

Comments by the United Nations High Commissioner for Refugees (UNHCR) on the Draft Law amending the law of 15 December 1980 in order to regulate the right of residence for stateless persons in Belgium

I. Introduction

1. The United Nations High Commissioner for Refugees (UNHCR) thanks the Committee on Internal Affairs, General Affairs and Administration of the Belgian House of Representatives for its invitation to present its comments on the Draft Law amending the law of 15 December 1980 in order to regulate the right of residence for stateless persons in Belgium (“Draft Law”).¹

2. UNHCR offers these comments as the Agency mandated by the United Nations General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people.² In resolutions adopted in 1994 and 1995, the UN General Assembly entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.³ This mandate has continued to evolve as conclusions of UNHCR’s Executive Committee⁴ have been endorsed by the UN General Assembly.⁵

3. In line with its mandate responsibility to address statelessness worldwide and to assist States in ensuring that their legislation is in compliance with the 1954 United Nations *Convention relating to the Status of Stateless Persons* (1954 Convention) and the 1961 United Nations *Convention on the Reduction of Statelessness* (1961 Convention) which Belgium ratified in 1960 and acceded to in 2014 respectively, UNHCR offers its comments on the proposed legislation and its explanatory memorandum.

4. UNHCR’s comments are based on, inter alia, the guidance and interpretations provided in the *UNHCR Handbook on Protection of Stateless Persons* (UNHCR Handbook)⁶, on UNHCR’s findings and recommendations in the 2012 *Mapping Statelessness in Belgium* report (Mapping Statelessness)⁷ to which the explanatory note of the Draft Law refers extensively, and on UNHCR’s 2016 *Good Practice Paper on Establishing Statelessness Determination Procedures to Protect Stateless Persons* (Good Practice Paper).⁸

¹ Proposition de loi modifiant la loi du 15 décembre 1980 sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers, en vue de régler le droit de séjour des apatrides, 24 janvier 2019, DOC54 3487/001, available at : <http://www.dekamer.be/FLWB/PDF/54/3487/54K3487001.pdf>

² UN General Assembly resolutions 3274 (XXIV) and 31/36 designate UNHCR as the body to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness and to assist such persons in presenting their claims to the appropriate national authorities.

³ UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR’s Executive Committee Conclusion No. 78 (XLVI), Prevention and Reduction of Statelessness and the Protection of Stateless Persons, 20 October 1995, available at: <http://www.refworld.org/docid/3ae68c443f.html>

⁴ UNHCR, *Conclusion on International Protection*, 05 October 2001, No. 90 (LII) - 2001, para. (q), available at: <http://www.unhcr.org/refworld/docid/3bd3e3024.html> ; *General Conclusion on International Protection*, 10 October 2003, No. 95 (LIV) - 2003, para. (y), available at: <http://www.unhcr.org/refworld/docid/3f93aede7.html> ; *General Conclusion on International Protection*, 08 October 2004, No. 99 (LV) - 2004, para. (aa), available at: <http://www.unhcr.org/refworld/docid/41750ef74.html> ; *General Conclusion on International Protection*, 07 October 2005, No. 102 (LVI) - 2005, para. (y), available at: <http://www.unhcr.org/refworld/docid/43575ce3e.html> ; *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 06 October 2006, No. 106 (LVII) - 2006, paras. (f), (h), (i), (j) and (t), available at: <http://www.unhcr.org/refworld/docid/453497302.html>

⁵ UNGA resolution A/RES/61/137 of 19 December 2006.

⁶ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at : <http://www.refworld.org/docid/53b676aa4.html>

⁷ UNHCR, *Mapping Statelessness in Belgium*, October 2012, available at: <https://www.refworld.org/docid/5100f4b22.html>

⁸ UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, 11 July 2016, available at: <https://www.refworld.org/docid/57836cff4.html>

5. UNHCR on several occasions encouraged Belgium to adopt an accessible, dedicated, fair, and efficient mechanism to determine statelessness that includes the procedural safeguards set out in the UNHCR Handbook and provides a legal status for stateless persons.⁹ Such a statelessness determination procedure serves to identify stateless persons to ensure that they enjoy the rights to which they are entitled until they acquire a nationality.¹⁰

6. At UNHCR's December 2011 Ministerial Meeting to commemorate the 60th and 50th anniversaries of the 1951 Convention relating to the Status of Refugees and the 1961 Convention on the Reduction of Statelessness respectively, Belgium pledged to establish a statelessness determination procedure (SDP).¹¹

7. The Belgian Federal Government agreements of March 2008¹² and December 2011¹³ committed to setting up a dedicated statelessness determination procedure and granting a residence permit to stateless persons. The 2014 Belgian Federal Government agreement¹⁴ and the first policy note of the former State Secretary for Asylum and Migration¹⁵ provided for a centralisation of the existing statelessness determination by the Civil Courts, and the grant in principle of a residence permit by the Aliens' Office to persons determined as stateless by the courts.

