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International and Regional Instruments

Cat	Q	Sub	Subtheme	Question	International Norms & Good Practice	Answer	Source
IOB	1	a	1954 Convention	Is your country party to the 1954 Statelessness Convention?	UN Convention Relating to the Status of Stateless Persons, 1954	Yes	United Nations Treaty Collection
IOB	1	b		If yes, when was ratification/accession?		Ratification on 27 May 1960	United Nations Treaty Collection
IOB	1	c		Are there reservations in place? Please list them.	Best practice is no reservations. If there are, they should have little or no impact on the rights of stateless people.	No	United Nations Treaty Collection
IOB	1	d		Does the Convention have direct effect?	Best practice is that the Convention has direct effect, though this may depend on the legal regime.	Yes	Loi portant approbation de la Convention relative au Statut des Apatrides UNHCR, Mapping Statelessness in Belgium , October 2012, para. 218
IOB	2	a	1961 Convention	Is your country party to the 1961 Statelessness Convention?	UN Convention on the Reduction of Statelessness, 1961	Yes	United Nations Treaty Collection
IOB	2	b		If yes, when was ratification/accession?		Accession on 1 July 2014	United Nations Treaty Collection
IOB	2	c		Are there reservations in place? Please list them.	As above	Declaration concerning Article 2: The Belgian Government declares that, for Belgium, the category of “foundlings” concerns found children who are believed to be new-born. Declaration concerning Article 8(3): Belgium reserves the right to deprive of his nationality a person who did not acquire it by virtue of a Belgian individual on the day of his birth, or who was not granted it under the Belgian Nationality Code, in the cases currently provided for under Belgian legislation, namely [...]	United Nations Treaty Collection
IOB	2	d		Does the Convention have direct effect?	As above	Yes	Loi portant assentiment à la Convention des Nations unies sur la réduction des cas d'apatridie [FR]
IOB	3	a	Other conventions	State party to European Convention on Nationality 1997? Please list any reservations.	European Convention on Nationality, 1997	No	Council of Europe Treaty Office UNHCR, Mapping Statelessness in Belgium , October 2012, para. 485
IOB	3	b		State Party to European Convention on Human Rights 1950? Please list any relevant reservations.	European Convention on Human Rights, 1950	Yes No relevant reservations	Council of Europe Treaty Office
IOB	3	c		State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Please list any reservations.	Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006	No	Council of Europe Treaty Office UNHCR, Mapping Statelessness in Belgium , October 2012, para. 485
IOB	3	d		Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive). Please list any relevant reservations.	Directive 2008/115/EC of the European Parliament and of the Council (EU Returns Directive)	Yes	Eur-lex
IOB	3	e		State Party to Convention on the Rights of the Child 1989? Please list any relevant reservations.	Convention on the Rights of the Child 1989	Yes No reservations but interpretative declaration regarding foreign nationals, differences in treatment and discrimination. "With regard to Article 2(1), according to the interpretation of the Belgian Government, non-discrimination on grounds of national origin does not necessarily imply the obligation for States automatically to guarantee foreigners the same rights as their nationals. This concept should be understood as designed to rule out all arbitrary conduct	United Nations Treaty Collection

						but not differences in treatment based on objective and reasonable considerations, in accordance with the principles prevailing in democratic societies."	
IOB	3	f		State Party to International Covenant on Civil and Political Rights 1966? Please list any relevant reservations.	International Covenant on Civil and Political Rights 1966	Yes No relevant reservations	United Nations Treaty Collection
IOB	3	g		State Party to International Covenant on Economic, Social and Cultural Rights 1966? Please list any relevant reservations.	International Covenant on Economic, Social and Cultural Rights 1966	Yes No reservations	United Nations Treaty Collection
IOB	3	h		State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Please list any relevant reservations.	Convention on the Elimination of all Forms of Discrimination Against Women 1979 Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness.	Yes No reservations	United Nations Treaty Collection
IOB	3	i		State Party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984? Please list any relevant reservations.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984	Yes No reservations	United Nations Treaty Collection
IOB	3	j		State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1966? Please list any relevant reservations.	International Convention on the Elimination of All Forms of Racial Discrimination 1965	Yes No reservations	United Nations Treaty Collection
IOB	3	k		State Party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990? Please list any relevant reservations.	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990	No	United Nations Treaty Collection

Stateless Population Data

Cat	Q	Sub	Subtheme	Question	International Norms & Good Practice	Answer	Source
POP	1	a	Availability and sources	Does the Government have a 'stateless' category in its data collection systems (e.g. census)? Please list available figures for the total stateless population on the territory and describe how data is disaggregated (e.g. by sex, age, residence).	<p>Gen. Rec. 32, CEDAW: States parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Council of the European Union (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> <p>UNHCR (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>Institute on Statelessness and Inclusion (2014): States should strengthen measures to count stateless persons on their territory.</p>	<p>Yes, there is a 'stateless' category in the National Registry in Belgium.</p> <p>The National Registry includes the Population Register (nationals in Belgium); the Foreigners Register (non-nationals in Belgium); the diplomatic and consular Registers (nationals abroad) and the Waiting Register (asylum seekers).</p> <p>On 1 January 2018 there were 906 persons registered as stateless in the National Registry (most recent figures available on request only).</p> <p>This only includes persons who have been recognised as stateless and issued a long-term residence permit.</p> <p>Data is disaggregated by age and sex (see source)</p>	Myria, Opinion to the Committee on the Interior, General Affairs and Civil Service Draft law No. 3487/1 amending the law of 15 December 1980 on access to the territory, residence, establishment and expulsion of foreigners, in order to regulate the right of residence of stateless persons (24 January 2019)
POP	1	b		Do government authorities define data categories that may overlap (e.g. unknown nationality) or where stateless people might be more highly represented (e.g. Palestinian)? Please explain and provide any available figures.	As above	<p>Yes, there is a data category 'undetermined nationality' which includes individuals whose nationality could not be determined at the time of their registration in the National Registry by municipal authorities.</p> <p>On 1 January 2017 there were 4,248 persons registered as 'undetermined nationality' in the National Registry (most recent figures available on request only).</p> <p>There is also a category 'Palestinian authority' (West-Bank and Gaza).</p> <p>On 1 January 2017 there were 362 registered under the category 'Palestinian authority' in the National Registry (most recent figures, available on request only)</p>	Numbers received from Myria (Federal Migration Centre)
POP	1	c		What is UNHCR's estimate for the stateless/at risk of statelessness population and what is the source for this estimate?	As above	<p>"On 1 July 2018, UNHCR estimated that 8,984 persons were stateless or could be at risk of statelessness in Belgium (UNHCR Mid-Year Trends – June 2018 report).</p> <p>Data encompasses both stateless persons who have been recognised as such and issued a long-term residence permit (963 persons), and those individuals whose nationality could not be determined at the time of their registration in the National Registry by municipal authorities (6,797). Due to varying practices at municipal level, the number of people registered under "undetermined nationality" in the National Registry varies substantially, and some persons registered under this category might not be stateless."</p> <p>Source: figures UNHCR received (1 July 2018) from the National Registry</p>	Response sought from UNHCR UNHCR, Mid-Year Trends 2018
POP	1	d		Have there been any surveys or mapping studies to estimate the stateless population in the country?	As above	The most up to date and complete mapping study is UNHCR, Mapping Statelessness in Belgium, October 2012.	UNHCR, Mapping Statelessness in Belgium , October 2012 See also " Demandeurs d'asile, réfugiés et apatrides en Belgique : un essai de démographie des populations demandeuses ou bénéficiaires d'une protection internationale " 2008
POP	1	e		Are there any other sources of estimates for the stateless population not covered by the above? Please list sources and figures.	As above	No.	
POP	1	f		Are there issues with the reliability of data or indications that the stateless population may be over/under	As above	Yes. Firstly, the use of the registration category 'undetermined nationality' in the official data is causing significant uncertainty as to the situation of people	Myria Opinion to the Committee on the Interior, General Affairs and Civil Service Draft law No. 3487/1 amending the law of 15 December 1980 on access to the territory,

				reported? If yes, please describe.		<p>who are registered under this group, with regard to statelessness in particular.</p> <p>Secondly, the stateless population registered in the National Register only includes the population</p> <ul style="list-style-type: none"> - recognised as stateless by a court and - holding a valid residence permit issued for a period of more than three months. <p>Persons not covered by administrative data in the National Register include:</p> <ul style="list-style-type: none"> - persons who are undergoing 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 recognised as stateless who do not have a valid residence permit, - 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. <p>Asylum seekers are registered separately, outside the National Register, as required by EUROSTAT. This table shows the number of stateless persons registered as asylum seekers in Belgium, per month. Caution is required when reading this table as the numbers are rounded to the nearest multiple of 5 (this is how the EUROSTAT table works, not requested by Belgium), which affects the result per month/per year. However, the rounding is smart and is done on the aggregate so this technical characteristic has no impact on the ranking of Belgium at EU level.</p>	<p>residence, establishment and expulsion of foreigners, in order to regulate the right of residence of stateless persons (24 January 2019)</p> <p>UNHCR, Mapping Statelessness in Belgium, October 2012, para 108</p> <p>Eurostat, Persons subject of asylum applications pending at the end of the month by citizenship, age and sex Monthly data (rounded)</p>
POP	1	g		Please provide any available figures for stateless refugees and/or asylum-seekers and clarify if the Govt also counts these groups in figures for the stateless population (i.e. to avoid under/over-reporting).	As above	<p>On 1 January 2018 there were 182 stateless refugees registered in the National Registry.</p> <p>Asylum-seekers are registered in a separate registry (the Waiting Registry).</p>	<p>See Myria Opinion to the Committee on the Interior, General Affairs and Civil Service Draft law No. 3487/1 amending the law of 15 December 1980 on access to the territory, residence, establishment and expulsion of foreigners, in order to regulate the right of residence of stateless persons (24 January 2019)</p>
POP	2	a	Stateless in detention data	Does the Government record and publish figures on stateless people held in immigration detention? If yes, please provide.	As above and see also norms in Detention section.	<p>The Immigration Office does not usually or regularly publish figures on stateless people held in immigration detention.</p> <p>The best available statistics are produced following a request by a member of Parliament (<i>Questions parlementaires</i>), which implies that the Immigration Office is to some extent, recording some figures on stateless people. But it is only through thorough bilateral dialogue with the authorities that the figures and the guidance on how to understand them can be accessed.</p>	<p>See for instance Immigration's Office (<i>Office des étrangers</i>) Annual Statistical Report 2017 (only available in French or Dutch)</p>
POP	2	b		Does the Government record and publish figures on people released from immigration detention due to un-removability? If yes, please provide.	As above	As above.	

