

332 Dossiers are considered as being "sans objet" when people have emigrated, died, or received a residence permit on another basis.

399. No mention is made in either the Aliens Act or any royal decree of a possible period within which a request must be examined. As set out below, for Ashmi, a recognized stateless woman of Bhutanese origin in her 40s, the procedure lasted more than two years.[333] In discussions with the researchers, the Aliens Office noted that it was dealing with 20,000 regularization claims lodged on the basis of Article 9bis. It mentioned that, since each decision had to be reasoned, the longer the reasoning the longer it would take to respond and that it was not bound by any fixed time limit when doing so.

400. As regards the difficulties stateless persons encounter when seeking regularization, Table 5 also shows that in 2007 the majority of the requests made (around 60 per cent) received a negative response. Despite an increase in positive decisions, 30–40 per cent of requests by stateless persons were not accepted in 2008 and 2009 respectively. In 2011, the regularization rate fell back again compared with 2010, with the average regularization rate for 2007–11 being 62.5 per cent. This observation, combined with deadlines imposed by the 19 July 2009 Instruction and the significant discretionary powers of the Aliens Office since the cancellation of the Instruction by the Council of State, suggest that in the future stateless persons seeking regularization in Belgium may encounter difficulties similar to those observed before the 19 July 2009 Instruction.

401. The types of residence permit granted to recognized stateless persons are illustrated in Table 6.

Table 6. Types of residence held by recognized stateless persons as at 17 March 2011[334]

Positive decisions	No.	%
Certificate of registration: temporary residence permit delivered to asylum-seekers and foreigners seeking regularization on medical grounds whose application has been declared admissible – valid for three months *(Attestation d'immatriculation (au registre d'attente) Modèle A/Immatriculatieattest)*	19	2.83
A Card: temporary residence permit – valid for one year *(Certificat d'inscription au registre des étrangers/Bewijs van inschrijving in het vreemdelingenregister)*	56	8.33
B Card: permanent residence permit – valid for five years *(Certificat d'inscription au registre des étrangers/Bewijs van inschrijving in het vreemdelingenregister)*	386	57.44
C Card/identity card for foreigners: permanent resident permit – valid for five years *(Carte d'identité d'étranger/identiteitskaart voor vreemdelingen)*	132	19.64
F Card/residence permit for family members of EU citizens: permanent residence permit – valid for five years *(Carte de séjour de membre de la famille d'un citoyen de l'Union/Verblijfskaart van een familielid van een burger van de Unie)*	27	4.02
F+ Card/permanent residence permit for family members of EU citizens – valid for five years: *(Carte de séjour permanent de membre de la famille d'un citoyen de l'Union / Duurzame verblijfskaart van een familielid van een burger van de Unie)*	16	2.38
Special identity card	5	0.74
Others	31	4.61
Total	**672**	**100.00**

Source: Aliens Office.

402. Table 6 indicates that the majority of residence permits held by recognized stateless persons are B and C Cards. This does not, however, mean that these were the types of permit initially received by the 672 lawfully resident recognized stateless persons in Belgium. As social assistants and lawyers confirmed in the context of the research, it usually takes many years before a recognized stateless person gets a B or C Card. Reading Tables 5 and 6 together, they show that 304 (45 per cent) of the 672 recognized stateless persons with a residence permit in Belgium in March 2011 were recognized in the previous four years and that 265 of them (almost 40 per cent) were recognized in the previous two years.

[333] Participant No. 14. For more information see her story below after para. 402.

[334] The C Card allows residence in another EU country. An E Card is reserved for EU citizens.

Name: Ashmi (Participant No. 14)
Age and sex: 40s, female
Country of origin: Bhutan
Status when interviewed: Rejected asylum-seeker, recognized as stateless and regularized (unlimited residence)
Current status: Unchanged

The case of Ashmi* reflects the difficulties of the Nepali minority in Bhutan. Her grandparents moved from Nepal to Bhutan for work and became Bhutanese. She was born in Bhutan, but grew up in a village speaking one of the languages of Nepal. She has never learned to read or write. She says her official identity documents were kept by the local authorities in her village.

In Bhutan she lived with her husband and their two children. He was a driver and she worked on a farm. In late 2002, her husband was arrested because he helped people of Nepalese origin to take their property out of the country. When she went to the authorities to ask after her husband, they told her she only had to sign a paper and he would be released. Illiterate, Ashmi did not know that she was in fact giving her consent for all their property to be seized by the state.

Stripped of all her possessions, without papers and not knowing her husband's fate, Ashmi decided to take her children and leave for Delhi, where one of her in-laws lived. One month later she moved to Belgium and asked for asylum in early 2003. Within a year, her application had been rejected twice. The Belgian authorities questioned Ashmi's credibility because she did not speak Dzongkha, the official language of Bhutan, nor did she know much about Bhutan, for example, the name of the king.

In late 2003, Ashmi opted for voluntary return and approached IOM for assistance. They found that she could not go back to Bhutan, as the Embassy refused to provide her with a travel document. So she stayed in Belgium with her status unclear.

Taking the advice of a lawyer, Ashmi then applied to be recognized as stateless and received a positive decision a year later in 2008. Her children had to wait until they were 18 before they were also recognized as stateless.

In February 2009, Ashmi lodged a request for the regularization of her stay, which was granted after two years. Only two weeks before her interview for the research project, Ashmi and her children received unlimited residence permits. Now she is hopeful that she can find a job and have a more stable life.

An NGO helped the family to find housing and provides them with financial support. Currently, Ashmi's daughter is studying to become a nursing assistant and her son is training to become an electrician.

Ashmi does not know what happened to her husband. Throughout her stay in Belgium, she has been trying to trace him through the Red Cross. In 2010, she was informed that he had most probably died, but she has no proof of this.

Ashmi's dreams for the future are family-related: she would like to bring her husband's two children from a previous marriage to Belgium. She wants to acquire Belgian nationality and to get travel documents so she can visit relatives.

* Not his real name.

6.3.3 Other rights of recognized stateless persons with a residence permit

403. As set out above in paragraphs 326–332, the 1954 Convention sets out a range of rights to which stateless persons are entitled depending on their residency status in the country. Recognized stateless persons and/or persons granted a residence permit are entitled not only to the rights that apply to stateless persons present in Belgium, but also to those applicable to stateless persons lawfully in and lawfully staying in Belgium. These concern notably the right to engage in gainful employment and access to welfare, including public relief, social security, and education, as well as administrative support as regards identity papers and travel documents. Some of these rights under the Convention are examined briefly below.

404. It should also be noted in this context, that the Revised European Social Charter of 1996 may also provide some protections for lawfully staying stateless persons. The Charter guarantees a wide range of social and economic rights in the areas of housing, health, education, employment, legal and social protection, free movement of persons,

and non-discrimination, and was ratified by Belgium on 2 March 2004.[335] While a detailed examination of the rights it sets out was beyond the scope of this research, it is worth noting that the Appendix to the Charter on the scope of its application specifically states:

> "Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons."[336]

6.3.3.1 The right to gainful employment

405. As regards the right to engage in wage-earning employment, the 1954 Convention states, "Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."[337] It further encourages state parties to give sympathetic consideration to assimilating the rights of all stateless persons in this regard to those of nationals.[338]

406. Belgium has not specifically addressed the question of wage-earning employment for stateless persons. Contrary to what is foreseen for recognized refugees, recognized stateless persons are not automatically exempted from the obligation to have a work permit. Rather, they are subject to the general legislation on work authorization and permits. As a consequence, the possibility for recognized stateless persons to work depends on factors unrelated to their statelessness, such as the type of residence permit they have, the type of work sought or available, and their family situation. These factors will determine whether stateless persons are exempted from the requirement to have a work permit or whether one is needed and can be acquired. Each situation has thus to be examined individually. The same reasoning applies as regards self-employment, covered by Article 18 of the 1954 Convention.

407. As seen in Table 6, the types of residence permit most frequently held by recognized stateless persons are B and C Cards. These provide permanent residence and allow the stateless person to work without needing a specific work permit. It must be remembered, however, that stateless persons may well only have been granted such permits after some time and that holders of an A Card are not automatically exempted from a work permit. The scope of the research did not, however, permit an examination of whether the issuance of work permits to holders of an A Card raises concern.

408. In the field of labour legislation the 1954 Convention further protects stateless persons lawfully staying in Belgium by stating that they should be accorded the same treatment as is accorded to nationals, notably with respect to remuneration, hours of work, holidays with pay, minimum age of employment, training, and so on, in so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities.[339] No concern towards stateless persons with lawful stay arose in this respect in the course of the research, but a detailed examination of the issue was again beyond the scope of the report.

409. On the same basis that the Constitutional Court found discrimination towards stateless persons vis-à-vis refugees, both of which categories are in a comparable situation, as regards the right to benefit from social integration allowance and from family allowance,[340] it might be useful to undertake further analysis of possible discrimination as regards access to employment.

6.3.3.2 The right to public relief and social security

410. The 1954 Convention guarantees stateless persons lawfully staying in a state party *the same treatment as nationals,* as regards access to both public relief and social security. Article 23 states that they should be accorded the same treatment as its nationals with respect to public relief and assistance. Article 24(1)(b) likewise guarantees them the same treatment as nationals as regards social security in respect of legal provisions for work-related injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme.[341] This latter provision can be subject to some limitations on its application, but when ratifying the Convention Belgium declared that it did not wish to make use of these.

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335 Act of 15 March 2004 assenting to the revised European Social Charter and to the Appendix, Strasbourg, 3 May 1996, *Moniteur belge,* 10 May 2004.

336 Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163, available at http://www.unhcr.org/refworld/docid/3ae6b3678.html. See also UNHCR, Round Table on the Social Rights of Refugees, Asylum-Seekers and Internally Displaced Persons: A Comparative Perspective, December 2009, available at http://www.unhcr.org/refworld/docid/4d3d59c32.html, pp. 7–8.

337 1954 Convention, Article 17 §1 (emphasis added).

338 Ibid., Article 17 §2.

339 Ibid., Article 24 §1(a).

340 See above section 6.3.1.1, "Constitutional Court findings of discrimination as regards the right of residence".

341 Article 2 of the law of 12 May 1960 approving the 1954 Convention.

411. Further protection may be afforded by EU legislation, which coordinates national social security legislation to ensure equal treatment with nationals regarding social security rights of persons moving within the European Union.[342] In addition, recognized stateless persons are covered by general national legislation concerning health insurance and child allowance; the nationality (or lack thereof) of the person is irrelevant.[343]

412. In Belgium, public welfare centres (Centre public d'action sociale (CPAS) / Openbaar Centrum voor Maatschappelijk Welzijn (OCMW)) can provide two different types of assistance: social integration and social aid.

413. The right to social integration can be realized through support to find employment and/or the provision of an integration allowance, although this right is subject to conditions linked to age, nationality, and effective residence. Stateless persons must be recognized as such and be authorized to stay and be residing habitually in Belgium. In addition, they must meet general conditions, that is, be over 18, have an effective residence in Belgium, be willing to work unless medically unable, be unable to support themselves otherwise, and assert their rights to benefits which they may enjoy under Belgian or foreign social legislation.[344]

414. Some labour tribunals will allow a recognized stateless person to obtain social aid. Such cases are rare for recognized stateless persons whose regularization procedure is ongoing. These tribunals have argued that because it has been established that return to the country of origin is impossible, a case of force majeure exists.[345] They have followed the position of the Court of Cassation, which had held that aliens who could not return to their country of origin for reasons beyond their control were entitled to receive social aid from the centres and were entitled to it until they could actually leave Belgium. The Court of Cassation ruling led to a Circular directing the centres to grant social aid to an alien staying in Belgium illegally but who could not return to his or her country of origin for reasons beyond his or her control.[346]

415. One recognized stateless woman who was able to obtain assistance before her regularization was approved was Ashmi, whose story is set out after paragraph 399 above. She was able to receive financial support one year after being recognized as stateless, but before her regularization was eventually approved. She received €730 a month for her and her two children.

416. As seen in Table 6, the type of residence permit most frequently held by recognized stateless persons is either a B or C Card. Nevertheless, only holders of C Cards may ask for social integration; holders of B Cards may only ask for social aid if they fulfil the necessary requirements. As already mentioned, however, this does not mean that this type of permit is initially awarded to recognized stateless persons. As a result, current holders of C Cards who are entitled to social integration may have had to wait several years after regularizing their stay before they obtained this Card and thereby benefit from social integration, although they may sometimes be able to benefit from social aid from the public welfare centres (CPAS/OCMW).

6.3.3.3 The right to education

417. According to Article 22 of the 1954 Convention, the contracting states shall accord to stateless persons the *same treatment as is accorded to nationals* with respect to elementary education. There is no requirement of lawful presence or stay. In addition, the Article states that stateless persons should be accorded treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances with respect to education other than elementary education.

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342 Council of the EU, Council Regulation No. 1408/71 of 14 June 1971 on the Application of Social Security Schemes to Employed Persons and their Families Moving within the Community, 14 June 1971, available at http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31971R1408:EN:HTML. Successive amendments and corrections to the Regulation have been incorporated in a consolidated version of the Regulation available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1971R1408:20080707:EN:PDF. The Regulation applies, *inter alia,* to stateless persons and refugees residing in the territory of a member state to whom the legislation of one or several member states applies and to the members of their families and their descendants. It also applies to descendants of these workers irrespective of the nationality of the latter, provided the descendants are EU nationals.

343 It should, however, be noted that recognized stateless persons do not have to fulfil the general criterion requiring five years of prior residence in Belgium before asking for child allowances (Article 1 §2, loi du 20/07/1971 sur les prestations familiales garanties). The same applies for family allowances for employees who are stateless or who are asking for allowances for a stateless child (Article 56sexies, §1 2°, lois coordonnées relatives aux allocations familiales pour travailleurs salariés, 04/08/1930, modified notably by the laws of 19/12/1939 and 30/12/2009).

344 Article 3, 1°–6° of the Law of 26 May 2002, concernant le droit à l'intégration sociale. (While B and C cards are both permanent residence permits valid for five years, only the C Card gives right to social integration.)

345 See several decisions of the Ghent Labour Tribunal: 27 October 2006, AR 174.282/06; 29 September 2006, AR 173.554/06; 12 May 2006, No. 172.710/06, all unpublished (in Dutch). See also Belgium: Liège Labour Tribunal, 27 November 2007, RG 8.209/2006, available at http://www.adde.be/J_15/index.php?option=com_docman&task=doc_download&gid=72&Itemid=120 (in French).

346 Belgium, Ministry of the Interior, Circular of 26 April 2005, concernant le droit à l'aide sociale pour certaines catégories d'étrangers.

418. In Belgium all children have access to education irrespective of their status or nationality (or lack thereof). A school cannot refuse to enrol a child under 18 because he or she does not have a residence permit, nor can it deny a child a diploma.[347]

6.3.3.4 The right to identity papers and administrative assistance

419. Regarding identity papers, Article 27 of the 1954 Convention requires states to "issue identity papers to any stateless person in their territory who does not possess a valid travel document". In addition, Article 25 of the 1954 Convention provides

> "When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities."

420. In Belgium, the CGRS offers recognized stateless persons administrative assistance which they cannot obtain elsewhere because they do not have a nationality. For instance, the CGRS can issue documents, such as certificates of birth, marriage or death, insofar as the stateless person can prove his or her identity.[348] The CGRS can issue the following documents:

> "stateless person certificate, on request and presenting the judgment of the [Tribunal] of First Instance. With this document the recognised stateless person can ask the municipal authorities to regularise him/her;
>
> "the register office certificates which would normally be issued to the foreigner by his/her national authorities, if the stateless person cannot obtain them from the country where the event (birth, marriage) took place because he/she has no nationality."

6.3.3.5 The right to travel documents

421. Article 28 of the 1954 Convention provides that "Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory". The state can refuse to issue documents for compelling reasons of national security or public order.

422. In Belgium, stateless persons can obtain a "grey passport" to travel outside the country. The request must be addressed to the Passport Service of the Ministry of Foreign Affairs.[349] To obtain this document, the person must fulfil the conditions set out in the 1974 law on the issuance of passports.[350] These are: (i) he or she must prove his or her identity;[351] (ii) his or her nationality, refugee status, or recognized statelessness must be confirmed;[352] (iii) it must be impossible to obtain a passport from competent authorities;[353] and (iv) the person must have a permanent residence permit. Since 1 September 2004, a travel document issued by the Federal Foreign Office is for a period of two years.[354]

423. Table 6 shows that at least 11 per cent of that population recognized as stateless with a valid residence permit do not meet the conditions for requesting a travel document, since one of the conditions is the possession of an authorization to stay permanently on the territory.

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347 For the French-language Community: Decree of 30 June 1998 visant à assurer à tous les élèves des chances égales d'émancipation sociale, notamment par la mise en oeuvre de discriminations positives, Moniteur belge, 22 August 1998, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1998063039&table_name=loi, (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1998063039&table_name=wet (in Dutch). For the Flemish Community: Circular of 24 June 1999 of the Flemish Minister of Education Baldewijns "Het recht op onderwijs voor kinderen zonderen wettig verblijfsstatuut", available at http://www.ond.vlaanderen.be/edulex/database/document/document.asp?docid=13382. On the latter, see generally Platform for International Cooperation on Undocumented Migrants (PICUM), "Evaluatieverslag van de ICEM-werkgroep Opvangbeleid", available at http://ww.picum.org/nl/article/evaluatieverslag-van-de-icem-werkgroep-opvangbeleid (in Dutch).

348 CGRS, Stateless Persons, available at http://www.cgra.be/en/Groupes_vulnerables/Apatrides (in English), http://www.cgra.be/fr/Groupes_vulnerables/Apatrides/ (in French), and http://www.cgra.be/nl/Kwetsbare_groepen/Staatlozen/ (in Dutch).

349 Service public fédéral Affaires étrangères (in French) and Federale Overheidsdienst Buitenlandse Zaken (in Dutch).

350 Law of 14 August 1974, relative à la délivrance des passeports, *Moniteur belge,* 21 December 1974.

351 If the person never provided official documents, the reference "decl" is mentioned on his identity card.

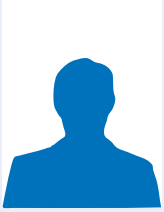
352 The residence card must show the correct status. So, if the person's status is administratively registered as "unknown", the request for travel documents will be inadmissible.

353 For stateless persons recognized as such and refugees this condition is automatically fulfilled.

354 Belgium, Ministry of Foreign Affairs, Circular of 26 September 2001 concerning the issuance of travel documents to non-Belgians, amended by a fax of 4 August 2006, applied retroactively from 1 September 2004. For further details see Nieuwsbrief Vreemdelingenrecht No. 19/2006, available at http://www.kruispuntmi.be/vreemdelingenrecht/detail.aspx?id=3581 (in Dutch).

424. According to the Federal Foreign Office, 50, 70, and 65 travel documents were issued to recognized stateless persons in 2006, 2007, and 2008 respectively. Since 2009 the number of travel documents issued to stateless persons has increased to 105 passports in 2009 and about 270 in 2010. This increase may be a consequence of the implementation of the 19 July 2009 Instruction, which has enabled the regularization of more stateless persons and the issuance of permanent residence permits.

425. The fact that many recognized stateless persons residing legally in Belgium cannot travel because their permit is not permanent is contrary to Article 28 of the 1954 Convention. They will often have to wait for the end of the maximum five-year period before their residence permit becomes permanent and allows them to travel. This can be a difficult and sometimes unbearable situation for them. The story of Sergey, who has been recognized as stateless and granted a temporary residence permit which has now been renewed three times, follows. As he said, "Can you believe I have not seen my family in more than 10 years? I am stuck here."[355] After the interview, he got in touch with the Belgian authorities. They will issue him with a passport and have invited him to come and collect it.



Name: Sergey (Participant No. 6)

Age and sex: 50s, male

Country of origin: Belarus

Status when interviewed: Rejected asylum-seeker, recognized stateless and regularized (limited residence)

Current status: Recognized stateless and regularized (unlimited residence)

The legacy of the Soviet Union still haunts Sergey* today. He was born in the 1950s in what is now Belarus. His family were not communists and so always had problems, he claims. In 1988, he helped to organize one of the first strikes in the Soviet Union and believes it was by way of punishment that he was mobilized as a reservist to go to nuclear-contaminated Chernobyl. He fled to Ukraine, but the authorities there also wanted to send him to Chernobyl. So he came back to Minsk in 1990, only to be requested again to go to Chernobyl. To avoid that, Sergey left for Poland on a false passport and was there when the Soviet Union collapsed.

When Soviet citizenship ceased to exist he should, in theory, have become a Belarusian citizen. However, when the Belarus nationality law entered into force in 1991, he was not eligible for citizenship as he did not have a permanent home on Belarusian territory.

In Poland, Sergey started a business in design and frequently travelled to Africa, especially to Liberia. He was even able to obtain a Liberian passport. At the time, he had a Soviet passport, but was not considered a Russian citizen. In 1999, he married a Ghanaian woman and went to the Netherlands, but the Dutch authorities told him that they did not have a procedure to recognize him as stateless.

He then moved on to Belgium and lived in asylum-seeker reception centres, during which time he applied for refugee status three times without success. Sergey says the asylum authorities never told him that Belgium has a procedure to recognize statelessness, but that he was helped "tremendously" by a priest and was as a result able to reunite with his wife.

When Sergey finally learned about the Belgian stateless procedure in 2005, he applied in Antwerp and was recognized as stateless two years later. With that certificate in hand, he applied for regularization in 2007, but was rejected by the Aliens Office, which told him to go back to Belarus. With UNHCR support, he received a residence card in 2009, which needs to be renewed every year.

Now Sergey is working as a truck driver and has an indefinite work contract. He complains that he is stuck in Belgium and, with only a temporary residence permit, cannot travel. He would particularly like to see his family in Belarus.

In addition to his own situation, his daughter was born in Antwerp in 2009 and is currently stateless. Sergey would like her to be Belgian, but the Belgian authorities argue that she can acquire her mother's Ghanaian nationality if her parents apply for it at the Ghanaian Embassy.

Sergey longs for a stable life, ideally in Belgium. "I'm being treated like an enemy, but what's my crime?" he asks. He believes that stateless people are ignored and neglected and that they should enjoy equal treatment to refugees.

Since the interview, Sergey has been granted unlimited residence in Belgium. A few months later, he was issued with a travel document of the 1954 Convention.

* Not his real name.

[355] Participant No. 6 (Sergey).

6.4 The status of applicants seeking recognition as stateless

426. This section focuses on the status – the rights and obligations – of applicants during the statelessness determination procedure. As with the previous section, the information in this section should not be considered exhaustive, since an analysis of all the human rights relevant to applicants seeking recognition as stateless was outside the scope of the research.

6.4.1 The absence of an automatic right of residence for applicants

427. If formal recognition of statelessness does not result in the granting of a residence permit, a *fortiori* no temporary stay permit is automatically granted to applicants seeking recognition as stateless (or their families) while the procedure is ongoing. Indeed, whereas the 1980 Aliens Act guarantees temporary stay permits to individuals seeking asylum,[356] there are no corresponding provisions in the field of statelessness. Persons seeking recognition as stateless who are not lawfully residing in Belgium on other grounds thus find themselves staying on the Belgian territory in an irregular and difficult situation. This has obvious consequences as regards their right to work and to access to public relief, as well as their overall rights during the stateless determination procedure, and, indeed, as regards any potential detention or expulsion.

428. In the late 1990s, there were a few cases in which Belgian tribunals approved the granting of a stay permit to someone seeking recognition as stateless during the determination procedure. Such cases were usually handled in summary proceedings before the Tribunal of First Instance. For instance, in 1997 the Nivelles Tribunal of First Instance referred explicitly in an order to Article 3 of the European Convention on Human Rights and held that the applicant had no other country in which he could legally reside and that therefore to force him to stay in Belgium irregularly amounted to inhuman and degrading treatment.[357] At the end of 1997, the Brussels Tribunal of First Instance, in a summary proceeding, also instructed the municipality to deliver a residence permit, renewable every three months, until a final decision could be taken on the application to be recognized as statelessness. The judgment's reasoning was essentially based on the precarious circumstances of applicants who are on the territory illegally and without social aid.[358] As mentioned above in paragraphs 346–351, the Aliens Office has, however, appealed against such rulings, which have been overturned by the Court of Appeal with the result that the temporary stay permits issued as a result of the Tribunal decisions have been withdrawn.