8. The centralisation of statelessness determination was implemented when on 29 June 2017 the Belgian Federal Parliament approved a bill introducing a new article 632*bis* into the Judicial Code, giving exclusive competence for determining statelessness to the Family Courts established at the five seats¹⁶

⁹ UNHCR, *Mapping Statelessness*, para. 315, recommendation 6 ; UNHCR, *Mémorandum en matière de protection des réfugiés, des bénéficiaires de la protection subsidiaire et des apatrides en Belgique*, June 2014, p. 46, recommendation 18 available at: <https://www.refworld.org/docid/541fc8c84.html>; UNHCR, *Good Practice Paper*, p.3 ; Belgium, *Sénat de Belgique/Belgische Senaat, Proposition de résolution visant à résoudre le problème de l'apatridie et à protéger les apatrides/Voorstel van resolutie teneinde het probleem van de staatloosheid en de bescherming van staatlozen op te lossen, Rapport fait au nom de la commission des affaires institutionnelles par M. Anciaux/Verslag namens de commissie voor de institutionele aangelegenheden uitgebracht door de heer Anciaux*, 21 March 2016, available at <https://www.senate.be/www/webdriver?MltabObj=pdf&MlcolObj=pdf&MlInamObj=pdfid&MltypeObj=application/pdf&MlvalObj=100663610>, p. 36-52

¹⁰ UNHCR, *Good Practice Paper*, p. 2

¹¹ A summary of pledges is presented in UNHCR, *Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons* (Geneva, Palais des Nations, 7-8 December 2011), available at: <http://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf> ; UNHCR, *Good Practice Paper 6*, p. 2.

¹² Belgium, *Chambre des représentants de Belgique/Belgische Kamer van Volksvertegenwoordigers, Accord de Gouvernement/Regeringsakkoord*, 20 March 2008, p. 48, available at <http://www.dekamer.be/FLWB/PDF/52/0020/52K0020002.pdf> (in French and Dutch).

"The Government will put in place a procedure for the grant of stateless status by the Commissioner General for Refugees and Stateless Persons. Recognition as stateless will in principle result in a right to (temporary) residence." ("Le Gouvernement mettra en place une procédure d'octroi du statut d'apatride par le Commissariat général aux réfugiés et aux apatrides. La reconnaissance en tant qu'apatride donnera en principe lieu à un droit de séjour (temporaire).")

¹³ Belgium, *Governmental Agreement*, 1 December 2011, available at https://www.lachambre.be/kvvcr/pdf_sections/searchlist/Accord_de_Gouvernement_1er_decembre_2011.pdf (in French)

and https://www.dekamer.be/kvvcr/pdf_sections/searchlist/Regerakkoord_1_december_2011.pdf (in Dutch), which reads, "The Government will put in place a procedure for the Commissioner General for Refugees and Stateless Persons to determine statelessness. Recognition of statelessness will in principle result in the delivery of a (temporary) residence permit." ("Le Gouvernement mettra en place une procédure de reconnaissance du statut d'apatride via le Commissariat Général aux Réfugiés et aux Apatrides. La reconnaissance du statut d'apatride aura en principe pour conséquence la délivrance d'un titre de séjour (temporaire)" (in French at p. 134). "De regering zal een procedure instellen voor de erkenning van de status van staatloze via het Commissariaat-Generaal voor de Vluchtelingen en de Staatlozen. De erkenning van de status van staatloze zal in principe tot gevolg hebben dat een (tijdelijke) verblijfsvergunning wordt afgegeven. België zal het Verdrag van 1961 tot beperking van staatloosheid ratificeren" (in Dutch at p. 135).

¹⁴ Belgium, *Chambre des représentants de Belgique/Belgische Kamer van Volksvertegenwoordigers, Accord de Gouvernement/Regerakkoord*, 10 October 2014, p. 168, available at <http://www.lachambre.be/FLWB/PDF/54/0020/54K0020001.pdf> (in French and Dutch).

