

**Childhood Statelessness Prevention in the Migratory  
Context:  
The Experience of Syrian Asylum Seekers in Belgium**

*By Justine Raymond*

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# Preventing Childhood Statelessness in the Migratory Context: Experience of Syrian Asylum Seekers in Belgium

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## **Author biography**

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## **Key words**

migration – statelessness – children – Belgium – Syria

## **Abstract**

In 2014, UNHCR started a campaign to end statelessness worldwide by 2024. At the same time, important migratory inflows have been experienced in Europe as a result of the ongoing conflict in Syria, among others. In light of those events, this research aims at identifying how Belgian laws and their implementation effectively prevent statelessness among children of asylum seekers from Syria who are born in Belgium. It identifies stateless persons and those at risk of statelessness in the Syrian context. This paper then assesses how Belgian legislation on statelessness prevention at birth is applied to children of asylum seekers, depending on the parents' legal status, as registered asylum seekers, recognized refugees, beneficiaries of subsidiary protection, recognised stateless persons, or irregular migrants. Moreover, it further identifies practical obstacles to acquisition of Syrian or Belgian nationality and monitors municipalities' implementation of the legislation on statelessness prevention at birth. This paper concludes that despite strong existing safeguards against statelessness at birth in the Belgian legislation, in practice the proper application of those safeguards is impaired by administrative obstacles or the lack of expertise of civil servants who apply the law, which still leaves some asylum seekers' children born in Belgium at risk of statelessness.



## 1. Introduction

In light of the current conflict in the Syrian Arab Republic (Syria)<sup>1</sup>, European Union Member States have had to deal with high inflows of asylum seekers<sup>2</sup> reaching their territories. The situation is being portrayed as a crisis in the media. However, the crisis discussed in this article is of another nature: it is a statelessness crisis. To mark the 60th anniversary of the 1954 Convention relating to the Status of Stateless Persons, the Office of the United Nations High Commissioner for Refugees (UNHCR) launched in 2014 an international campaign to end statelessness worldwide by 2024.<sup>3</sup> However, the current conflict in Syria and the consequent migration flows put Syrians fleeing their country at greater risk of becoming stateless.<sup>4</sup> Children born in this context are especially at risk. In line with the aim of UNHCR campaign, this research tries to identify both current legal safeguards against statelessness at birth for the population fleeing Syria present in Belgium as well as obstacles in practice to the acquisition of a nationality.

This paper uses Belgium as a case study. As highlighted by the recent report on statelessness from UNHCR, Belgium has important safeguards against statelessness in its legislation, and is mostly in line with the 1961 Convention on the Prevention and Reduction of Statelessness, which it ratified on July 1, 2014.<sup>5</sup> Belgium can therefore serve as an example for current systems of prevention of statelessness in the migratory context and can help further improve national laws in other European countries in order to end statelessness. Ensuring each child can acquire a nationality is an obligation laid down in different international human rights instruments to which Belgium is party. This research is significant as in 2015 only, there were 334 children born in Belgium to mothers of Syrian nationality, amongst which 61 were registered asylum-seekers.<sup>6</sup> As will be further explained, these children could be at risk of becoming stateless if filiation with the father cannot be established due to Syria's gender discriminatory nationality law, preventing Syrian women from passing along their nationality to their children. This article therefore aims to answer the following research question: *how do Belgian laws and their implementation effectively prevent statelessness among children of asylum seekers from Syria who are born in Belgium?*

This research focuses on the *prevention* of statelessness at birth in the migratory context. The main causes of childhood statelessness identified in the literature that are relevant for the sample population in this research are: the inheritance of statelessness by new-borns from their parents, gaps in and conflicts between nationality laws, and administrative barriers and lack of documentation proving links to a nationality.<sup>7</sup> These causes find their sources both in law and in practice, which justifies that both aspects are researched to have an accurate picture of statelessness prevention in the country. This dual inquiry is also prescribed by the definition of a stateless person in the 1954

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<sup>1</sup> The simplified term of Syria is used throughout this paper to refer to the Syrian Arab Republic.

<sup>2</sup> The terminology of asylum seeker will be used to refer to persons fleeing their country regardless of their status. The terminology of registered asylum seeker will then be used for asylum seekers in the asylum procedure who have submitted an asylum application before the relevant authorities and are awaiting a final decision on their status.

<sup>3</sup> <http://www.unhcr.org/ibelong/>

<sup>4</sup> See in this regard: Norwegian Refugee Council & Institute on Statelessness and Inclusion (NRC/ISI), *Understanding statelessness in the Syria Refugee context*, 2016, <http://www.refworld.org/docid/584021494.html>

<sup>5</sup> United Nations High Commissioner for Refugees (UNHCR), *Mapping Statelessness in Belgium - Summary Report*, October 2012, <http://www.refworld.org/docid/5100f3412.html>.