429. Section 6.3.1.3 above has examined the risk of removal not only for recognized stateless persons but also for persons of unknown nationality. This could include persons of unknown nationality in an asylum procedure, who may be stateless, as well as rejected asylum-seekers, who are in fact stateless and should have applied for recognition as such.

6.4.2 Other rights

430. Many of the rights to which aliens are entitled derive from the issuance of a residence permit. That said, even though applicants seeking recognition as stateless and recognized stateless persons staying illegally in Belgium do not automatically receive a legal residency status in Belgium, they do enjoy a certain number of rights, just like other aliens without legal stay. These mainly derive from Belgium's international obligations and include such rights as access to courts and to legal aid. This section focuses mainly on rights under the 1954 Convention. General international human rights law is also a source of rights and obligations, but a more detailed analysis of these rights was outside the scope of this project. Some of these rights are examined below.

6.4.2.1 Protection from expulsion or removal

431. The protections from expulsion or removal under the 1954 and 1951 Conventions and under international human rights law have been outlined in section 6.3.1.3 above.

432. In general, before removing aliens residing illegally in Belgium, the Aliens Office has to verify their identity[359] and check whether they have a valid residence permit in another country and whether they have acquired travel documents from the receiving country's authorities. In theory, it is thus possible for an applicant seeking recognition as stateless to be removed if the Belgian authorities find in the course of its investigations that he or she is in fact the

356 Articles 71(4), 73 and 79 of the Royal Decree of 8 October 1981.

357 Belgium, Tribunal of First Instance Nivelles, 24 June 1997, RR 97/163, unpublished.

358 Belgium, Tribunal of First Instance Brussels, 17 December 1997, RR 97/1666/C, unpublished.

359 Aliens Office, Circular of 23 November 2009 sur l'identification des étrangers en séjour irrégulier, available at https://dofi.ibz.be/sites/dvzoe/FR/Documents/20090529_f.pdf (in French) and https://dofi.ibz.be/sites/dvzoe/NL/Documents/20090529_n.pdf (in Dutch).

national of a country and so is not stateless. The Aliens Office nevertheless states that it does not remove applicants seeking to be recognized as stateless.

433. In this context, the Brussels Tribunal of First Instance held in a summary proceeding in 1997 that any individual who meets the criteria set out in Article 1 of the 1954 Convention has the subjective right to be recognized as stateless. It found that in this particular case there were sufficient indications that the person concerned, whose application to be recognized as stateless was ongoing, no longer had Macedonian nationality, at least at that stage. It therefore ruled that she should not be arrested for illegal stay (and as a result be liable to potential removal) and that she should be given the means to lead a decent life in Belgium while awaiting the determination of her statelessness.[360]

434. While the Aliens Office has indicated that in recent years no recognized stateless persons have been forcibly removed, of a total of 62,442 removals between 2000 and 2010, 65 were of those of unknown nationality. Moreover, in 2009 and 2010, more than 80 per cent of these removals concerned asylum-seekers transferred in the framework of the Dublin II Regulation.[361]

435. The low number of removals of persons of unknown nationality compared with other removals suggests that the Belgian authorities encounter difficulties in forcibly removing persons with no or unclear nationality or possibly that there was not a strong focus on removals at that time. In addition, among the forced returns of persons of unknown nationality, it is worth noting that a significant proportion involved transfers to other EU member states in the framework of the Dublin II Regulation. It should be remembered that even in the absence of a well-founded fear of persecution or serious harm, for a variety of reasons stateless persons – some of whom may have been registered as being of unknown nationality if their status is not clear – may well introduce an asylum claim even though this is not the appropriate procedure for recognizing their statelessness.[362]

6.4.2.2 The right to gainful employment

436. Lacking of a residence permit on the basis of their pending stateless recognition procedure, applicants do not receive a work permit.

6.4.2.3 The right to social security, public relief and social security

437. Applicants seeking recognition as stateless and illegally staying recognized stateless persons have no rights to social security in Belgium

438. As mentioned above in paragraph 412, public welfare centres (CPAS/OCMW) can provide two different types of public relief: social integration and social aid. Since the right to social integration is reserved for lawfully resident recognized stateless persons (see paragraph 410), the question remains whether applicants seeking recognition as stateless can benefit from any type of social aid.

439. Article 57 §2 of the Law on public welfare centres[363] provides that for aliens illegally residing in Belgium the duty of the public welfare centres is limited to granting urgent medical care. This aid can cover both preventive and curative care and can include a wide range of medical treatment such as a surgical operation, childbirth, a medical examination, and so on. There is no list detailing the care covered by this legislation.

440. In principle, these centres are not required to provide social aid to applicants seeking recognition as stateless or to illegally resident recognized stateless persons. The jurisprudence has, however, been quite diverse on this issue and judges differ on the role public welfare centres should assume. Research carried out by the city of Ghent in 2007[364] showed that some labour tribunals agree that Article 57 §2 of the Law on public welfare centres applies, even if the alien is still in a statelessness determination procedure before a Tribunal of First Instance.[365] They have further decided that such a pending procedure does not suffice to prove that it is impossible for the alien to return. Certain judges also rule that even recognized stateless persons do not have the right to social aid so long as they are illegally staying in Belgium.[367]

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360 Belgium, Tribunal of First Instance Brussels, 11 April 1997, *Revue du droit des étrangers,* 1997, p. 262.

361 EU, Council Regulation (EC) No 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national, Official Journal of the European Union L50/1 of 25 February 2003), (hereafter Dublin II Regulation) available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3e5cf1c24.

362 See above section 4.1.2, "Judicial and administrative procedures".

363 Law of 8 July 1976, organique des centres publics d'action sociale [Belgium], Moniteur belge, 5 August 1976, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1976070801&table_name=loi (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1976070801&table_name=wet (in Dutch).

364 Stad Gent, *Staatlozen,* above note 225, p. 79.

365 Law of 8 July 1976, above note 363.

366 Belgium, Brussels Labour Tribunal, 11 March 2005, No. 72.108/04, and 24 March 2006, No. 16.451/05, both unpublished.

367 Belgium, Mons Labour Tribunal, 15 September 2004, No. 5.259, CDS, 2005 (in French).

441. Some judges have relied on the prohibition of inhuman and degrading treatment to rule in favour of granting the alien social aid. As explained in the 2007 City of Ghent report,[368] these cases usually concern stateless persons who are themselves in an orbit situation. They include, for example, Palestinians from Gaza who are unable to obtain travel documents, whose exceptional humanitarian situation has been confirmed by the CGRS, whose voluntary return is impossible, whose application for recognition as stateless is pending, and who can show an apparent situation of statelessness.[369]

442. In this context, the Belgian Constitutional Court has been asked preliminary questions on the compatibility between Article 57 §2 of the Law on public welfare centres with Articles 10 and 11 of the Constitution affirming the principles of equality and non-discrimination, read in conjunction with other constitutional or convention provisions.[370]

443. The Court was asked to compare the access to public relief, on the one hand, of Belgian nationals and aliens lawfully residing in Belgium, or aliens who whose asylum application has been rejected and have appealed a notification they have received to leave the territory and, on the other, of aliens who have received a final order to leave the territory (where no appeal against the rejection of an asylum application has been made or all appeals have been exhausted) and who have sought recognition as stateless in a procedure that is still ongoing. The right to public relief defined by the provision would be granted to the first category but not the second (the category in which the appellant found herself).

444. The Court held in 2001 that there is a significant difference between both groups: persons in the first category have initiated an appeal to establish that they are persecuted in their country of origin, whereas conclusive judgments have established that this danger does not exist for persons in the second category.[371] Furthermore it held that, given the high risk of these procedures being used for different ends from those intended, the Constitution read in conjunction with the provisions of the 1954 Convention did not require that public relief be granted to the second category of persons. It was thus decided that Article 57 §2 of the Law on public welfare centres is not contrary to Articles 10 and 11 of the Constitution, read in conjunction with other constitutional or convention provisions.

6.4.2.4 The right of families with children illegally residing in Belgium to be admitted to a reception centre if the parents cannot provide for their children

445. An additional right under Belgian legislation is that federal reception centres (for asylum-seekers) also have to provide material assistance to children (under 18) of parents illegally staying in Belgium, if it has been established that these children are indeed in need of assistance. In order not to separate them from their parents, the right of reception is extended to the parents. This in-kind assistance notably consists of shelter, food, clothes, and medical, psychological, and social aid.[372]

6.4.2.5 The right to education

446. Children of applicants to be recognized as stateless and recognized stateless persons illegally staying in Belgium have access to public education in Belgium, since all children in Belgium have free access to education until the end of compulsory education.[373]

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368 See para. 440.

369 Belgium, Brussels Labour Tribunal, 21 April 1994, No. 4.281, *Revue du droit des étrangers,* 1994.

370 Notably Articles 1, 6, and 23 of the 1954 Convention.

371 Belgium, Constitutional Court, 14 February 2001, No. 17/2001, available at http://www.const-court.be/public/f/2001/2001-017f.pdf (in French) and http://www.const-court.be/public/n/2001/2001-017n.pdf (in Dutch). Preliminary questions were asked by the Labour Courts of Brussels and of Huy. In a preliminary question asked by the Labour Court of Charleroi, the Court added that Article 57 §2 was not in violation of the Belgian Constitution and other Convention provisions by limiting to urgent medical care the right to public relief to an alien residing illegally in Belgium and who had initiated a procedure to be regularized on the basis of Article 9, al. 3 of the 1980 Aliens Act. See Belgium, Constitutional Court, 5 June 2002, No. 89/2002, available at http://www.const-court.be/public/f/2002/2002-089f.pdf (in French) and http://www.const-court.be/public/n/2002/2002-089n.pdf (in Dutch).

372 Federal Ministry for Social Integration, Anti-Poverty Policy, Social Economy and Federal Urban Policy, Law of 12 January 2007, relative à l'accueil des demandeurs d'asile et autres categories d'étrangers (1), available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007011252&table_name=loi (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2007011252 (in Dutch), Article 60.

373 Article 24 §3 of the Belgian Constitution.

6.5 Conclusions and recommendations

6.5.1 Conclusions

447. This chapter has examined the status, the rights and the obligations of persons recognized as stateless and of those awaiting determination of their eligibility for protection under the 1954 Convention. It shows that ensuring stateless persons are treated appropriately requires proper awareness of, and commitment to, applicable international standards.

448. The 1954 Convention provides a graduated structure, with a stateless person's entitlements increasing in line with his or her level of attachment to the country in question. As a result, while some provisions are unconditional and apply to all stateless people under the state's jurisdiction, others are dependent on the individual being " lawfully in", "lawfully staying" or "habitually resident" in the territory. Thus certain rights apply during the determination phase while others only arise on recognition.

449. The Convention does not operate in isolation. The rights and obligations of stateless persons are also derived from international human rights law, including where applicable international refugee law. In some cases international human rights law provisions replicate rights found in the 1954 Convention; others provide for a higher standard of treatment or for rights not found in the 1954 Convention at all. For stateless refugees, international refugee law provides a higher level of protection under the 1951 Refugee Convention than that offered by the 1954 Convention.

450. With regard to **the rationale for a status for recognized stateless persons**, the status granted to someone recognized as stateless under the 1954 Convention needs to provide, at the very least, an interim response in anticipation of a durable one. For stateless persons, the latter involves the acquisition or reacquisition of nationality, an issue covered in Chapter 7. In addition, ensuring that stateless persons are treated appropriately requires not only proper awareness of, and commitment to, applicable international standards, but also an effective mechanism for identifying such persons, an issue covered in the previous chapter.

451. The 1954 Convention does not, however, require that states grant an authorization to stay to all stateless persons. As UNHCR's July 2012 Guidelines on Statelessness No. 3 on the Status of Stateless Persons at the National Level note, however, granting at least a temporary authorization to stay "would fulfil the object and purpose of the treaty", as realization of many of the rights of stateless people is dependent upon legal stay.[374] Indeed, most states with determination procedures grant a status in national law, including a right of residence, upon recognition. This is often in the form of a fixed term, renewable residence permit.

452. As the Summary Conclusions of UNHCR's December 2010 expert meeting on statelessness determination procedures and the status of stateless persons noted, this approach is the best way to ensure the protection of stateless people and uphold the 1954 Convention. Without such a status, many stateless people may be deprived of the protection of the Convention. As set out in the Conclusions: "When States recognize individuals as being stateless, they should provide such persons with a lawful immigration status from which the standard of treatment envisaged by the 1954 Convention flows. Having a lawful status contributes significantly to the full enjoyment of human rights.[375] In some cases, stateless people may also have a right of residence in the state under international human rights law, including under Article 12 of the 1966 International Covenant on Civil and Political Rights.

453. All recognized stateless persons do not, however, necessarily require residence permits in the country that recognizes them. This may not be necessary if stateless persons have a realistic prospect, in the near future, of obtaining protection consistent with the standards of the 1954 Convention in another state.

454. In UNHCR's view, protection can only be considered available in another country when stateless persons can acquire or reacquire nationality through a simple, rapid and non-discretionary procedure that is a mere formality or where they enjoy permanent resident status in a country of habitual residence to which immediate return is possible. As for their ability to return to a country of previous habitual residence, this must be accompanied by the opportunity to live a life of security and dignity. Permission to return on a short-term basis would not suffice. In circumstances where these criteria are met, the host state would have discretion to provide a more transitional status.[376]

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374 UNHCR Guidelines on Statelessness No. 3, above note 266, para. 28.

375 UNHCR, Geneva Summary Conclusions, above note 195, para. 25.

376 UNHCR Guidelines on Statelessness No. 3, above note 266, paras 34–38.

455. With regard to **the residency rights of recognized stateless persons in Belgium**, at present formal recognition of statelessness in Belgium does not result in the grant of a residence permit. *A fortiori,* no temporary stay permit is granted to the applicant or his or her family while the procedure is ongoing. While there have been some cases where Belgian courts have approved the granting of a stay permit to recognized stateless persons and even to applicants in the determination procedure, court practice is divergent and there is no common practice in this regard.

456. In practice, in the absence of an automatic right of residence for persons recognized as stateless in Belgium, many are illegally present. This is so not least because of the difficulties they can face obtaining identity documents and gaining lawful entry to the territory in the first place.

457. Until able to regularize their stay, stateless people may be at risk of detention and/or removal on account of their illegal presence, although the Aliens Office has indicated that neither applicants seeking recognition as stateless nor recognized stateless people are forcibly removed. Since the beginning of the 2000s, a few dozen people of unknown nationality – some of whom may be stateless – have nevertheless been removed from the territory, mainly within the framework of the Dublin II Regulation.

458. Further research on these issues would be needed to clarify the situation. Further research is also necessary regarding the situation of people considered to be "unreturnable" who may be stateless or at risk of statelessness, as this issue was beyond the scope of the study.

459. The question of the residence permit of a recognized stateless person has been addressed by the Constitutional Court in 2009 and 2012 in two cases the contrasting treatment of refugees and stateless persons in Belgium as regards their right of residence. In both judgments the Court concluded that the difference in treatment as regards the right to stay between a stateless person in Belgium and a recognized refugee was not reasonably justified.

460. In addition, the federal government agreement of 1 December 2011 foresees in principle the grant of a (temporary) residence permit to recognized stateless persons.[377] This commitment was already present in the federal government agreement of 18 March 2008 but had not been implemented.[378] UNHCR welcomes this renewed governmental commitment.

461. Since the exercise of many rights is dependent on the acquisition of an authorization to stay on the territory, many recognized **stateless persons need to regularize their stay** by initiating a regularization procedure. Significant delays (sometimes of several years) have been observed in this procedure and are added to those already encountered in the statelessness determination procedure. This further extends the period during which stateless persons find themselves living in Belgium with no or very limited rights.

462. While 30 to 60 per cent of regularization decisions on requests introduced by stateless persons used to be negative, this proportion decreased significantly after the introduction of new regularization criteria in July 2009. As a result more than 90 per cent of such requests were approved in 2010. One of the results of implementing these criteria has been that more stateless persons have been regularized. This has helped to reduce the number of recognized stateless persons residing illegally in Belgium. In fact, only 56 applications for regularization made by recognized stateless persons were outstanding at the end of 2011.

463. The deadlines stipulated in the July 2009 Instruction for introducing regularization requests have, however, in some cases now expired and the Instruction was cancelled by the Council of State in December 2009. This means that it is not known what future practice will be regarding the regularization of stateless persons. Without any change in law and/or practice, they may in future again face difficulties regularizing their stay in Belgium. Indeed a downward trend is already observed in 2011 with only 53 per cent of regularization requests approved and only 49 stateless people residing illegally in Belgium regularized.

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377 Belgium, Governmental Agreement, 1 December 2011, above note 256, p. 134, "The Government will put in place a procedure for the Commissioner General for Refugees and Stateless Persons to determine statelessness. Recognition of statelessness will in principle result in the delivery of a (temporary) residence permit." "Le Gouvernement mettra en place une procédure de reconnaissance du statut d'apatride via le Commissariat Général aux Réfugiés et aux Apatrides. La reconnaissance du statut d'apatride aura en principe pour conséquence la délivrance d'un titre de séjour (temporaire)" (in French). "De regering zal een procedure instellen voor de erkenning van de status van staatloze via het Commisariaat-Generaal voor de Vluchtelingen en de Staatlozen. De erkenning van de status van staatloze zal in principe tot gevolg hebben dat een (tijdelijke) verblijfsvergunning wordt afgegeven" (in Dutch).

378 Belgium, Governmental Agreement, 18 March 2008, above note 257, p. 35, "The Government will put in place a procedure for the grant of stateless status by the Commissioner General for Refugees and Stateless Persons. Recognition as stateless will in principle result in a right to (temporary) residence." "Le Gouvernement mettra en place une procédure d'octroi du statut d'apatride par le Commissariat général aux réfugiés et aux apatrides. La reconnaissance en tant qu'apatride donnera en principe lieu à un droit de séjour (temporaire)" (in French). "De regering voorziet in een procedure tot toekenning van het statuut voor staatlozen door het Commissariaat-Generaal voor de Vluchtelingen en de Staatlozen. De erkenning als staatloze heeft in principe een (tijdelijk) verblijfsrecht tot gevolg" (in Dutch).

464. The number of pending regularization applications introduced before the Aliens Office should give an overview of the number of recognized stateless people without valid residence permits, but this information is not currently published.

465. With regard to **other rights of recognized stateless persons**, whether or not they possess a residence permit, and of applicants seeking recognition as stateless, the chapter assessed in particular the right to gainful employment, welfare, administrative assistance, and education.

466. Since the enjoyment of many rights derives from the grant of a residence permit, recognized stateless people who do not have such a permit face significant difficulties. This is the same for applicants seeking to be recognized as stateless. In particular, neither have access to gainful employment. Despite diverging jurisprudence on the issue, recognized stateless people without a residence permit do not generally receive social aid because public welfare centres are not required in principle to provide it, nor do they have access to health care except for urgent medical care. As for the situation in Belgium regarding the right to public relief, whether social aid or social assistance, this needs further analysis.

467. Children do, however, have the right to go to school and families residing illegally in Belgium with children have the right to be admitted to a reception centre if the parents cannot provide for their children.

468. On request, the CGRA issues recognized stateless persons with civil status documents which they cannot obtain elsewhere because they do not have a nationality as well as certificates confirming their recognition as a stateless person by the judiciary.

469. When it comes to the issuance of a travel document, however, there is a requirement that holders have a permanent residence permit before the authorities will issue a travel document. This is contrary to the 1954 Convention, which requires only lawful stay. In addition, stateless persons will often have to wait for years before they can obtain such documents, since recognition of statelessness does not itself lead to a residence permit.[379]

470. Like other states, Belgium is bound by international and European human rights law, but an examination of these standards as they relate to stateless persons in Belgium was beyond the scope of this research. Incompatibilities between the situation in Belgium and its international obligations cannot be excluded.

471. In particular, the lack of legal residence both during the statelessness determination procedure and even after recognition (until regularization can be secured) means that many stateless persons are unable to access other fundamental rights. As a result, stateless persons in Belgium may live in very precarious and uncertain conditions, often for many years. Some courts, including up to the level of the Council of State in 1998 and 2004,[380] have on occasion ruled that their situation constitutes inhuman and degrading treatment.

[379] See above paras 421–425.

[380] See above paras 348–349.

6.5.2 Recommendations

472. Bearing in mind the December 2011 federal government agreement which foresees in principle the grant of a (temporary) residence permit to recognized stateless people, UNHCR makes the following recommendations with a view to allowing Belgium to uphold its international obligations vis-à-vis stateless persons.

16

Recognition of statelessness should in general result in the issuance of a residence permit. Issuing a residence permit to recognized stateless persons would give effect to the 2009 and 2012 rulings of the Constitutional Court and the 2008 and 2011 Belgian federal government commitments and enable stateless people recognized in Belgium to enjoy the rights set out in the 1954 Convention. This would also facilitate the Aliens Office's subsequent decision on residence and would help reduce delays caused by an additional regularization procedure. The residence permit granted could be on at least a one-year renewable basis. In some cases, it may nevertheless not be necessary to issue a residence permit, for instance, where a stateless person enjoys the right of residence in another country and is able to return and live there with full respect for his or her human rights.

17

Applicants should be issued a temporary residence permit during a statelessness determination procedure and be accorded the same standards of treatment as asylum-seekers.

18

Access to work for recognized stateless persons with a residence permit of limited duration should be facilitated by exempting them from the obligation to have a work permit. (Those with unlimited residence do not require such permit.)

19

Travel documents should be delivered to all stateless persons residing lawfully on Belgian territory, irrespective of the duration of their residence permit. This would avoid recognized stateless persons lawfully staying in the country whose residence permit is of limited duration encountering problems obtaining travel documents, as may currently be the case, and thereby ensure that Belgium upholds its obligations under Article 28 of the 1954 Convention.

20

Further research should be undertaken on respect for the human rights of stateless persons, in particular regarding their access to public relief and practice regarding detention, as well as regards "unreturnable" persons who may be stateless.

7. THE PREVENTION AND REDUCTION OF STATELESSNESS

7.1 Introduction

473. Prevention of statelessness involves addressing the causes of statelessness so that new cases of statelessness are avoided. This can include measures to close gaps in nationality legislation, to promote birth registration, and to improve access to documentation and the determination or confirmation of nationality. Reduction of statelessness involves finding solutions to enable stateless persons to acquire a nationality, including through tailored statelessness reduction campaigns, legal reforms allowing stateless persons to acquire or reacquire a nationality and individual naturalization.

474. This chapter analyses the international and regional legal framework to prevent and reduce statelessness, as well as relevant provisions in Belgian nationality law. It assesses the impact of this Belgian legislation on stateless persons, including as visible in statistical data on the conferral of Belgian nationality on such persons. The chapter examines the extent to which Belgium meets international standards and obligations arising not only from international instruments that focus exclusively on statelessness but also from international human rights law. It recognizes a number of safeguards that already exist in Belgian nationality law to avoid and reduce statelessness. Finally, it recommends a number of measures to help to improve compliance with international law, especially in the context of the federal government's expressed commitment to accede to the 1961 Convention on the Reduction of Statelessness and to undertake another reform of the BNC, which was before Parliament at the time of writing.

475. The most effective way of preventing statelessness is by including adequate safeguards in laws and administrative frameworks to ensure that situations of statelessness do not arise. Where people have become stateless, the only way to resolve their situation is through the grant or reacquisition of citizenship.[381] Until the problem of statelessness is eliminated, however, stateless persons need to be protected. This chapter thus complements the two preceding chapters, since Chapter 5 addresses the determination of statelessness and Chapter 6 analyses the status, rights, and obligations of recognized stateless persons and those seeking recognition as stateless.[382]

476. Simply applying the other provisions of the 1954 Convention without fulfilling the commitment made in Article 32 of the Convention to facilitate the naturalization of stateless persons is not sufficient. As explained in this chapter, wherever possible states should also facilitate the assimilation and naturalization of stateless persons who are living on their territory.