Cat	Q	Sub	Subtheme	Question	International Norms & Good Practice	Answer	Source
SDS	1	a	Definition of a stateless person	Is there a definition of a stateless person in national law? Do the definition and exclusion provisions align with the 1954 Convention? Please provide details.	UN Convention Relating to the Status of Stateless Persons, 1954 : Articles 1(1) & 1(2).	There is no definition of a stateless person in Belgian law. The definition in the 1954 Convention (which has direct effect) is applied.	Loi portant approbation de la Convention relative au Statut des Apatrides et des Annexes, signées à New-York, le 28 septembre 1954 EMN Ad-Hoc Query on recognition of stateless persons
SDS	1	b	Existence of a dedicated SDP	Which of the following best describes the situation in your country? Choose only one and then proceed to question indicated. 1. There is a dedicated statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure (proceed to Question 2a). 2. There is no dedicated SDP but there are other administrative procedures through which statelessness can be identified (e.g. residence permit or naturalisation applications, refugee status determination, ad hoc procedures) (proceed to Question 10a). 3. There is a dedicated Stateless Status but no formal procedure for determining this (proceed to Question 15a). 4. None of the above. Are there other possibilities for stateless people to regularise their stay without their statelessness being determined (proceed to Question 16a)?	UNHCR (2014) : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. UNHCR (2016) : Establishing a statelessness determination procedure is the most efficient means for States Parties to identify beneficiaries of the Convention.	1. There is a judicial procedure, although in our view it does not constitute a formal Statelessness Determination Procedure (SDP) due to its shortcomings. A person can be determined to be stateless by one of six family courts. There are no specific procedural safeguards in place, and the person recognised as stateless does not derive any rights from this recognition.	Art. 572bis, 1° of the Judicial Code (substantive competence) Art. 632bis of the Judicial Code (territorial competence) UNHCR, Mapping Statelessness in Belgium , October 2012, p. 48, para. 221-222 UNHCR, Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons , 11 July 2016, p. 2. UNHCR, Campaign Update , October 2017, October 2017, p. 4 EMN Ad-Hoc Query on recognition of stateless persons EMN Ad-Hoc Query on Joint ad-hoc query COM & LU EMN NCP on statelessness (part 1) Myria, La migration en chiffres et en droits 2015 , p. 83-86
SDS	2	a	Access to procedure (SDP)	Is the examination of statelessness claims conducted by a dedicated, centralised body with relevant expertise? Please note the competent authority and evaluate appropriateness to national context.	UNHCR (2014) : States may choose between a centralised procedure or one that is conducted by local authorities. Centralised procedures are preferable as they are more likely to develop the necessary expertise. UNHCR (2016) : It is important that examiners develop expertise while ensuring that the procedures are accessible.	Examination of statelessness claims is conducted by one of six family courts. Before 2017, all first instance courts were competent to examine statelessness. The centralisation to 6 Courts was aimed at specialisation of magistrates. However, the family courts have not yet required the necessary expertise in statelessness and nationality matters.	Art. 572bis, 1° of the Judicial Code (substantive competence) Art. 632bis of the Judicial Code (territorial competence) UNHCR, Campaign Update , October 2017, October 2017, p. 4 Chambre des représentants, Accord de Gouvernement , 10 October 2014, p. 168
SDS	2	b		Are there clear, accessible instructions on how to make a claim of statelessness?	UNHCR (2014) : For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.). UNHCR (2016) : Information on the procedure and counselling services must be available to potential applicants in a language they understand.	There are no instructions available on how to make a claim of statelessness.	UNHCR, Mapping Statelessness in Belgium , p. 48, para. 312
SDS	2	c		Can submissions be made orally and/or in writing in any language?	ENS (2013) : Bureaucratic difficulties (e.g. complicated forms, inflexible procedures, language restrictions etc.) can impede access to SDPs.	Submissions must be made in writing, in the form of a unilateral petition, with the assistance of a lawyer, and in the language of the territorially competent court (i.e. Dutch, French, or German).	Art. 1027 of the Judicial Code

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SDS	2	d		Must a specific application form be used? Please note any difficulties with forms or other inflexible documentation requirements.	ENS (2013) : Bureaucratic difficulties (e.g. complicated forms, inflexible procedures, language restrictions etc.) can impede access to SDPs.	Applications must take the form of a unilateral petition, which is very formalistic and requires several legally technical entries, such as the object of the petition and the jurisdiction. The qualified assistance of a lawyer is needed for the petition to have any chance of success.	Art. 1026 of the Judicial Code
SDS	2	e		Are competent authorities authorised to initiate SDPs <i>ex officio</i> ?	UNHCR (2016) : It is recommended that governmental authorities be authorised to initiate procedures <i>ex officio</i> . UNHCR (2014) : Given that individuals are sometimes unaware of SDPs or hesitant to apply, procedures can usefully contain safeguards permitting State authorities to initiate a procedure.	Competent authorities are not authorised to initiate an SDP <i>ex officio</i> . There are no referral mechanisms.	UNHCR, Mapping Statelessness in Belgium , p. 48, p. 61, recommendation 12
SDS	2	f		Are there obligations in law on authorities to consider the application?	UNHCR (2016) : Access to the SDP must be guaranteed.	The family court is obliged to consider the application but only if all the requested formalities are fulfilled.	Art. 1028 of the Judicial Code
SDS	2	g		Is there an application fee?	UNHCR (2016) : Access to the SDP must be guaranteed.	The regular fee for cases at the family court is applied, which is currently 165 EUR per applicant. In case of insufficient financial means, it is possible to apply for an exemption from fees.	Service public fédéral Justice, Réforme des droits de greffe . Art. 691 Code des droits d'enregistrement, d'hypothèque et de greffe . Art. 664-668 of the Judicial Code
SDS	2	h		Is there a lawful stay requirement to access the SDP?	UNHCR (2016) : Access to the procedure needs to be open to anyone regardless of lawful stay or residence. ENS (2013) : There is no basis in the 1954 Convention for requiring lawful stay.	There is no lawful stay requirement to access the SDP.	UNHCR, Mapping Statelessness in Belgium , p. 48, p. 221
SDS	2	i		Is there a time limit on access to the SDP?	UNHCR (2016) : Access to the SDP must be guaranteed and not subject to time limits. ENS (2013) : There is no basis in the 1954 Convention to set time limits for individuals to claim stateless status.	There is no time limit on access to the SDP.	NANSEN
SDS	2	j		Is there training to inform different government bodies about statelessness and SDPs? If yes, please provide details (e.g. who provides training to whom/how often?)	UNHCR Executive Committee (2006) : Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons.	UNHCR sporadically provides training to family court judges and public prosecutors (December 2017 and December 2018), and to local civil registrars (May 2016 and January 2017).	Response sought from UNHCR
SDS	2	k		Is there cooperation between agencies that may have contact with stateless people to refer cases for status determination?	UNHCR (2016) : Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice.	There are no referral mechanisms. When faced with people whose nationality is undetermined local authorities (civil registrars) will sometimes advise them to initiate a procedure for statelessness determination through the family court. This is not a structured practice.	UNHCR, Mapping Statelessness in Belgium , para 228-229, p. 48, and p. 61, recommendation 12
SDS	3	a	Assessment (SDP)	Who has the burden of proof in the SDP in law and practice?	UNHCR (2014) : The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts). UNHCR (2016) : SDPs must take into consideration the difficulties inherent in proving statelessness. UNHCR Expert Meeting (2010) : Individuals must cooperate to establish relevant facts. The burden should shift to the State if an individual can demonstrate they are not a national, on the basis of reasonably available evidence. Hoti v. Croatia ECHR (2018) : State has responsibility to at least share the burden of proof with the applicant when establishing the fact of statelessness.	The applicant bears the burden of proof in law, by application of the principle " <i>actor incumbit probatio</i> ". In practice the burden of proof lies almost entirely with the applicant. Very exceptionally, Crown Prosecutors (who have an advisory role in the procedure) will make enquiries with consular authorities.	UNHCR, Mapping Statelessness in Belgium , para 287 - 291 Belgium, Court of First Instance Dinant, 3 April 2015, unpublished (in French)
SDS	3	b		What is the standard of proof? Is it the same as in refugee status determination procedures?	UNHCR (2014) : States are advised to adopt the same standard of proof as in refugee status determination ('reasonable degree'). Inter-Parliamentary Union (2018) The standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving	The standard of proof is unclear. With regard to the States from which an applicant needs to provide evidence of lack of nationality, it is accepted that the enquiry can be limited to the States with which the applicant enjoys a relevant link, in particular by birth on the territory, descent, marriage, or habitual residence	UNHCR, Mapping Statelessness in Belgium , para. 283. UNHCR, Mapping Statelessness in Belgium , para. 280. Belgium, Court of Appeal Brussels, 9 June 2016, unpublished (in Dutch).

					<p>statelessness in the likely absence of documentary evidence.</p> <p>Hoti v. Croatia ECtHR (2018): If statelessness is a relevant factor in the context of access to human rights, the standard of proof when determining the status of statelessness cannot be too high.</p>		<p>UNHCR, Mapping Statelessness in Belgium, para. 282.</p> <p>Belgium, Court of First Instance Dinant, 3 April 2015, unpublished (in French)</p> <p>Belgium, Court of First Instance Bruges, 23 November 2015(in Dutch)</p> <p>Belgium, Court of First Instance Antwerp, 2 March 2016, unpublished (in Dutch)</p> <p>Belgium, Court of Appeal Ghent, 10 march 2016 (in Dutch)</p> <p>Belgium, Court of First Instance Verviers, 14 March 2016, unpublished (in French)</p> <p>Belgium, Court of Appeal Brussels, 9 June 2016, unpublished</p> <p>Belgium, Court of Appeal Ghent, 16 June 2016, (in Dutch)</p> <p>Belgium, Court of First Instance Antwerp, 3 October 2016, unpublished (in Dutch)</p>
SDS	3	c		<p>What measures are in place to guarantee substantive equality for women, children and other groups (e.g. disabled people, older people, LGBTQI people, etc.) at risk of discrimination in the SDP?</p>	<p>UNHCR (2014): Due to discrimination, women might face additional barriers in acquiring documentation (e.g. birth certificates or other identification documents). Children may face acute challenges in communicating basic facts with respect to their nationality. States must follow the principle of the best interests of the child.</p> <p>Gen. Rec. 32, CEDAW: Nationality laws may discriminate directly or indirectly against women. Legislative provisions that appear gender neutral may in practice have a disproportionate and negative impact on the enjoyment of the right to nationality by women.</p>	<p>There are no specific measures in place to guarantee substantive equality for women, children and other groups at risk of discrimination. The general legal framework on anti-discrimination is applicable.</p> <p>Unia, the Independent public institution which combats discrimination and promotes equal opportunities, treated 72 complaints regarding discrimination in the sector "police and justice" in 2018.</p>	<p>Lead expert</p> <p>Unia, 2018 : Toujours plus de citoyen-ne-s se tournent vers Unia</p>
SDS	3	d		<p>Is there clear guidance for decision makers on how to determine statelessness (including e.g. sources of evidence and procedures for evidence gathering, etc.)?</p>	<p>ENS (2013): Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances.</p>	<p>There is no clear guidance for decision makers (judges from the Family Courts) on how to determine statelessness.</p>	<p>Contacts by lead expert with judges.</p>
SDS	4	a	Procedural Safeguards (SDP)	<p>Is free legal aid available during the procedure?</p>	<p>UNHCR (2014): Applicants should have access to legal counsel; where free legal assistance is available, it should be offered to applicants without financial means.</p> <p>ENS (2013): If state funded legal aid is available, it should be provided to stateless claimants. If there is no state funded legal aid but asylum claimants can access free legal aid free of charge, the same level of access should be provided to stateless people.</p>	<p>Free legal aid is available for applicants who have insufficient means of subsistence. There is no presumption of insufficient means of subsistence for applicants for statelessness determination, while there is such a presumption for asylum seekers.</p> <p>The challenges in accessing free legal aid in Belgium are well documented, in particular for undocumented migrants.</p> <p>The challenges in accessing free legal aid in Belgium in particular for persons in detention and persons in need of international protection are also well documented.</p>	<p>Art. 508/13 of the Judicial Code</p> <p>Art. 1 §2 Arrêté royal du 18 décembre déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire</p> <p>See ECHR Anakomba Yula c. Belgium (2009)</p> <p>See Constitutional Court 21 June 2018 (annulation of provisions from 2016 legislative reform of legal aid)</p> <p>See ECRE/ELENA Legal Note on Access to Legal Aid in Europe</p> <p>See UNHCR Memorandum en matière de protection des réfugiés, des bénéficiaires de la protection internationale et des apatrides (2014), Recommendation 10</p> <p>Myria, Rapport annuel Migration 2015</p> <p>See "La réforme de l'aide juridique renforce les inégalités", Isabelle Doyen, ADDE asbl (2016)</p> <p>ADDE, L'aide juridique aux demandeurs d'asile,</p>