<sup>6</sup> Foreign Public Service Economie - Direction Générale Statistique - Statistics Belgium, *naissances vivantes enregistrées en Belgique en 2015 dont les mères étaient de nationalité syrienne*, unpublished.

<sup>7</sup> Institute on statelessness and inclusion, *Addressing the Right to a Nationality through the Convention on the Rights of the Child, A Toolkit for Civil Society*, (2016), <http://www.statelessnessandhumanrights.org/tools/toolkit-downloads>; Z. Albarazi and L. van Waas, *Statelessness and displacement: scoping paper*, (2016), <https://www.nrc.no/resources/reports/statelessness-and-displacement/>.

Convention on the Status of Stateless Persons as it refers to the term ‘operation’ of the law of the countries to assess whether or not a person is stateless.

Literature relating to statelessness has so far paid too little attention to the application in practice of legal safeguards against statelessness at birth. The European Network on Statelessness, a non-governmental organization based in the United Kingdom, has recently commissioned a number of researches on childhood statelessness in several European states. Those existing case studies have focused on nations who experience ‘internal statelessness’, resulting from dissolution of states or discriminatory practice, as experienced by the largest stateless community in Europe, the Roma.<sup>8</sup> Moreover, although existing literature recognises the link between migration and statelessness,<sup>9</sup> no research has yet been entirely dedicated to statelessness prevention among vulnerable migrant populations in Europe. This case study is therefore an addition to existing research as it not only looks at the implementation of the legislation on statelessness prevention at birth in a country with no known issue with statelessness, but also investigates how the implementation can prove difficult with regard to children of a particularly vulnerable group in the migratory context, namely asylum seekers. In order to grasp the current implementation of the legal safeguards against statelessness at birth, this research submitted semi-structured questionnaires to municipalities, due to their responsibility for the registration of births and nationalities of people currently in Belgium.

This paper first provides in section 2 an analysis of the Syrian context and of the application of the Syrian Nationality Law in order to identify currently stateless persons in Syria and Syrians at risk of statelessness in the migratory context. Section 3 reviews the different possible legal statuses of asylum seekers from Syria present in Belgium, as the national laws apply differently to individuals depending on their legal status. In section 4, the relevant Belgian laws and specific clauses applicable to statelessness prevention are presented in light of each legal status that an asylum seeker could hold. Technical obstacles to acquisition of Syrian or Belgian nationality are then assessed in Section 5. Finally, section 6 presents the results of a field research on the implementation and application of those laws by Belgian municipalities in which Syrians and asylum seekers reside. The outcome of the research showed that in practice proper application of the existing legal safeguards against stateless at birth is impaired by administrative obstacles or lack of expertise of civil servants who implement the law, which still leaves asylum seekers' children at risk of statelessness.

## 2. Syria: Identifying Stateless Persons and Persons at Risk of Statelessness

This section seeks to identify both stateless persons and persons *at risk of statelessness* in the Syrian context. A stateless person is “a person who is not considered as a national by any State under the operation of its law”.<sup>10</sup> This definition is found in Article 1 of the Convention relating to the Status of Stateless Persons of 1954 and is now considered as being accepted as customary law.<sup>11</sup> The second

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<sup>8</sup> European Network on Statelessness (ENS), ‘Ending Childhood Statelessness: A study on Albania’, Working Paper 06/15 (2015); ENS, ‘Ending Childhood Statelessness: A study on Estonia’, Working Paper 04/15 (2015); ENS, ‘Ending Childhood Statelessness: A study on Italy’, Working Paper 07/15 (2015); ENS ‘Ending Childhood Statelessness: A study on Latvia’, Working Paper 07/15 (2015); ENS, ‘Ending Childhood Statelessness: A study on Macedonia’, Working Paper 02/15 (2015); ENS, ‘Ending Childhood Statelessness: A study on Poland’, Working Paper 03/15 (2015); ENS, ‘Ending Childhood Statelessness: A study on Romania’, Working Paper 01/15 (2015); ENS, ‘Ending Childhood Statelessness: A study on Slovenia’, Working Paper 08/15 (2015).

<sup>9</sup> L. van Waas, ‘Addressing the “new” causes of statelessness’, in L. van Waas (ed.), *Nationality Matters Statelessness under International Law* (Intersentia, 2008), p.151; Z. Albarazi and L. van Waas, *Statelessness and displacement*, 2016, p. 23.

<sup>10</sup> United Nations General Assembly (UNGA), *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, <http://www.refworld.org/docid/3ae6b3840.html>.