7.2 The international and regional legal framework

477. The international community has recognized the need to prevent and reduce statelessness in the context of conflict prevention, conflict resolution, post-conflict reconciliation, and reduction of displacement, and as part of the protection of the human rights of individuals. Article 15 of the 1948 Universal Declaration of Human Rights declares, "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality." It can nevertheless be a challenge to determine *which* nationality someone may have a right to, especially if that person is stateless, where the right to a nationality under the Universal Declaration has been rendered void.

478. The aspiration of Article 15 has, however, been given more concrete form by way of the 1961 Convention and more generally by subsequent human rights treaties. These instruments have been complemented by regional ones. In addition, the 1954 Convention relating to the Status of Stateless Persons obliges states to facilitate the assimilation and naturalization of stateless persons.

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381 States may be expected to act proactively in cooperation with other states to prevent statelessness. See African Committee of Experts on the Rights and Welfare of the Child, Decision on the Communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) against the Government of Kenya, 22 March 2011, available at http://www.acerwc.org/wp-content/uploads/2011/09/002-09-IHRDA-OSJI-Nubian-children-v-Kenya-Eng.pdf, para. 51.

382 See also UNHCR, *Nationality and Statelessness,* above note 46, pp. 25–26.

7.2.1 The global human rights context

479. The fact that international human rights law recognizes the right of every person to a nationality assists the interpretation of conventions related to statelessness.[383]

480. This interaction is reflected in the conclusions of the third of a series of expert meetings held by UNHCR in 2010–2011, as part of the commemorations of the fiftieth anniversary of the 1961 Convention.[384] The meeting, held in Dakar, Senegal, focused on the interpretation of the 1961 Convention and on preventing statelessness among children, and concluded that the right of every person to a nationality

> "is fundamental for the enjoyment in practice of the full range of human rights. The object and purpose of the 1961 Convention is to prevent and reduce statelessness, thereby guaranteeing every individual's right to a nationality. The Convention does so by establishing rules for contracting states on acquisition, renunciation, loss and deprivation of nationality.
>
> "The provisions of the 1961 Convention, however, must be read in light of subsequent developments in international law, in particular international human rights law."[385]

481. In this context, obligations arising from the Convention on the Rights of the Child (CRC), to which Belgium is a party, are of paramount importance in determining the scope of the 1961 Convention obligations to prevent statelessness among children. Several CRC provisions are of significance in interpreting Articles 1–4 of the 1961 Convention: Article 7 of the CRC guarantees that every child has the right to acquire a nationality;[386] Article 8 ensures that every child has the right to preserve his or her identity, including his or her nationality; Article 2 contains a general non-discrimination clause which applies to all substantive rights enshrined in the CRC, including Articles 7 and 8; and Article 3 applies in conjunction with Articles 7 and 8 and requires that all actions concerning children be undertaken with their best interests as a primary consideration. The obligations imposed on states by the CRC are not only directed at the child's country of birth, but at all countries with which a child has a link, for instance through parentage or residence. In the context of state succession, predecessor and successor states may also have obligations.

482. In addition, the principle of gender equality enshrined in the ICCPR and CEDAW must also be taken into account when interpreting the 1961 Convention so as to ensure that women have the same right as men to confer their nationality on their children.

483. Article 18 of the Convention on the Rights of Persons with Disabilities also recognizes the right of persons with disabilities to a nationality on an equal basis with others.

7.2.2 Conventions related to nationality and statelessness[387]

484. Belgium is a party to the 1930 Convention on Certain Questions relating to the Conflict of Nationality Laws,[388] as well as to its two protocols: the Protocol Relating to a Certain Case of Statelessness[389] and the Protocol relating to Military Obligations in Certain Cases of Double Nationality.[390]

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383 Vienna Convention on the Law of Treaties, 23 May 1969, UNTS, Vol. 1155, p. 331, available at http://www.unhcr.org/refworld/docid/3ae6b3a10.html, Article 32 (3).

384 UNHCR, Expert meeting, Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children (Summary Conclusions), September 2011, available at http://www.unhcr.org/refworld/docid/4e8423a72.html (UNHCR Dakar Summary Conclusions).

385 Ibid., paras 1–2.

386 See also ICCPR, Article 24(3); Convention on the Rights of Persons with Disabilities, Article 18(2).

387 A main source for this section is UNHCR, *Nationality and Statelessness,* above note 46, pp. 27–39.

388 League of Nations, Convention on Certain Questions Relating to the Conflict of Nationality Law, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, available at http://www.unhcr.org/refworld/docid/3ae6b3b00.html. Belgium signed this Convention on 12 April 1930 and ratified it on 4 April 1939.

389 League of Nations, Protocol Relating to a Certain Case of Statelessness, 12 April 1930, No. 4138, 179 LNTS 115, available at http://www.unhcr.org/refworld/docid/3ae6b39520.html. Belgium signed the Protocol on 9 April 1936 but did not ratify it. Article 1 provides that "In a State whose nationality is not conferred by the mere fact of birth in its territory, a person born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality shall have the nationality of the said State".

390 League of Nations, Protocol Relating to Military Obligations in Certain Cases of Double Nationality, 12 April 1935, League of Nations, Treaty Series, vol. 178, p. 227, No. 4117, available at http://www.unhcr.org/refworld/docid/3ae6b38c10.html. Belgium ratified it on 4 April 1939.

485. While Belgium has acknowledged the need to provide protection to stateless persons by becoming a party to the 1954 Convention,[391] it has not yet acceded to a number of treaties aimed at reducing and preventing statelessness, such as the 1961 Convention on the Reduction of Statelessness, the 1997 European Convention on Nationality or the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession. The two latter regional instruments complement and build on the obligations contained in the 1961 Convention.[392]

7.2.2.1 The 1961 Convention on the Reduction of Statelessness

486. While certain international instruments confirm that everyone has the right to a nationality, they do not specify the nationality to which a person is entitled.[393] To alleviate the absence of clear rules in this respect, states have developed a series of additional standards in recognition of the need for further international cooperation and agreement to prevent and reduce statelessness.

487. The 1961 Convention is the only universal instrument that elaborates clear, detailed and concrete safeguards to ensure a fair and appropriate response to the threat of statelessness. Accession and adherence to the 1961 Convention equip states to avoid and resolve nationality-related disputes and to mobilize international support to prevent and reduce statelessness. UNHCR further believes that a higher number of state parties will also help to improve international relations and stability by consolidating a system of common rules.[394]

488. The 1961 Convention sets out rules for the conferral or non-withdrawal of nationality where the person in question would be left stateless. This makes it possible for states to prevent new cases of statelessness from arising, which should lead to a reduction in statelessness over time. The 1961 Convention aims at preventing statelessness, particularly at birth, but does not prohibit the possibility of revoking nationality under certain circumstances, nor does it require the retroactive granting of citizenship to all currently stateless persons.

489. In seeking to reduce the incidence of statelessness, the 1961 Convention requires signatory states to adopt nationality legislation that reflects its prescribed standards relating to the acquisition or loss of nationality.

490. While the rules specified in the 1961 Convention operate regardless of whether a child's birth is registered, registration of birth provides a key form of proof underpinning implementation of the 1961 Convention and related human rights norms. Article 7 of the CRC specifically requires the registration of the birth of every child and applies irrespective of the nationality or residence status of the parents.[395] On this subject the research shows that the practice of birth registration varies widely among municipalities in Belgium. Yet there is a constant practice in the fact that the child's nationality is never mentioned on the birth certificate.

491. Should the interpretation or application of the Convention lead to disputes between contracting states which are not resolved by other means, they can be submitted to the International Court of Justice at the request of any one of the parties to the dispute. The Convention also provides for the creation of a body to which a person who may benefit from the provisions of the Convention may apply to have his or her claim examined and to seek assistance in presenting the claim to the appropriate authority. The General Assembly subsequently asked UNHCR to fulfil this role.[396]

492. Lastly, the Final Act of the Convention includes a recommendation similar to that in the Final Act of the 1954 Convention, encouraging state parties to extend the provisions of the Convention to de facto stateless persons whenever possible.

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391 Law of 12 May 1960, portant approbation de la Convention relative au Statut des Apatrides et des Annexes, published *Moniteur belge* 10 August 1960 (in French), entered into force on 20 August 1960. Article 1(1) provides that the Convention and its Annexes will have full force and effect in Belgium.

392 See further below sections 7.2.2.3, "The 1997 European Convention on Nationality and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession", and 7.5.3 "The 1997 European Convention on Nationality and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession".

393 Such as Article 15 of the Universal Declaration of Human Rights.

394 UNHCR, Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness, September 2010, available at http://www.unhcr.org/refworld/docid/4cad866e2.html, p. 2.

395 UNHCR, Dakar Summary Conclusions, above note 384, para. 41. See also ICCPR, Article 24(2).

396 See also above, section 2.4, "UNHCR's engagement with statelessness".

7.2.2.2 The 1954 Convention and further reduction of statelessness via naturalization

493. Even though both the 1954 and 1961 Conventions address questions of statelessness, they are different in nature. The 1954 Convention aims to regulate the status of stateless persons and to ensure the widest possible enjoyment of their human rights. It is the only international instrument to create a specific status for stateless persons. By acceding to it, Belgium has demonstrated its commitment to treating stateless persons in accordance with internationally recognized human rights and humanitarian standards.

494. Yet no matter how extensive the rights granted to a stateless person may be, they are not the equivalent of the rights that result from possessing a nationality. Protecting stateless persons under the 1954 Convention should thus be seen as an interim response until the underlying issue of acquisition of nationality is addressed. Ultimately, the reduction of statelessness by acquisition of nationality must remain the goal.

495. Indeed, Article 32 of the 1954 Convention requires state parties, including Belgium, to facilitate, "as far as possible", the assimilation and naturalization of stateless people living on their territory, that is, their integration into the economic, social, and cultural life of the country and their naturalization. Article 32 also requires them "in particular [to] make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings". Quite a number of countries, including not least Belgium under its current legislation and in the bill under discussion in Parliament at the time of writing, have included reduced periods of legal residence in their nationality legislation for refugees and/or stateless persons who want to apply for naturalization.[397] The ECN, which is briefly examined in the following section, develops further obligations in this area.

7.2.2.3 The 1997 European Convention on Nationality and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession

496. At the regional level, the Council of Europe has been actively engaged in the issue of statelessness, *inter alia* by adopting two conventions on the matter in the last 15 years: the 1997 European Convention on Nationality (ECN) and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession.[398]

497. The ECN embodies principles and rules applying to all aspects of nationality, and aims to make acquisition of a new nationality and recovery of a former nationality easier. It seeks to ensure that nationality can only be lost *ex lege* or at the initiative of the State Party for limited reasons and under the condition that the person does not become stateless, unless the nationality was acquired through fraud. The ECN also stipulates that nationality cannot be arbitrarily withdrawn; it guarantees that the procedures governing applications for nationality are just, fair, and open to appeal; and it regulates the situation of persons in danger of being left stateless as a result of state succession. It further covers multiple nationality, military obligations, and cooperation between state parties. A state can accede to the ECN while making reservations to certain Articles.

498. Regarding the acquisition of nationality, Article 6(3) of the ECN requires domestic law to establish rules that make it possible for foreigners lawfully and habitually resident in the territory to be naturalized. This Article also limits any residency requirements to a maximum of 10 years before an individual is entitled to lodge an application for naturalization. Article 6(4)(g) requires states to facilitate naturalization procedures among others for stateless persons and recognized refugees lawfully and habitually resident on the territory.

499. The explanatory report of the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession stresses that state succession can lead to the emergence of a large number of stateless persons.[399] It therefore builds on the ECN by developing more detailed rules whereby states can prevent, or at least reduce to the extent possible, cases of statelessness arising from state succession. This Convention is, however, limited in its scope on the avoidance of statelessness as a result of state succession.

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397 This is also the case in Europe, for instance, in Bulgaria (where three years' residence is required for stateless persons instead of five years generally); Denmark (eight not nine); Estonia (none not eight); Finland (four not six); Germany (six not eight); Greece (three not seven); Hungary (five not eight); Italy (five not 10); Macedonia (six not eight); Moldova (eight not 10); Netherlands (three not five); Norway (three not seven); Slovenia (five not 10); Sweden (four not five); Switzerland (five not 12); United Kingdom (three not five).

398 See further below section 7.5.3, "The 1997 European Convention on Nationality and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession".

399 See Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, Explanatory Report, available at http://www.conventions.coe.int/Treaty/EN/Reports/Html/200.htm (in English) and http://www.conventions.coe.int/Treaty/FR/Reports/Html/200.htm (in French), para. 3.

7.3 The national legal framework and the Belgian Nationality Code

500. Turning to domestic law, the acquisition, attribution, renunciation, loss and deprivation of Belgian nationality are regulated by Articles 8 and 9 of the Constitution and by the BNC, which was adopted in 1984.[400] The latter has been subject to six reforms since then, some favouring a more flexible approach to the requirements for accessing nationality and others leaning towards more restrictive conditions. At the time of writing this report, further amendments were before Parliament. The BNC is complemented by royal decrees and circulars.[401]

501. The first chapter of the BNC contains general provisions, while the second and the third concern respectively "attribution" and "acquisition" of nationality. Finally, chapters 4 and 5 of the BNC concern loss/deprivation of nationality (Articles 22–23) and restoration of nationality (Articles 24–24bis) respectively.

502. The BNC distinguishes between two modes of obtaining citizenship: *"attribution"* or *"toekenning",* which can be automatic and non-automatic, and *"acquisition"* or *"verkrijging",* which is not automatic.

503. Upon fulfilment of specific criteria, the most important of which is birth to a parent who is a national, children obtain Belgian nationality by **attribution** which under the BNC gives them access to nationality by operation of the law (also known as *ex lege* acquisition). Sometimes birth in Belgium can also give rise to a right to Belgian nationality if other conditions are met.

504. Adults, that is, people over 18 years old or individuals below that age who have been "emancipated",[402] can obtain Belgian nationality through **acquisition by declaration, option**, or **naturalization**. Unlike children, adults can never acquire Belgian nationality automatically, but must always make an explicit application which the state in certain cases has discretion to refuse.

505. The declaration procedure is an administrative, and in some cases judicial one, where nationality is granted if certain criteria, mainly related to residence, are met. Under the current BNC, Article 12 bis sets out the conditions for obtaining Belgian nationality by declaration. Articles 13–17 set out the conditions for obtaining Belgian nationality by a declaration of option. The procedure is similar to that for declaration and the criteria relate notably to marriage.[403] Naturalization under Article 18–21 is a parliamentary procedure whereby the Naturalization Commission grants nationality on a discretionary basis if (lower) residency requirements are met. There is no possibility of appeal against negative decisions and the applicant has no right to know the reasoning behind the rejection or the suspension of his or her application.[404]

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400 Entered into force on 1 January 1985. See generally Foblets, M.C., and Yanasmayan, Z., *Country Report: Belgium,* European Union Observatory on Democracy (EUDO) Citizenship, April 2010, available at http://eudo-citizenship.eu/docs/CountryReports/Belgium.pdf.

401 Royal Decree of 13 December 1995, déterminant le contenu du formulaire de demande de naturalisation ainsi que les actes et justificatifs à joindre à la demande de naturalisation et à la déclaration de nationalité et fixant la date de l'entrée en vigueur de la loi du 13 avril 1995 modifiant la procédure de naturalisation et le Code de la nationalité belge, available at http://tinyurl.com/6u9e4rs (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1995121330&table_name=wet (in Dutch); Circular of 25 April 2000, concernant la loi du 1er mars 2000 modifiant certaines dispositions relatives à la nationalité belge, available at http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&pub_date=2000-05-06&numac=2000009423&caller=list (in French) and http://tinyurl.com/dywphbj (in Dutch); Circular of 20 July 2000 complétant celle du 25 avril 2000, available at http://tinyurl.com/dywphbj (in French) and http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&pub_date=2000-05-06&numac=2000009423&caller=list (in Dutch) ; Royal Decree of 25 April 2007 fixant la date d'entrée en vigueur de l'article 386,1°et 2° de la loi du 27 décembre 2006 portant des dispositions diverses (I), published Moniteur belge, 31 May 2007, and entered into force 9 June 2007, available at http://tinyurl.com/7r3x485 (in French) and http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&pub_date=2007-05-10&numac=2007009414&caller=list (in Dutch); Circular of 25 May 2007 relative aux modifications du Code de la nationalité belge introduites par la loi du 27 décembre 2006 portant des dispositions diverses, available at http://tinyurl.com/6qzgffm (in French) and http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&pub_date=2007-06-04&numac=2007009549&caller=list (in Dutch); Royal Decree of 23 April 2008 fixant la date d'entrée en vigueur de l'article 386,1° et 2° de la loi du 27 décembre 2006 portant des dispositions diverses (I) à l'égard des Etats Parties à la Convention du Conseil de l'Europe du 6 mai 1963 sur la réduction des cas de pluralité de nationalité et sur les obligations militaires en cas de pluralité de nationalités, published Moniteur belge, 5 May 2008, entered into force 28 April 2008, available at http://tinyurl.com/d7e94w7 (in French) and http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&pub_date=2008-04-30&numac=2008009338&caller=list (in Dutch).

402 Under Belgian law, children are subject to parental authority until the age of 18. A child can, however, be "emancipated" if he or she marries before the age of 18 and in rare cases where a Youth Tribunal declares a sufficiently mature child 15 or more years old to be "emancipated". See Civil Code, above note 28, Title X, Chapter III, Articles 476–487.

403 For more on acquisition by option see "7.5.2.2 Declaration and option".

404 For more on acquisition by naturalization see "7.5.2.1 Naturalization".

506. Of particular relevance in the context of statelessness, is Article 10 §1 of the BNC.[405] This provides that a child born in Belgium is Belgian if he or she would otherwise be stateless at any moment before he or she reaches the age of 18 or is "emancipated". The provision thus applies not only to children who are stateless at birth but also to (rarer) situations where they may become stateless before they reach the age of 18 or are "emancipated". Unlike other provisions in the BNC, there is no requirement to have a residence permit to be granted nationality. The provision applies even if the whole family is residing unlawfully in Belgium.

507. The BNC was last modified on 27 December 2006.[406] This added an exception to the principle contained in Article 10 §1 in a new Article 10 § 2.[407] Since 2006, an otherwise stateless child born in Belgium is no longer able to obtain Belgian nationality, if it is possible for him or her to obtain another nationality by his or her parent(s) or legal guardian(s) initiating administrative measures before the diplomatic or consular authorities of the country of either parent. This exception was introduced to prevent opportunistic behaviour, where aliens used to come to Belgium to give birth so that their child would become Belgian, when the child could in fact have acquired the nationality of one or other of his or her parents by registering at the consular authorities of their country of nationality in Belgium.

508. Another significant reform in 2006 concerns dual nationality. As a result, a Belgian national who acquires another nationality is now allowed to keep his or her Belgian nationality, regardless of the nationality obtained. In the past, dual nationality had only been permitted when an alien could become Belgian without having to renounce his or her nationality of origin. The 2006 modification also sets out more restrictive provisions, including an explicit requirement of legal residence during the period preceding the request for, or declaration of, nationality.[408] In addition, an individual can now be deprived of his or her nationality if this was obtained fraudulently (as also permitted under Article 8(2)(b) of the 1961 Convention).[409] Possibilities for deprivation of Belgian nationality have thus increased, while instances of loss of this nationality have decreased.[410]

7.3.1 The impact of the BNC in reducing statelessness among children born in Belgium

509. After the implementation of the BNC in 1984, Article 10 of the BNC resulted in 209 attributions being made on this basis in 1985. In the three following years, the number of attributions declined to 17–19 cases annually, while in 1998 and 1999 there were 34 and 38 cases respectively. From 2000, the number of attributions based on Article 10 increased, to 162 in 2006. Following the change made to Article 10 of the BNC in 2006, however, the number of attributions decreased significantly, as shown in Figure 11.

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405 BNC, Article 10 §1 reads (in French): "Est Belge, l'enfant né en Belgique et qui, à un moment quelconque avant l'âge de dix-huit ans ou l'émancipation antérieure à cet âge, serait apatride s'il n'avait cette nationalité."
(in Dutch) "Belg is het kind geboren in België en dat, op gelijk welk ogenblik voor de leeftijd van achttien jaar of voor de ontvoogding voor die leeftijd, staatloos zou zijn, indien het die nationaliteit niet bezat."

406 Law of 27 December 2006, portant des dispositions diverses, *Moniteur belge,* 28 December 2006, available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2006122732&table_name=loi (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2006122732&table_name=wet (in Dutch). The consolidated text is available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1984062835&table_name=loi (in French) and http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1984062835&table_name=wet (in Dutch).

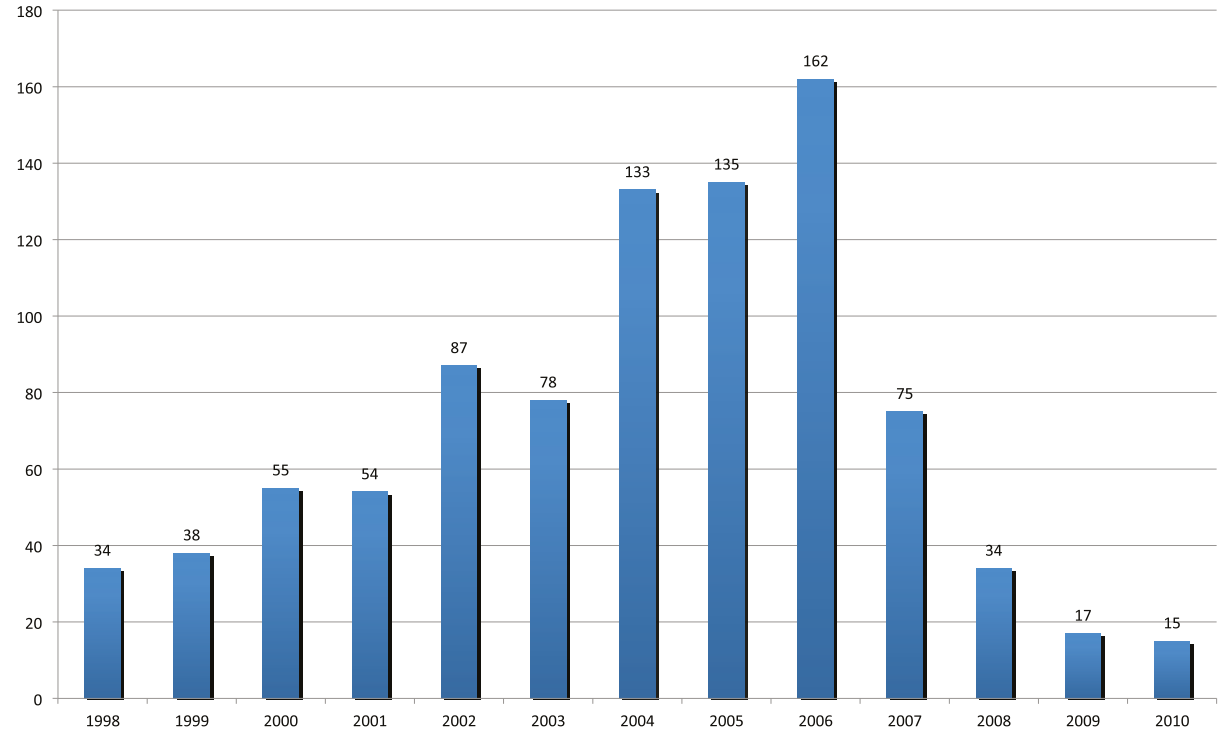
407 BNC, Article 10 § 2 reads (in French): "Toutefois, l'alinéa 1er ne s'appliquera pas si l'enfant peut obtenir une autre nationalité moyennant l'accomplissement par son ou ses représentants légaux d'une démarche administrative auprès des autorités diplomatiques ou consulaires du pays de ses auteurs ou de l'un de ceux-ci."
(in Dutch): "Het eerste lid zal evenwel niet van toepassing zijn indien het kind een andere nationaliteit kan verkrijgen, mits zijn wettelijke vertegenwoordiger(s) administratieve handelingen verrichten bij de diplomatieke of consulaire overheden van het land van de ouders of van één van hen."