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							<p>recommandations pour une amélioration structurelle, (2011)</p> <p>Agentschap Integratie en Inburgering, bijzondere voorwaarden kosteloze rechtsbijstand voor personen zonder wettig verblijf in België (2016)</p> <p>UCL, CEDIE, Centre Charles De Visscher, recherche sur l'accompagnement juridique des demandeurs d'asile (en collaboration avec le UNHCR)</p> <p>See NANSEN preliminary findings on access to legal aid in detention 2018</p>
SDS	4	b		Is an interview always offered (unless granting without interview)?	UNHCR (2014) : The right to an individual interview [is] essential.	The family court judge has the option to invite the applicant and their lawyer to a hearing in chambers (not public). In practice a hearing is always organised. This cannot, however, be seen as an interview with required procedural guarantees.	Art. 1028 of the Judicial Code
SDS	4	c		Is free interpreting offered for statelessness determination interviews?	UNHCR (2014) : The right to assistance with interpretation/translation [is] essential. ENS (2013) : Assistance should be available for translation and interpretation.	Free interpreting is not automatically offered. The applicant's lawyer must arrange for an interpreter if this is required. In case of insufficient financial means a request can be submitted to have the costs of interpretation covered by the state.	Art. 664-668 of the Judicial Code
SDS	4	d		Are there quality assurance audits of the SDP?	UNHCR (2016) : Quality assurance audits of SDPs are considered good practice.	There are no quality assurance audits. The 2014 Federal Governmental Agreement foresaw an evaluation of the centralisation of the competence for statelessness determination implemented in 2017 after one year, but no initiative has been taken.	Chambre des représentants de Belgique, Accord de Gouvernement , 10 October 2014, p. 168
SDS	4	e		What role does UNHCR play in the proceedings (e.g. access to files, monitoring, training)?	UNHCR (2014) : States are encouraged to guarantee access to UNHCR as a safeguard in the procedure.	UNHCR sporadically provides training to family court judges and public prosecutors (December 2017 and December 2018). UNHCR does limited monitoring through individual cases brought to its attention.	Responses sought from UNHCR
SDS	4	f		Are decisions (refusals and grants) given in writing with reasons?	UNHCR (2014) : States are encouraged to incorporate the safeguard that decisions are made in writing with reasons.	Decisions (judgements) are given in writing with reasons.	Art. 149 of the Belgian Constitution
SDS	4	g		Is there a timeframe for the SDP set in law or policy and is it complied with in practice?	UNHCR (2014) : It is undesirable for a first instance decision to be issued more than six months from submission of an application. In exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months.	There is no timeframe for the SDP set in law or policy. The duration of the procedure seems to vary from one court to another, but generally appears to be long, on average around one year. 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.	UNHCR, Mapping Statelessness in Belgium , para. 224 Contacts with lawyers
SDS	4	h		Is there a referral mechanism from refugee status determination procedures to the statelessness procedure (e.g. if refused asylum)?	UNHCR (2016) : Efficient referral mechanisms should be established and officials who may be in contact with stateless persons trained to identify and refer potential applicants. ENS (2013) : Cross-referral systems should exist in cases where the two determination procedures (refugee and stateless) are not conducted in a joint framework.	There are no referral mechanisms even though the independent quasi-judicial body competent to grant international protection in Belgium is officially named "Commissioner-General for Refugees and Stateless persons" (CGRA/CGVS). In accordance with the Immigration Act, the CGRA is the civil status authority for stateless persons recognised as such by the family courts (as well as for recognised refugees). This means that they issue birth certificates, identity certificates etc. However, there is no legal basis for the issuance of "a certificate confirming the status of stateless person". Nor is this certificate a condition for entry in the Foreigners Register. Indeed, registration is based on the residence permit when it is issued by the Immigration Office. For this reason, and from 2015 onwards, the CGRA no longer issues "certificates of confirmation of stateless status".	UNHCR, Mapping Statelessness in Belgium , para 228-229 See Commissariat Général aux Réfugiés et aux apatrides
SDS	5	a	Protection during SDP	Does the applicant have automatic legal admission while their claim for stateless status is assessed or is there a risk of expulsion?	UNHCR (2014) : An individual awaiting a decision is entitled, at a minimum, to all rights based on presence in the territory as well as 'lawfully in' rights (including identity papers, the right to self-employment, freedom of movement, protection against expulsion). It is recommended that	The applicant does not have automatic legal admission while their claim for statelessness status is assessed. In the past there have been a few cases in which courts granted legal admission to applicants for recognition as stateless during the determination procedure. No recent examples were found. In one case	UNHCR, Mapping Statelessness in Belgium , para. 427. UNHCR, Mapping Statelessness in Belgium , para. 428.

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					individuals receive the same treatment as asylum-seekers. ENS (2013) : States should refrain from expelling or removing an individual pending the outcome of the determination process.	a court granted legal admission to an individual already determined to be stateless who was awaiting a decision on his request for a residence permit.	Belgium, Tribunal of First Instance Charleroi, 5 January 2018, unpublished.
SDS	5	b		Do applicants for stateless status have permission to work and access to assistance to meet their basic needs?	UNHCR (2014) : Allowing individuals to engage in wage-earning employment can reduce pressure on State resources and contributes to dignity and self-sufficiency. The status of those awaiting statelessness determination must reflect applicable human rights such as, assistance to meet basic needs.	Lacking a residence permit on the basis of their pending application, applicants are not entitled to work. In principle, applicants for stateless status (who don't have a residence permit on another basis) are only entitled to urgent medical assistance and no other social assistance. This is also the case for all undocumented migrants.	UNHCR, Mapping Statelessness in Belgium , para. 436 Article 57 §2 of the Law on public welfare centres UNHCR, Mapping Statelessness in Belgium , para. 440-441
SDS	5	c		Do applicants for stateless status face a risk of detention?	UNHCR (2014) : Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful governmental objective pursued by detention.	Applicants for stateless status face a risk of detention: if they have no residence permit on another basis, they are undocumented migrants for an undetermined period until a residence permit might be issued. Undocumented migrants are a priority target for detention and return policies. Routine detention of asylum seekers at the border takes place in Belgium.	Déclaration de politique générale, asile et migration , 26 October 2018 See NANSEN Note 2018-1 Asile à la frontière et détention , Avril 2018
SDS	6	a	Appeals (SDP)	Is there an automatic right of appeal?	UNHCR (2014) : An effective right to appeal against a negative first instance decision is an essential safeguard in an SDP.	There is an automatic right of appeal.	Art. 1050 of the Judicial Code
SDS	6	b		Is legal aid available for appeals?	UNHCR (2014) : The applicant should have access to legal counsel and, where free legal assistance is available, it should be offered to applicants without financial means. ENS (2013) : Applicants should have access to legal counsel both at first instance and on appeal.	Like at the first instance level, free legal aid is available for appeals for applicants who have insufficient means of subsistence. There is no presumption of insufficient means of subsistence, while there is such a presumption for asylum seekers.	Art. 508/13 of the Judicial Code Art. 1 §2 Arrêté royal du 18 décembre déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire
SDS	6	c		Is there a fee for the appeal application?	UNHCR (2014) : An effective right to appeal against a negative first instance decision is an essential safeguard.	The regular fee for cases at the courts of appeal is applied, which is currently 400 EUR. In case of insufficient financial means, it is possible to apply for an exemption from fees.	Service public fédéral Justice, Réforme des droits de greffe . Art. 691 Code des droits d'enregistrement, d'hypothèque et de greffe . Art. 664-668 of the Judicial Code
SDS	6	d		Is there any evidence of significant errors in decision-making?		Although only a very limited number of decisions are published, there is some evidence of errors in decision-making, notably regarding applicants of Palestinian origin.	Court of Appeal Ghent, 20 April 2017 (in Dutch) Court of Appeal Brussels, 5 June 2018 (in Dutch) Court of Appeal Antwerp, 3 October 2018 (in Dutch)
SDS	7	a	Stateless Status (SDP)	Does recognition of statelessness result immediately in automatic permission to stay/legal status? If not, please describe any additional requirements.	UNHCR (2014) : The status granted to a stateless person in a State Party must reflect international standards. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty.	Recognition of statelessness does not result in automatic permission to stay. By default, in the absence of a fully-fledged statelessness status (including a residence permit or linking to a dedicated procedure for accessing a residence status) recognised stateless persons apply for permission to stay on humanitarian grounds (art. 9bis Immigration Law). However, there are no criteria set in law for humanitarian stay. The Belgian Constitutional Court held that the difference in treatment with regard to the right of residence between recognised refugees and recognised stateless persons who involuntarily lost their nationality and cannot obtain a legal and durable right of residence in another state, constitutes discrimination since different treatment is applied to persons who find themselves in comparable situations. According to the Constitutional Court, this discrimination stems from the absence of any legislative provision granting persons recognised as stateless in Belgium a right of residence comparable to the one enjoyed by refugees. The Immigration Office has declared that recognised stateless persons who can show they satisfy the two requirements set out by the Constitutional Court (1. involuntarily lost their nationality and 2. cannot obtain a legal and durable right of residence in another state) receive a residence permit of limited duration. The Court of Cassation has held that stateless persons who satisfy the two requirements set	UNHCR, Mapping Statelessness in Belgium , para 455 UNHCR, Mapping Statelessness in Belgium , para 461 Constitutional Court, 17 December 2009 , No. 198/2009 (in French) Constitutional Court, 11 January 2012 , No. 1/201 (in French) Senate hearing, 21 March 2016 , p. 21 Service public fédéral Intérieur - Office des Etrangers, Avis relatif à la proposition de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en vue de régler le droit de séjour des apatrides, DOC 54 3487/001 (déposée par Mme Nahima Lanjri, 1 March 2019, p. 2, unpublished