<sup>11</sup> United Nations (UN), *draft Articles on Diplomatic Protection with commentaries*, 2006, <http://www.refworld.org/docid/525e7929d.html>.

category of persons is not yet considered as stateless but is at risk of becoming stateless due to difficulties in securing the necessary evidence that they fulfil the nationality law criteria to acquire a nationality.<sup>12</sup>

The first part of this section aims at identifying groups currently stateless in Syria. As highlighted above, one of the causes of statelessness at birth is the inheritance from their parents. It is therefore important to identify stateless groups among the population fleeing Syria, who are likely to be found among the asylum seekers in Belgium, as their children born in Belgium will be at risk of statelessness. Despite the likely statelessness of their children born prior in their country of origin, this research focuses on prevention and not reduction and will therefore not address their situation. As another source of statelessness is the existence of gaps and conflicts between nationality laws, the second section analyses the Syrian Nationality Law (SNL) in order to identify gaps in acquisition of nationality when the birth occurs abroad, which might put children at risk of statelessness or render them stateless. The major problem identified in this regard is gender discrimination in Syrian Nationality Law.

### 2.1. *Stateless Persons in Syria*

Syria has a high level of stateless persons living in the country. UNHCR officially reported 160,000 stateless persons living in Syria as of 2015.<sup>13</sup> The number has decreased by around half compared to statistics of 2010 according to UNHCR database in which 300,000 stateless persons were accounted for.<sup>14</sup> Moreover, the statistics of UNHCR exclude Palestinian refugees, also stateless, who reside in areas of operations of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA).<sup>15</sup> Despite the Syrian Nationality Law providing for the acquisition of Syrian nationality for children born in Syria to unknown parents, parents of unknown/no nationality and to any child unable “to acquire a foreign nationality by virtue of his parentage”,<sup>16</sup> in practice this provision is not systematically implemented.<sup>17</sup> This issue is best illustrated with two communities within Syria, the Kurds and Palestinians.

#### 2.1.1. *Stateless Kurds*

The stateless status of most of the Kurdish population has historical roots. When Syria declared itself an Arab Republic in 1973, the constitution adopted emphasised the Arab ethnic nature of the Nation and thus Kurdish ethnicity was therefore not in line with the Arabisation of the country.<sup>18</sup> The current stateless status of many Kurds has its origins in the 1962 census in the al-Hasakah region where most Kurds live. The census was originally organised to identify Kurds illegally entering from Turkey.<sup>19</sup> The census differentiated three categories of people: Syrian Nationals, who could prove they held residence prior to 1945; *Ajnabi*,<sup>20</sup> those who were unable to confirm such a residence; and

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<sup>12</sup> United Nations High Commissioner for Refugees (UNHCR), *Self-Study Module on Statelessness*, October 2012, <http://www.refworld.org/docid/50b899602.html>, p.8.

<sup>13</sup> See UNHCR population statistics database, [http://popstats.unhcr.org/en/time\\_series](http://popstats.unhcr.org/en/time_series).

<sup>14</sup> UNHCR, *Statistical Online Population Database*, [www.unhcr.org/statistics/populationdatabase](http://www.unhcr.org/statistics/populationdatabase); UNHCR, *Self-study*, (2012), p. 8.

<sup>15</sup> UNHCR, *Statistical Online Population Database: Sources, Methods and Data Considerations* (2013), <http://www.unhcr.org/45c06c662.html>.

<sup>16</sup> Syrian Arab Republic, *Legislative Decree 276 - Nationality Law*, 24 November 1969, <http://www.refworld.org/docid/4d81e7b12.html> [Syrian Nationality Law - [SNL]] Articles 3C, 3D.

<sup>17</sup> NRC & ISI, *Understanding statelessness* (2016), p. 17; Z. Albarazi, 'The Stateless Syrians', *Tilburg Law School* (2013), p.7.

<sup>18</sup> Z. Albarazi, *TLS* (2013), p.14.

<sup>19</sup> Human Rights Watch (HRW), *Syria: The Silenced Kurds*, October (1996), <https://www.hrw.org/sites/default/files/reports/SYRIA96.pdf>.

<sup>20</sup> *Ajnabi* – or *Ajanib* - means *foreigners* in Arabic.