408 BNC, Article 7bis.

409 BNC, Article 23(1).

410 For example, Belgian nationality is no longer lost in the event of voluntary acquisition of another nationality.

Figure 11. Attribution of Belgian nationality – BNC, Article 10



Source: Belgian House of Representatives[411]

510. In practice, since the Belgian authorities cannot oblige the parents of a child whose automatic attribution of Belgian nationality has been refused under Article 10 §2 of the BNC actually to undertake measures to obtain the nationality of their country of origin for their child, there are examples of children born on the territory in Belgium who do not currently have a nationality even if they may be able to obtain one. One interview in the course of the research[412] concerned a child born in Belgium to a recognized stateless father and an alien mother, who is and remains stateless as a result of her parents' unwillingness to ask for the mother's nationality because they believe the child should be Belgian as a consequence of her birth on the territory.

511. The authority responsible for assessing whether a child born in Belgium would be stateless if he or she does not acquire Belgian nationality is the civil registrar of the municipality of the parents' place of habitual residence. This assessment needs to take account of the legislation and practice in the country of origin of the parents whose child has been born in Belgium and who have sought Belgian nationality for their child.[413] As a result, the legislation of the country of origin must provide for acquisition of nationality by descent on fulfilment of certain administrative formalities.

512. In the context of efforts to obtain proof from relevant consular authorities that the latter have refused to recognize the children concerned as nationals, the research for the project showed that some parents may need and, indeed, would welcome assistance from the authorities. From the point of view of the Ministry of Justice, it has noted that the starting point is that an alien born in Belgium is presumed to have the nationality of his or her parents' country of origin and that if the parents claim that their child fulfils the criteria for obtaining Belgian nationality it is for them to prove this. In UNHCR's view, the burden of proof in such cases should be shared, since the nature of statelessness means that applicants "are often unable to substantiate the claim with much, if any, documentary evidence", with the result that a collaborative and non-adversarial approach may be more effective.[414]

513. In practice, in such cases the Belgian authorities' approach is not so rigid, and collaboration between the municipality and the individual concerned often proves necessary to obtain the information needed from relevant consular authorities. This is as recommended in the UNHCR Dakar Summary Conclusions, which mention that states that maintain an exception for granting nationality to otherwise stateless children born on their territory should assist parents in initiating the relevant procedure with the authorities of the parents' state of nationality.[415]

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411 Information provided in response to parliamentary questions.

412 Participant No. 6 (Sergey).

413 In this context, the civil registrar can obtain information from the Foreign Affairs Federal Public Service (SPF des Affaires étrangères). The Nationality Service of the Justice Federal Public Service (SPF Justice) also holds a large database of nationality legislation that is regularly updated.

414 UNHCR Guidelines on Statelessness No. 2, above note 195, paras 37–38.

415 UNHCR, Dakar Summary Conclusions, above note 384, para. 15. See also UNHCR, Guidelines on Statelessness, No. 1, above note 10, para. 34, on conclusions to be drawn regarding a lack of response from competent authorities.

514. The difficulties some parents have nevertheless encountered in obtaining proof of lack of nationality from relevant consular authorities are illustrated by Tamanna's story, although the situation of her two children has now been resolved.

Name: Tamanna (Participant No. 13) and her two children
Age and sex: 30s, female
Country of origin: Kenya/India
Status when interviewed: Regularized (unlimited residence)
Current status: Tamanna's children now have Indian nationality

Tamanna is a Kenyan mother of Indian origin, who lived in Kenya with her husband, an Indian national. They left Kenya because Indians were often the target of harassment. When they arrived in Belgium in 1998, Tamanna applied for asylum but her claim was rejected.

She is now in her early 30s and has two children, both born in Belgium. When her first child was born not long after her arrival, she was not able to pass on her Kenyan nationality to him[416] and did not know she had to register him with the Indian Embassy to obtain his father's nationality.

With no status in Belgium and their savings dwindling, the family decided to return to Kenya. But when Tamanna approached the Indian Embassy to get identity documents for her son, she was told that it could not issue the documents as the child was staying in Belgium illegally.

Tamanna describes her living conditions at that time as very difficult: her social assistance covered medical appointments but not medication, so she had to pay for her son's vaccines. The situation deteriorated further when her son became very ill and they had trouble paying for the medicine. Tamanna could not work as she was taking care of her child.

Some years later, Tamanna gave birth to a daughter and, given her previous negative experience, did not even try to register her in any embassy. She asked the Belgian authorities for help to enable her return to Kenya, but that did not work out.

Tamanna became more and more worried by this unstable situation. It was impossible to get conclusive information from the Indian Embassy: sometimes they would tell her that the case was pending, then that her request had been turned down, but she never received a reply in writing. She claimed that the Embassy refused to give Indian nationality to her children because they were illegally in Belgium.

For their part, the Belgian authorities did not believe her story that the Indian Embassy was so uncooperative. They saw no exceptional circumstances preventing her children from acquiring Indian nationality. "If this is not exceptional, then what is?" Tamanna asks.

Tamanna's own situation improved in 2009 when she got a stay permit for five years, but she was not able to get her children registered properly. Finally she gave up her attempts with the Indian Embassy in Brussels and travelled to India to talk to the authorities in New Delhi, but she received no help there either.

The two children are too young to realize the difficult situation they are in, Tamanna says. They think of themselves as Belgians, speak Dutch and go to school. But for the parents it is worrying to see their children grow up without status.

Tamanna says: "They are stateless, and for most things in life you have to have a nationality". She adds: "We need to have stability. If you know what your status is, you can move on, you know your destiny."

Since the interview, Tamanna has finally been able to obtain Indian citizenship for her two children, so that the situation has been resolved and the children are no longer without a nationality.

* Not his real name.

[416] At the time, only a Kenyan father was able to transfer his nationality to his children. A mother could not. Since then the law has been changed in Kenya to permit either parent to confer nationality on a child born outside Kenya. See Kenya Citizenship and Immigration Act, 2011 [Kenya], 30 August 2011, available at http://www.unhcr.org/refworld/docid/4fd9a3082.html, Article 7.

515. The practice of civil registrars in assessing whether children born in Belgium would be stateless if they do not acquire Belgian nationality appears to vary. The Ministry of Justice informed the researchers that it appears that some municipalities systematically contact the consular authorities of the country of origin to ask for a declaration stating that the child is not a national of the country. Others do not conduct such checks and simply accept the parents' declaration.

516. It may well be, however, that checks will be more thorough in future. In the 2011 judgment following a preliminary question asked by the Brussels Labour Tribunal, the CJEU held that citizenship of the EU requires a member state to allow third-country nationals who are parents of a child who is a national of that member state to reside and work there, if a refusal to do so would deprive that child of the genuine enjoyment of the substantive rights attached to the status of citizen of the Union.[417]

517. The case concerned the Colombian parents of two Belgian children. They had been ordered to leave the territory after their requests for asylum and for a residence permit (the latter on the grounds that they were parents of Belgian children) had been refused.[418] The CJEU considered that Belgium's refusal had not respected EU legislation, since the children had been granted Belgian nationality and should as a result be able to benefit from their status as citizens of the Union, namely the right to reside there with their parents. The Court held that refusing a residence permit to the parents would be equivalent to compelling the children to leave the EU to accompany them. Furthermore, the CJEU held that if a work permit were not granted to the parents, they would be at risk of not having the necessary resources to provide for their own needs and those of their family which would mean that their children, despite being citizens of the Union, would be forced to leave its territory.

518. The judgment reaffirms that "citizenship of the Union is intended to be the fundamental status of nationals of Member States" and that the parents of an EU citizen must be allowed to reside and work in the EU country where the child has citizenship, so that the child can enjoy his or her effective rights as an EU citizen.

519. It is possible to appeal against a municipality's refusal to register a child born in Belgium as Belgian. In one case concerning a child born in Belgium in 2004 to Ecuadorian parents, Saint-Gilles municipality refused to register the child as Belgian, even though the parents had obtained confirmation from the Ministry of Justice that their child had indeed been Belgian since birth, under Article 10 of the BNC.[419] In 2005, the Brussels Tribunal of First Instance ordered the municipality to register the child as Belgian,[420] which it did even though it appealed against the decision. In 2009, the Brussels Court of Appeal upheld the Tribunal judgment, stating that the municipality's refusal was illegal and that it had added conditions to the application of Article 10 not envisaged by the legislator, namely that the parents had to undertake the necessary measures to obtain Ecuadorian nationality for their child or had to obtain a judgment confirming the statelessness status of the child.[421]

7.3.2 The proposed reform of the Belgian Nationality Code

520. Since 2006 it has been suggested by some parties that legislation on the acquisition of Belgian nationality should be neutral from a migration point of view, in the sense that the granting of nationality should not result in authorization to stay in Belgium or have a positive influence on its duration. At the time of writing, a bill reforming the BNC was in the process of going through Parliament.[422]

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417 CJEU, *Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm),* C-34/09, 8 March 2011, available at http://www.unhcr.org/refworld/docid/4f2a49f12.html (in French and English) and http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-34/09&td=ALL (additional EU languages).

418 The children, born in 2003 and 2005, that is, before the introduction of the modified Article 10 of the BNC, had acquired Belgian nationality because they were born in Belgium and because, having not been declared at the embassy of their parents' country of origin, they were at risk of becoming stateless.

419 This was before the 2006 modification of Article 10 of the BNC.

420 Belgium, Tribunal of First Instance Brussels, 13 May 2005, unpublished.

421 Belgium, Court of Appeal, Brussels, 3 April 2009, unpublished. The former version of Article 10 still applies to children born in Belgium before the entry into force of the 2006 legislative change, and who at that time would have been stateless if they had not been given Belgian nationality. The Court would undoubtedly have arrived at a different conclusion had the child been born after 2007.

422 Belgium, House of Representatives, Proposition de loi modifiant le Code de la nationalité belge afin de rendre l'acquisition de la nationalité belge neutre du point de vue de l'immigration, session 2010–2011, Document No. 53K0476, available at http://www.dekamer.be/kvvcr/showpage.cfm?section=/flwb&language=fr&rightmenu=right&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=53&dossierID=0476 (in French) and http://www.dekamer.be/kvvcr/showpage.cfm?section=/flwb&language=nl&rightmenu=right&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=53&dossierID=0476 (in Dutch).

521. In August 2011, UNHCR provided comments on an earlier version of the bill.[423] These brought the attention of parliamentarians to the lack of preferential treatment for refugees, beneficiaries of subsidiary protection and stateless persons as regards access to Belgian nationality. UNHCR also pointed out that in this draft certain categories of beneficiaries of international protection or stateless persons, especially vulnerable ones, such as children, older persons, and persons with disabilities or health needs, would probably encounter serious difficulties fulfilling the criteria of economic contribution to society and social integration which are required for the acquisition of nationality by declaration. Additionally, UNHCR recommended further alignment of the legislation with the 1961 Convention, notably regarding loss and deprivation of nationality as well as strengthened safeguards against statelessness for foundlings and children born on a ship or aircraft.

522. Later the same month, the Council of State issued an Opinion on the draft law.[424] This argued, inter alia, that an exception to the requirements of social integration and economic contribution might have to be made for older persons and persons with disabilities.[425] The Council of State further considered that the text did not provide sufficient safeguards against statelessness and recommended its revision in the light of the 1961 Convention, which sets out the rules for the implementation of the principle that statelessness should be avoided. The Council of State also affirmed that this principle had in its view become customary law. It also referred to obligations as set out in case law of the Court of Justice of the European Union (CJEU) regarding the conferral and loss of citizenship of the Union.[426]

523. The December 2011 Belgian federal government agreement included a commitment to support the Parliament's reform of the BNC.[427] Since then discussions continued and in July 2012 the Justice Commission of the Chamber of Representatives adopted a draft bill modifying the BNC.[428] The bill was then approved by a plenary session of the Chamber of Representatives on 25 October 2012 and sent to the Senate.[429] It is expected it will be definitively adopted in the autumn of 2012.

524. The bill reduces the number of procedures for obtaining nationality to two: naturalization, which becomes the exceptional procedure, and declaration, which becomes the rule. The bill also incorporates into the declaration procedure some of the criteria currently used in the acquisition of nationality by option, which ceases to exist.

525. In order to obtain Belgian nationality by declaration (under Article 12bis), the bill proposes to establish the following conditions: a term of legal residence, knowledge of one of the three languages of Belgium, and economic and social integration. It replaces the requirement of seven years' main residence in Belgium with one of five or 10 years' legal residence, 10 years' legal residence being required for those not able to show economic integration. Further to the Council of State's Opinion, the bill includes exceptions to these criteria for people with disabilities or who are retired.

526. The text further defines (and tightens) the notion of legal residence. An applicant's residence permit in Belgium must be legal, permanent and uninterrupted in order for it to be taken into account when a request for nationality is made. With respect to the period preceding the request, not all temporary residence permits will be taken into consideration.

527. With regard to acquisition of Belgian nationality by naturalization (under Articles 18–21), the bill proposes, also following the Council of State's Opinion, to retain measures to facilitate the naturalization of stateless people, whereby they are only required to have two years' legal stay before they can apply.

528. By contrast, the bill proposes to eliminate facilitated naturalization for refugees who, like stateless persons, can currently apply for Belgian nationality after two years' legal residence, as opposed to three years' legal stay for other foreigners. This is a concern, not least since some refugees may also be stateless and, in the absence of recognition of their statelessness, they will most probably be excluded from this favourable treatment.

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423 HCR, Commentaires du Haut Commissariat des Nations Unies pour les réfugiés relatifs à la proposition de loi 0476/010 du 22 juin 2011 modifiant le Code de la nationalité belge afin de rendre l'acquisition de la nationalité belge neutre du point de vue de l'immigration, Amendement N° 124 de Mme Van Cauter et consorts, 4 August 2011, available at http://www.unhcr.be/fileadmin/user_upload/pdf_documents/fr/juristique/Commentaires_du_HCR_sur_la_proposition_de_loi_de_Van_Cauter_du_22_juin_2011_modifiant_le_Code_de_Nationalite_Belge.pdf (in French).

424 Belgium, House of Representatives, Avis du Conseil d'Etat, N° avis 49.941/AG/2/V des 16 et 23 août 2011, Document No. 53K0476/011, available at http://www.lachambre.be/FLWB/PDF/53/0476/53K0476011.pdf (in French and Dutch).

425 Ibid., paras 11.4–11.5.

426 Ibid., paras 14.1.1–14.4. For more on the CJEU judgment, see below para. 606.

427 Belgium, Governmental Agreement 2011, above note 256, p. 134, para. 2.7.7.

428 Belgium, House of Representatives, Proposition de loi modifiant le Code de la nationalité belge afin de rendre l'acquisition de la nationalité belge neutre du point de vue de l'immigration, (session 2011–2012), Document No. 53k0476/016, 24 July 2012, available at http://www.dekamer.be/FLWB/pdf/53/0476/53K0476016.pdf (in French and Dutch).

429 Belgium, House of Representatives, Proposition de loi modifiant le Code de la nationalité belge afin de rendre l'acquisition de la nationalité belge neutre du point de vue de l'immigration, (session 2011–2012), Document No. 53 0476/021, 25 October 2012, available at http://www.lachambre.be/FLWB/PDF/53/0476/53K0476021.pdf (in French and Dutch).

529. Otherwise only foreigners with legal stay who show exceptional merit in the scientific, sporting, or sociocultural fields are able to acquire Belgian nationality without a particular period of previous legal residence being required.

530. Furthermore, the bill requires a person seeking Belgian nationality to have unlimited legal stay in the country before he or she can apply. In addition, when calculating the required period of legal stay that needs to be fulfilled only periods of legal stay of over three months and unlimited legal stay can be taken into account. Despite the fact that the argument of the declarative effect of the refugee status recognition has been raised during the discussion on the draft law, there is still a chance that the period between an asylum application and recognition of refugee status would, for example, no longer be taken into account. The result would be that refugees, including possibly some stateless persons (since refugees may also be stateless) would experience a further delay in accessing nationality.

531. In addition, besides the existing grounds for deprivation of nationality based on fraud or serious breach of duties as a Belgian citizen, the bill proposes to create two additional grounds for the deprivation of nationality: where Belgian nationality has been obtained through a marriage of convenience and where someone has been convicted of certain serious crimes. In such cases, there is nevertheless a safeguard against statelessness in Article 20 § 2 of the bill. This states that the judge may not deprive someone of Belgian nationality if this would have the effect of rendering him or her stateless, unless nationality has been acquired as a result of fraudulent conduct. It requires the judge to allow the individual reasonable time to reacquire his or her original nationality. If the bill is finally adopted in this form, it is understood that this safeguard will also apply to the deprivation of nationality due to serious breaches of duties as a Belgian citizen.

532. As regards renunciation of Belgian nationality, the bill introduces an additional safeguard against statelessness: if acquisition or recovery of a foreign nationality does not immediately follow the renunciation of Belgian nationality, such renunciation will not have legal effect if, and as long as, it would render the individual stateless.

533. The bill does not seem to address the shortcoming observed in Article 8 §4 of the BNC which implicitly foresees that a child under 18 who acquires Belgian nationality from his or her parent will lose it if filiation to that parent is no longer established, even if this would result in the child becoming stateless.[430]

534. Finally, a registration fee is reintroduced for procedures of acquisition of nationality and set at 150 euros.

7.4 Statistical data from the National Register on conferral of Belgian nationality

535. The National Register provides information on the legally resident population in Belgium, including those who have acquired or been attributed Belgian nationality. This data source makes it possible to identify, by procedure, the annual number of stateless persons with a residence permit of more than three months who have obtained Belgian nationality.

536. An examination of the Register indicates that the adoption of the BNC in 1984 and in particular its Article 10 §1[431] had the effect of significantly reducing cases of statelessness in Belgium, since it provided that children born in Belgium who were under the age of 18 at the time of the entry into force of the legislation (and who were not already "emancipated")[432] were entitled to Belgian nationality if they would otherwise be stateless.

537. At the time, this allowed a significant number of stateless persons and persons of unknown nationality to become Belgian during the second half of the 1980s, as shown in Table 7. In 1985 alone, it resulted in 1,681 stateless persons or persons of unknown nationality with a valid residence permit of more than three months receiving Belgian nationality (including 209 acquisitions by operation of the law after birth, based on Article 10 of the BNC). These new Belgian nationals were essentially stateless persons who were born in Belgium and under 18 years of age before the introduction of the BNC.

538. Table 7 also shows how acquisitions of Belgian nationality, whether by operation of law or following an application by the individual concerned, fell considerably in subsequent years. Indeed, since the 1990s, 519 stateless persons residing legally in the country have been granted Belgian nationality. This number varied between 10 acquisitions in 1990 and 53 in 2009.

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430 See below para. 591.

431 See above para. 506.

432 See above note 402 for an explanation of the term.

Table 7. Number of acquisitions of Belgian nationality by stateless persons or persons of unknown nationality[433]

Year	Number	Year	Number
1985	1,681	1998	14
1986	162	1999	12
1987	119	2000	31
1988	105	2001	23
1989	N/A	2002	17
1990	10	2003	19
1991	21	2004	30
1992	33	2005	26
1993	25	2006	41
1994	32	2007	16
1995	26	2008	35
1996	27	2009	53
1997	28		

Source: National Register, DG-SIE/AD-SEI.

539. To assess the rate of acquisition of Belgian nationality of lawfully resident stateless persons, the researchers established a specific indicator. To establish this indicator they took the ratio between the annual number of new Belgians and the lawfully resident foreign population. During the 1990s, this ratio calculated for the stateless population ranged between 3 per cent and 7 per cent on average; on average, 5.3 per cent of the legal stateless population received Belgian nationality annually. During the 2000s, this ratio increased to 7.6 per cent annually.[434] The lawfully resident recognized stateless population was thus able to acquire Belgian nationality more frequently.

540. As shown in Figure 12, at the beginning of the 1990s the stateless population with a valid residence permit was more likely to acquire Belgian nationality than were EU citizens. Since the mid-1990s, however, third country nationals have been significantly more likely to acquire Belgian nationality than recognized stateless persons residing lawfully in Belgium, although EU nationals continue to have the lowest level of acquiring Belgian nationality. This rate is even higher for recognized refugees.[435] Indeed, during the 2000s, on average, 30 per cent of the refugee population of known nationality acquired Belgian nationality annually, as did 23 per cent of the refugee population of unknown nationality. These two groups clearly have a higher probability of receiving Belgian nationality than stateless persons, particularly at the end of 1990s and the beginning of the 2000s.

541. That recognized stateless persons have the lowest probability of acquiring Belgian nationality might be explained by less willingness on the part of stateless persons with a valid residence permit to acquire Belgian nationality. It could also be explained by difficulties they encounter fulfilling the conditions set out in the BNC. Specifically, they may not be able to fulfil the requirement imposed in practice by the Naturalization Commission of the Chamber of Representatives that applicants for naturalization have unlimited lawful stay.[436] Given the fact that stateless persons often have to wait many years before being able to secure legal stay in Belgium and that when first secured it may in any case only be temporary, this de facto length of legal stay requirement suggests that problems fulfilling the conditions of the BNC are the more likely reason for their low rate of acquisition of Belgian nationality. Indeed, since the amendments to the BNC currently before Parliament remove preferential access to nationality for refugees, (who may also be stateless persons),[437] this situation may deteriorate further if these measures are approved.

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433 From 1985 to 1988, acquisitions of Belgian nationality, whether by operation of law or following an application by the individual concerned, included both stateless persons and persons of unknown nationality. Since 1990, these statistics have included only the stateless population.

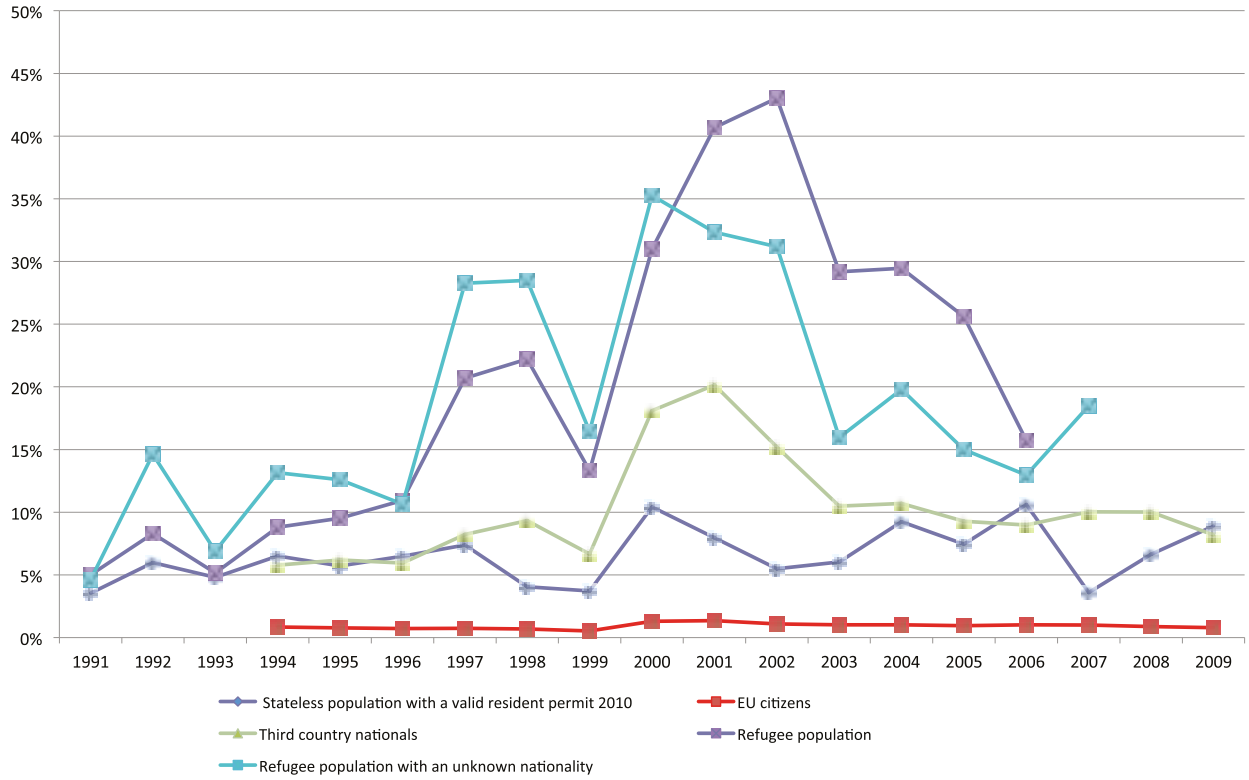
434 This ratio of acquisition of Belgian citizenship increased during the 2000s, despite the increase of the population at risk during the same period (see "Figure 2. Recognized stateless population with a valid residence permit of more than three months").