¹⁵ Belgium, *Chambre des représentants de Belgique/Belgische Kamer van Volksvertegenwoordigers, Note de politique générale Asile et Migration/Algemene Beleidsnota Asiel en Migratie*, 28 November 2014, available at <http://www.dekamer.be/FLWB/PDF/54/0588/54K0588026.pdf> (in French and Dutch).

¹⁶ Previously, persons seeking to be recognized as stateless had to apply to one of the 27 Tribunals of First Instance in the country.

of the Courts of Appeal and to the Family Court of Eupen for cases in German.¹⁷ The Draft Law would implement the announced grant in principle of a residence permit by the Aliens' Office to persons determined as stateless by the courts.¹⁸

9. UNHCR welcomes the significant improvement the Draft Law plans to achieve by introducing a lawful residence for individuals determined to be stateless. If adopted, this legislative initiative would remedy a major protection gap, as decisions of Belgian courts recognising statelessness are not accompanied by a right of residence or other rights, thus recognising a quality that is devoid of any practical effect.¹⁹ Similarly, persons applying to be recognised as stateless in Belgium do not have a legal status or a temporary residence permit for the duration of the procedure.²⁰ UNHCR also welcomes the intention to include facilitated family reunification in the Draft Law.

10. A global High-Level Segment on Statelessness will be held on 7 October 2019 to mark the mid-way point of UNHCR's #IBelong Campaign to End Statelessness by 2024²¹ launched in 2014 and would present Belgium with an opportunity to showcase these achievements at the international level.

11. Sections II to IV of these comments will clarify why UNHCR supports this Draft Law in general, while suggesting some points for further improvement, including some concerns regarding the provisions in the Draft Law on exclusion and withdrawal or cancellation (see sections V and VI). Besides, UNHCR would like to take this opportunity to recall its recommendations regarding the establishment of a dedicated mechanism to determine statelessness and raise some points of attention regarding the overall design of the current statelessness determination mechanism in Belgium (section VII).

II. Status of individuals determined to be stateless – right of residence

a. Introduction of a residence permit for recognised stateless persons (art. 4, § 2 Draft Law)

12. UNHCR welcomes the **introduction in the proposed Draft Law of a residence permit for recognized stateless persons**. The issuance of such a residence permit would enable stateless persons recognized in Belgium to enjoy the rights set out in the 1954 Convention, and would be in line with global and European trends to offer better protection to stateless persons. Furthermore it would give effect to the rulings of the Constitutional Court and the Court of Cassation mentioned above.

13. Although the 1954 Convention does not explicitly require States to grant stateless persons a right of residence, granting such permission would fulfil the object and purpose of the Convention.²² Therefore, UNHCR recommended in 2012 that recognition of statelessness should generally result in the issuance of a residence permit, while acknowledging that in some cases it may not be necessary to issue a residence permit, for instance where a stateless person enjoys the right of residence in another country

¹⁷ Loi du 6 juillet 2017 portant simplification, harmonisation, informatisation et modernisation de dispositions de droit civil et de procédure civile ainsi que du notariat, et portant diverses mesures en matière de justice, *Moniteur Belge* 24 July 2017, entered into force on 3 August 2017, available at : <http://www.ejustice.just.fgov.be/eli/loi/2017/07/06/2017030652/moniteur>

¹⁸ Belgium, *Government Agreement*, see above note 14; Belgium, *Policy note of the State Secretary for Asylum and Migration*, see above note 15.

¹⁹ According to the latest figures available to UNHCR (2014), the regularization rate of stateless persons is low. In 2014, only 37% of the persons recognized as stateless by the courts were regularized by the Aliens Office (Belgium, Sénat de Belgique/Belgische Senaat, Proposition de résolution visant à résoudre le problème de l'apatridie et à protéger les apatrides/Voorstel van resolutie teneinde het probleem van de staatloosheid en de bescherming van staatlozen op te lossen, Rapport fait au nom de la commission des affaires institutionnelles par M. Anciaux/Verslag namens de commissie voor de institutionele aangelegenheden uitgebracht door de heer Anciaux, 21 March 2016, available at <https://www.senate.be/www/webdriver?MltabObj=pdf&MlcolObj=pdf&MlnamObj=pdfid&MltypeObj=application/pdf&MlvalObj=100663610>, p.51.)

²⁰ UNHCR, *Mapping Statelessness*, para. 455-471; UNHCR, *Good Practice Paper*, p. 2-3.