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						out by the Constitutional Court do not automatically fall under the category of foreigners authorised to stay by law, or are automatically equated to a recognised refugee. They still need to be granted leave to remain. In practice recognised stateless persons thus still need to submit a request for humanitarian stay. A legislative proposal was introduced in parliament to establish criteria and a procedure for granting a residence permit to recognised stateless persons in law. The proposal was only briefly discussed before dissolution of parliament in May 2019 and it is currently unclear whether discussions will resume.	Court of Cassation, 27 June 2016 , No. S.15.0004.N/1, B.M. v. Openbaar Centrum voor Maatschappelijk Welzijn van Roeslare (in Dutch) Proposition de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en vue de régler le droit de séjour des apatrides
SDS	7	b	How long is initial status granted for and is it renewable?	UNHCR (2014) : It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable.	The length of the residence permit granted is at the discretion of the Immigration Office. This is specific and inherent to the - by default - humanitarian stay that stateless people need to apply for. Generally, a residence permit of limited duration is granted, valid for one year, renewable.	Art. 9bis of the Immigration Law (in French) Contact with lawyers	
SDS	7	c	Is a travel document issued to people recognised as stateless?	UN Convention Relating to the Status of Stateless Persons, 1954 , Article 28.	A travel document is issued to people recognised as stateless if and only when they obtain a residence permit.	Art. 57 of the Consular Code (in French) Ministerial circular, 15 September 2017 (in Dutch)	
SDS	7	d	Do people recognised as stateless have a right to family reunification?	UNHCR (2014) : Although the 1954 Convention does not address family unity, States parties are nevertheless encouraged to facilitate the reunion of those with recognised stateless status in their territory with their spouses and dependents.	People recognised as stateless holding a residence permit qualify for family reunification under the general regime applicable to third-country nationals.	Art. 10 of the Immigration Law (in French)	
SDS	7	e	On what grounds (if any) may residence status granted to stateless people be revoked?	UNHCR (2014) : If an individual recognised as stateless subsequently acquires or reacquires the nationality of another State, they will cease to be stateless under the 1954 Convention. This may justify the cancellation of a residence permit on the basis of statelessness, although proportionality considerations under international human rights law, such as the right to a private and family life should be taken into account.	There are no specific grounds for revoking residence status granted to stateless people. Granting and renewal of the residence status is at the discretion of the Immigration Office, so all factors it considers relevant, including acquisition of a nationality, may lead to revocation. Besides that, all the grounds foreseen by law for the holders of a temporary humanitarian residence permit apply (such as fraud, or threat to public order).	Art. 9bis of the Immigration Law (in French)	
SDS	7	f	Do people granted stateless status have permission to work?	UN Convention Relating to the Status of Stateless Persons, 1954 : Article 17 UNHCR (2014) : The right to work must accompany a residence permit.	People recognised as stateless are subject to the general legislation on work authorisation and permits. If they don't have a residence permit, they are not entitled to work. If they obtained a residence permit on humanitarian grounds (9bis Immigration Law) they are authorised to work by law.	UNHCR, Mapping Statelessness in Belgium , para. 406. Art. 10, 5° Arrêté royal portant exécution de la loi du 9 mai 2018 relative à l'occupation de ressortissants étrangers se trouvant dans une situation particulière de séjour	
SDS	7	g	Do people granted stateless status have access to primary, secondary, and higher education?	UN Convention Relating to the Status of Stateless Persons, 1954 : Article 22	People recognised as stateless are subject to the general legislation on access to education. If they obtained a residence permit, they have access to primary, secondary, and higher education under the same conditions as third country nationals. If they don't have a residence permit, they are guaranteed access to primary and secondary education if they are minors. A school cannot therefore refuse to enrol a pupil under the age of 18 solely because they do not have a residence permit. And for the same reason, the school cannot deny them a diploma.	Art. 24 of the Belgian Constitution Law of 29 June 1983 on compulsory education Flemish decree on equal opportunities in education .	
SDS	7	h	Do people granted stateless status have access to social security and healthcare?	UN Convention Relating to the Status of Stateless Persons, 1954 : Articles 23 & 24 UNHCR (2014) : The right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.	People recognised as stateless who obtained a residence permit have access to social security and healthcare under the same conditions as third country nationals. If they don't have a residence permit, they are excluded from social security and healthcare. They are also excluded in principle from both forms of public relief (social integration and social aid), and are only entitled to urgent medical care, under the same conditions as undocumented migrants. Jurisprudence has been diverse on this	UNHCR, Mapping Statelessness in Belgium , para. 437. Art. 3 Loi concernant le droit à l'intégration sociale jo. Art. 2 Arrêté royal portant règlement général en matière de droit à l'intégration sociale Art. 57 §2 Loi organique des centres publics d'action sociale	

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						issue, with some judges ordering social aid on varying legal grounds.	UNHCR, Mapping Statelessness in Belgium , para. 440-441. V. LAUVAUX, « L'accès des apatrides à l'aide sociale », in F. ETIENNE et M. DUMONT (dir.), Regards croisés sur la sécurité sociale, Liège, Anthemis, coll. CUP, 2012, pp.708-729.
SDS	8	a	Access to nationality (SDP)	In what timeframe do stateless people acquire the right to apply for naturalisation and how does this compare to others with a foreign nationality?	UN Convention Relating to the Status of Stateless Persons, 1954 : Article 32 UNHCR (2016) : It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons. Council of Europe Committee of Ministers (1999) : Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory. ENS (2013) : The main benchmark is if there is any preferential treatment for stateless people compared to the general rules applied to those with a foreign nationality.	Stateless people can apply for naturalisation through Parliament after two years of legal residence if their right of residence is of unlimited duration. There is no legal provision organising the transition between the humanitarian residence permit (one year, renewable) and any residence for an unlimited duration. Only changing from humanitarian to another status (e.g. family reunification, refugee status etc.) will allow stateless people access to residence of unlimited duration. In theory, after renewing a one-year humanitarian permit five times, a stateless person could apply for unlimited residence and naturalisation, but there are no criteria set in law/policy for a one-year permit to be transferred to unlimited stay. As most statuses only foresee a right of residence of unlimited duration after five years, the facilitated regime is hardly ever applied. Stateless people can also apply for nationality through the regular procedure, after five years of legal residence and if their right of residence is of unlimited duration.	Art. 19 §2 of the Belgian Nationality Code
SDS	8	b		Are there requirements relating to 'good character' or previous criminal convictions that could prevent some stateless people from accessing nationality? If yes, please describe.	Council of Europe Committee of Ministers (1999) : States should ensure that offences, when relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a state.	Access to nationality can be refused on account of "reprehensible behaviour". The concept of "reprehensible behaviour" is ill-defined and, in practice, applied broadly.	Art. 15, §3 of the Belgian Nationality Code Art. 1, §2, 4° of the Belgian Nationality Code Art. 2 of the Royal Decree implementing the Belgian Nationality Code
SDS	8	c		Are there exemptions for stateless people from any nationality or integration test, language, income or fee requirements? Please describe the requirements and cost of the procedure for stateless people. [Section complete, proceed to DET].	UN Convention Relating to the Status of Stateless Persons, 1954 : Article 32 UNHCR (2016) : It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons. Council of Europe Committee of Ministers (1999) : Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory.	For the facilitated naturalisation provided for stateless persons no requirements besides type and duration of right of residence are mentioned. In practice however language and integration requirements are applied at the discretion of the parliamentary commission deciding on such requests. In the regular procedure for acquisition of nationality (after five years residence) there are no exemptions for stateless people. There is a fee of 150 EUR per request that applies to adults and children equally, including when they are stateless.	Response sought from MP presiding the commission for naturalisation See Myria, Devenir Belge, procédures d'acquisition de la nationalité , 2016