435 The National Register does not provide information on recognized stateless refugees as such, but it is presumed that they are included among the statistics on recognized refugees of unknown nationality. It should be remembered that existing legislation provides facilitated access to nationality for recognized refugees.

436 See below paras 623–625 for further discussion of this issue.

437 See above para. 526.

Figure 12. The rate of acquisition of Belgian nationality, 1991–2009



Source: National Register, DG-SIE/AD-SEI.

542. As shown in Figure 13, the most common way in which stateless persons acquire Belgian nationality is by naturalization under Article 19 of the BNC.[438] This requires that, in order to be able to apply for naturalization, individuals must be aged at least 18 years and have lived legally in Belgium as their principal residence for at least three years, this period of legal residence being reduced to two years for recognized refugees and stateless persons. Between 1991 and 2005, a quarter of these new Belgians were granted Belgian nationality by the Chamber of Representatives under its discretionary power.[439] Second, about a fifth of formerly stateless Belgians acquired their nationality by option on the basis of marriage (particularly during the 1990s).[440] The third most common way for them to acquire Belgian

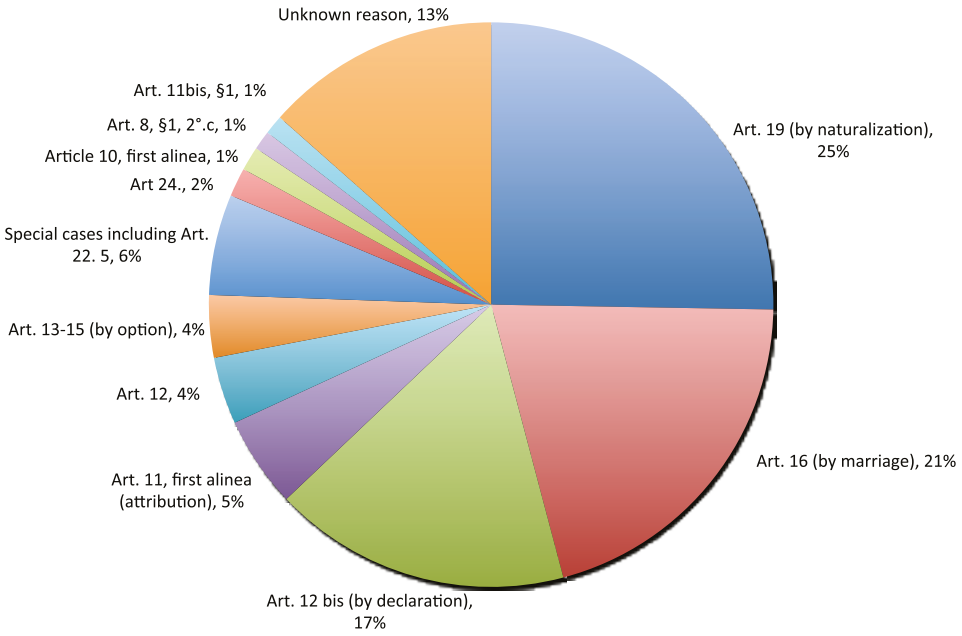
438 BNC, Article 19, reads (in French):
"Pour pouvoir demander la naturalisation, il faut être âgé de dix-huit ans accomplis et avoir fixe sa résidence principale en Belgique depuis au moins trois ans; ce délai est réduit à deux ans pour celui dont la qualité de réfugié ou d'apatride a été reconnue en Belgique en vertu des conventions internationales qui y sont en vigueur ou pour celui qui a été assimilé au réfugié en vertu de l'ancien article 57 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, tel qu'il était en vigueur jusqu'au 15 décembre 1996.
"Peut être assimilée à la résidence en Belgique, la résidence à l'étranger lorsque le demandeur prouve qu'il a eu, pendant la durée requise, des attaches véritables avec la Belgique. [La résidence principale visée à l'alinéa 1er doit être couverte par un séjour légal.]"
(in Dutch) "Om de naturalisatie te kunnen aanvragen moet de belanghebbende volle achttien jaar oud zijn en sedert ten minste drie jaar zijn hoofdverblijf in België hebben gevestigd; deze termijn wordt verminderd tot twee jaar voor de vreemdeling wiens hoedanigheid van vluchteling of van staatloze in België is erkend krachtens de er vigerende internationale overeenkomsten of voor diegene die, met de vluchteling gelijkgesteld werd verklaard krachtens het oud artikel 57 van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen zoals van kracht tot 15 december 1996.) Verblijf in het buitenland kan met verblijf in België gelijkgesteld, wanneer de aanvrager bewijst dat hij gedurende de vereiste periode door een werkelijke band met België verbonden is geweest. (De in het eerste lid bedoelde hoofdverblijfplaats moet gedekt zijn door een wettelijk verblijf.)"

439 See below section 7.5.2.1 "Naturalization" for further details regarding naturalization under Article 19 of the BNC.

440 BNC, Article 16, reads: (in French) "§1. Le mariage n'exerce de plein droit aucun effet sur la nationalité.
"§ 2. 1° L'étranger qui contracte mariage avec un conjoint de nationalité belge ou dont le conjoint acquiert la nationalité belge au cours du mariage, peut, si les époux ont résidé ensemble en Belgique pendant au moins trois ans et tant que dure la vie commune en Belgique, acquérir la nationalité belge par déclaration faite [...] conformément à l'article 15.
"2° L'étranger qui contracte mariage avec un conjoint de nationalité belge ou dont le conjoint acquiert la nationalité belge au cours du mariage, peut, si les époux ont résidé ensemble en Belgique pendant au moins six mois et tant que dure la vie commune en Belgique, acquérir la nationalité belge par déclaration faite [...] conformément à l'article 15, à condition qu'au moment de la déclaration, il ait été autorisé ou admis, depuis au moins trois ans, à séjourner plus de trois mois ou à s'établir dans le Royaume.
"3° [...]
"4° Peut être assimilée à la vie commune en Belgique, la vie commune en pays étranger lorsque le déclarant prouve qu'il a acquis des attaches véritables avec la Belgique."

nationality was by declaration based on Article 12bis[441] of the BNC. A large majority of these cases of declaration of nationality followed the modification of the BNC in 2000, which introduced the possibility of acquiring Belgian nationality after at least seven years of main residence in Belgium.[442]

Figure 13. Conferral of Belgian nationality on stateless persons by procedure, 1991–2005



Source: National Register, DG-SIE/AD-SEI.

543. In addition, the National Register retains historical information on the variable "nationality" for each individual. This means it is possible to identify the number of formerly stateless persons with a valid residence permit of more than three months and with Belgian nationality on a given date.

544. As of 1 January 1991, 1,313 formerly stateless persons with a valid residence permit had acquired Belgian nationality, notably following the introduction of the BNC in 1984.[443] Of these, 1,110 (78 per cent of this Belgian population) were born in Belgium (Figure 14). As highlighted in Table 2 (Chapter 3 above), the stateless population born in Belgium had increased by the early 1980s. By the beginning of the 1990s, however, there were only 368 people born in Belgium and residing legally in the country who were still stateless. Between 1991 and 2006, this native population gradually decreased further to become just 122 persons by 1 January 2006. It should be noted that most of this population was born before the introduction of the BNC in 1984. More precisely, 91 per cent of this population were over 18 years old when the BNC came into effect in 1985. This finding is in line with the terms of Article 10 of the BNC.[444]

(in Dutch) "§ 1. Het huwelijk heeft van rechtswege geen enkel gevolg op de nationaliteit.
"§ 2. (1° De vreemdeling die huwt met een Belg of wiens echtgenoot gedurende het huwelijk de Belgische nationaliteit verkrijgt kan, indien de echtgenoten gedurende ten minste drie jaar in België samen hebben verbleven en zolang zij in België samenleven, door een overeenkomstig artikel 15 afgelegde (...) verklaring de staat van Belg verkrijgen.
"2° De vreemdeling die huwt met een Belg of wiens echtgenoot gedurende het huwelijk de Belgische nationaliteit verkrijgt kan, indien de echtgenoten gedurende ten minste zes maanden in België samen hebben verbleven en zolang zij in België samenleven, door een overeenkomstig artikel 15 afgelegde (...) verklaring de staat van Belg verkrijgen, op voorwaarde dat hij op het ogenblik van de verklaring, sedert ten minste drie jaar, gemachtigd of toegelaten werd tot een verblijf van meer dan drie maanden of om zich te vestigen in het Rijk.
"3° (...)
"4° Samenleven in het buitenland kan worden gelijkgesteld met samenleven in België, wanneer de belanghebbende bewijst dat er tussen hem en België een werkelijke band is ontstaan."

441 BNC, Article 12bis mentions that someone born in Belgium can acquire Belgian nationality by declaration made between the ages of 18 and 30, if he or she has resided in Belgium continuously since birth.

442 BNC, Article 12 bis §1 3°.

443 See above "Table 7. Number of acquisitions of Belgian nationality by stateless persons or persons of unknown nationality".

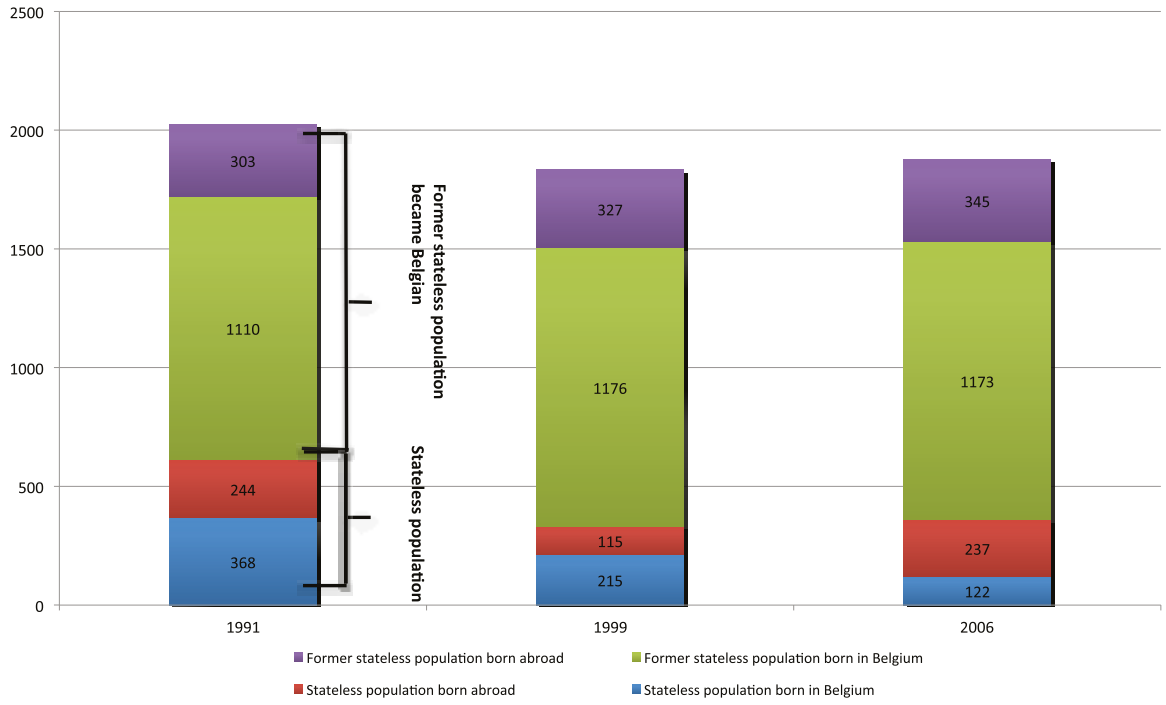
444 As explained above at para. 506, Article 10 §1 provides that children born in Belgium who were under the age of 18 at the time of the entry into force of the legislation (and who are not already "emancipated") are entitled to Belgian nationality if they would otherwise be stateless. Article 29 of the Code foresees that the entry into force of BNC Articles 8–10 does not have the effect of attributing Belgian nationality to an alien, who at the time of this entry into force was 18 years old.

545. This group is one of two identified in the research that remained stateless. The second is made up individuals who were *under* 18 when the BNC was adopted and who still appeared to be stateless as late as 2006. Eleven such cases in the latter group were identified. It is not clear why this is so. It may mean that administrative difficulties are sometimes encountered in applying the retroactivity of Article 10 correctly or it could mean that the "new nationality" (whether Belgian or foreign) of some of them has not been correctly registered. Further investigation into the issue to clarify their situation and resolve any outstanding problems would appear to be important.

546. By March 2011, the stateless population born in Belgium had fallen to 94 persons. This population is probably still decreasing for two reasons. First, Article 10 of the BNC was introduced to prevent the statelessness of persons born in Belgium. Second, the population born in Belgium continues to acquire Belgian nationality, to emigrate, or to die.

547. In addition to this population born in Belgium, the National Register also allows us to identify the stateless population born in a foreign country residing in Belgium with a valid residence permit. As of 1 January 1991, there were 244 immigrants who were stateless, while 303 had been granted Belgian nationality (that is, 55 per cent of the stateless population born in a foreign country at that time). This formerly stateless population born abroad that had become Belgian increased slightly during the 1990s and in the first half of the 2000s, as a result of new acquisitions and attributions of nationality. This trend was nevertheless smaller than it might otherwise have been because of outflows such as emigration and deaths among this population.[445]

Figure 14. Stateless population with a valid resident permit and formerly stateless population who are now Belgian, according to their place of birth (Belgium or abroad), in 1991, 1999, and 2006



Source: National Register, DG-SIE/AD-SEI (statistical treatment: DEMO-UCL).

548. Several conclusions can be drawn from the analysis in this section. First, the adoption of the BNC in 1984 allowed a significant number of stateless persons and persons of unknown nationality to become Belgian during the second half of the 1980s. These new Belgians were essentially stateless persons born in Belgium and aged under 18 before the introduction of the BNC. Second, the lawfully resident stateless population born in Belgium has been decreasing since the introduction of the BNC. Cases identified recently were persons born in Belgium and aged over 18 years when the BNC was adopted, although 11 of those under 18 when the BNC was adopted still appeared to be stateless as late as 2006.[446] Third, between 1991 and 2005 the three main procedures used by stateless persons to acquire Belgian nationality were (i) naturalization (Article 19), (ii) option on the basis of marriage (Article 16), and (iii) declaration of nationality (Article 12bis). Finally, the recognized stateless population has a lower rate of acquisition of Belgian nationality than specific groups such as third-country nationals or refugees.

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445 The probability of dying was sizeable because the stateless population born abroad was relatively old. Indeed, in 1991, one third of this population was more than 60 years old, and 60 per cent were aged 30–60 years.

446 See above para. 545.

7.5 Compatibility between Belgian legislation and international standards

549. This section focuses on the compatibility between Belgian legislation and international standards in matters related to the prevention and reduction of statelessness.

550. Considering the expressed willingness of the Belgian Federal Government to accede to the 1961 Convention, this section examines the potential gaps in national legislation compared to the Convention. It also examines Belgian nationality legislation in the context of Article 32 of the 1954 Convention, which provides for the facilitated assimilation and naturalization of stateless persons. Finally, this section mentions briefly two regional conventions related to nationality.

551. As already mentioned, attribution, acquisition, deprivation, renunciation, and loss of Belgian nationality are regulated by the Constitution and the BNC.[447] Both contain a number of provisions referring to statelessness, which generally aim to ensure Belgian compliance with the international standards and obligations.

552. The analysis below shows that substantive safeguards against statelessness exist and that the law generally appears to meet international standards, as does the draft law adopted in July 2012 by the Justice Commission of the Chamber of Representatives and in October 2012 by plenary session of the Chamber.

553. Considering the ongoing reform of the BNC and the government's expressed commitment to accede to the 1961 Convention, some further steps could nevertheless be undertaken to ensure improved adherence to international standards to prevent and reduce statelessness. Legislative provisions of the current BNC that would need to be modified or added to be fully in line with the 1961 Convention mainly concern additional safeguards in rare instances of loss and deprivation of nationality, birth on ships and aircraft that are stationary or in transit and for foundlings.

7.5.1 The 1961 Convention on the Reduction of Statelessness

554. The 1961 Convention sets out measures state parties must take to prevent and reduce statelessness among children and to reduce instances of loss, deprivation, and renunciation of nationality leading to statelessness among adults. It also covers statelessness as a result of state succession.

555. During a meeting with the Ministry of Justice in the course of the research, it was reaffirmed that even though the 1984 BNC drew on some principles of the 1961 Convention as indicated in the explanatory memorandum to the bill at the time, the question of ratification had not been considered at that time. The subsections that follow set out key provisions of the 1961 Convention and the extent to which Belgian law and practice on these issues are compatible with the Convention.

7.5.1.1 Safeguards against statelessness at birth (Article 1 and 4, 1961 Convention)

556. With regard to the **grant of nationality to otherwise stateless children born in the territory of contracting states to the 1961 Convention (Articles 1(1), 1(2) and 1(3))**, the 1961 Convention places primary responsibility for granting nationality to children who would otherwise be stateless on the contracting state in which such children are born.[448]

557. **Article 1(1)–1(2).** The 1961 Convention establishes the principle that a contracting state must grant its nationality to children born on its territory if they would otherwise be stateless. Article 1(1) provides contracting states with two mechanisms for granting nationality to otherwise stateless children born in their territory: at birth by operation of law, or by application. It reads:

> "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:
>
> (a) at birth, by operation of law, or
>
> (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected."

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447 See above para. 500.

448 The UNHCR Dakar Summary Conclusions, above note 384, is the primary source for this section. See also, Prof. Dr. G.-R. de Groot, "Preventing Statelessness among Children: Interpreting Articles 1-4 of the 1961 Convention on the Reduction of Statelessness and Relevant International Human Rights Norms", Background Paper for UNHCR expert meeting on Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children, May 2011, unpublished, (hereafter De Groot, Preventing Statelessness among Children).

558. Belgian legislation is in line with this provision of the 1961 Convention, while the current bill reforming the BNC does not modify the BNC in terms of safeguards against statelessness at birth.

559. As explained in paragraphs 506–507 above, Article 10 §1 of the BNC operates as a safeguard against statelessness for children born in Belgium who would otherwise be stateless by stating that such children are entitled to Belgian nationality, while Article 10 §2 provides an exception to this obligation if it is possible for the child to obtain a nationality through administrative measures before the authorities of the country of nationality of either parent. Article 10 §1 of the BNC is in line with Article 1(1) of the 1961 Convention. As the Dakar Summary Conclusions note:

> "The rules for preventing statelessness among children contained in Articles 1(1) and 1(2) of the 1961 Convention must be read in light of later human rights treaties, which recognize every child's right to acquire a nationality, in particular where they would otherwise be stateless. The right of every child to acquire a nationality (CRC, Article 7) and the principle of the best interests of the child (CRC, Article 3) together create a presumption that States need to provide for the automatic acquisition of their nationality at birth by an otherwise stateless child born in their territory, in accordance with Article 1(1)(a) of the 1961 Convention. Where contracting states opt for an application procedure to grant their nationality to otherwise stateless children, developments in international human rights law create a strong presumption that States should limit application requirements so as to allow children to acquire nationality as soon as possible after birth."[449]

560. The exception contained in Article 10 §2 was also discussed in the UNHCR expert meeting in Dakar. It concluded: "Responsibility to grant nationality to otherwise stateless children is not engaged where a child is born in a State's territory and is stateless, but could acquire the nationality of a parent by registration with a state of nationality of a parent, or a similar procedure such as declaration or exercise of a right of option." This exception is only deemed valid, however, "if a child can acquire the nationality of a parent immediately after birth and the State of a parent does not have any discretion to refuse the grant of nationality".[450]

561. Indeed, the Constitutional Court has held that the exception is not discriminatory.[451] In a 2008 judgment on the possible arbitrariness of such a provision, the Court held that the legislator had not made it impossible for children to whom Article 10 §1 of the BNC applies to have a nationality, but only aimed to prevent children from automatically acquiring Belgian nationality if they could benefit from another nationality by undertaking a simple administrative measure. The Court further emphasized that it must be deduced from Article 10 §2 that the child must have the right to acquire the other nationality and that this would be endangered should such an acquisition be subject to discretionary application by the authorities representing the foreign state.

562. Furthermore, the Court noted that the new Article 10 §2 constituted an exception to the rule and must for this reason be restrictively interpreted, taking due account of the objective of the legislator. It held that this provision would not apply if the parents found themselves unable to apply to the diplomatic or consular authorities of their country of origin, as is notably the case for parents recognized as refugees according to the 1980 Aliens Act.

563. The Circular of 25 May 2007 on the application of the modified Article 10 gives examples of situations where it would be impossible for parents to take the necessary measures for their child to obtain a nationality.[452] These include parents who have sought asylum whose procedure is ongoing and parents who have been recognized as refugees or granted subsidiary protection. Should the parents' asylum claim be rejected, the guidelines stress that the child who would have acquired Belgian nationality while the procedure was pending, would not in principle be able to keep it, (although the Circular is silent as to how this should be implemented). In such cases, it is assumed there are no longer obstacles to the acquisition of the nationality of the parents' country of origin (provided that an eventual time period for registering the child, foreseen by the country of origin, has not expired).

564. Although not mentioned by the Court or in the guidelines for civil registrars, this presumed obstacle should also apply to parents recognized as stateless. By definition they are not considered as the nationals of any country and cannot thus address any foreign authority in Belgium to register their child for the purpose of acquiring that country's nationality. As mentioned by the Ministry of Justice in interview with the researchers, where both parents are recognized as stateless in Belgium, any children born to them after that recognition must be attributed Belgian nationality under Article 10 BNC.

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449 UNHCR, Dakar Summary Conclusions, above note 384, paras 22–23.

450 UNHCR, Dakar Summary Conclusions, above note 384, para. 15.

451 Belgium, Constitutional Court, 24 April 2008, No. 73/2008, available at http://www.const-court.be/public/f/2008/2008-073f.pdf (in French) and http://www.const-court.be/public/n/2008/2008-073n.pdf (in Dutch). *See also Revue du droit des étrangers,* No. 148, 2008.

452 Circular of 25 May 2007 relative aux modifications du Code de la nationalité belge introduites par la loi du 27 décembre 2006 portant des dispositions diverses, available at http://www.ejustice.just.fgov.be/mopdf/2007/06/04_2.pdf#Page14 (in French and Dutch), p. 14, section II (regarding Article 10).

565. **Article 1(3) of the 1961 Convention** articulates a gender-sensitive safeguard against statelessness and requires states to grant nationality to children born in wedlock on their territory to mothers who are nationals, if the child would otherwise be stateless.

566. Belgian legislation seems to be in line with this provision, since Article 8 §1 1° of the BNC provides that a child born in Belgium to a Belgian parent is Belgian (whether or not the parents are married).