²¹ UNHCR #IBelong Campaign website, available at: <http://www.unhcr.org/ibelong/>

²² UNHCR, *Handbook*, para. 147

and is able to return and live there with full respect for his or her human rights (see further §17-20)²³, or on grounds of national security or public order (see further §31).²⁴

14. UNHCR notes that currently almost all States with statelessness determination procedures grant a right of residence to persons recognized as stateless, except in case the individual concerned poses a risk to national security or public order, or is admissible to another country.²⁵ Based on experiences of other countries, UNHCR considers it unlikely that the establishment of a statelessness determination procedure and the subsequent grant of a right of residence will create a pull factor. France has had a statelessness determination procedure for the longest period and received 420 requests and 71 admissions were granted in 2018.²⁶ The UK received a total of approximately 750 applications per year between April 2013 and December 2017.²⁷ This figure mostly includes persons who were already on the territory of the UK at the time of the introduction of the statelessness determination procedure.

15. Jurisprudence from the highest courts in Belgium also highlights the need to provide for residence rights for stateless persons. The Belgian Constitutional Court in judgements of 2009 and 2012 held that the difference in treatment in regard to their right of residence between recognized refugees and recognized 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.²⁸ According to the Constitutional Court, this discrimination stems from the absence of any legislative provision granting persons recognized as stateless in Belgium a right of residence comparable to the one enjoyed by refugees. According to the Constitutional Court, it was up to the legislator to remedy this situation, as only the legislator can set the conditions under which stateless persons are entitled to acquire a residence permit. In 2018 the Constitutional Court reiterated its jurisprudence on discrimination between refugees and stateless persons, and overturned the establishment of a fee for the introduction of a request for a residence permit by stateless persons as an exemption from such a fee was provided for refugees.²⁹

16. The Court of Cassation held that judges are obliged to remedy the legislative gap that was identified by the Constitutional Court by investigating whether a recognized stateless person has involuntarily lost his or her nationality, and if s/he had demonstrated that s/he could not obtain a durable residence permit in another state with which s/he has ties.³⁰ The Court later clarified that the fact that judges should refuse to apply the existing regulations because these violate the principle of equal treatment, does not mean that stateless persons automatically fall under the category of aliens authorized to stay on the territory by law. They still need to be granted leave to remain.³¹

²³ UNHCR, *Handbook*, para. 472, recommendation 16.

²⁴ Art. 31 of the 1954 Convention.

²⁵ UNHCR, *Good Practices Paper*, p.8.

²⁶ Source: UNHCR. For information about the statelessness determination procedure in France, see: <https://www.ofpra.gouv.fr/fr/apatridie/quelques-chiffres>

²⁷ Source: UNHCR.

²⁸ Belgium, Constitutional Court, 17 December 2009, No. 198/2009, available at <http://www.const-court.be/public/f/2009/2009-198f.pdf> (in French) and <http://www.const-court.be/public/n/2009/2009-198n.pdf> (in Dutch) and Belgium, Constitutional Court, 11 January 2012, No. 1/2012, available at <http://www.const-court.be/public/f/2012/2012-001f.pdf> (in French) and <http://www.const-court.be/public/n/2012/2012-001n.pdf> (in Dutch).

²⁹ Belgium, Constitutional Court, 22 February 2018, No. 18/2018, available at <http://www.const-court.be/public/f/2018/2018-018f.pdf> (in French).

³⁰ Belgium, Court of Cassation, 27 May 2016, No. C.13.0042.F, *M.Z. v. Ville d'Eupen, Bourgmestre de la Ville d'Eupen et l'Etat belge*, available at : http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20160527-2 (in French) and http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20160527-2 (in Dutch).

³¹ Belgium, Court of Cassation, 27 June 2016, No. S.15.0014.N/1, *B.M. v. Openbaar Centrum voor Maatschappelijk Welzijn van Roeselare*, available at http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20160627-2 (in Dutch)

b. Where protection is available in another State (art. 4, §5 Draft Law)

17. UNHCR notes that the Draft Law foresees the **refusal of a residence permit when the stateless person has a residence permit of unlimited duration in another State with which s/he has durable ties.**

18. UNHCR reiterates its position that the possibility of return to another country can be a ground for limiting protection of the stateless person in the territory only if protection is available in another country: when that person can (re)acquire a nationality through a simple, rapid and non-discretionary procedure, or when the stateless person enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.³²