Detention

Cat	Q	Sub	Subtheme	Question	International Norms & Good Practice	Answer	Source
DET	1	a	Detention screening	Are immigration detention powers provided for in law? Please provide the legal source(s).	ICCPR Article 9(1) ECHR Article 5 (1)	Yes.	-Art. 7 Immigration Law -Art. 74/5 Immigration Law -Art. 74/6 Immigration Law -Art. 51/5 Immigration Law
DET	1	b		Does domestic law allow immigration detention for purposes other than those listed under ECHR 5(1)(f)?	ECHR Article 5(1)(f)	No	As above
DET	1	c		Does a proposed country of removal need to be identified before a person is detained for removal? Please describe the situation in law and in practice.	ICCPR Article 7 : Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment. Auad v Bulgaria ECtHR (2011) : The only issue is whether the authorities were sufficiently diligent in their efforts to deport the applicant. EU Returns Directive : Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.	In principle yes. But a new practice has been developed according to which a person can be detained for removal based on an initial (temporary) order to leave the territory with detention measure in which no country for removal has been identified (and no Article 3 ECHR test has been carried out.) When the person's nationality has been identified and the Art. 3 ECHR test has been carried out, a new order to leave the territory with detention measure is then delivered. The latter decision contains the actual 'removal decision' in which the country of removal is identified.	Council for Immigration Law Litigation, 1 October 2018, nr. 210383 Council for Immigration Law Litigation, 24 December 2018, nr. 214610
DET	1	d		Is statelessness juridically relevant in decisions to detain? Please describe how (risk of) statelessness is identified and whether referral to an SDP is possible from detention.	Auad v Bulgaria ECtHR (2011) Mikolenko v. Estonia ECtHR (2009) : Detention may only be justified as long as deportation proceedings are being conducted with due diligence. UNHCR (2014) : Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Equal Rights Trust (2012) : States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights. International Commission of Jurists (2014) : The detention of stateless persons can never be justified when there is no active or realistic progress towards transfer to another State.	There is no dedicated mechanism in place to identify stateless persons or persons at risk of statelessness. In Belgium, at the border, routine detention of individuals seeking international protection including on the ground of statelessness is the rule.	" Asile à la frontière et détention ", NANSSEN Note 2018/1, avril 2018
DET	1	e		Are stateless people detained in practice?		Yes	Point of no return. The futile detention of unreturnable migrants ", January 2014, p. 26-28
DET	1	f		Does law (and/or policy) provide that immigration detention should be used only as a last resort, after all alternatives have been exhausted in each individual case?	UNHCR (2014) : Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient. EU Returns Directive : Article 15(1)	Yes. Art. 7 Immigration Law states "To this end (of removal), unless other less coercive measures can be effectively applied, a foreigner may be detained for the time strictly necessary to carry out the measure, in particular when there is a risk of absconding or when the foreigner evades or obstructs the preparation of return or the removal procedure, and without exceeding a period of detention of two months."	Art. 7 Immigration Law
DET	1	g		Are individual vulnerability assessments carried out before a decision to detain (or soon after)? Please note whether statelessness is considered to be a factor increasing vulnerability.	ENS (2015) : Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed. EU Returns Directive : Article 16(3) EU Returns Handbook (2017) : Attention should be paid to the specific situation of stateless persons. Council of the European Union (2013) : European entities should assess the situation of LGBTI persons in detention.	No, there is no mechanism in place to assess vulnerability prior to the detention decision. Statelessness is not mentioned among the categories of vulnerable persons in the Immigration Law.	Art. 1, 12° Immigration Law NANSSEN, " Kwetsbaarheid in detentie: verkennende bevindingen "; 4 June 2019
DET	2	a	Alternatives to immigration detention	Are alternatives to detention established in law and considered prior to any decision to detain?	ICCPR Article 9 FKAG v Australia HRC (2013) : Any decision relating to detention must consider less invasive means of achieving the same ends. UN General Assembly (2009) : Calls upon all States to adopt alternative measures to detention. UNHCR (2014) : Detention can only be justified where other less invasive or	The Immigration Law specifies that alternatives to detention will be established by Royal Decree, but there is no such Royal Decree in place. Art. 7 Immigration Law foresees that a place of residence can be designated for the time necessary to carry out the measure. In practice no alternatives are considered prior to detention. In the case of families with minor children an alternative of detention	-Art. 74/6 Immigration Law -Art. 51/5 Immigration Law -Art. 74/9 Immigration Law Myria, Développer des alternatives à la détention , 1 January 2019

					<p>coercive measures have been considered and found insufficient.</p> <p>Human Rights Council (2012) : The obligation to always consider alternatives before resorting to detention should be established by law.</p> <p>EU Returns Directive: Article 15(1)</p> <p>Equal Rights Trust (2012): States have an obligation to consider and apply appropriate and viable alternatives to immigration detention that are less coercive and intrusive.</p> <p>International Detention Coalition (2015) : Immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case.</p>	exists. They can be held in 'return houses' before being detained in closed family units.	
DET	2	b		<p>Is there evidence that immigration detention is used in practice prior to all alternatives being considered?</p>	As above.	Yes. There are no alternatives to detention determined by law except for families with minor children.	
DET	3	a	Procedural safeguards	<p>Is there a maximum time period for immigration detention set in law? What is it?</p>	<p>UN Human Rights Council (2010) : A maximum period of detention must be established by law and upon expiry the detainee must be automatically released.</p> <p>UNHCR (2012) : To guard against arbitrariness, maximum periods of detention should be set in national law.</p> <p>EU Returns Directive: Article 15(5)</p> <p>Equal Rights Trust (2012) : Detention should always be for the shortest time possible.</p>	Yes. Detention is permitted for an initial period of 2 months that can be prolonged with 2 months when the necessary steps have been taken to remove the person within 7 working days after detention, when the steps are continued with due diligence and when removal is still possible within a reasonable period of time. The detention can be prolonged for another month by the Minister. The detention cannot exceed 5 months except in cases of public order or national security, detention cannot exceed 8 months.	Art. 7 Immigration Law
DET	3	b		<p>Does law/policy provide that individuals must be informed in writing of the reasons for their immigration detention?</p>	<p>UN General Assembly (1988) : Anyone who is arrested shall be informed at the time of the reason for his arrest.</p> <p>EU Returns Directive: Detention shall be ordered in writing with reasons being given in fact and in law.</p> <p>Equal Rights Trust (2012) : Stateless detainees shall receive their order of detention in writing and in a language they understand.</p> <p>International Commission of Jurists (2014): The authorities shall ensure that sufficient information is available to detained persons in a language they understand on the nature of their detention and reasons for it.</p>	The Royal Decree of 2-08-2002 'on the functioning of the closed centres' states that the director of the closed centre should inform the detainee of the reasons and legal base for detention as well as the possibility to appeal. The Royal Decree of 8-10-1981 on access to the territory, stay, establishment and removal of foreigners determines the decision and form that should be delivered to the foreigner in case of detention with purpose of removal. In practice individuals receive a written decision informing them of the reasons of their detention. Sometimes, in cases of prolongation of detention, this decision is delivered belatedly.	-Art. 17 Royal Decree 2-08-2002 -See for instance art. 110terdecies Royal Decree 8-10-1981
DET	3	c		<p>Are detainees provided with information on their rights, contact details of legal advice and support providers, and guidance on how to access an SDP?</p>	<p>Equal Rights Trust (2012) : Detaining authorities are urged to provide stateless detainees with a handbook in a language and terms they understand, containing information on all their rights and entitlements, contact details of organisations which are mandated to protect them, NGOs and visiting groups and advice on how to challenge the legality of their detention and their treatment as detainees.</p>	Yes. Information leaflets are available in detention centres. Information is also provided during the intake upon arrival in the closed centre. In practice this is not effective due to lack of use of interpreters. No specific information is provided on statelessness determination.	Art. 17 Royal Decree 2-08-2002 -ENNHRI, " Migrant's access to information on their rights ", 2017, p. 14
DET	3	d		<p>Are there regular periodic reviews of detention before a court or independent body, which can order release?</p>	<p>Kim v Russia ECtHR (2014) : The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure.</p> <p>Equal Rights Trust (ERT) (2012) : To avoid arbitrariness, detention should be subject to automatic, regular and periodic review throughout the period of detention, before a judicial body independent of the detaining authorities.</p>	There is no automatic review of detention before a court. The person concerned must initiate the procedure before the court via a lawyer for the court to examine the lawfulness of the detention measure. If the detention is prolonged to 5 months by the Minister, the Minister must adhere the court to review the lawfulness of the prolongation of detention.	-Art. 71 Immigration Law -Art. 74 Immigration Law

DET	3	e		What remedies are available to challenge detention? Please any obstacles to accessing effective remedies in practice.	<p>ICCPR Article 9(4) ECHR: Article 5(4) Kim v Russia ECtHR (2014) : The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure. Alimuradov v. Russia ECtHR (2019): The individual must have at their disposal a procedure for judicial review of the lawfulness of detention capable of leading to release.</p>	The person has access to a court to challenge their detention. Obstacles identified: a qualified (expert and experienced) lawyer is needed to initiate the procedure before the court; the court's review is limited to the lawfulness of detention; the court cannot examine the appropriateness of detention; the competent courts are courts that judge criminal law cases; not all judges are specialised or familiar with immigration law.	<p>-Art. 71 Immigration Law -Art. 72 Immigration Law</p> <p>Based on the casework experience of NANSEN</p>
DET	3	f		Are there guidelines in place governing the process of re-documentation and ascertaining entitlement to nationality for the purpose of removal?	<p>Equal Rights Trust (2012) : The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation. ENS (2015) : The detaining state should have rules in place that govern the process of re-documentation and/ or ascertaining entitlement to nationality.</p>	There are no general guidelines in place. The process of re-documentation and ascertaining entitlement to nationality is ad hoc, based on practices of the relevant consular authorities.	<p>Office des Etrangers, Circulaire relative à l'identification d'étrangers en séjour irrégulier, 2009</p> <p>Myria, Retour, détention et éloignement des étrangers en Belgique, un retour à quel prix?, 2017, p. 64.</p> <p>EMN, The effectiveness of return in Belgium, challenges and good practices linked to EU rules and standards, 2018, p. 23</p>
DET	3	g		Is free legal aid available to challenge detention? Please describe any barriers to accessing legal aid in practice.	<p>UNHCR (2014): Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means. EU Returns Directive: Article 13(3)</p>	Yes. Free legal aid is available and guaranteed by the Constitution. In 2 detention centres (Caricole, 127bis) lawyers are appointed from a list with specialised lawyers. In 2 detention centres (CIB, CIV) a first line legal permanence is organised (practical information, legal information, a first legal opinion or a referral to a specialised body or organisation; may be provided by associations and should be provided by reception facilities; not necessarily lawyers). Barriers include that in some detention centres (CIM) trainee lawyers are appointed who don't have any experience in this particular field of law; and not all lawyers that voluntarily place themselves on the mentioned list are competent.	<p>See CIRE Faire valoir ses droits en centre fermés, 2018, p. 15-23</p> <p>Front-line legal aid (Art. 508/1,1° CJud) Second-line legal aid (Art. 508/1,2° CJud)</p>
DET	4	a	Protections on release	Are people released from detention issued with identification documents (including confirmation of their stateless status) and protected from re-detention?	<p>UN Convention Relating to the Status of Stateless Persons, 1954: Article 27 UNHCR (2014) : Being undocumented cannot be used as a general justification for detention. ENS (2015) : State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention. Equal Rights Trust (2012): Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.</p>	No.	"Point of no return. The futile detention of unreturnable migrants", January 2014, p. 26-28
DET	4	b		If the purpose of detention cannot be fulfilled and the person is released, what legal status and rights are provided to them in law?	<p>Saïd Shamilovich Kadzoev v Direktsia Migratsia' pri Ministerstvo na vatreshnite raboti ECJ (2009): After the maximum period of detention has expired, the person must be released immediately. A lack of valid documentation or inability to support themselves should not be a deterrent to release. Equal Rights Trust (2012): Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.</p>	The person is released with an order to leave the territory. No legal status is provided and as an undocumented migrant, they are entitled to no rights except for urgent medical care.	<p>For a complete overview of access to medical care according to the right to stay in Belgium see Medimmigrant, Droit de séjour et soins médicaux, 2019</p> <p>For an overview of the Urgent Medical Assistance mechanism see Art. 57quinquies of the 8 July 1976 Act</p>
DET	4	c		If re-detention occurs, is the cumulative time spent in detention counted towards any maximum time limits?	<p>Equal Rights Trust (2012): When calculating the total time spent by an individual in detention, it is highly desirable that time spent in detention on previous occasions is taken into consideration.</p>	No. According to established practice, the Immigration Office takes a new decision to maintain residence when an occupant objects to an attempted removal. The counter is then reset to "zero". This practice was validated by the Court of Cassation in a decision of 31 August 1999.	See Court of Cassation, 31 August 1999
DET	5	a	Return & readmission agreements	Is statelessness considered a juridically relevant fact in any bilateral readmission and/or return agreements?	<p>UNHCR (2014) : Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness.</p>	Belgium has entered into readmission agreements as an EU MS, a BENELUX MS, and as a self-standing State. There is generally a clause addressing stateless people in European agreements but not necessarily in Benelux agreements. This will depend	<p>Liste des accords dont la Belgique est dépositaire</p> <p>EU readmission agreements: https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-</p>