567. Regarding **Articles 1(4), 1(5) and 4 of the 1961 Convention** and the **grant of nationality to otherwise stateless persons born abroad to nationals of contracting states**, the 1961 Convention places primary responsibility for granting nationality to otherwise stateless children on the contracting state of which the child's parents are nationals. The Convention stipulates the following two rules in this area.[453]

568. The first is found in Article 1(4) and applies where an otherwise stateless child is born in a contracting state to parents of another contracting state but does not acquire the nationality of the country of birth automatically, is above the age permitted to apply for nationality, or has not fulfilled the required residence conditions. In such cases the contracting state of which the parents of the person concerned are citizens is responsible for granting its nationality to that person. In these limited circumstances, where contracting states must grant nationality to children born abroad in another contracting state to one of their nationals, states may require that an individual lodge an application and meet certain criteria. These are set out in Article 1(5) and are similar to those in Article 1(2), with some distinctions.[454]

569. The second subsidiary rule is set out in Article 4 and applies where children of a national of a contracting state who would otherwise be stateless are born in a non-contracting state. In such cases the contracting state of which the parents of the person concerned are citizens is also responsible for granting its nationality to the child. Article 4 does, however, give contracting states the option of either granting nationality to children of their nationals born abroad automatically at birth or of requiring an application subject to the exhaustive conditions listed in Article 4(2).[455]

570. As regards the timing of the grant of nationality Article 4 of the 1961 Convention, like Article 1, must be read in the light of subsequent developments in international human rights law. Similarly, there is a strong presumption that contracting states should provide for automatic acquisition of their nationality at birth to an otherwise stateless child born abroad on the basis of Articles 3 and 7 of the CRC. Where an application procedure is in place, under international human rights law the processing and granting of nationality should take place as soon as possible after birth.[456]

571. Attribution of Belgian nationality to children under the age of 18 years through their father or mother is covered by Article 8 of the BNC. When a child is born abroad and is under 18 years of age (and is not "emancipated"), this Article provides for automatic attribution of Belgian nationality when the Belgian parent was born in Belgium (Article 8 § 1(2)(a)). The child born abroad to a Belgian parent who was not born in Belgium can obtain nationality through a declaration of the parent to the relevant Belgian authorities before the child reaches the age of five (Article 8 § 1(2)(b)). However, when a child born abroad to a Belgian parent does not have another nationality, or loses another nationality before reaching the age of 18 or "emancipation", the child is automatically Belgian (Article 8 § 1(2)(c)) as no explicit declaration from the parents is required. Children who are Belgian nationals by this means will retain their nationality unless it is established before they reach the age of 18 (or are "emancipated") that they have another nationality (Article 8 § 1, last sentence).

572. These provisions indicate that Article 8 of the BNC is largely consistent with Articles 1(4), 1(5) and 4 of the 1961 Convention.

573. The Belgian authorities have nonetheless highlighted a possible difficulty arising from Article 8 §3 of the BNC in the case of adoption. Indeed, if filiation to the Belgian (biological) parent is established after the date of an adoption, Belgian nationality will only be conferred on the child if the adoptive parent or his or her spouse is the biological parent.[457] Otherwise, the adopted child born to a Belgian parent will not be Belgian.

574. Concretely, Article 8 §3 of the BNC could raise difficulties for an adopted child who was not born in Belgium and who does not acquire the nationality of a foreign adoptive parent (a stateless child born in Belgium to unknown parents would benefit from Article 10 of the BNC before any adoption takes place and would be Belgian and if the adoptive parent were Belgian, the child would become Belgian, and). Should biological filiation to a Belgian parent

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453 UNHCR, Dakar Summary Conclusions, above note 384, para. 35.

454 Ibid.

455 Ibid., para. 36.

456 Ibid., para. 37.

457 BNC, Article 8 §3 reads (in French): "La filiation établie à l'égard d'un auteur belge après la date du jugement ou de l'arrêt homologuant ou prononçant l'adoption n'attribue la nationalité belge à l'enfant que si cette filiation est établie à l'égard de l'adoptant ou du conjoint de celui-ci." (In Dutch): "De afstamming vastgesteld ten aanzien van een Belgische ouder na de datum van het vonnis of het arrest dat de adoptie homologeert of uitspreekt, verleent de Belgische nationaliteit maar aan het kind, indien die afstamming wordt vastgesteld ten aanzien van de adoptant of diens echtgenoot."

be established after the child has been adopted, the child will only become Belgian if the Belgian parent is also the adoptive parent. Otherwise, the stateless child born abroad to a biological Belgian parent will remain stateless.

575. The Belgian authorities concede that the situation covered by Article 8 §3 of the BNC is exceptional and that the legislator wished to avoid conflicts between biological and adoptive filiation.[458]

7.5.1.2 Foundlings (1961 Convention, Article 2)

576. Children found abandoned on the territory of a contracting state must be treated as having been born within that territory of parents possessing the nationality of that State and accordingly acquire the nationality of the country where they are found. Article 2 of the 1961 Convention does not define an age at which a child may be considered a foundling.[459]

577. The BNC also addresses the issue of foundlings, but its provision limits foundlings to newborn children only.[460] This issue was raised by the Ministry of Justice during a meeting in January 2011, according to which Article 2 of the 1961 Convention and Article 10 §3 of the BNC seek to express the same idea, namely that a child born to a woman who then abandons him or her should be considered as a child born on the territory where he or she is found. However, the Ministry believes that the scope of application of Article 2 of the 1961 Convention is wider than that foreseen by the BNC. Indeed, the Belgian Civil Code uses the notion of "newborn" to refer to a child who is at most a few days old.[461] A child who is already a few months old, and a *fortiori* if he or she is a few years old, is thus no longer a "newborn" and falls outside the scope of Article 10 §3 of the BNC.

578. How, then, should the term "foundling" used in Article 2 of 1961 Convention be interpreted? The words for "foundling" used in each of the five authentic texts of the Convention (Chinese, English, French, Russian, and Spanish) reveal some differences in the ordinary meaning of these terms, in particular with regard to the age of the children covered by this provision. The English text uses the word "foundling", which is defined by the *Oxford English Dictionary* as "an infant that has been abandoned by its parents and is discovered and cared for by others".[462] The word "infant" is defined as "a very young child or baby".[463] The terms used in the Spanish and Russian texts seem to also refer to newborn children.[464] When looking at the French text, however, the words used are "l'enfant trouvé", which would encompass infants, children as well as adolescents, that is, all persons under the age of 18. This wider term is also used in the Chinese text.[465]

579. Indeed, State practice reveals a broad range of ages within which this provision is applied. Some contracting states limit the granting of nationality to foundlings who are very young (12 months or younger). Most contracting states nevertheless apply their rules in favour of foundlings to older children as well, including in some cases up to the age of majority.

580. It could thus be argued that given the different versions of the text available, a national provision that limits the application of Article 2 of the 1961 Convention to newborn children only would not be contrary to that same Convention. Such an approach would, however, automatically exclude all children who are not newly born from protection against potential statelessness. As the expert meeting in Dakar concluded:

> "At a minimum, the safeguard for Contracting States to grant nationality to foundlings should apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth. This flows from the object and purpose of the 1961 Convention and also from the right of every child to acquire a nationality. A contrary interpretation would leave some children stateless."[466]

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458 Indeed, pursuant to Article 350 of the Belgian Civil Code, above note 28, unless the biological filiation is established to the adoptive parent, the establishment of filiation after an adoption does not break the legal filiation established by the adoption and does not create a legal filiation link with the biological parent, or at least not a complete one. Priority is thus given to the prior adoptive filiation.

459 UNHCR, Dakar Summary Conclusions, above note 384, paras 43–47. See also generally, De Groot, Preventing Statelessness among Children, above note 448.

460 BNC, Article 10 §3: (in French) "L'enfant nouveau-né trouvé en Belgique est présumé, jusqu'à preuve du contraire, être né en Belgique." (In Dutch) "Het in België gevonden pasgeboren kind wordt, behoudens tegenbewijs, verondersteld in België te zijn geboren."

461 See for example Articles 56 §4 and 59 of the Belgian Civil Code, above note 28.

462 http://oxforddictionaries.com/definition/foundling.

463 http://oxforddictionaries.com/definition/infant.

464 In Spanish *"expósito",* and in Russian, "найденыш".

465 In Chinese 弃儿 (qi'er).

466 UNHCR Dakar Summary Conclusions, above note 384, para. 44.

581. This issue was addressed by the Council of Europe, which in 2009 recommended that member states "treat children found abandoned on their territory with no known parentage, as far as possible, as foundlings with respect to the acquisition of nationality".[467]

582. Moreover, in addition to the fact that Belgian legislation currently has what may be considered as more restrictive wording than the 1961 Convention on the issue of foundlings, Belgium needs to take into account the need to uphold its existing international obligations concerning children under the CRC. In addition to its obligations under Article 3 to ensure that the best interest of the child is a primary consideration, Article 7 of the CRC prescribes,

> "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality… [and] States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

583. In the light of the above and of the object and purpose of Article 2 of the 1961 Convention, Belgium is thus encouraged to adapt Article 10 §3 of the BNC to ensure that the category of foundlings is not limited to newborns only.

7.5.1.3 Application of safeguards against statelessness to children born on ships and aircraft (1961 Convention, Article 3)

584. Under Article 3 of the 1961 Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the state whose flag the ship flies or in the territory of the state in which the aircraft is registered, as the case may be.

585. The BNC is silent on this issue, but the Ministry of Justice has highlighted this point as being potentially problematic. Indeed, as regards births in an aircraft, Belgian legislation provides that births during a flight in a Belgian aircraft are deemed to have occurred on Belgian territory.[468] The Belgian authorities rely on Professor Verwilghen's interpretation of this legislation,[469] and argue that since Belgian legislation deals with births during a flight, birth in an aircraft during a stopover or stay in a foreign airport cannot be considered as a birth on Belgian territory. There is no similar provision concerning births on a ship, but the authorities believe that the same interpretation would apply.

586. Here again, Article 3 of the 1961 Convention covers a larger group of children than Belgian legislation, as its application is not limited to births during a flight or a sea voyage. In the same vein, the UNHCR Dakar expert meeting concluded,

> "The extension of the territory of a Contracting State to 'ships' as prescribed in Article 3 of the 1961 Convention is to be interpreted as referring to all 'vessels' registered in that contracting state irrespective of whether the ship involved is destined for transport on the high seas … It also applies to ships within the territorial waters or a harbour of another State or to aircraft at an airport of another State."[470]

587. Moreover, account must again be taken of Belgium's international obligations, notably under Article 3 and 7 of the CRC.

588. In the light of the above, Belgium is thus encouraged to delete the words "during a flight" from its relevant legislation and include a specific provision in the BNC covering ships and aircraft in line with Article 3 of the 1961 Convention.

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467 Council of Europe: Committee of Ministers, Recommendation CM/Rec(2009)13 of the Committee of Ministers to Member States on the Nationality of Children, 9 December 2009, CM/Rec(2009)13, available at http://www.unhcr.org/refworld/docid/4b83a76d2.html, para. 9.

468 Law of 27 June 1937, portant révision de la loi du 16 novembre 1919 relative à la réglementation de la navigation aérienne. Article 7 reads (in French): "Les naissances, en cours de vol, à bord des aéronefs belges sont réputées survenues sur le territoire du Royaume. (La déclaration de naissance est faite au commandant de l'aéronef par le père ou la mère ou les deux auteurs ou, à leur défaut, par toute autre personne ayant assisté à l'accouchement.) Aussitôt que possible et au plus tard lors du premier atterrissage, le commandant de l'aéronef en dresse acte par inscription sur le carnet de route en présence de deux témoins. L'acte est signé par le déclarant, le commandant de l'aéronef et les témoins", available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1937062730&table_name=loi.
(In Dutch) "De geboorten aan boord van varende Belgische luchtvaartuigen, worden geacht op het grondgebied van het Rijk te zijn geschied. (De aangifte van geboorte wordt aan de gezagvoerder van het luchtvaartuig gedaan door de vader of de moeder of door beide ouders of, bij gebreke van dezen, door enige persoon die bij de bevalling tegenwoordig is geweest.) Zodra mogelijk en uiterlijk bij de eerste landing maakt de gezagvoerder van het luchtvaartuig een akte op door inschrijving in het reisboek ten overstaan van twee getuigen. De akte wordt door de aangever, de gezagvoerder van het luchtvaartuig en de getuigen ondertekend …," available at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1937062730&table_name=wet.

469 Verwilghen, M., *Le Code de la nationalité belge,* Brussels: Bruylant, 1985, No. 451.

470 There may not be a problem if the ship or aircraft involved is at the time of birth of a child located in a *ius soli* state, as the child may acquire that state's nationality. However, should this not be the case and the ship or aircraft is located in a non-contracting state, Article 3 of the 1961 Convention would apply. See UNHCR, Dakar Summary Conclusions, above note 384, paras 48–49.

7.5.1.4 Loss of nationality (1961 Convention, Articles 5–7)

589. Articles 5–7 of the 1961 Convention prevent statelessness in later life by requiring prior possession of, or assurance of acquiring, another nationality before a nationality can be lost. If such protections are in place, loss of nationality can only take place automatically when someone's personal status changes.

590. In this context, Article 5(1) provides:

> "If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality."

591. Article 8 §4 of the present BNC could be seen as problematic in the light of the 1961 Convention. It foresees that a child over 18 who acquired Belgian nationality from his or her parent will keep that nationality even if filiation to that parent is no longer established. The wording of Article 8 §4 may imply that a child under 18 whose filiation to a Belgian parent is no longer established loses Belgian nationality, possibly rendering the child stateless. If interpreted this way, this provision is only problematic, however, if the child is born abroad. Indeed, a child born in Belgium would fall under Article 10 and would retain his or her Belgian nationality if not having it would make him or her stateless.

592. A similar provision concerning potential loss of nationality is found in Article 11, for children born in Belgium who have acquired Belgian nationality from a biological parent also born in Belgium whose main residence has been there for five of the 10 years preceding the child's birth. Should this filiation no longer be established, the child would remain Belgian only if he or she were over 18. However, since Article 11 applies to children born in Belgium, should the filiation cease to exist, the child would fall under Article 10 and would keep Belgian nationality if otherwise stateless.

593. That said, in other Articles dealing with the consequences for children of loss of nationality, the BNC ensures that the child will only lose nationality if he or she already has or will acquire the nationality of the parent who loses his or her Belgian nationality.[471] Such a guarantee can for example be seen in the case of voluntary renunciation of nationality. The inclusion of guarantees in Articles 8 §4 and 11 similar to those existing in other Articles of the BNC is therefore recommended.

594. Until 2006, a Belgian lost Belgian nationality if he or she voluntarily acquired another nationality. Since then, this cause of loss has been removed from the legislation, and a Belgian national seeking naturalization in a foreign country no longer loses his or her Belgian nationality on that account. The BNC now complies in this respect with Article 7(2) of the 1961 Convention, which allows for such a loss only if the national acquires or has been given assurances that he or she will acquire the nationality by that foreign country.

595. The BNC further deals with loss of nationality by a Belgian born abroad whose main and continuous residence has been abroad from the age of 18 to 28 (unless he served the Belgian government abroad). If a Belgian in this particular situation has sole authority over his or her child under 18, that child will also lose Belgian nationality; should parental authority be shared, the child will only lose Belgian nationality if the other parent loses it as well.[472] Here again, the legislator, concerned about possible cases of statelessness, introduced a specific paragraph stating that loss of nationality due to residence abroad will not apply to Belgians and their children if the application of these provisions would make them stateless.[473] These provisions are thus in conformity with Article 7(3) of the 1961 Convention, which reads,

> "Subject to the provisions of paragraphs 4 and 5 of this Article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground."

596. The BNC further allows persons over 18 who have lost their nationality other than by deprivation to recover it by a "declaration of option" provided their main residence has been in Belgium for the 12 months preceding the declaration.[474] The bill maintains this principle and restricts the condition of main residence.

597. The bill does not bring any modification in the BNC in terms of loss of nationality. The bill does not address the shortcoming observed in Article 8 §4 of the BNC in relation to the loss of nationality of some children whose filiation is no longer established.

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471 BNC, Article 22 §3.

472 Ibid., Article 22 §1 5° and 6°.

473 Ibid., Article 22 §3.

474 Ibid., Article 24.

7.5.1.5 Renunciation of nationality (1961 Convention, Article 7)

598. Article 7(1) of the 1961 Convention prevents statelessness, as it requires prior possession of or assurance of acquiring another nationality before a nationality can be renounced.

599. If national law permits renunciation of nationality, the 1961 Convention states that "such renunciation shall not result in loss of nationality unless the person concerned possesses or acquired another nationality".[475] This is the case in Belgium. A declaration of renunciation can be made from the age of 18 only if the individual proves that he or she has another nationality or will acquire or recover one as a result of this declaration. Where an adult making such a declaration has sole parental authority over a child under 18, the child also will lose Belgian nationality if he or she already has or acquires the parent's foreign nationality. Should parental authority be shared, the child will not lose his or her nationality as long as one parent still has it. The child will lose it if that parent in turn loses Belgian nationality, but only if the child acquires, or already has, the nationality of one parent or adoptive parent.[476]

600. While maintaining this safeguard against statelessness, the bill makes it possible to acquire another nationality, the acquisition of which requires Belgian nationality to be renounced. According to Article 18 of the bill modifying article 22 of the BNC, when acquisition or reacquisition of another nationality does not directly follow the declaration of renunciation and would make the person concerned stateless, the renunciation will have no legal effect until another nationality has been acquired or re-acquired.

7.5.1.6 Deprivation of nationality (1961 Convention, Article 8)

601. The 1961 Convention states clearly that "a Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless".[477] There are, however, exceptions to this principle. These include cases where nationality has been obtained by "misrepresentation or fraud"[478] and where, "inconsistently with his duty of loyalty to the Contracting State, the person … has conducted himself in a manner seriously prejudicial to the vital interests of the State".[479] These possibilities are in turn subject to limitations that such grounds be defined in law and that deprivation be "in accordance with law", including with a "right to a fair hearing by a court or other independent body" (Article 8(4)). In addition, Article 9 affirms that a person or group cannot be deprived of their nationality on racial, ethnic, religious, or political grounds.

602. These provisions are exceptions to a general rule and should therefore be interpreted narrowly. In applying these exceptions, the principle of proportionality also applies, that is, the gravity of act must be weighed against the impact of the deprivation on the individual.[480]

603. The BNC permits deprivation of nationality[481] except for Belgians who have acquired their nationality from a Belgian parent at the time of their birth or who have been attributed their nationality by virtue of Article 11 of the BNC.[482] Deprivation can thus occur if a Belgian national, who has not acquired Belgian nationality from a Belgian parent at birth and who has not obtained this nationality by virtue of Article 11 of the BNC, has acquired it fraudulently or is in serious breach of his or her duties as a Belgian citizen.[483] In this context, the Constitutional Court held in 2009 that this differentiated treatment was not without justification.[484] Deprivation involves a process initiated by the government or the courts and only concerns the person denounced. It has no effect on a spouse or child.

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475 Ibid., Article 7(1)(a).

476 BNC, Article 22 §1 2° and 3°.

477 1961 Convention, Article 8(1).

478 Ibid., Article 8(2)(b).

479 Ibid., Article 8(3)(a)(ii). Article 8(3)(a)(i) also provides for deprivation of nationality where "inconsistently with his duty of loyalty to the Contracting State, the person (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render service to, or received or continued to receive emoluments from another State". With the exception of fraud and misrepresentation, a Contracting State must declare its intention to retain this ground in its nationality law at the time of signature, ratification or accession.

480 CJEU, C-135/08 *Janko Rottmann v. Freistaat Bayern,* 2 March 2010, below note 491 and for more information about the case, paras 606–609.

481 BNC, Article 23.

482 BNC, Article 11, provides that a child born in Belgium is granted Belgian nationality automatically if one parent was also born in Belgium and has had his or her main residence there for five years in the 10 years preceding the child's birth. Article 11 further states that a child born in Belgium is Belgian if adopted by an alien born in Belgium who has had his or her main residence there for five years in the 10 years preceding the adoption.

483 BNC, Articles 23 §1 1° and 23 1§ 2°.

484 Belgium, Constitutional Court, 14 May 2009, No. 85/2009, available at http://www.const-court.be/public/f/2009/2009-085f.pdf (in French) and http://www.const-court.be/public/n/2009/2009-085n.pdf (in Dutch).

604. **Deprivation based on fraud.** The possibility of depriving someone of their nationality on the basis of fraud used to acquire nationality was added in 2006. Such fraud must have involved acquisition of nationality on the basis of altered or dissimulated facts or of wrong declarations or fake or forged documents which were decisive in the decision to grant nationality. In the absence of provisions to the contrary, Belgian legislation thus allows for deprivation of nationality, even if it leads to statelessness. This is, however, not contrary to the 1961 Convention, which, as outlined above, also allows someone to be deprived of nationality if this was acquired fraudulently, even if this leads to statelessness.[485]

605. The Ghent Court of Appeal has deprived three individuals of Belgian nationality on the basis of fraud. The first concerned a man of Bhutanese origin who as well as violating the Aliens Act fraudulently acquired Belgian nationality by adopting a false identity.[486] The second concerned a man of Albanian origin who had used a document with a false Kosovar name on the basis of which he obtained a residence permit as a refugee.[487] The third concerned a woman of Thai origin who had acquired Belgian nationality on the basis that she was married to a Belgian without mentioning that her divorce from him had already been pronounced by a tribunal.[488] It is possible that the man of Bhutanese origin was rendered stateless as a result, since Bhutanese law does not permit dual nationality.[489] These were the only cases relating to fraud mentioned in a response by the Minister of Justice to a parliamentary question in the Chamber of Representatives in September 2011.[490]

606. The question of how fraud should be assessed has been examined at the European level by the CJEU in the case of *Janko Rottmann* v. *Freistaat Bayern.*[491] The judgment responded to a preliminary question concerning the interpretation of Article 17 of the EC Treaty on citizenship of the Union.[492] The case concerned an Austrian national who, in accordance with Austrian nationality law, had lost his nationality on acquiring German citizenship. However, when acquiring German nationality, he had concealed the fact that he was the subject of criminal proceedings in Austria on the ground of suspected serious fraud in the exercise of his profession. After being informed of the existence of an arrest warrant against him, the German authorities decided to withdraw his German nationality with retroactive effect, on the grounds that he had acquired German nationality by deception. The effect of the withdrawal, which under Austrian law did not cause the individual concerned automatically to reacquire Austrian nationality, left him stateless.

607. In its judgment, the CJEU held that a member state may withdraw its nationality, when granted by way of naturalization, from a citizen of the Union, when that person has obtained it by deception, even if as a consequence of that withdrawal the person concerned loses his or her citizenship of the Union because he or she no longer possesses the nationality of a member state.

608. The CJEU nevertheless ruled that the withdrawal must observe the principle of proportionality. In particular, it has to be ascertained whether the withdrawal of naturalization and, therefore, the loss of the rights enjoyed by every citizen of the Union are justified and proportionate to the gravity of the offence committed by that person, to the lapse of time between the naturalization decision and the withdrawal decision, and to whether the individual can recover his or her original nationality. It held that, before a decision withdrawing naturalization on the ground of deception takes effect, and in the light of all the relevant circumstances, the national court should determine whether observance of the principle of proportionality requires the person concerned to be afforded a reasonable period of time to try to recover the nationality of his or her member state of origin.

609. Thus, despite the fact that deprivation for fraud is possible, even if it leads to statelessness, member states must apply a proportionality test to ensure that leaving the person concerned with no EU rights is justifiable given the circumstances.

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485 1961 Convention, Article 8(2)(b).

486 Belgium, Court of Appeal Ghent, No. 2008/AR/828, 11 December 2008.

487 Belgium, Ghent Court of Appeal, No. 2008/AR/831, 5 February 2009, available at http://jure.juridat.just.fgov.be/view_decision?justel=N-20090205-9&idxc_id=229087&lang=nl (in Dutch).