19. With respect to an individual's ability to return to a country of previous habitual residence, this must be accompanied by the opportunity to live there in security and dignity in conformity with the object and purpose of the 1954 Convention. Thus, this exception only applies to those individuals who already enjoy the status of permanent resident in another country, or would be granted such status upon arrival, where this is accompanied by a full range of civil, economic, social and cultural rights, and where there is a reasonable prospect of obtaining nationality of that State.³³

20. Care must be taken to ensure that the criteria for determining whether an individual has a realistic prospect of obtaining protection elsewhere are narrowly construed.³⁴

Therefore, UNHCR recommends replacing the phrase “state with which he has durable ties” with “country of previous habitual residence to which immediate return is possible”, as the latter has a specific meaning according to UNHCR’s guidance.³⁵

UNHCR also recommends stipulating that the status in the country to which return is envisaged has to be accompanied by a full range of civil, economic, social and cultural rights, and that there should be a reasonable prospect of obtaining the nationality of that State.

21. Furthermore, local ties need to be considered. Where an individual has developed close ties with a host State as a result of long-term residence and family links, conferral of the status normally granted upon recognition as a stateless person would be appropriate, even where protection may be available in another State.³⁶

c. Validity of the residence permit and facilitated naturalization (art. 4, § 3 Draft Law)

22. UNHCR also welcomes the fact that the **residence permit granted would be initially valid for two years, and that after a period of two years** (counting from the submission of the request for a residence permit) **the individual will be granted unlimited leave to remain.** This would allow for stability and would eventually facilitate naturalization of stateless persons.

³² UNHCR, *Handbook*, para. 153 – 157.

³³ UNHCR, *Handbook*, para. 157.

³⁴ UNHCR, *Handbook*, para. 154.

³⁵ UNHCR, *Handbook* in its para 139 provides for the following: “The condition that a stateless person be “habitually resident” or “residing” indicates that the person resides in a State party on an on-going and stable basis. “Habitual residence” is to be understood as stable, factual residence. This covers those stateless persons who have been granted permanent residence, and also applies to individuals without a residence permit who are settled in a country, having been there for a number of years, who have an expectation of on-going residence there.

³⁶ UNHCR, *Handbook*, para. 163. In some cases, this approach may be required to satisfy human rights obligations such as refraining from unlawful or arbitrary interference with privacy, family or home.

23. Granting stateless persons unlimited leave to remain after a period of two years would render them eligible for naturalization under article 19 §2 of the Belgian Nationality Code. This would fulfil the commitment made in article 32 of the 1954 Convention to facilitate the naturalization of stateless persons. No matter how extensive the rights granted to a stateless person may be, they are not equivalent to the rights that result from possessing a nationality. Protecting stateless persons under the 1954 Convention should thus be seen as an interim response until the underlying issue of a lack of nationality is addressed. Ultimately, the reduction of statelessness by acquisition of nationality shall remain the goal.³⁷

III. Status of individuals awaiting determination of statelessness

24. UNHCR welcomes the inclusion in the Draft Law of a **temporary residence permit for the duration of the procedure for a residence permit at the Aliens Office** (art. 4, §2 Draft Law). UNHCR notes however that the Draft Law only grants lawful stay in Belgium for the duration of the procedure for a residence permit at the Aliens Office, while no such lawful stay is granted for the duration of the procedure for statelessness determination by the Family Courts (and Courts of Appeal). As is noted in the explanatory memorandum of the Draft Law: « *Aucun droit de séjour n'est établi au cours de la procédure devant le tribunal (en l'espèce devant le tribunal de la famille)* ».

25. UNHCR recalls that as the 1954 Convention rights are formulated almost identically as those enshrined in the 1951 Refugee Convention, it is recommended that individuals awaiting a determination of statelessness receive the same standards of treatment as asylum-seekers whose claims are being considered in the same State in view of their comparable legal situation.³⁸ This includes the right to lawful stay in the country for the duration of the procedure. As confirmed by the drafting history of the 1954 Convention, applicants for statelessness status who enter into a determination procedure are therefore "lawfully in" the territory of a State party.³⁹

26. As UNHCR noted in 2012, persons seeking recognition as being stateless who are not lawfully residing in Belgium on other grounds find themselves staying on the Belgian territory in an irregular and difficult situation. This has obvious consequences as regards their right to work and access to public relief, as well as their overall rights during the stateless determination procedure, and may potentially result in their detention or expulsion.⁴⁰

UNHCR therefore recommends issuing a temporary residence permit to applicants for statelessness determination during the entire determination procedure, starting with the introduction of a request for statelessness determination at the Family Courts, and granting them the same standards of treatment as asylum-seekers.⁴¹

IV. Family reunification (art. 2 Draft Law)

27. UNHCR welcomes the intention to include provisions on facilitated family reunification. Although the 1954 Convention does not address family reunification, under human rights law State parties are encouraged to facilitate the reunification of those with recognised statelessness status in their territory with their spouses, children and dependents.⁴² UNHCR however wishes to draw attention to the fact that in practice, the period during which stateless persons can benefit from the regime of facilitated

³⁷ UNHCR, *Mapping Statelessness*, para. 494-495.