					<p>on the situation of the country's nationals. For example, it was important for the agreement with Kazakhstan. For the agreement with Kosovo too, there are persons declared stateless in Belgium, but for the Kosovar authorities, they are not stateless.</p> <p>Belgium also makes regular use of readmission MoU's that are not public: the Belgian MoUs and their European equivalents have different names (mostly "declarations"). At the European level, these are generally short (1-2 pages) and concise texts. At the Belgian level on the other hand, they are quite comprehensive. These documents are negotiated between 2 administrations or ministries and have no legal value - every party can withdraw from it whenever they want. The Belgian Immigration Office rejected a request for consultation, made under Article 6, §1, 3° of the Law of 11 April 1994 on the publicity of administrative acts. There is no systematic provision on stateless people in the non-public MoU's. The readmission agreement with Romania dates from before their accession to the EU. In this agreement, persons who have lost their Romanian nationality are also included. Romania has provided that persons who have lost their nationality may request to recover it. If, for example, a person has had Romanian nationality once and then became stateless in Belgium, it is not impossible that they may be able to regain their original nationality.</p>	<p>migration-return-policy/return-readmission_en.</p> <p>BENELUX readmission agreements (published in the Belgian Official Journal and available on request at the BENELUX secretariat): http://www.benelux.int/fr/benelux-unie/introduction</p> <p>Belgian Contact Point of the European Migration Network (EMN), Good Practices in the return and reintegration of irregular migrants: Belgium's entry bans policy & use of readmission agreements, June 2014</p> <p>Myria, Retour, détention et éloignement des étrangers en Belgique, un retour à quel prix?, 2017, p. 63-65.</p> <p>Response to parliamentary question</p> <p>EMN, The effectiveness of return in Belgium, challenges and good practices linked to EU rules and standards, 2018</p> <p>Information provided to NANSEN by the Belgian Immigration Office</p>
DET	5	b		Are you aware of cases of cases of stateless people being returned under such agreements?	No	

Prevention and Reduction

Cat	Q	Sub	Subtheme	Question	International Norms & Good Practice	Answer	Source
PRS	1	a	Stateless born on territory	Is there a provision in law for stateless children born on the territory to be granted nationality? [If yes, continue to PRS1b. If no, proceed to PRS1h]	UN Convention on the Reduction of Statelessness, 1961 : Article 1 European Convention on Nationality, 1997 : Article 2 Convention on the Rights of the Child 1989 : Article 7 Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless. European Parliament (2018) : The EU and its MS should ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 CRC.	Yes. Article 10 al. 1 of the BNC provides that a child born in Belgium is Belgian if they would otherwise be stateless at any moment before they reach the age of 18 or are "emancipated" (a minor older than 15 years old for whom the consequences of the minority (incapacity to act and parental authority) are partially lifted)). Article 10 al. 4 of the BNC specifies that such Belgian nationality acquired will only be lost upon acquisition of another nationality before the child is 18 or "emancipated".	Art. 10 of the Belgian Nationality Code Circulaire relative aux modifications du Code de la nationalité belge introduites par la loi du 27 décembre 2006 portant des dispositions diverses , 25 May 2007 UNHCR, Mapping Statelessness in Belgium , para 506 EMN Ad-Hoc Query on Joint ad-hoc query COM & LU EMN NCP on statelessness: minors born in exile and unaccompanied minors (part 2) ,
PRS	1	b		Is the provision for otherwise stateless children to acquire nationality automatic or non-automatic (i.e. by application)?	UNHCR (2012) : The 1961 Convention provides Contracting States with two alternatives for granting nationality to otherwise stateless children born in their territory: either automatic acquisition upon birth or upon application. ENS (2015) : The 1961 Convention and the ECN oblige the conferral of nationality to otherwise stateless children born on the territory. The optimal method is to grant nationality automatically at birth.	The provision for otherwise stateless children to acquire nationality is automatic (by operation of the law). However, Art. 4 BNC provides that proof of Belgian nationality is provided by proving that the conditions and formal requirements imposed by Belgian law have been met. In practice the burden of proof lies with the applicant's legal representative(s).	Art. 10, al 1 of the Belgian Nationality Code
PRS	1	c		Is it a requirement that the parents are also stateless for the otherwise stateless child to acquire nationality?	UNHCR (2012) : The test is not an inquiry into whether a child's parents are stateless. ENS (2015) : Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the parents hold a nationality but are unable to pass this on.	No.	
PRS	1	d		Are stateless children required to prove they cannot access another nationality to acquire the nationality of the country of birth? If yes, please describe how this is determined in practice.	UNHCR (2012) : A Contracting State cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless based on its own interpretation of another State's nationality laws. The burden of proof must be shared between the claimant and the authorities. Decision-makers must consider Articles 3 & 7 CRC and adopt an appropriate standard of proof. Special procedural considerations to address the acute challenges faced by children in communicating basic facts about their nationality should be respected.	Art. 10 al. 2 BNC stipulates that the child will not be Belgian if they can obtain another nationality by their parent(s) or legal guardian(s) initiating administrative measures before the diplomatic or consular authorities of the country of either parent. The Constitutional Court upheld art. 10 al. 2, but made two clarifications: 1. The Court emphasised that it must be deduced from art. 10 al. 2 that the child must have the <i>right</i> 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. 2. The Court noted that art. 10 al. 2 constitutes an exception to the rule and must for this reason be restrictively interpreted. 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 recognised as refugees The Circular from the Minister of Justice 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. These include parents who have sought asylum whose procedure is ongoing and parents who have been recognised as refugees or granted subsidiary protection. Formerly registered asylum seekers whose applications have been rejected, will not be exempted from the administrative steps to have their child	Art. 10, al 2 of the Belgian Nationality Code UNHCR, Mapping Statelessness in Belgium , para 507 Constitutional Court, 24 April 2008, No. 73/2008 1. Constitutional Court, 24 April 2008, para. B.8.4. UNHCR, Mapping Statelessness in Belgium , para. 561 2. Constitutional Court, 24 April 2008, para. B.8.5 UNHCR, Mapping Statelessness in Belgium , para. 562 Circulaire relative aux modifications du Code de la nationalité belge introduites par la loi du 27 décembre 2006 portant des dispositions diverses , 25 May 2007 UNHCR, Mapping Statelessness in Belgium , para 563

						<p>recognised by the representative authorities of their country, unless the time limit for registration has lapsed, in which case the child will be granted Belgian nationality.</p> <p>The authority responsible for assessing whether a child born in Belgium would be stateless if they do not acquire Belgian nationality is the civil registrar of the municipality of the parents' place of habitual residence. In practice the civil registrar will often seek advice from the Nationality Service of the Ministry of Justice, which has an advisory role regarding the interpretation and application of the BNC. If advice is requested in writing, the Nationality Service will provide individualised advice. The Nationality Service has also published standard responses to recurring questions on an online platform available to civil registrars. According to the Nationality Service and Civil Registrars in principle the burden of proof lies with the applicant. In practice the approach is often more collaborative, in that the Nationality Service (in its advice) or the Civil Registrars will detail any additional elements of proof that might be required. In exceptional cases the Nationality Service will make enquiries with consular authorities.</p>	<p>UNHCR, Mapping Statelessness in Belgium, para. 511</p> <p>Information obtained from the Nationality Service of the Ministry of Justice</p> <p>UNHCR, Mapping Statelessness in Belgium, para. 512 -513</p> <p>Information obtained from the Nationality Service of the Ministry of Justice</p>
PRS	1	e	Is a stateless child born on the territory required to fulfil a period of residence to be granted nationality? If yes, please specify length and if this must be legal residence.	<p>UN Convention on the Reduction of Statelessness, 1961: Article 1(2)</p> <p>UNHCR (2012): States may stipulate that an otherwise stateless individual born in its territory fulfils a period of 'habitual residence' (understood as stable, factual residence, not legal or formal residence) not exceeding five years preceding an application nor ten years in all.</p> <p>Convention on the Rights of the Child, 1989: Articles 3 & 7</p> <p>Committee on the Rights of the Child (2015): Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions.</p> <p>European Convention on Nationality, 1997: Article 6(2)(b)</p>	There is no requirement to fulfil a period of residence.	<p>Art. 10 of the Belgian Nationality Code</p> <p>Objectif asbl, "Attribution de la nationalité belge aux apatrides nés en Belgique (art.10)"</p>	
PRS	1	f	Are the parents of a stateless child required to fulfil a period of residence for the child to be granted nationality? If yes, please specify length and if this must be legal residence.	<p>Committee on the Rights of the Child (2011): The outcome of an application by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State.</p> <p>ENS (2015): Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention.</p>	There is no requirement for the parents to fulfil a period of residence.	Art. 10 of the Belgian Nationality Code	
PRS	1	g	What are the age limits (if any) for making an application for nationality for a stateless person born on the territory?	<p>UN Convention on the Reduction of Statelessness, 1961: Article 1(2)</p> <p>UNHCR (2012): Contracting States need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21.</p> <p>ENS (2015): Closing the window of opportunity to apply for a nationality has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child.</p>	The BNC does not stipulate any age limits. A child born in Belgium is Belgian <i>ex lege</i> if they would otherwise be stateless at any moment before they reach the age of 18 or are "emancipated". As long as it can be established that the child would have been stateless before the age of 18, there is no reason not to apply the safeguard after the age of 18. Application in practice is however unknown.	Art. 10 of the Belgian Nationality Code	
PRS	1	h	Are there specific provisions to protect the right to a nationality of children born to refugees?	<p>UNHCR (2012): Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities.</p>	The Belgian Constitutional Court emphasised that art. 10 al. 2 constitutes an exception to the rule and must for this reason be restrictively interpreted. 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 recognised as refugees. The Circular from the Minister of Justice of 25 May	<p>Constitutional Court, 24 April 2008, No. 73/2008, para. B.8.5</p> <p>UNHCR, Mapping Statelessness in Belgium, para. 562</p>	