*Maktoumeen*,<sup>21</sup> those who did not participate in the census.<sup>22</sup> The conditions of the census were, however, less than optimal to determine the population's status: the census only took place over the course of a single day. Administrative documents were difficult to obtain on short notice, such as proof of residence, which were requested on the spot; decisions to register were arbitrarily made; many residents were illiterate; and many residents did not engage much with the authorities thus were neither informed about the census and its procedure, nor that they could appeal.<sup>23</sup> This led to about 20% of the Kurdish population being rendered stateless at the time.<sup>24</sup> One can also see a deficiency in the implementation of the law as the safeguards provided for under Article 3C SNL that should prevent passing on statelessness to their children are currently inactive and the statuses of *Ajnabi* or *Maktoumeen* became in practice hereditary.<sup>25</sup> Presidential Decree 49 adopted in March 2011 granting Syrian nationality to *Ajnabi* from al-Hasaka partly reversed the trend and can explain the important drop in numbers of stateless individuals in the country.<sup>26</sup> Substantiated testimonies have confirmed the legislation has been put in practice but further details on the implementation and consistent application could not be collected due to the start of the conflict in the country.<sup>27</sup> However, the *Maktoumeen* were still excluded from the decree and therefore statelessness among Syrian Kurds is still important.

### 2.1.2. Stateless Palestinians

Palestinian refugees are another important category of stateless persons in Syria, with about 526,744 registered Palestinian refugees in Syria as of January 1, 2011, prior to the conflict.<sup>28</sup> An estimated 450,000 Palestinian refugees registered with UNRWA in Syria still remain inside the country.<sup>29</sup> Palestinian refugees are prevented by the authorities from acquiring Syrian nationality in order to ensure their right to return to Palestinian territories in the future.<sup>30</sup> Indeed, the right to vote or be naturalised was excluded from the rights granted to Palestinians under Law 206 of 1957.<sup>31</sup>

### 2.2. Persons at Risk of Statelessness Based on Gender Discriminatory Laws

Provisions of the SNL can be identified that put children at risk of statelessness. This Law discriminates against women in passing along their nationality to their child. Indeed, if born within the country, the Syrian mother can only pass along her nationality to her child if the father is unknown.<sup>32</sup> More relevant with regard to Syrian asylum seekers in the migratory context is the fact that if born outside the country, a child can only receive Syrian nationality if he or she is born to a Syrian Arab father.<sup>33</sup> Therefore, a child born to a Syrian mother and for whom filiation with the father cannot be established, regardless of the nationality of the father, would be at risk of statelessness. Indeed, to prevent statelessness, the paternity of the child must be established. Legal documents may need to be presented for the filiation of the child with the father to be established. In the migratory context,

<sup>21</sup> *Maktoumeen* means *hidden* in Arabic.

<sup>22</sup> Z. Albarazi, *TLS* (2013), p. 14.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.* p. 15-16.

<sup>25</sup> *Ibid.* p. 7.

<sup>26</sup> *Ibid.* p. 18.

<sup>27</sup> *Ibid.*

<sup>28</sup> United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Where We Work: Syria*, <http://www.unrwa.org/where-we-work/syria>.

<sup>29</sup> UNRWA, *Syria Crisis*, <http://www.unrwa.org/syria-crisis#Syria-Crisis-and-Palestine-refugees>.

<sup>30</sup> Z. Albarazi, *TLS* (2013), p. 7.

<sup>31</sup> UNGA, *Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, (A/61/13), 2006, <http://www.unrwa.org/resources/reports/report-unrwa-commissioner-general-un-general-assembly-2005>, footnote 2.

<sup>32</sup> Syrian Arab Republic, *SNL*, Article 2B.

<sup>33</sup> Syrian Arab Republic, *SNL*, Article 3A.



it might be difficult for the father to submit such legal documents, preventing the filiation with the child to be established.

Finally, the situation of children of long-term refugees raises questions: Even though they should automatically acquire a nationality based on the Syrian legislation, they might still be at risk of statelessness if they cannot approach their authorities to obtain the necessary identity documents. Children of beneficiaries of subsidiary protection could similarly be affected if the parents deserve refugee status but could not sufficiently substantiate their claim. Finally, governments often use nationality as a weapon against the opposition, stripping persons of their nationality or refusing to grant it to their children.<sup>34</sup>

Based on this analysis of the Syrian context, the following cases where a child born in Belgium to parents from Syria is at risk of statelessness have been identified:

- a child born to stateless parents (including *Maktoumeen* and *Ajnabi* Kurds, as well as Palestinians)
- a child born to a single Syrian or stateless mother
- a child born to a Syrian mother and a stateless father
- a child born to Syrian parents where the filiation with the father is not established
- a child born to Syrian parents who are long-term refugees

Before introducing the applicable legal framework on statelessness prevention at birth in Belgium that would prevent these children from being stateless, the following section presents the different legal statuses an asylum seeker might hold in Belgium, as it can have an impact on the applicable legislation.