³⁸ UNHCR, *Handbook*, para 145.

³⁹ UNHCR, *Handbook*, para 135.

⁴⁰ UNHCR, *Mapping Statelessness*, para. 427.

⁴¹ UNHCR, *Mapping Statelessness*, para. 472, recommendation 17.

⁴² UNHCR, *Handbook*, para 151.

family reunification may be much shorter than one year and thus hamper the facilitation of reunification of stateless persons.⁴³

V. Exclusion from residence permit (art. 4, §7 Draft Law)

28. UNHCR notes that the Draft Law foresees that « *L'étranger est exclu du séjour en tant que bénéficiaire du statut d'apatride lorsque, ayant été condamné définitivement pour une infraction particulièrement grave, il constitue un danger pour la société ou lorsqu'il existe des motifs raisonnables de le considérer comme un danger pour la sécurité nationale.* »

29. In this regard, UNHCR wishes to recall that article 1(2) of the 1954 Convention sets out the circumstances in which persons who fall within the "stateless person" definition are nevertheless excluded from the protection of this legal instrument. The third alinea provides that the Convention shall not apply to persons with respect to whom there are serious reasons for considering that: (a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes; (b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country; (c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

30. UNHCR notes that under the current statelessness determination mechanism the competence of statelessness determination lies exclusively with the Family Courts.⁴⁴ When ruling on statelessness determination, it is common practice of Family Courts to also verify whether the individual in question should be excluded from protection on the basis of article 1(2) of the 1954 Convention.⁴⁵ When reasons for exclusion are identified during the application for the residence permit at the Aliens Office, cases should be referred back to the Family Courts for reconsideration given their exclusive competence on statelessness determination.

31. Additionally, article 31 of the 1954 Convention allows expulsion of a stateless person lawfully in the territory on grounds of national security or public order. The second and third paragraphs of this article stipulate that the expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law - including the possibility to submit evidence, to appeal the decision and to be represented -, and that such a stateless person shall be granted a reasonable period within which to seek legal admission into another country.

VI. Withdrawal or cancellation (art. 4, §8 Draft Law)

32. UNHCR wishes to share some concerns about the wording of the last paragraph of the proposed Draft Law, where it is stated that the residence permit can be withdrawn or cancelled when the individual acquired the "*statut d'apatride*" as a result of fraudulent conduct, through false information, the commission of forgery and/or the use of false or falsified documents.

33. In the explanatory memorandum a distinction is implicitly made between the "*qualité d'apatride*", which is determined by the Family Courts and the "*statut d'apatride*", which would be granted by the Aliens Office following the Draft Law. It is indeed important to make the distinction between determining the eligibility for recognition as a stateless person under article 1(1) of the 1954 Convention, which is

⁴³ Under the current proposal the application for family reunification must be filed within one year counting from the court decision recognising the individual as stateless to benefit from the facilitated regime. A stateless person would however subsequently still be required to obtain a residence permit by the Aliens Office, before family reunification could be envisaged. As this procedure for a residence permit at the Aliens Office can take up to six months (see art. 4 §2 Draft Law), the period during which stateless persons can benefit from this regime of facilitated family reunification will be significantly reduced.

⁴⁴ Art. 572bis of the Judicial Code of Belgium, available here:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1967101003&table_name=loi

⁴⁵ See inter alia Belgium, Court of Cassation, 22 January 2009, No. C.06.0427.F, available at <http://www.unhcr.org/refworld/docid/4a26475f2.html> (in French) and http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20090122-11 (in Dutch).

the responsibility of the Family Courts in Belgium, and the treatment received after such recognition, which involves a decision taken by the Aliens Office under the current legislation as well as under the proposed Draft Law.