488 Belgium, Ghent Court of Appeal, 2008/AR/2471, 4 June 2009.

489 *Bhutan Citizenship Act,* 1985 [Bhutan], 10 June 1985, available at http://www.unhcr.org/refworld/docid/3ae6b4d838.html, Article 6.

490 Chamber of Representatives, "Written Questions and Answers", QRVA 53 04, response of 23 September 2011, available at http://www.dekamer.be/QRVA/pdf/53/53K0041.pdf, pp. 94–95.

491 CJEU, C-135/08 *Janko Rottmann v. Freistaat Bayern,* 2 March 2010 (Grand Chamber), available at http://www.unhcr.org/refworld/docid/4be130552.html (in English) and http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-135/08&td=ALL (additional EU languages).

492 European Union, Treaty Establishing the European Community (Consolidated Version), Rome Treaty, 25 March 1957, available at http://www.unhcr.org/refworld/docid/3ae6b39c0.html. Article 17(1) reads, "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship."

610. **Deprivation based on a serious breach of duties as a Belgian citizen.** The other instance of deprivation envisaged by the BNC (under Article 23 1§ 2°) is based on a serious breach of duties as a Belgian citizen. In response to a parliamentary question,[493] the Ministry of Justice reported in September 2011 that, after a period of 60 years during which it had not been used,[494] it had been applied again in four cases between 2009 and 2010.

611. The Brussels Court of Appeal has resorted to this provision in three cases. The first concerned a person of Tunisian origin, who had acquired Belgian nationality through marriage; he had been convicted for different reasons, one being membership of extremist Islamic groups whose aim was to commit serious attacks against persons and properties, convictions which the Court deemed a serious threat to public order and the security of Belgium, its institutions, and citizens.[495] The second case concerned another Belgian of Tunisian origin who had been convicted of playing an active role in two extremist Islamic groups whose aim was to carry out serious attacks against persons and properties, which according to the judgment showed that the individual had no attachment to Belgium and its institutions or any sense of national belonging other than on paper.[496] The third case concerned an individual of Moroccan origin, who had become Belgian by declaration and had also been convicted of active membership of a terrorist extremist Islamic organization.[497] The most recent ruling was in November 2010 by the Antwerp Court of Appeal and concerned a man of Moroccan origin, who had been condemned for terrorism in Morocco and who had committed criminal acts in Belgium and Morocco.[498]

612. The fact that the BNC provides for deprivation for "serious breach of duties as a Belgian citizen" could potentially have a wider scope than the ground of inconsistency "with (his) duty of loyalty to the contracting State" as permitted under Article 8(3) of the 1961 Convention. At the same time, however, in practice deprivation due to serious breach of duties has only recently been used again in Belgium, in four cases, all of which concerned individuals involved in the planning of terrorist attacks. The broad formulation of the provision in the BNC could, however, potentially give rise to a broader interpretation in future.

613. Deprivation of nationality can be applied despite the fact that such deprivation will render the individual stateless when the national has acted "in a manner seriously prejudicial to the vital interests of the State"[499] (which could for instance include treason and espionage), as well as when an individual has been in the service of another state.[500] The actions of the individuals in the 2009 and 2010 Court of Appeal judgments mentioned in paragraphs 610–611 above may well, however, fall under conduct "seriously prejudicial to the vital interests of the State", as the individuals had been convicted of membership of groups created to support terrorist commandos of Islamic extremist groups and were involved in the organization of armed groups trained to recruit volunteers and send them abroad to join foreign troops and undergo further training, or of membership of an extremist Islamic group and of planning a terrorist attack.

614. It is interesting to note that the Brussels Court of Appeal did consider the issue of the possible statelessness of the individuals concerned, in the sense that all three judgments specifically state that the individuals concerned had both Belgian and Moroccan or Tunisian nationality, possibly indicating that this element was a factor to be taken into consideration in the decision of deprivation. Indeed, in all four cases, since both the Moroccan and Tunisian Nationality Codes[501] do not permit the loss of nationality except by royal or presidential decree in exceptional circumstances, it may be that each individual had still retained their first nationality and did not therefore become stateless.

615. As only four individuals have recently been deprived of Belgian nationality due to a serious breach of duties as a Belgian citizen, it is unclear if this category might include individuals who have not behaved in a manner seriously prejudicial to the vital interests of the state in the sense of the 1961 Convention.

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493 Chamber of Representatives, "Written Questions and Answers", above note 490.

494 Until 2009, only 38 Belgians – four before the Second World War and 34 shortly afterwards – had been deprived of their nationality for this reason. See Foblets and Yanasmayan, *Country Report: Belgium,* above note 400, p. 14.

495 Belgium, Court of Appeal Brussels, 26 January 2009, No. 2007/AR/1452.

496 Belgium, Court of Appeal Brussels, 26 January 2009, No. 2007/AR/1456, with commentary by Renauld, B., *Revue du droit des étrangers,* No. 152, 2009.

497 Belgium, Court of Appeal Brussels, 7 January 2010, No. 2007/AR/1453. This case was mentioned to the researchers by the Ministry of Justice following a meeting held in January 2011. The Constitutional Court judgment of 14 May 2009, No. 85/2009, above note 484, concerned the same person.

498 Belgium, Court of Appeal Antwerp, 17 November 2010, No. 2009/AR/3058.

499 1961 Convention, Article 8(3)(a)(ii).

500 1961 Convention, Article 8(3)(a)(i).

501 Morocco, Dahir n° 1-58-250 du 21 safar 1378 (6 septembre 1958) portant la Code de la nationalité marocaine (revisée 2007), DAHIR n. 1-58-250 (21 safar 1378), 12 September 1958, available at http://www.unhcr.org/refworld/docid/3ae6b5778.html, Articles 19–20 and Code de la nationalité tunisienne (amendé 1984) [Tunisia], 22 April 1963, available at http://www.unhcr.org/refworld/docid/3ae6b4d024.html, Article 30 (nouveau).

616. It is recommended that Article 23 §1 2° BNC be adapted to the wording of the 1961 Convention by replacing "if they are seriously in breach their duties as a Belgian citizen" ("s'ils manquent gravement à leurs devoirs de citoyen belge") with "if inconsistently with their duty of loyalty towards Belgium, they have conduct themselves in a manner seriously prejudicial to the vital interests of the State" ("si dans des conditions impliquant un manque de loyalisme envers la Belgique, ils ont eu un comportement de nature à porter un préjudice grave aux intérêts essentiels de l'Etat").

617. Alternatively, the legislator is encouraged to include in the BNC a safeguard against statelessness in case of deprivation of nationality on the basis of "serious breach of duties as a Belgian citizen". It is understood that this is currently envisaged in the draft law.

618. Deprivation of Belgian nationality due to a criminal conviction or marriage of convenience. While maintaining the two aforementioned grounds for deprivation of nationality, the bill creates two additional grounds for deprivation of nationality that is in case of criminal conviction or marriage of convenience. The bill also inserts in the BNC an additional safeguard against statelessness. It states that a judge will not revoke Belgian nationality if this leaves the person concerned stateless, unless he/she has obtained Belgian nationality through deceit, false information, or the omission of relevant facts. In the latter situations, the judge provides for a reasonable time period so as to allow the person to try to recover his/her nationality of origin (Article 20 §2 bill).

7.5.2 The 1954 Convention and the facilitation of assimilation or naturalization

619. Statelessness can also be reduced by granting a nationality to stateless persons. This section examines Belgian nationality legislation in the context of Article 32 of the 1954 Convention, providing for facilitated assimilation and naturalization of stateless persons.[502]

620. As mentioned above, non-automatic methods of acquiring nationality include naturalization and acquisition by declaration or option.[503] This section examines both these issues as addressed by UNHCR in its comments on the draft nationality law.[504]

7.5.2.1 Naturalization

621. Naturalization is a discretionary grant of Belgian nationality by the Naturalization Commission of the Chamber of Representatives to an alien who requests it. It is viewed as a favour bestowed on the alien rather than a right. As stipulated in Article 19 of the BNC, in order to be able to ask for naturalization, the applicant must be 18 and must have had his or her main residence in Belgium for at least three years. This period of time is reduced to two years for a recognized refugee or recognized stateless person.[505] A period of residence abroad can be assimilated to residence in Belgium, if the applicant proves that he or she has maintained authentic ties to Belgium during that time. This main residence must have been on the basis of legal stay. It is also necessary to distinguish between legal stay at the time of the request and legal stay prior to the request. (See also paragraph 640 for developments in the bill).

622. Since the 2006 legislative change, stateless persons have been required to have their main residence in Belgium for two years prior to submission of the naturalization request and to have had legal stay during that time. Like Article 7bis, Article 19 of the BNC does not, however, require applicants seeking naturalization to have had a legal residence permit of more than three months for those two years. Thus, periods of legal stay that were for a shorter period should be taken into account, but they must be continuous with no interruption by an illegal stay or a stay abroad.

623. Under Article 7bis of the BNC, the applicant must be legally residing in Belgium at the time of the request, that is, he or she must have legal residence of more than three months in Belgium in accordance with the 1980 Aliens Act. Individuals who hold a temporary stay permit of three months or less, such as asylum-seekers whose claim has merely been declared admissible, cannot therefore seek naturalization. Article 7bis does not as such require the applicant to hold an unlimited residence permit at the time of the request. Concretely, he or she must at that time have an aliens' identity card (a C, E or F Card) or a proof of registration for a definite or indefinite period on the Aliens Register (BIVR or CIRE, A or B Card).[506] The possession of these documents is seen as a sign of a stable and continuing stay on the territory. (See also paragraphs 635–638 below on developments in the draft bill).

624. In practice, however, the Chamber of Representatives takes into consideration almost exclusively aliens who have an unlimited right to reside at the time of their request. Although the Circular of 25 May 2007 gives a number of residence permits that may be taken into account at the time of the request, in practice the Chamber does not take the

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502 See also above, section "7.3, The national legal framework and the Belgian Nationality Code".

503 See above paras 502–505.

504 See above note 423.

505 BNC, Article 19.

506 See "Table 6. Types of residence held by recognized stateless persons as at 17 March 2011", for further information on the types of residence held by recognized stateless persons.

Circular into account and temporary stay can still be a cause of rejection of an application despite the legal eligibility. The Commission thus only appears to count periods where the person has an unlimited right of residence.[507]

625. Nevertheless, since the Naturalization Commission is sovereign, it can decide on whichever criteria it sees fit, even if they are not foreseen by the law. A member of the Commission explained that a temporary stay could thus be taken into account for the required two years of legal stay, but that the application could in the end still be refused. He stressed that this aspect is still unclear and that the Commission is awaiting approval of the announced legislative changes. Meanwhile, he observed that the Commission will focus mainly on aspects relating to the applicant's conduct[508] and integration.[509]

626. As set out in Article 21 of the BNC, an applicant can apply for naturalization either directly to the naturalization service of the Chamber of Representatives or through the civil registration officer in his or her municipality, who has 15 days to transfer the application to the Chamber. Along with a completed naturalization request form, the applicant must submit various documents, including excerpts from the Population or Aliens Registers to prove the two years of uninterrupted main residency in Belgium; proof of recognition if the applicant is a recognized refugee or stateless person; and a birth certificate. The CGRS can deliver civil registration documents including birth certificates to recognized refugees or stateless persons if they encounter difficulties obtaining (or cannot be expected to obtain) them from their countries/place of origin.

627. On reception and verification of the request, the naturalization service will transmit it to, and ask the opinion of, the Crown Prosecutor's Office of the Tribunal of First Instance under which the municipality of the applicant's main residence falls, the Aliens Office, and the State Security Service. These opinions are intended to inform the Chamber, given that it does not itself carry out any investigations. Their content is not determined by law and can sometimes overlap. The overall aim is to prevent people who are untrustworthy and who present a danger to public order from becoming Belgian. These three different services have four months to give their opinion. Failure to do so can be considered as a favourable opinion from an administrative point of view. Given that the Chamber is sovereign, it can, however, also decide to suspend the procedure while waiting for feedback from these services.

628. The Crown Prosecutor's opinion is one of the most important, as he or she must determine whether the applicant meets the legal requirements and if there are any obstacles to naturalization because of "serious personal acts".[510] The notion of "serious personal acts" has been further explained in various Circulars[511] and concerns any offences against the law. It has to be noted that by using the word "acts", the legislator wished to emphasize that negative behaviour, even if not a crime, can be an obstacle to the granting of Belgian nationality. On the one hand, not every criminal conviction automatically constitutes a serious personal act. For example, if the judgment is old, the act may no longer be considered serious or may even be found to be excusable. On the other hand, a serious personal act can be found to exist even in the absence of a criminal conviction, for example, when a criminal investigation has been opened against the applicant, when an administrative measure exists to remove the applicant from the territory, or where he or she has outspokenly refused to comply with the law of the territory. A conviction pronounced abroad can also be taken into account.

629. The Aliens Office specifically gives information on all residence statuses as well as any possible wrongdoing which may have taken place in this context. The State Security Service gives its opinion on the risk posed to national security and pays particular attention to significant national and international activities such as terrorism and human trafficking.

630. The latest version of the general criteria for assessing naturalization requests adopted by the Commission[512] proposes rejecting naturalization applications on grounds including being found guilty of drug or human trafficking, serious offences, organized crime, or terrorism. It also recommends rejection if the applicant's identity is impossible to verify; if they do not have a legal right to stay or acquired it fraudulently; and if they refuse to learn one of the three official languages of Belgium. This list of criteria should, however, be seen as indicative only, as it is not binding on the Commission which has adopted it or on future Commissions. Besides, since decisions are not reasoned and are generally not public, it is difficult to assess the exact position of the Naturalization Commission on certain issues, such as the legal stay requirement.

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507 Center Kruispunt Migratie-Integratie (Migration/Integration Centre), Expertisecentrum voor Vlaanderen – Brussel, "Wie kan belg worden?" (Who can become a Belgian?), available at http://www.kruispuntmi.be/vreemdelingenrecht/wegwijs.aspx?id=104.

508 In particular whether the applicant has a criminal record.

509 In particular whether he or she can speak one of the three official languages of Belgium.

510 The notion of "faits personnels graves" is found in all the procedures, not only that for acquisition by naturalization.

511 Circular of 6 August 1984, concernant le Code de la nationalité belge, Moniteur belge, 14 August 1984; Circular of 20 July 2000, complétant la circulaire du 25 avril 2000 concernant la loi du 1er mars 2000 modifiant certaines dispositions relatives à la nationalité belge. This latter Circular defines the notion of "faits personnels graves" also contained in point 6 of the Circular of 20 July 2000.

512 Chamber of Representatives, Naturalization Commission, Critères généraux pour l'appréciation des demandes de naturalisation, 11 January 2011 (copy on file with authors).

631. On receiving the different opinions, the Naturalization Commission of the Chamber of the Representatives, which comprises 17 members of Parliament, will propose accepting, refusing, or adjourning the application. The applications are distributed to members of the Commission, who sit in a panel or "chamber" made up of three MPs from different parties, who then consider the application. If all three members of the chamber agree on whether to accept, reject, or adjourn the application, then there is no need for further discussion by all Commission members. The Commission then proposes to the Chamber of Representatives that it grant nationality to applications that have received favourable opinions without further examination. If there are any unfavourable opinions, the Commission can propose that the Chamber of Representatives refuse the application or adjourn its consideration (for a maximum of two years), or it can ask the three-member chamber concerned to undertake additional investigations.

632. Should the Chamber of Representatives vote to approve the Commission's proposal to naturalize the applicant, the decision will be published in the Belgian Official Journal (*Moniteur belge*/*Belgisch Staatsblad*). On average about three naturalization laws, often containing the names of several hundred persons acquiring Belgian nationality, are approved a year.

633. It is not possible to appeal against a refusal of naturalization, but the applicant can respond to the negative opinion of the Crown prosecutor. The Commission can then decide to ask the different services for additional information in the light of the applicant's comments. It will, however, be difficult for such a person to construct a solid response since they do not have access to their file.

634. The length of the naturalization procedure is not determined by law and depends on different factors such as obtaining the necessary opinion, or on circumstances, such as the fact that the Naturalization Commission does not sit permanently and that in case of disagreement in a chamber of the Commission, the file will automatically be dealt with in the plenary session. One member of the Naturalization Commission estimated that on average it took two years from the date of application for the Commission to issue a decision. He further explained that about one in a hundred requests is made by a stateless person and that these applications are not treated separately or differently from all the others.

635. An alien who is naturalized becomes Belgian on the date of publication in the Official Journal. He or she automatically acquires all the rights and obligations attached to Belgian nationality. There is no immediate effect on his or her spouse, who can acquire Belgian nationality in accordance with Article 16 of the BNC, as seen above.[513] This is different for minor children, who generally become Belgian on naturalization of one of their parents.[514] Children over 18 must follow the procedure for acquisition by declaration or option foreseen by Articles 12bis, 13, 14, and 15 of the BNC.

636. The bill makes naturalization an exceptional procedure, as compared to acquisition of nationality by declaration which becomes the rule. Conditions to be naturalized are to be 18 years old or above; to enjoy legal stay in Belgium; and to demonstrate exceptional merit in scientific, sporting, or sociocultural areas, and that it is impossible to be granted nationality via declaration. The bill eliminates the preferential treatment for refugees but maintains it for stateless persons. Stateless persons above 18 years old will be able to request naturalization after two years of legal residence in Belgium without having to fulfil any additional conditions. However, the situation of refugees or beneficiaries of subsidiary protection who are also stateless raises concern as they will most probably only have a refugee or subsidiary protection status and lack a status of stateless person. This entails that most of these persons will probably be required to reside legally in Belgium for five or 10 years before being able to acquire Belgian nationality.

637. Even though the declaration procedure becomes the main access to nationality as compared to naturalization in the current procedure, it can be expected that naturalization will remain the main route to nationality for recognized stateless persons who are not refugees or beneficiaries of subsidiary protection, as the requirements of this procedure are lower than those of the declaration procedure. Much will depend, however, on the future practice of the Naturalization Commission, especially since naturalization is a discretionary act.

638. The bill further defines the notion of legal stay (see also above paragraphs 525–526). To be allowed to lodge a request for naturalization the applicant must have a permanent residence permit (Article 4 §2 draft law), as compared to a residence permit of more than three months in the current BNC (Article 7 bis BNC). Only residence permits of more than three months or authorizations to settle, as compared to any temporary residence permit as in the current BNC, will be taken into account when considering the period preceding the request (amendment to Article 4 of draft law).[515]

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513 See above para. 505 and note 440 for text of Article 16.

514 According to Article 12 of the BNC, children automatically become Belgian upon naturalization of one of their parents, if the following criteria are fulfilled on the day the parent is naturalized: (a) the parent has acquired Belgian nationality voluntarily by naturalization or declaration; (b) the child is a minor at the time of his or her parent's naturalization; (c) filiation is established; and (d) the parent has parental authority over the child, as interpreted in the light of 16 July 2004, *Loi portant le Code de droit international privé,* Article 62 on filiation and Article 35 §1 on parental authority.

515 Belgium, Draft Law of 17 October 2012, modifiant le Code de la nationalité belge afin de rendre l'acquisition de la nationalité belge neutre du point de vue de l'immigration, available at http://www.dekamer.be/FLWB/PDF/53/0476/53K0476017.pdf (in French and Dutch).

7.5.2.2 Declaration and option

639. Obtaining Belgian nationality by declaration or declaration of option is an administrative and in some cases judicial procedure where nationality is granted if certain criteria, notably related to residence, are met.

640. Unlike for naturalization, stateless persons do not benefit from favourable treatment if they seek to acquire nationality by declaration or option. They are treated as any other foreigner who would request Belgian nationality under these procedures.

641. Under the current BNC, Article 12bis sets out the conditions for obtaining nationality by declaration. In order to acquire Belgian nationality by declaration, the applicant must have a link with Belgium that is based notably on his or her birth on Belgian territory and main residence in the country since then, on the Belgian nationality of his/her biological or adoptive parent, or on seven years of main residence and legal stay in Belgium coupled with an unlimited residence permit at the time of the declaration.

642. Articles 13–17 set out the conditions for obtaining Belgian nationality by a declaration of option. This possibility essentially concerns young persons able to show links with Belgium during their childhood or adolescence, the current favourable treatment for spouses of Belgian citizens and the right to nationality of adult children of Belgian citizens.

643. The procedures set out under Article 12bis (declaration) and 15 (option) are similar. An applicant must apply to the civil registrar in his or her municipality, who must send the application to and request the opinion of the Crown Prosecutor's Office of the Tribunal of First Instance within whose jurisdiction the municipality of the applicant's main residence falls and send it to the Aliens Office and the State Security Office for their opinion. If the Crown Prosecutor sees no impediment to obtaining Belgian nationality because of "serious personal acts", an attestation confirming this is issued and the declaration or the declaration of option is registered with immediate effect. If there are obstacles, the Crown Prosecutor must issue a negative opinion, which must be reasoned, within four months. In the absence of a negative opinion within four months, the declaration or the declaration of option is accepted. Where a negative opinion has been issued, the Public Prosecutor will refer the application within a month to the Chamber of Representatives, which will then decide on the application, or, if the applicant explicitly asks for it, to the Tribunal of First Instance, which may make a further appeal to the Court of Appeal.

644. Article 8 of the bill adopted in July 2012 by the Justice Commission of the Chamber of Representatives and by plenary session of the Chamber in October 2012 foresees residence, economic and social integration as conditions for acquiring nationality by declaration in the event of a legal stay in Belgium of five to 10 years since birth.[516] However, an exception is made to the requirement of economic participation and social integration for foreigners who provide evidence of being incapable of working due to a disability or invalidity, or evidence of having reached retirement age. Such persons can obtain nationality after five years of legal stay in Belgium.[517]

645. As mentioned above at paragraph 524, the bill incorporates into the declaration procedure some of the criteria currently used in the acquisition of nationality by option, which ceases to exist.

7.5.3 The 1997 European Convention on Nationality and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession[518]

646. A thorough examination of the compatibility between Belgian legislation, the 1997 European Convention on nationality and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession, to which Belgium is not a party, was beyond the scope of the research project. Meetings with the Ministry of Justice showed, however, that most principles relating to the prevention and reduction of statelessness contained in the ECN mirror those enshrined in the 1961 Convention. They also indicated that Belgian legislation seems broadly in line with them, whether these relate to acquisition,[519] involuntary loss,[520] renunciation,[521] or recovery[522] of nationality.

647. In terms of compatibility between national legislation and the ECN, two provisions of the BNC nevertheless appear problematic, although a detailed analysis was beyond the scope of the research.

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516 For more details, see above, "7.3.2. The proposed reform of the Belgian Nationality Code".

517 See above para. 505.

518 See also above section "7.2.2.3 The 1997 European Convention on Nationality and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession".

519 ECN, Article 6.

520 ECN, Article 7.

521 ECN, Article 8, requires state parties to permit nationals to renounce their nationality, provided they do not thereby become stateless.

522 ECN, Article 9, provides, "Each State Party shall facilitate, in the cases and under the conditions provided for by its internal law, the recovery of its nationality by former nationals who are lawfully and habitually resident on its territory."

648. Firstly, the lack of any review of decisions on naturalization made by the Naturalization Commission under Article 21 of the BNC nevertheless appears contrary to Article 12 of the ECN. The latter requires "decisions relating to the acquisition, retention, loss, recovery or certification of [the country's] nationality [to be] open to an administrative or judicial review in conformity with its internal law". This is not the case in Belgium, since naturalization is decided by the Chamber of Representatives and no appeal is possible against this decision, as mentioned in paragraph 633 above. Since Article 9 of the Constitution stipulates that naturalization is granted by the federal legislative power,[523] it may be that a change to the Constitution would be necessary before the 1997 Convention could be adopted.

649. In addition, Article 23 of the BNC which provides for deprivation of nationality, notably due to serious breaches of duties as a Belgian citizen, contains no provision (such as that in Article 22 of the BNC which regulates the renunciation of nationality) that any deprivation should not take place if this would render the individual stateless. This would be contrary to Article 7(3) of the ECN which only permits deprivation of nationality if someone would become stateless where nationality was acquired by fraud. Belgium could, however, make a reservation to these Articles if it ratified the ECN and then proceed to address this issue later.