### 3. Asylum Seekers' Statuses Under Belgian Law

The Belgian legislation applicable to the prevention of childhood statelessness can differ depending on the legal status of the person in Belgium. Therefore, it is important to see in which category asylum seekers from Syria can belong to in order to analyse the related impact on the risk of statelessness of their child born in Belgium. This article identifies five different statuses a person from Syria might fall under once on Belgian territory. The first is that of registered asylum seeker. Any person who submitted an asylum application at the Immigration Office in Belgium holds the status of registered asylum seeker throughout the whole refugee status determination procedure by the Office of the Commissioner General for Refugees and Stateless Persons (CGRS). At the end of such a process, three scenarios are possible.

In the first case, the person is granted asylum and holds the status of refugee. In the second case, the person is not recognized as a refugee but is nonetheless granted subsidiary protection. These persons are referred to as beneficiaries of subsidiary protection. In the third case, the application is rejected and the person who at this stage stays in Belgium will be considered a migrant in irregular stay. This case is currently unlikely in Belgium as the recognition rate of Syrians as either refugees or beneficiaries of subsidiary protection approaches 100%.<sup>35</sup> Asylum-seekers who reside in Belgium but have not submitted an asylum application in Belgium and have not authorization to stay in the country will also be considered migrants in irregular stay. These could be persons in transit in Belgium, wishing to have their asylum procedure processed in another country, which could be a consequence of the

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<sup>34</sup> Z. Albarazi and L. van Waas, *Statelessness and displacement*, 2016, p. 23.

<sup>35</sup> For 2015, the recognition rate was of 97,64% for Syrians while in July 2016 this recognition rate was still of 97%. See: CGRS, *Statistiques d'Asile: Rapport Mensuel, Décembre 2015*, 7 January 2016, [http://www.cgra.be/sites/default/files/statistiques\\_asile\\_decembre\\_2015\\_0.pdf](http://www.cgra.be/sites/default/files/statistiques_asile_decembre_2015_0.pdf); CGRS, *Statistiques d'Asile: Rapport Mensuel, Juillet 2016*, 18 August 2016, [http://www.cgra.be/sites/default/files/statistiques\\_asile\\_juillet\\_2016\\_fr.pdf](http://www.cgra.be/sites/default/files/statistiques_asile_juillet_2016_fr.pdf).

Dublin system. Indeed, according to the Dublin III Regulation, asylum seekers that registered their application in one country are usually prevented do so in another country and will face return to the first country of application.<sup>36</sup>

Finally, the fifth status an asylum seeker can hold is that of a stateless person. This status can be combined with one of the four statuses mentioned above. As highlighted earlier, a large number of persons in Syria are stateless and it is therefore likely that a proportion of those fleeing the country will be stateless. The CGRS is not competent to recognise a person as stateless but can only issue official documents, such as marriage, death or birth certificates, to an already recognised stateless person.<sup>37</sup> In order for his or her status to be recognised, a stateless person must start a procedure before the Court of First Instance, who is competent to deal with matters of civil status and nationality.<sup>38</sup> The burden of proof is on the applicant. The judge usually only considers the legislation of the country in which the person is born, the country in which he stayed or the country of which his or her parents hold their nationality in order to determine the statelessness of the applicant.<sup>39</sup> Only persons who have been recognised through this procedure hold official status as stateless persons. Proving statelessness is difficult since it is a negative process, as one needs to prove he does *not* hold any nationality. Moreover, the procedure being a legal one, it might take time to obtain the recognition of statelessness in Belgium. Therefore, despite being stateless, some persons will not benefit from the advantages of stateless persons as those are only granted to recognised stateless persons. It is important to note that in Belgium the recognition of statelessness does not provide a right of residence in the country, thus the possibility to combine the status of recognized stateless person as well as a of migrant in irregular stay. The next section considers how Belgian legislation on statelessness prevention for children born in Belgium applies to each of the legal statuses asylum-seekers parents of these children could hold in Belgium.

#### 4. The Belgian Legal Framework on Statelessness Prevention at Birth

This section first presents the Belgian legal framework relevant for statelessness prevention at birth and related jurisprudence. Secondly, it looks at the specific application of Belgian legislation for each of the statuses an asylum seeker could hold in Belgium.

##### 4.1. Legal Framework

Article 10(1) of the Belgian Nationality Code (BNC) provides that a child born in Belgium who would be otherwise stateless at any point of time before he is 18 or emancipated<sup>40</sup> is Belgian.<sup>41</sup> Article 10(4) BNC specifies that such Belgian nationality acquired will only be lost upon acquisition of another nationality before the child is 18 or emancipated.<sup>42</sup> However, Article 10 BNC was amended by Law of 27 December 2006<sup>43</sup> and a new provision, Article 10(2) BNC, was added. The provision reads:

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<sup>36</sup> Regulation 604/2013/EU of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, [2013] OJ L 180/31.

<sup>37</sup> CGRS, *Apatrides*, <http://www.cgra.be/fr/apatrides>.