34. In light of this distinction and the division of competences between the Family Courts and the Aliens Office, UNHCR advises that the Aliens Office should only be competent to withdraw or cancel the residence permit granted (the “*statut d’apatride*”) in case it finds that this residence permit was obtained fraudulently while not being able to modify the determination on the eligibility for recognition as stateless person under article 1(1) of the 1954 Convention (the “*qualité d’apatride*”). In case any fraudulent behaviour would have led to an incorrect determination of eligibility for the recognition as stateless person under article 1(1) of the 1954 Convention (the “*qualité d’apatride*”), the competence to establish this lies exclusively with the Family Courts.⁴⁶

UNHCR therefore recommends clarifying that the residence permit can be withdrawn or cancelled when the individual acquired the “statut d’apatride au sens du Titre II, Chapitre IX de la loi du 15 décembre 1980” as a result of fraudulent conduct, through false information, the commission of forgery and/or the use of false or falsified documents.

35. Moreover, in light of the abovementioned similarity between the legal situation of stateless persons and refugees, it would be appropriate to provide for **procedural safeguards** equivalent to those applicable to the withdrawal or cancellation of residence permits of refugees.

VII. Design and location of the mechanism to determine statelessness

36. UNHCR supports the Draft Law as it aims to provide a legal status for stateless persons and those awaiting a decision on their application for a residence permit. This constitutes a positive response to a significant protection gap. UNHCR would however like to take this opportunity to recall its recommendations regarding the establishment of a dedicated mechanism to determine statelessness and formulate some points for attention regarding the overall design of the current statelessness determination mechanism in Belgium.

37. UNHCR on several occasions encouraged Belgium to adopt an accessible, dedicated, fair, and efficient mechanism to determine statelessness that includes the procedural safeguards set out in its Handbook and provides a legal status for stateless persons.⁴⁷ A statelessness determination procedure serves to recognize stateless persons to ensure that they enjoy the rights to which they are entitled under the 1954 Convention until they are able to acquire a nationality.⁴⁸ It therefore comprises two elements: recognition on the one hand and access to rights (including legal residence) on the other.

38. UNHCR recalls that States have broad discretion in the design and operation of statelessness determination procedures.⁴⁹ Procedures should however be as simple, fair and efficient as possible⁵⁰ and decisions should be made and communicated within a reasonable time.⁵¹

39. It is in the interests of all parties that statelessness determination is conducted as expeditiously as possible, subject to reasonable time being available to gather evidence. Several countries have established time limits within which determination authorities are to make a decision on a statelessness

⁴⁶ Art. 572bis of the Belgian Judicial Code.

⁴⁷ UNHCR, *Mapping Statelessness*, para. 315, recommendation 6 ; *Mémoire en matière de protection des réfugiés, des bénéficiaires de la protection subsidiaire et des apatrides en Belgique* (see above note 9), p. 46, recommendation 18; *Good Practice Paper*, p.3.

⁴⁸ UNHCR, *Good Practice Paper*, p. 2.

⁴⁹ UNHCR, *Handbook*, para. 62.

⁵⁰ UNHCR, *Handbook*, para. 64.

⁵¹ UNHCR, *Handbook*, para. 71.

application. In applications where the immediately available evidence is clear and the statelessness claim is manifestly well-founded, fair and efficient procedures may only require a few months to reach a final determination.⁵² As a general consideration, it is undesirable for a first instance decision to be issued more than six months from the submission of an application as this prolongs the period spent by an applicant in an insecure position.⁵³

40. UNHCR suggests to provide for an assessment of whether final decisions, i.e. the combination of statelessness determination by the Civil Courts and processing of the subsequent request for a residence permit by the Aliens Office, are made within a reasonable time. UNHCR noted in 2012 that the duration of the procedure for statelessness determination at the Civil Courts varied depending on the tribunal, but generally seemed to be lengthy, in some instances two to four years.⁵⁴

41. UNHCR also suggests that it should be assessed whether the combination of statelessness determination by the Family Courts and processing of the subsequent request for a residence permit by the Aliens Office, is efficient.

42. The distinction between these two processes is particularly important when an individual might be able to acquire or re-acquire a nationality. When determining eligibility for recognition as stateless under Article 1(1) of the 1954 Convention, the question to be answered is whether, at the point of making that determination, an individual is a national of the country or countries in question. It is neither a historic nor a predictive exercise⁵⁵. The Belgian Court of Cassation has also held that it is not necessary for the applicant to prove that he or she could not acquire another nationality in order to be recognized as stateless⁵⁶ or that that he or she had not undertaken steps to regain a nationality they had lost, even if they had voluntarily renounced it⁵⁷. The question of an individual's ability to acquire or re-acquire a nationality may however have an impact on the status to be granted after awarded on recognition (this issue is explored in §18)⁵⁸.