						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. These include parents who have sought asylum whose procedure is ongoing and parents who have been recognised as refugees or granted subsidiary protection. Formerly registered asylum seekers whose application have been rejected, will not be exempted from the administrative steps to have their child recognised by the representative authorities of their country, unless the time limit for registration has lapsed, in which case the child will be granted Belgian nationality.	Circulaire relative aux modifications du Code de la nationalité belge introduites par la loi du 27 décembre 2006 portant des dispositions diverses , 25 May 2007 UNHCR, Mapping Statelessness in Belgium , para 563
PRS	2	a	Foundlings	Are foundlings granted nationality automatically by law? If not automatic, please describe the procedure.	UN Convention on the Reduction of Statelessness, 1961 : Article 2 European Convention on Nationality, 1997 : Article 6(1)(b)	Article 10 al. 3 of the BNC provides that a new-born child found in Belgium is presumed to be born in Belgium, until proven otherwise. Therefore the safeguard provided in art. 10 al. 1 BNC will be applied to such children if they would otherwise be stateless.	Art. 10 al. 3 of the Belgian Nationality Code
PRS	2	b		Is there an age limit (e.g. 'new-born' or 'infant') in law or practice specifying when a foundling would qualify for nationality?	UNHCR (2012) : At a minimum, the safeguard should apply to all young children who are not yet able to communicate information about the identity of their parents or their place of birth.	In its declaration concerning Article 2 of the 1961 Convention, the Belgian Government declared that, for Belgium, the category of "foundlings" concerns found children who are believed to be new-born. There is no readily available information on how this is implemented in practice.	United Nations Treaty Collection , 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, p. 9.
PRS	2	c		Can nationality be withdrawn from foundlings if this leads to statelessness?	UNHCR (2012) : Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality.	Nationality can only be withdrawn from foundlings upon acquisition of another nationality before the child is 18 or "emancipated".	Art. 10, al. 4 of the Belgian Nationality Code
PRS	3	a	Adoption	Where a child national is adopted by foreign parent(s), does the child lose their original nationality before the new nationality is acquired?	UN Convention on the Reduction of Statelessness, 1961 : Article 5 ENS (2015) : Children may be exposed to a (temporary) risk of statelessness during the adoption process due to the nationality law of the child's country of origin.	A minor who is adopted by national(s) of another country and acquires or already possesses nationality of that country loses Belgian nationality. There could be a risk of statelessness in the procedure, but no information is available on how this operates in practice. Nationality is not lost if one of the adoptive parents is a Belgian national, or if the parent married to the adoptive parent who is a national of another country, is a Belgian national.	Art. 22, §1, 4° of the Belgian Nationality Code EUDO, Belgium: modes of protection against statelessness
PRS	3	b		Does a foreign child adopted by national parents acquire nationality? Please specify any age limits and/or risk of statelessness during the adoption process.	European Convention on Nationality, 1997 : Article 6(4)(d) Committee on the Rights of the Child (2015) : Ensure that the child is not stateless or discriminated against during the waiting period between arrival and formal adoption.	A foreign child under the age of 18 adopted by national parents acquires nationality the day the adoption takes effect. This is automatic if either the child or one of the adoptive parents were born in Belgium, or if the child has not acquired the nationality of any other country (safeguard against statelessness). It is by declaration if neither the child nor the parent was born in Belgium, in which case, the parent must make a declaration within five years after the adoption takes effect and before the child reaches the age of 18.	Art. 9 of the Belgian Nationality Code EUDO, Belgium: modes of protection against statelessness
PRS	4	a	Ius sanguinis	Can children born to nationals abroad acquire nationality by descent (<i>ius sanguinis</i>) in general and/or if they would otherwise be stateless?	UN Convention on the Reduction of Statelessness, 1961 : Article 4 UNHCR (2012) : Where a child who would otherwise be stateless is born to parents of another Contracting State but does not acquire the nationality of the State of birth responsibility falls to the Contracting State of the parents to grant its nationality to the child.	Children born to nationals abroad acquire nationality by descent automatically if at least one parent is a national and born in the country, or if the child has not acquired nationality of any other country (safeguard against statelessness). Nationality is acquired upon declaration if none of the parents were born in Belgium, in which case, the parent has to make a declaration within five years after the birth of the child.	Art. 8 of the Belgian Nationality Code EUDO, Belgium: modes of protection against statelessness

PRS	4	b		Are there any discriminatory conditions in law and/or practice for the acquisition of nationality by descent (e.g. differential treatment of children born out of wedlock, rights of father/mother/same-sex parents to confer nationality, etc.)?	Genovese v. Malta ECtHR (2011) : The state must ensure that the right to nationality is secured without discrimination. CEDAW Gen. rec. No. 32, 2014 : Requires States parties to ensure that women and men have equal rights to confer their nationality to their children and that any obstacles to practical implementation of such laws are removed. UNHCR (2014) : Action 4	There are no discriminatory conditions in law and/or practice for the acquisition of nationality by descent.	
PRS	5	a	Birth registration	Does the law provide that all children are registered immediately upon birth regardless of the legal status and/or documentation of parents?	Convention on the Rights of the Child, 1989 : Article 7 International Covenant on Civil and Political Rights, 1966 : Article 24(2) Council of Europe (2009) : Member states should register the birth of all children born on their territory even if they are born to a foreign parent with an irregular immigration status or the parents are unknown. UNHCR (2012) : Article 7 CRC applies irrespective of the nationality, statelessness or residence status of the parents. UNHCR (2014) : Action 7 UN Sustainable Development Goal 16.9	The law provides that a birth certificate is issued by the civil registrar of the municipality of birth within 15 days after birth, regardless of the legal status and/or documentation of the parent. All birth certificates are kept in the civil status register . Registration in the National Registry is done by the municipality of residence of the parents. This is only possible if at least one of the parents has legal residence status. In the absence of any registration in the National Registry the child is effectively undocumented (with limited access to healthcare, schooling etc). Note the difference between the civil status register (containing civil status records such as birth, marriage, death) and the National Registry (registering all Belgian nationals and foreigners with legal residence status).	Art. 42-49 of the Belgian Civil Code
PRS	5	b		Are all children issued with birth certificates upon registration? If no, please describe legal status of documentation issued.	UN Human Rights Council, Resolution A/HRC/RES/20/4 : Underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of immigration status and that of parents or family members. Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents.	The law provides that a birth certificate is issued by the civil registrar of the municipality of birth within 15 days after birth, but only on request by the parents.	Art. 42-49 of the Belgian Civil Code
PRS	5	c		Is the child's nationality determined or recorded upon birth registration? If yes, please describe how and by whom (e.g. if the mother/father's nationality is recorded and/or automatically attributed to the child, if there's a formal procedure, if information on both parents is recorded etc.)	Convention on the Rights of the Child, 1989 : Articles 3 & 7	The child's nationality is not recorded upon birth registration. The child's nationality should be determined upon birth registration in order to resolve questions of private international law (such as filiation and name). In practice this is not always possible, in which case Belgian law is applied.	Art. 44 of the Belgian Civil Code Information obtained from the president of the Flemish Association for Civil Registrars (Vlavabs)
PRS	5	d		If a child's nationality is not determined or recorded upon birth registration, is there a legal framework to determine the child's nationality later? If yes, please describe the procedure, including the legal grounds, deadlines and competent authority.	Convention on the Rights of the Child, 1989 : Articles 3 & 7	For the subsequent registration in the National Registry nationality will be recorded. Registration in the National Registry is only possible if at least one of the parents has legal residence status or if the child can obtain legal residence on its own. The competent authority is the municipality of residence of the parents. In case the parents are registered asylum seekers the competent authority is the Immigration Office. Nationality is only registered on the basis of a national passport or a certificate of nationality. If nationality cannot be determined this will be registered as "undetermined nationality".	Art. 1 Arrêté royal déterminant les informations mentionnées dans les registres de la population et dans le registre des étrangers. Art. 1 Loi du 19 juillet 1991 relative aux registres de la population, aux cartes d'identité, aux cartes des étrangers et aux documents de séjour Art. 1bis Art. 1 Loi du 19 juillet 1991 relative aux registres de la population, aux cartes d'identité, aux cartes des étrangers et aux documents de séjour

PRS	5	e		Are there credible reports to suggest that children are prevented from registering in practice because of parents' legal status or other reasons (please specify)?	Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed.	Not aware of such reports.	
PRS	5	f		Are there mandatory reporting requirements that would deter undocumented parents from coming forward to register their children (e.g. health or civil registry authorities required to report undocumented migrants)?	Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status.	Yes. Public servants, including civil registrars, are required to report undocumented migrants to the immigration authorities.	Art. 29 Belgian Penal Code
PRS	5	g		Is there a statutory deadline for birth registration? If yes, please state the deadline and whether late birth registration is possible in law and practice.	Committee on the Rights of Migrant Workers and Members of their Families & Committee on the Rights of the Child (2017) : Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration. UN Human Rights Council, Resolution A/HRC/RES/20/4 : Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child.	Notification of the birth is done no later than the first working day after the birth by the hospital where the birth took place, or if the birth took place outside a hospital, the doctor, midwife or any other witness. Registration of birth has to be done within 15 days after birth by the parents. If the parents don't register the birth within this timeframe the civil registrar will draw up the birth certificate based on the information provided in the notification of birth.	Art. 42 of the Belgian Civil Code Art. 43 of the Belgian Civil Code
PRS	5	h		Are there additional requirements for late birth registration (e.g. fees, documents, court procedure)? Please describe the procedure including the competent authority and procedural deadlines.	As above	If the parents don't register the birth within fifteen days, the civil registrar will draw up the birth certificate <i>ex officio</i> based on the information provided in the notification of birth. Thus, lack of birth registration within fifteen days could only occur if there were no witnesses to the birth and no notification of birth was done. In this exceptional case a judgement to replace the birth certificate could be requested at the family court, during which process a court fee and lawyers' fees would apply.	Art. 35 of the Belgian Civil Code
PRS	6	a	Reduction	Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details.	UNHCR (2014) : Action 7	Not aware of any such programmes.	
PRS	6	b		Are there particular sections of the population - such as minority groups - believed to be stateless/at risk of statelessness? Please provide details and source of information.	UN Convention on the Reduction of Statelessness, 1961 : Article 9 UNHCR (2014) : Action 4 UN Human Rights Council (2019) : States should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities.	Among the population arriving in Belgium over the last years several groups are believed to be stateless/at risk of statelessness, notably: - Palestinians - Kurds - Persons at Risk of Statelessness due to difficulties in proving filiation or due to gender-discriminatory nationality laws.	Justine Raymond, " Childhood Statelessness Prevention in the Migratory Context: The Experience of Syrian Asylum Seekers in Belgium ", Statelessness Working Paper Series No. 2017/04.
PRS	6	c		Has the Government implemented any other measures specifically aimed at reducing (risk of) statelessness? (e.g. identification, registration or naturalisation campaigns, removal of treaty reservations, reform of discriminatory laws, etc.)	UN Convention on the Reduction of Statelessness, 1961 UNHCR (2014) : Actions 1 & 8 UNHCR (2015) : States parties to the 1954 Convention are required to help stateless persons become naturalised citizens.	No.	