<sup>38</sup> Service International de Recherche, d'Education et d'Action Sociale (Siéras), *Analyses et études: Quelques principes et questions pratiques sur l'apatridie* (2004), <http://www.sireas.be/publications/analyse09-2004.pdf>.

<sup>39</sup> *Ibid.*

<sup>40</sup> This term refers to a legal mechanism through which a minor is freed from control by their parents or guardians'

<sup>41</sup> Belgium. *Code de la Nationalité Belge* (Belgian Nationality Code [BNC]), 1984, Article 10(1).

<sup>42</sup> Belgium. BNC, Article 10(4).

<sup>43</sup> Belgium, *Loi portant des dispositions diverses (I)*, 27 December 2006, Article 380.

However, paragraph 1 will not be applicable if the child can obtain another nationality by his legal representative or representatives initiating an administrative procedure before the diplomatic or consular authorities of the country of origin of both representatives or one of them.<sup>44</sup>

This addition aimed at avoiding cases of aliens abusing the previous legislation by consciously giving birth in Belgium and not registering their child before the authorities of their country of origin in order for the child to satisfy the statelessness requirement and obtain Belgian nationality.<sup>45</sup> A Ministerial Circular<sup>46</sup> published in May 2007 provides guidance for interpreting the new provisions of the Law of 27 December 2006.<sup>47</sup> The Circular gives interpretive guidance for the application of Article 10(1) and 10(2) BNC to registered asylum seekers, recognised refugees, and persons benefiting of subsidiary protection. Its content and the following implications for those statuses are discussed below.

Only a few judgments dealing with nationality are published online and it is therefore difficult to find jurisprudence in this domain.<sup>48</sup> Although the courts have yet to address specific cases of asylum seekers, three national judgments discussing the granting of nationality based on Article 10 BNC can be found. The most recent judgment was dated October 20, 2015 and interpreted the application of the exclusion clause found in Article 10(2) BNC.<sup>49</sup> The case concerned parents of Brazilian nationality. The child obtained Belgian nationality according to Article 10(1) BNC in order to avoid him becoming stateless as a result of Brazilian law not authorising him to obtain Brazilian nationality. Following a marriage and recognition of the child by a Brazilian father, the municipal authorities changed the nationality of the child and registered him as Brazilian. In court, the representatives of the municipality argued that following the father's recognition of the child, the latter could obtain Brazilian nationality by initiating an administrative procedure, which the municipality representative claimed was falling under the exclusion clause to obtain Belgian nationality found in Article 10(2) BNC. However, the judge interpreted the clause as only applying in order to determine whether the child could obtain Belgian nationality according to Article 10(1) BNC and concluded that it did not apply in order to revoke nationality from a person who had obtained Belgian nationality according to this Article. The argument of the municipality was therefore rejected.

The implications of the judgment are that nationality granted under Article 10(1) can only be lost based on Article 10(4) BNC which guarantees the child has obtained another nationality before being deprived of Belgian nationality. The Court's reasoning can be applied to children of former asylum seekers, whose status has been refused but whose child born in Belgium already obtained Belgian nationality on the basis of Article 10(1) BNC. In such a case, it would mean that the child's Belgian nationality cannot be revoked based on the fact that the parents can be expected to undertake steps to obtain the nationality of origin for his or her child by contacting the authorities of his or her country of origin, as the exception in Article 10(2) BNC provides. Only if the child obtained Syrian or another nationality can his/her Belgian nationality be revoked before he/she child turns 18.

The second judgment was issued by the Constitutional Court.<sup>50</sup> The question before the court was whether the new provision of Article 10(2) BNC was violating the right to acquire a nationality under

<sup>44</sup> Belgium, BNC, Article 10(2), author's translation.

<sup>45</sup> UNHCR, *Mapping statelessness* (2012), p. 96.

<sup>46</sup> See <http://www.vocabulairepolitique.be/circulaire/>.

<sup>47</sup> Belgium, *Circulaire relative aux modifications du Code de la nationalité belge introduites par la loi du 27 décembre 2006 portant des dispositions diverses I*, 25 May 2007.

<sup>48</sup> Information provided by Patrick Wautelet; See also, C. L. Closset, *Traité de la nationalité en droit belge*. (Éditions Larcier, 2015). This reference book on Belgian nationality law does not mention any jurisprudence on Article 10 of the BNC.

<sup>49</sup> Belgium, Court of First Instance, Brussels, 25 October 2015, N°14/3830/A.