650. At the time of writing, the bill envisaged inserting into the BNC an additional safeguard against statelessness in case of deprivation of nationality (Article 20 § 2). If the bill is finally adopted in this form, it is understood that this safeguard will also apply to the deprivation of nationality due to serious breaches of duties as a Belgian citizen.

651. As regards the 2006 Convention, its Explanatory Report stresses that "state succession" may occur as a result of various types of events, including transfer of territory from one state to another, unification of states, dissolution of a state, and separation of part or parts of the territory.[524] In a meeting with the Ministry of Justice, the authorities indicated that this Convention was not seen as being of particular interest given its subject matter.

7.6 Conclusions and recommendations

7.6.1 Conclusions

652. This chapter has examined the prevention and reduction of statelessness and how Belgium deals with these issues.

653. The 1961 Convention is the only universal instrument that elaborates clear, detailed, and concrete safeguards to ensure a fair and appropriate response to the threat of statelessness. Accession and adherence to the 1961 Convention equips states to avoid and resolve nationality-related disputes and to mobilize international support to strengthen the prevention and reduction of statelessness. UNHCR further believes that a higher number of state parties will also help to improve international relations and stability by consolidating a system of common rules.[525]

654. Protection of stateless persons under the 1954 Convention should be seen as an interim response while the underlying issue of acquisition of nationality is addressed. In the end, the prevention and reduction of statelessness by ensuring access to nationality must remain the goal. Indeed, Article 32 of the 1954 Convention requires state parties, including Belgium, to facilitate the assimilation and naturalization of stateless persons living in Belgium.

655. The **impact of the adoption of the BNC in 1984** has been to allow a significant number of stateless children and children of unknown nationality to become Belgian. It has also led to a decrease in the number of lawfully resident stateless persons born in Belgium.

656. The use of procedures to acquire nationality has evolved over time depending on legislative changes that have had the effect of restricting or facilitating access to nationality. The three main procedures by which stateless persons acquire Belgian nationality are: (a) naturalization, (b) acquisition by option, notably on the basis of marriage, and (c) acquisition by declaration. Finally, the stateless population has a lower rate of acquisition of Belgian nationality than specific groups such as third country nationals or refugees.

657. As a result, the lawfully resident stateless population born in Belgium has decreased since the introduction of the BNC. Analysis of remaining cases points to two groups which have been unable to acquire nationality. The first is made up of people born in Belgium and aged over 18 years when the BNC was adopted. The second group is made up of individuals who were under 18 when the BNC was adopted and who still appeared to be stateless as late as 2006. Eleven such cases in the latter group were identified. It is not clear why this is so. Possibly there may be administrative difficulties applying the retroactivity of Article 10 of the BNC correctly or it may be that the "new nationality" (whether Belgian or foreign) of some of them has not been correctly registered.

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523 "La naturalisation est accordée par le pouvoir législatif fédéral".

524 Explanatory Report to the Council of Europe Convention on the avoidance of statelessness in relation to State succession, available at http://conventions.coe.int/Treaty/en/Reports/Html/200.htm, para. 7.

525 UNHCR, Preventing and Reducing Statelessness, above note 394, p. 2.

658. Between 1991 and 2005 around a quarter of all stateless persons acquiring Belgian nationality used the naturalization procedure under Article 19 of the BNC. Around 20 per cent each used the option procedure on the basis of marriage under Article 16 or declaration of nationality under Article 12bis. Stateless children were among the remaining smaller groups acquiring Belgian nationality.

659. Finally, the recognized stateless population has a lower rate of acquisition of Belgian nationality than other groups such as third country nationals or refugees. Exactly why this is so is not clear, but it could be because they have difficulty fulfilling the conditions set out in the BNC, not least because of the length of time it takes them to regularize their stay.

660. With regard to **current proposals to amend the BNC**, a bill was adopted by the Justice Commission of the Chamber of Representatives in July 2012 and by the plenary session of the Chamber in October 2012, after which it went to the Senate. The bill reduces the number of procedures for obtaining nationality to two: naturalization, which becomes the exceptional procedure, and declaration, which becomes the rule. The bill also incorporates into the declaration procedure some of the criteria currently used in the acquisition of nationality by option, which ceases to exist.

661. In order to obtain Belgian nationality by declaration, the bill proposes to establish the following conditions: a term of legal residence, knowledge of one of the three languages of Belgium, and economic and social integration. It replaces the requirement of seven years' main residence in Belgium with one of five or 10 years of legal residence, 10 years' legal residence being required for those not able to show economic integration. The bill includes exceptions to these criteria for people who are disabled or retired.

662. With regard to acquisition of Belgian nationality by naturalization, the bill proposes to retain measures to facilitate the naturalization of stateless persons, whereby they are only required to have two years' legal stay before they can apply.

663. By contrast, the bill proposes to eliminate the criterion facilitating refugees' naturalization that is currently available under the BNC, which permits them to apply for Belgian nationality after two years' legal residence, as opposed to three years' legal stay for other foreigners. This is a concern, not least since some refugees may also be stateless and, in the absence of recognition of their statelessness, they would most probably be excluded from this favourable treatment.

664. Instead, only foreigners with legal stay who show exceptional merit in the scientific, sporting, or sociocultural fields would be able to acquire Belgian nationality without a particular period of previous legal residence being required.

665. Furthermore, the bill requires a person seeking Belgian nationality to have unlimited legal stay in the country before he or she can apply. In addition, when calculating the required period of legal stay that needs to be fulfilled only periods of legal stay of over three months and unlimited legal stay can be taken into account. Despite the fact that the argument of the declarative effect of the refugee status recognition has been raised during the discussion on the draft law, there is still a possibility that the period between an asylum application and recognition of refugee status would, for example, no longer be taken into account. The result would be that refugees, including possibly some stateless persons (since refugees may also be stateless) would experience a further delay in accessing nationality.

666. In addition, besides the existing grounds for deprivation of nationality based on fraud or serious breach of duties as a Belgian citizen, the bill proposes to create two additional grounds for the deprivation of nationality: where Belgian nationality has been obtained through a marriage of convenience and where someone has been convicted of certain serious crimes. In such cases, the bill nevertheless inserts a safeguard against statelessness.

667. As regards renunciation of Belgian nationality, the bill introduces an additional safeguard against statelessness: if acquisition or recovery of a foreign nationality does not immediately follow the renunciation of Belgian nationality, such renunciation will not have legal effect if, and as long as, it would render the individual stateless. The bill does not, however, seem to address the shortcoming observed in Article 8 §4 of the BNC in relation to the loss of nationality of some children whose filiation is no longer established.

668. Lastly, a registration fee is reintroduced for acquisition of nationality procedures and set at 150 euros. The bill is expected to be voted in Parliament in the autumn of 2012.

669. In the context of efforts to reduce statelessness, the expressed willingness of the Belgian Government in late 2011 to **accede to the 1961 Convention** is most welcome. It helps contribute to the "quantum leap" in the protection of stateless persons referred to by High Commissioner for Refugees Guterres in his closing address at the Intergovernmental Meeting at ministerial level commemorating the anniversaries of the 1951 and 1961 conventions in Geneva in December 2011.[526]

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[526] UNHCR, Closing Remarks by the UN High Commissioner for Refugees, UNHCR Intergovernmental Meeting at Ministerial Level, above note 7.

670. This chapter's evaluation of Belgian nationality law and its capacity to reduce and prevent statelessness shows that substantive safeguards against statelessness exist and that the law generally appears to meet international standards, as does the draft law adopted in July 2012 by the Justice Commission of the Chamber of Representatives and in October 2012 by the plenary session of the Chamber.

671. Considering the ongoing reform of the BNC and the government's expressed commitment to accede to the 1961 Convention, some further steps could nevertheless be undertaken to ensure improved adherence to international standards to prevent and reduce statelessness.

672. Legislative provisions of the current BNC that would need to be modified or added to be fully in line with the 1961 Convention mainly concern additional safeguards in rare instances of loss and deprivation of nationality, birth on ships and aircraft that are stationary or in transit and for foundlings.

673. As regards **accession to regional instruments**, Belgium is not a party to either the 1997 European Convention on Nationality (ECN) or the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession. Most principles contained in the 1997 ECN mirror those enshrined in the 1961 Convention and Belgian legislation seems broadly in line with them, whether they relate to acquisition of nationality, its involuntary loss, its renunciation or recovery.

674. In terms of compatibility between national legislation and the ECN, two provisions of the BNC nevertheless appear problematic, although a detailed analysis was beyond the scope of the research. The lack of any review of decisions on naturalization made by the Naturalization Commission under Article 21 of the BNC nevertheless appears contrary to Article 12 of the ECN. The latter requires "decisions relating to the acquisition, retention, loss, recovery or certification of [the country's] nationality [to be] open to an administrative or judicial review in conformity with its internal law".

675. In addition, Article 23 of the BNC which provides for deprivation of nationality, notably due to serious breaches of duties as a Belgian citizen, contains no provision (such as that in Article 22 of the BNC which regulates the renunciation of nationality) that any deprivation should not take place if this would render the individual stateless. This would be contrary to Article 7(3) of the ECN which only permits deprivation of nationality if someone would become stateless where nationality was acquired by fraud. Belgium could, however, make a reservation to these Articles if it ratified the ECN and then proceed to address this issue later.

676. At the time of writing, the bill envisaged inserting into the BNC an additional safeguard against statelessness in case of deprivation of nationality. If the bill is finally adopted in this form, it is understood that this safeguard will also apply to the deprivation of nationality due to serious breaches of duties as a Belgian citizen.

7.6.2 Recommendations

677. In view of Belgium's pledge to accede to the 1961 Convention and in order to allow Belgium to improve its commitment to international standards in terms of prevention and reduction of statelessness, including notably in the context of the ongoing reform of the nationality law, UNHCR makes the following recommendations:

Accession to the 1961 Convention and reform of the BNC

21 Belgium should now implement its pledge to accede to the 1961 Convention on the Reduction of Statelessness. Belgium would then be able to join the 11 states that have acceded to the Convention in the last two years (2010–2012) which brought the number of states parties to the 1961 Convention at the beginning of October 2012 to 48.

22 Belgium should ensure that the current reform of the BNC takes account of the particular situation of stateless persons and indeed of refugees and beneficiaries of subsidiary protection, not least since they may also be stateless, and that it respects the standards enshrined in the 1954 and 1961 conventions, notably as regards facilitated access to nationality.

Safeguards against statelessness at birth

23 The legislator is encouraged to amend Article 10 §3 of the BNC to ensure the category of "foundlings" is not limited to newborns only.

24 As regards birth on aircraft and ships, the legislator is encouraged to delete the words "during a flight" from its relevant legislation and include a specific provision in the BNC covering ships and aircraft flagged and registered in Belgium in line with Article 3 of the 1961 Convention.

25 The situation of the 11 individuals who were aged less than 18 years when the BNC was adopted in 1984 and who appeared to be still stateless in 2006 should be investigated to determine why this may be and how a durable solution can be found for them as regards their nationality, should this still be an issue.

Safeguards in case of loss and deprivation of nationality

26 The legislator is encouraged to include in the BNC a safeguard against statelessness as regards loss of nationality of children if filiation is no longer established. Article 8 §4 of the BNC could be rephrased as follows:

"If filiation is no longer established before a person has reached the age of 18, he or she will nevertheless retain Belgian nationality if the loss of this Belgian nationality would result in statelessness."

27 The legislator is encouraged to include in the BNC a safeguard against statelessness in case of deprivation of nationality on the basis of "serious breach of duties as a Belgian citizen". It is understood that this is currently envisaged in the draft law.

Facilitated access to nationality for stateless persons

28 Pursuant to Article 32 of the 1954 Convention, UNHCR recommends that Belgium take account of the fact that stateless persons do not possess the nationality of any state and therefore maintain stateless persons' facilitated access to Belgian nationality by naturalization compared to other foreigners, as is currently envisaged in the draft law.

29

In addition, UNHCR recommends that the period of legal stay between the introduction of the asylum application and the refugee status recognition be taken into account, when calculating the required period of legal stay before nationality by declaration or naturalization can be requested. This is not least because refugees may also be stateless.

Registration of children as stateless

30

In addition to these legislative changes, Belgium should review practices relating to the identification and registration of children as stateless, taking into account the February 2012 UNHCR Guidelines on Statelessness No. 1 on the Definition of a "Stateless Person" and the forthcoming UNHCR Guidelines on Statelessness on the Interpretation of Articles 1–4 of the 1961 Convention. This will help determine whether there may be administrative difficulties implementing Article 10 of the BNC correctly and whether the "new nationality" (whether Belgian or foreign) of some children has not been correctly registered.

31

Registrar guidelines setting out that children born on Belgian soil will be Belgian only if they would otherwise be stateless and that they will not be Belgian if the child can obtain the nationality of either parent as a result of their having initiated administrative measures before the diplomatic or consular authorities of their country of origin (as set out in Article 10 of the BNC), should clearly state that the children of recognized stateless parents cannot be subject to the latter limitation. By definition, their parents are not considered as nationals of any country and thus cannot address any foreign authority in Belgium to register their child for the purpose of acquiring that country's nationality.

Establishing children's nationality

32

As some children born in Belgium are stateless because their parents are not always well-informed about the procedure to be undertaken for their children to acquire a nationality or about their responsibility to undertake such procedures, it is recommended that parents of these children be duly informed of the reasons why their children cannot acquire Belgian nationality. In addition they should be helped to answer any questions they may have concerning what they need to do for their children to acquire another nationality. This function could be performed, depending on the situation, in part or totally by the registrars. In addition, the creation of a focal point in the Ministry of Justice is recommended, to whom individuals and professionals can refer with questions related to nationality.

33

Considering the difficulties that certain parents face in obtaining written proof from consular authorities that they do not recognize their children as nationals of that country, Belgium should ensure that the burden of proof is shared between the state and the applicant. In this context, the authorities should assist individuals in contacting embassies and work together to secure a response from them. After all, a shared burden of proof in this context may support the more conclusive resolution of a child's situation. (In this context, see also Recommendation No. 11(b).) In some instances, however, contacts with an embassy may not always be appropriate and a response may not therefore be forthcoming.

Accession to the European Convention on Nationality

34

It is recommended that Belgium accede to the 1997 European Convention on Nationality. Given that naturalization decisions under the BNC are not currently subject to administrative or judicial review in Belgium (which is contrary to Article 12 of the ECN), Belgium could accede to the Convention with a reservation concerning its Article 12. This issue could then be tackled later and the reservation withdrawn "in whole or in part as soon as circumstances permit" as permitted under Article 29(3) of the ECN. Such an approach would help reinforce Belgium's commitment to reducing and preventing statelessness and set a positive example to other states. In this context it should be remembered, however, that the importance of naturalization in the draft law adopted by the Justice Commission of the Chamber of Representatives in July 2012 and by the plenary session of the Chamber in October 2012 is reduced, so that fewer people would be affected by the lack of administrative or judicial review of such decisions.

8. CONCLUDING REMARKS

678. In our discussions with stateless people during this research, a common theme was evoked: the feeling of waste. A waste of time trying to prove their statelessness and striving to be recognized as stateless, a waste of the opportunity to contribute to society through work, a waste of energy living illegally while waiting for the regularization of their stay: a waste of life itself. Hannah Arendt describes such a state and argues:

> "The great danger arising from the existence of people forced to live outside the common world is that they are thrown back, in the midst of civilization, on their natural givenness, on their mere differentiation. They lack that tremendous equalizing of differences which comes from being citizens of some commonwealth and yet, since they are no longer allowed to partake in the human artifice, they belong to the human race in much the same way as animals belong to a specific animal species."[527]

679. Losing citizenship thus entails the loss of essential characteristics such as the "relevance of speech... and the loss of all human relationships".[528] This feeling of being expelled from humanity is a sentiment often expressed by stateless people. They feel they are watching others live their lives while they are waiting for theirs to start. It is not surprising that many of them say, when asked about their hopes for the future, "I want to be recognized as a human being."

680. The situation of great uncertainty and vulnerability in which these people find themselves in is common to all people without rights: they are deprived "of a place in the world which makes opinions significant and actions effective".[529] Belgium has not only the opportunity to help these people, but also the obligation to do so under the various international human rights instruments it has ratified. All stakeholders need to be consistently reminded of these rights, as states' failure to uphold these obligations will simply add to the already precarious situation in which stateless people are living and have been living for most of their lives. As Hannah Arendt notes in relation to groups made "undesirable" in one country, "once they had left their homeland they remained homeless, once they had left their state they became stateless, once they had been deprived of their human rights they were rightless, the scum of the earth".[530] By recognizing them and according them these rights, Belgium can put an end to their desperate situation. Moreover, conferral of Belgian nationality can help them secure a durable solution.

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527 Arendt, H., *The Origins of Totalitarianism,* New York: World Publishing Company, 1958, p. 302, available at http://www.archive.org/stream/originsoftotalit00aren#page/n5/mode/2up.

528 Ibid., p. 297.

529 Ibid.

530 Ibid.

APPENDIX I: MEETINGS WITH STAKEHOLDERS

In order to inform the report, the researchers interviewed the stakeholders listed below.

Aliens Office

9 December 2010

Mr. Freddy Roosemont, General Director

13 January 2011

Ms. Michelle Alexandre, Policy Support Service
Ms. Nele Broeckaert, Humanitarian Leave Service
Mr. Cid Catala, Investigations Service
Ms. Thérèse Michaux, Appeals Service
Ms. Annie Mistler, Long Term Stay Service
Mr. Nicolas Perrin, Policy Support Service
Mr. Geert Verbauwhede, Identification Service

15 March 2011

Mr. François Geysen, Asylum Directorate

Office of the Commissioner General for Refugees and Stateless Persons (CGRS)

9 December 2010

Mr. Dirk Van den Bulck, Commissioner General for Refugees and Stateless Persons

11 January 2011

Mr. Eric Anciaux, Legal Adviser
Mr. Frédéric Bernard, Legal Adviser
Ms. Ella Bogaerts, Legal Adviser
Ms. Birgit Engels, Legal Adviser

Cabinet of the Secretary of State for Asylum and Migration policy

9 December 2010

Mr. Dries Hanoulle, Adviser

Ministry of Justice

31 January 2011

Ms. Roseline Demoustier, Director General in charge of Civil Law, General Directorate of Legislation, Fundamental Freedoms and Rights, Federal Ministry of Justice

Mr. Lucien De Leebeeck, Adviser, Nationality Law Service, General Directorate of Legislation, Fundamental Freedoms and Rights, Federal Ministry of Justice

Brussels Crown Prosecutor's Office

2 March 2011

Mr. Valéry de Theux de Meylandt, Crown Prosecutor

Brussels Tribunal of First instance

15 March 2011

Ms. Bernadette Van Schepdael, Judge

Antwerp Crown Prosecutor's Office

18 March 2011

Ms. Chantal Merlin, First Deputy Crown Prosecutor

Antwerp Court of Appeal

28 March 2011

Ms. Ria Van Rompay, Judge

Namur Crown Prosecutor's Office

31 March 2011

Mr. Frédéric Lykops, Deputy Crown Prosecutor

Groupement des Agents de la Population et de l'Etat Civil (GAPEC)

6 April 2011

Mr. Jean-Marie Duquaine, Vice-Chairman

Federal Ombudsman

7 February 2012

Mr. Philippe Nicodème, Director

Lawyers

29 April and 5 May 2011

Ms. Sylvie Micholt
Mr. Pierre Robert
Ms. Sylvie Saroléa
Ms. Kati Verstrepen

Academics

1 April – 20 May 2011

Dr. Marie-Claire Foblets, Professor of Law and Anthropology at the Faculty of Law, Catholic University of Leuven

5 April 2011

Prof. mr. G.R. de Groot, Professor at the Faculty of Law, Maastricht University

10 May 2011

Dr. Jean-Yves Carlier, Professor at the Faculty of Law, Catholic University of Louvain

Association pour les droits des étrangers

8 March 2011

Ms. Isabelle Doyen, Director

Kruispunt Migratie-Integratie

8 March 2011

Ms. Annelies Troost, Lawyer, Legal Department

Additional information was also provided through exchanges with the **Belgian Refugee Council** (CBAR/BCHV).

APPENDIX II: PARTICIPANTS

The participants interviewed within the framework of the research are listed below, and are referred to in the report by their pseudonym and/or assigned number. Of the 34 identified participants, 20 stateless and potentially stateless persons were interviewed between February and June 2011. Further information on the methodology can be found in paragraphs 35–40.

Where participants' stories are given in full in the report, the paragraph preceding the start of their story is given below.

Participant Pseudonym / Profile

1. Jenna / **Lebanon (Palestinian and Egyptian origin)**
2. Berzan / **Syria (Kurd)**, see para. 185
3. Gabir / **Iran/Iraq**, see para. 229
4. Namita / **Bhutan**
5. Alina / **Kazakhstan (Russian origin)**
6. Sergey / **Former Soviet Union/Belarus**, see para. 425
7. Anil / **Bhutan (Nepalese minority)**, see para. 40
8. Canan / **Syria (Kurd)**, see para. 59
9. Jamal / **Somalia**
10. Khan / **Iran (Afghan origin)**
11. Bakur / **Syria (Kurd)**
12. Zaki and his family / **Palestinian Occupied Territories (Gaza)**, see para. 378
13. Tamanna and her two children / **Kenya (Indian origin)**, see para. 514
14. Ashmi and her two children / **Bhutan (Nepalese minority)**, see para. 402
15. Asin / **Syria (Kurd)**
16. Rami / **Palestinian Occupied Territories (Gaza)**
17. Omar / **Lebanon (Palestinian origin)**
18. Basem / **Lebanon (Palestinian origin)**
19. Saro / **Syria (Kurd)**
20. Bernard / **Belgium (Lithuanian origin)**, see para. 94

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Statelessness

United Nations High Commissioner for Refugees
Brussels, October 2012

This report investigates the situation of stateless people in Belgium and seeks to give the phenomenon of statelessness a human face. UNHCR, in collaboration with the Centre for Equal Opportunities and Opposition to Racism and the Catholic University of Louvain, has reviewed statistical information, Belgian law, jurisprudence and administrative practice and interviewed stakeholders, stateless persons and others. The report also makes recommendations on the registration of the stateless population, the determination of statelessness, the status of those recognized as stateless and those seeking recognition, and the prevention and reduction of statelessness.

Haut Commissariat des Nations Unies pour les réfugiés
Bruxelles, octobre 2012

Ce rapport étudie la situation des apatrides en Belgique et cherche à donner un visage humain au phénomène de l'apatridie. A cette fin, le HCR a, en collaboration avec le Centre pour l'égalité des chances et la lutte contre le racisme et l'Université catholique de Louvain, analysé les données statistiques, la législation, la jurisprudence et la pratique administrative. Des entretiens ont également été effectués notamment avec des apatrides et des parties prenantes. Le rapport formule des recommandations sur l'enregistrement de la population apatride, la détermination de l'apatridie, le statut des personnes reconnues comme apatrides et de celles qui en sollicitent la reconnaissance et la prévention et la réduction de l'apatridie.

Hoog Commissariaat der Verenigde Naties voor Vluchtelingen
Brussel, oktober 2012

Dit rapport onderzoekt de situatie van staatlozen in België en geeft een menselijk gezicht aan het fenomeen staatloosheid. UNHCR bestudeerde, in samenwerking met het Centrum voor gelijkheid van kansen en voor racismebestrijding en de l'Université catholique de Louvain , statistieken, de wetgeving, de rechtspraak en de administratieve praktijk en interviewde belanghebbenden, staatlozen en anderen. Het rapport bevat tevens aanbevelingen inzake de registratie van staatlozen, het bepalen van staatloosheid, de status van zij die erkend zijn als staatlozen, zij die die erkenning zoeken en de preventie en beperking van staatloosheid.

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