43. UNHCR recalls that the 2014 Belgian Federal Government agreement provided that the new procedure it intended to introduce would be evaluated one year after its entry into force and adjusted if necessary.⁵⁹

UNHCR therefore recommends to provide for an evaluation of the combined mechanism of statelessness determination by the Civil Courts and processing of the subsequent request for a residence permit by the Aliens Office, to assess whether this mechanism is fair, efficient and whether decisions are made within a reasonable time.

⁵² UNHCR, *Handbook*, para 74.

⁵³ However, in exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months to provide time for enquiries regarding the individual's nationality status to be pursued with another State, where it is likely that a substantive response will be forthcoming in that period. UNHCR, *Handbook*, para. 75.

⁵⁴ UNHCR, *Mapping Statelessness in Belgium*, para. 311.

⁵⁵ UNHCR, *Handbook*, para. 50

⁵⁶ Belgium, Court of Cassation, 27 September 2007, No. C06.0390.N, available at: http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20070927-1 (in French) and http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20070927-1 (in Dutch)

⁵⁷ Belgium, Court of Cassation, 6 June 2008, No. C.07.0385.F, available at: https://www.refworld.org/cases/BEL_CDC.499154412.html (in French) and http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=N-20080606-4 (in Dutch)

⁵⁸ Some decisions have come to UNHCR's attention where the distinction between determining the statelessness and determining the status after such recognition is not sufficiently clear with a risk of overlap. For example, Belgium, CALL, nr. 168 770, 31 May 2016, available at: <http://www.rvv-cce.be/sites/default/files/arr/A168770.AN.pdf> (in French); Belgium, Aliens Office, 24 November 2010, see: Belgium, CALL, nr. 83 615, 25 June 2012, available at: <http://www.rvv-cce.be/sites/default/files/arr/A83615.AN.pdf> (in Dutch); Belgium, CALL, nr. 71 157, 30 November 2011, available at: <http://www.rvv-cce.be/sites/default/files/arr/A71157.AN.pdf> (in Dutch) and Belgium, CALL, nr. 100 271, 29 March 2013, available at: <http://www.rvv-cce.be/sites/default/files/arr/A100271.AN.pdf> (in Dutch)

⁵⁹ Belgium, *Accord de Gouvernement/Regeringsakkoord*, 9 Oktober 2014 (see above, note 12), p. 154.

VIII. Conclusion and recommendations

44. UNHCR welcomes that the Draft Law plans to remedy a major protection gap by introducing a lawful residence for individuals determined to be stateless. This would implement the commitments in consecutive Belgian Federal Government agreements of March 2008⁶⁰, December 2011⁶¹, and October 2014⁶². It is hoped that Belgium will be in a position to showcase achievements in this field at the global High-Level Segment on to be held on 7 October 2019.

45. The draft law may however be further improved along the following recommendations:

- 1) Replacing the phrase “state with which he has durable ties” with “country of previous habitual residence to which immediate return is possible”;
- 2) Stipulating that the status in the country to which return is envisaged has to be accompanied by a full range of civil, economic, social and cultural rights, and that there should be a reasonable prospect of obtaining the nationality of that State ;
- 3) Issuing a temporary residence permit to applicants for statelessness determination during the entire determination procedure, starting with the introduction of a request for statelessness determination at the Family Courts, and granting them the same standards of treatment as asylum-seekers ;
- 4) Clarifying that the residence permit can be withdrawn or cancelled when the individual acquired the “statut d’apatride au sens du Titre II, Chapitre IX de la loi du 15 décembre 1980” as a result of fraudulent conduct, through false information, the commission of forgery and/or the use of false or falsified documents ; and
- 5) Providing for an evaluation of the combined mechanism of statelessness determination by the Civil Courts and processing of the subsequent request for a residence permit by the Aliens Office, to assess whether this mechanism is fair, efficient and whether decisions are made within a reasonable time.

46. UNHCR stands ready to further pursue the dialogue with all stakeholders at later stages of the legislative process.

UNHCR Regional Representation for Western Europe
8 March 2019

⁶⁰ Belgium, *Accord de Gouvernement/Regeringsakkoord*, 18 March 2008 (see above note 13) p. 35.

⁶¹ Belgium, *Governmental Agreement*, 1 December 2011 (see above note 14), in French p. 134, in Dutch p. 135.

⁶² Belgium, *Accord de Gouvernement/Regeringsakkoord*, 9 October 2014, p. 154.