<sup>50</sup> Belgium, Constitutional Court, 24 April 2008, N°73/2008.

several human rights treaties and discriminatory. In its ruling, the Constitutional Court judged the differentiated treatment ensuing from the provision to have a reasonable justification in light of the general interest and therefore found the refusal to grant nationality automatically to children concerned by the provision not arbitrary. It further added that Article 10(2) BNC being an exception to the rule, it must therefore be interpreted restrictively, with due regard to the aim of the legislator, to avoid abuses of such provisions.<sup>51</sup> Therefore, the provision shall not apply when it is impossible for the parents to approach the diplomatic or consular authorities of their country of origin.

The third judgment dealing with Article 10 BNC predates the introduction of the exception clause but is nonetheless relevant in situations where Article 10(2) BNC would not apply. The Court of Appeal of Brussels confirmed that the municipality cannot add additional requirements to the granting of Belgian nationality on basis of Article 10(1) BNC that were not envisaged by the legislator.<sup>52</sup> In the present case, the municipality of Saint-Gilles had required a proof of stateless status delivered by the Court in order to grant Belgian nationality to the child. The Court ruled that said proof cannot be requested by the municipality. However, the application of this judgment by other municipalities in practice is unknown. Municipalities are responsible for the application of Article 10(1) and thus for the statelessness assessment, according to this judgment, an official proof of statelessness through the stateless determination procedure cannot be required for the child in order for him or her to be granted Belgian nationality, simplifying the acquisition of Belgian nationality of children who would otherwise be stateless.

Another case not ruled by Belgian national courts but brought before the European Court of Justice (ECJ) also shed light on the implications of Article 10 BNC: The case *Zambrano v. Office National de l'Emploi (ONEm)*.<sup>53</sup> This case is very relevant in the European refugee context as it deals with rights that were granted to parents of a child who had obtained Belgian nationality on the basis of Article 10(1) BNC, whereas the parents' asylum application had been rejected. Despite the fact that the case deals with acquisition of nationality prior to the introduction of the exception clause under Article 10(2) BNC, the judgment is still relevant. In the case at hand, Colombian parents had had two children on Belgian soil who therefore had acquired Belgian nationality on the basis of Article 10 BNC as the parents had not registered them at the Colombian Embassy. The parents had been required to leave the Belgian territory after their asylum application had been rejected. The ECJ held in the judgment that by becoming Belgian citizens the children had also acquired Union citizenship. The actions of the government should not lead to deprivation of the child of "the genuine enjoyment of the substantive rights attached to the status of the citizen of the Union" and therefore prevented the parents from being evicted. Furthermore, the ECJ placed an obligation on the Belgian State to provide them with working and residence permits in order to ensure they would not be forced to leave the territory, which would deprive the child of the rights attached to citizenship of the Union.<sup>54</sup>

The decision in *Zambrano* is relevant in the current refugee situation as the acquisition by the child of Belgian citizenship is being linked to a right of residence and a right to a work permit for his or her parents holding third-country citizenship. The provision under Article 10 BNC therefore more than

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<sup>51</sup> Article 10 aims to avoid cases of statelessness while the new provision introduced ( 10(2) BNC) aims at preventing abuses by parents who wish to use the law for another purpose than avoiding statelessness (eg. Not register the child for him or her to be Belgian and therefore try to obtain a right to stay in Belgium for themselves thanks to their child's Belgian nationality). Therefore, the court did not refer to avoidance of statelessness as an aim of the legislator and therefore a ground for a restrictive interpretation. Rather the restrictive interpretation stems from a general principle of law the new provision being an exception to the rule found in article 10(1) BNC

<sup>52</sup> Belgium, Court of First Instance, Brussels, 13 May 2005, unpublished; Belgium, Court of Appeal, Brussels, 3 April 2009, unpublished.

<sup>53</sup> Case C-34/09 *Gerardo Ruiz Zambrano v. Office national de l'emploi* [2011] ECR I-01177.

<sup>54</sup> *Ibid.*

preventing statelessness could lead the authorities to restrict further the scope of the safeguard against statelessness at birth to prevent it being misused as a mean for parents having a child in Belgium to obtain a right to reside and work in Belgium. In the past years, Belgian nationality has been rarely granted on the basis of Article 10 BNC. In 2011, 2012, 2013, 2014 and 2015 there were respectively 6, 12, 11, 16 and 6 such conferrals of Belgian nationality.<sup>55</sup> With the influx of asylum seekers and the increased risks of statelessness, it is surprising that only six children benefitted from the legal safeguard against statelessness at birth in 2015.