PRS	7	a	Withdrawal of nationality	<p>Are there provisions on loss and/or deprivation of nationality established in law? Please describe and state whether there is a safeguard against statelessness in law and practice.</p>	<p>UN Convention on the Reduction of Statelessness, 1961: Article 8 European Convention on Nationality, 1997: Article 7(3) Universal Declaration of Human Rights: Article 15(2)</p>	<p>Art. 22, § 1 provides for loss of nationality on the following grounds: 2° Voluntary renunciation 3° Loss of nationality by a single parent through voluntary renunciation 4° Adoption by a foreign national 5° Residence abroad between the age of 18 and 28 6° Loss of nationality by a single parent because of residence abroad between the age of 18 and 28</p> <p>Item 6° relates to the situation of a dependent child under 18 who is subject to the authority of a single parent or adopter, when the latter loses Belgian nationality by virtue of 5°; when authority over the child is exercised by the father and mother or adopters, the dependent child under 18 shall not lose Belgian nationality while one of them still holds it; the child loses it when the parent or adopter loses it; the same rule applies where authority over the child is exercised by the father or mother and their adopting spouse.</p> <p>There is a safeguard against statelessness included for all these provisions.</p> <p>Articles 23, 23/1 and 23/2 BNC provide for deprivation of nationality on the following grounds:</p> <p>Art. 23: - Fraud during acquisition - Acting in serious violation of duties as Belgian nationals</p> <p>Art. 23/1: - conviction for certain grave crimes and punished by at least 5 years of imprisonment - conviction for a crime the commission of which was facilitated by the possession of Belgian nationality - after annulment of marriage of convenience, if Belgian nationality acquired through marriage</p> <p>23/2: - conviction for a terrorist offense and punished by at least 5 years of imprisonment</p> <p>Some persons are protected from deprivation depending on how they acquired nationality:</p> <p>Art. 23: Persons having acquired their nationality - from a parent (Art. 8 and 9) - on the basis of birth in Belgium (Art. 11 <i>and 11bis</i>)</p> <p>Art. 23/1 and 23/2: Persons having acquired their nationality - from a parent (Art. 8 and 9) - on the basis of birth in Belgium (Art. 11, 1° and 2°)</p> <p>There is a safeguard against statelessness in all three provisions, except if nationality was acquired by fraud. In this case, even if the person does not have another nationality, deprivation of nationality will be ordered after the expiration of a reasonable period determined by the Court to allow the person to try and recover their original nationality.</p>	<p>Art. 22 §1-2 of the Belgian Nationality Code</p> <p>Art. 23, 23/1 and 23/2 BNC</p> <p>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</p> <p>EUDO, Belgium: modes of protection against statelessness</p> <p>P. WAUTELET, "Deprivation of citizenship for 'jihadists': analysis of Belgian and French practice and policy in light of the principle of equal treatment", January 2016,.</p> <p>P. WAUTELET, "La nationalité belge en 2014 – L'équilibre enfin trouvé?" in <i>Droit de l'immigration et droit de la nationalité : fondamentaux et actualités</i>, Brussel, Larcier, 2014, pp. 337-341</p> <p>Constitutional Court (arrest 16/2018 of 7 February 2018)</p>
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PRS	7	b		Who is the competent authority for withdrawal of nationality and what procedural safeguards are in place (legal aid, judicial oversight, appeal, time limit, subject to prior sentencing)?	UN Convention on the Reduction of Statelessness, 1961 : Article 8(4) European Convention on Nationality, 1997 : Article 11	Competent authority: Art. 23: Court of Appeal Art. 23/1: Ordinary (civil or criminal) Judge (in practice included in criminal procedure or procedure for annulment of marriage) Art. 23/2: Ordinary (civil or criminal) Judge (in practice included in criminal procedure) Time limit: Art. 23: - Fraud during acquisition: deprivation maximum 5 years after acquisition of nationality - Acting in serious violation of duties as Belgian nationals: no time limit Art. 23/1: - Grave crimes: crime committed maximum 10 years after acquisition of nationality (except for international crimes: no time limit) - crime facilitated by the possession of Belgian nationality: crime committed maximum 5 years after acquisition of nationality - deprivation following annulment of marriage: no time limit Art. 23/2: no time limit Subject to prior sentencing: Art. 23: no prior sentencing required Art. 23/1: prior conviction or annulment of marriage by judicial authority required Art. 23/2: prior conviction required	Art. 23 of the Belgian Nationality Code
PRS	7	c		Are withdrawal provisions applied in practice?		Yes, withdrawal provisions are applied in practice.	Response by the Minister of Justice to Parliamentary Question Koen Metsu, N° 2301, 10 July 2018.

Jurisprudence and Training

Cat	Q	Sub	Subtheme	Question	International Norms & Good Practice	Answer	Source
LIT	1	a	Published judgements	Number of published judgements adjudicating statelessness (broken down by level of jurisdiction). Please list.		<p>Court of Cassation:</p> <p>Court of Cassation, 27 September 2007 (in French)</p> <p>Court of Cassation, 6 June 2008 (in French)</p> <p>Court of Cassation, 22 January 2009 (in French)</p> <p>Court of Cassation, 23 January 2017 (in Dutch).</p> <p>Courts of Appeal:</p> <p>Court of Appeal Brussels, 7 December 2006 (in Dutch)</p> <p>Court of Appeal Ghent, 4 January 2007 (in Dutch)</p> <p>Court of Appeal Ghent, 5 February 2009 (in Dutch)</p> <p>Court of Appeal Ghent, 10 march 2016 (in Dutch)</p> <p>Court of Appeal Ghent, 16 June 2016 (in Dutch)</p> <p>Court of Appeal Ghent, 20 April 2017 (in Dutch)</p> <p>Court of Appeal Brussels, 5 June 2018 (in Dutch)</p> <p>Court of Appeal Antwerp, 3 October 2018 (in Dutch)</p> <p>Courts of First Instance / Family Courts:</p> <p>Court of First Instance Ghent, 4 March 2010 (in Dutch)</p> <p>Court of Frist Instance Ghent, 6 October 2011 (in Dutch)</p> <p>Court of Frist Instance Bruges, 20 April 2015 (in Dutch)</p> <p>Court of First Instance Bruges, 23 November 2015 (in Dutch)</p> <p>Court of First Instance Antwerp, 2 March 2016 (in Dutch)</p> <p>Court of First Instance Bruges, 12 June 2017 (in Dutch)</p> <p>Court of Frist Instance Bruges, 5 February 2018 (in Dutch)</p> <p>Court of First Instance Mons, 17 July 2018 (in French)</p>	
LIT	1	b		Number of published judgements mentioning statelessness (broken down by level of jurisdiction). Please list.		<p><i>On residence rights:</i></p> <p>Constitutional Court:</p> <p>Constitutional Court, 17 December 2009 (in French)</p> <p>Constitutional Court, 11 January 2012 (in French)</p> <p>Constitutional Court, 22 February 2018 (in French)</p> <p>Court of Cassation:</p>	

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LIT	2	a	Legal training	<p>Is there training for judges and lawyers on statelessness? If yes, please provide details (e.g. provider, frequency).</p>	<p>UNHCR (2016): Officials who may be in contact with stateless persons need to be trained to identify potential applicants for stateless status and refer them to appropriate channels.</p> <p>UNHCR (2010): It is recommended that States provide specialised training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations.</p>	<p>UNHCR provides training to judges on statelessness in cooperation with the Institute for Judicial Training. There have been two trainings so far (December 2017 and December 2018). UNHCR sporadically organises training for lawyers (October 2014 and September 2017). Nansen organised one intervention (peer-support and exchange of information) for lawyers specialised in immigration law (April 2019).</p>	
LIT	3	a	Pro Bono	<p>Are there specialised lawyers or organisations providing free advice to stateless people or those at risk of statelessness? If yes, please describe.</p>	<p>UNHCR (2014): Applicants must have access to legal counsel.</p>	<p>Objectif asbl provides free advice on Belgian nationality, including the safeguard against statelessness at birth.</p> <p>NANSEN recently extended its monitoring and legal services activities to stateless persons.</p>	<p>Objectif asbl</p> <p>NANSEN</p>
LIT	4	a	Literature	<p>Is there domestic academic literature on statelessness? Please list and provide references and hyperlinks (where available).</p>		<p>Chiurulli (C.), La protection des apatrides : état des lieux, 2014</p> <p>De Hemricourt de Grunne (M.), « Reconnaissance et statut des apatrides en Belgique », Annales de droit de Louvain, 1999, 343-388.</p> <p>De Leebeeck (L.), « Prévention et protection juridiques des situations d'apatridie en Belgique », Revue du droit des étrangers, 2006, 531-533.</p> <p>Leclerc (P.), « Etat des lieux de l'apatridie : comment prévenir et réduire les situations d'apatridie tout en améliorant la protection des apatrides », Revue du droit des étrangers, 2006, 520-521.</p> <p>Lejeune (J.), « Aperçu de jurisprudence : la qualité d'apatride et le droit au séjour des apatrides reconnus », Revue du droit des étrangers, 2006, 522-530.</p> <p>Merlin (C.), « Les difficultés rencontrées par les magistrats statuant sur les demandes d'apatridie », Revue du droit des étrangers, 2006, 534-538</p> <p>Raymond (J.), "Childhood Statelessness Prevention in the Migratory Context: The Experience of Syrian Asylum Seekers in Belgium", Statelessness Working Paper Series No. 2017/04.</p>	

					<p>Renauld (B.), « L'Apatridie en Belgique, état des lieux en 2012 » in Alen (A.), Joosten (V.), Leysen (R.), Verrijdt (W.) (eds.), <i>Liberæ Cogitationes, Liber amicorum Marc Bossuyt</i>, Intersentia, Antwerpen, 2013, 531-541.</p> <p>Rosemont (F.), « Présentation de l'office des étrangers », <i>Revue du droit des étrangers</i>, 2006, 539-540.</p> <p>Sarolea (S.), « L'apatridie : du point de vue interétatique au droit de la personne », <i>Revue du droit des étrangers</i>, 1998, p. 183-212.</p> <p>Stad Gent, <i>Staatlozen: nergens en nooit onderdaan, overall en altijd vreemdeling. Praktijkgerichte handleiding</i>, 2007.</p> <p>Vandervoort (L.), <i>De Staatloze in België: op zoek naar een status met rechten en plichten</i>, <i>Tijdschrift voor Vreemdelingenrecht</i>, 2007, 244-263.</p> <p>Sarolea (S.), « Le Ministère de la justice et l'apatridie, note sous C.A. Bruxelles, 24 février 2000 », <i>Revue du droit des étrangers</i>, 2000, 107-115.</p> <p>Westerveen (G.), « Table ronde sur l'apatridie », <i>Revue du droit des étrangers</i>, 2006, 519.</p>	
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