#### 4.2. *Registered Asylum Seekers, Recognised Refugees and Beneficiaries of Subsidiary Protection*

According to the Circular of 25 May 2007, registered asylum seekers, recognised refugees and beneficiaries of subsidiary protection will not be subject to the exception clause found in Article 10(2) BNC. For registered asylum seekers and recognised refugees, this is explained by the very nature of their status, as by seeking refuge from their government, it is not authorized for them to contact the authorities of their country of origin as long as the procedure is ongoing.<sup>56</sup> For those benefitting of subsidiary protection, this can be explained based on the expectations that their government authorities will not be functional. However, for formerly registered asylum seekers whose application have been rejected, they will not be exempted from the administrative steps to have his/her child recognised by the representative authorities of his or her country, unless the time limit to be registered at the embassy has been exceeded, in which case the child will be granted Belgian nationality.<sup>57</sup>

However, as specified earlier, the circular does not have legal value. Nonetheless, the Constitutional Court considered its content in a case before it on whether the new provision was discriminatory based on the aim and purpose of the legislator. The Court noted that Article 10(2) BNC should have a restrictive interpretation.<sup>58</sup> It also recalled the exception for refugee and asylum seekers. It therefore seems that the Court's view is in line with the interpretation of the law found in the Circular. Accordingly, the exception to the acquisition of Belgian nationality for otherwise stateless persons provided for under Article 10(2) BNC will neither apply to registered asylum seekers nor to recognised refugees or beneficiaries of subsidiary protection. Thus, their stateless children born in Belgium should in theory be able to acquire Belgian nationality, as long as they do not acquire another nationality before they turn 18 or are emancipated, in which case they would lose Belgian nationality, as specified by Article 10(4) BNC.<sup>59</sup>

#### 4.3. *Stateless Persons*

Currently, there is no explicit mention in Article 10 BNC that a child of stateless parents automatically acquires Belgian citizenship if they are born in the country. UNHCR recommended the introduction in the BNC of an explicit statement that the exception of Article 10(2) BNC would not apply to recognised stateless parents,<sup>60</sup> but the recommendation was dismissed by Belgian legislators. However, despite the lack of explicit mention, children of recognised stateless persons born on Belgian territory should, as they would otherwise be stateless, be granted Belgian nationality.

#### 4.4. *Migrants in Irregular Stay*

There is no obligation of legal stay in Belgium in order for Article 10(1) BNC to apply.<sup>61</sup> However—as opposed to asylum seekers and refugees—migrants staying irregularly in Belgium are not exempted

<sup>55</sup> Myria, *La migration en chiffres et en droits*, (2016), [http://www.myria.be/files/MIGRA16\\_FR\\_AS.pdf](http://www.myria.be/files/MIGRA16_FR_AS.pdf), p. 64.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Belgium, Constitutional Court, 24 April 2008, N°73/2008.

<sup>59</sup> Belgium, BNC, Article 10(4).

<sup>60</sup> UNHCR, *Mapping statelessness* (2012), p. 123.

<sup>61</sup> Objectif, *Attribution de la nationalité belge aux apatrides nés en Belgique (Article 10)*, <http://www.allrights.be/attribution-de-la-nationalite-belge-aux-apatrides-nes-en-belgique-art10>.

from the exception under Article 10(2) BNC. They will therefore need to prove they initiated steps to see their child acquire the nationality of either of their countries of origin and that the granting was refused by the representative authorities in order for the child to be granted Belgian nationality.

## 5. Acquisition of a Nationality in Practice: Administrative Procedures and Obstacles

### 5.1. Acquisition of Syrian Nationality

In order for a child entitled to Syrian nationality to be registered as a Syrian national, certain conditions apply. According to the Syrian Personal Status Law, the registration of the birth occurring abroad must be conducted under the jurisdiction of the foreign country, in this case Belgium.<sup>62</sup> Therefore, a precondition for obtaining Syrian nationality is the registration of the birth according to Belgian legislation. The birth registration procedure in Belgium is explained below in the section on acquisition of Belgian nationality. Following the registration of the birth at the municipality, the birth must be registered at the Syrian embassy or consulate. Due to their status, asylum seekers and recognized refugees are already prevented from doing so. No information is available from the Syrian Embassy in Belgium on birth registration. Information was retrieved from the website of the Syrian Embassy in Australia. However, it can be assumed that similar conditions apply regardless of which embassy the child is declared at abroad. Some of the information found is also corroborated by a document from the Immigration and Refugee Board of Canada.

To register the birth of the child, the following documents must be submitted:

A proof that the parents' marriage has been registered in Syria (family record, marriage statement, family document legalised by the Ministry of Foreign Affairs in Syria); A copy of the original birth certificate translated to Arabic and legalised by the office of the Department of Foreign Affairs and Trade in the state (AU\$ 9.00); filling out the Arabic birth certificate exclusively by the parents; the father's passport; the child's name in Arabic and the place and date of the father's civil record written on a separate paper; [...] the consular application form for both parents [completed] and [...] two personal photos (AU\$ 9.00) [...].<sup>63</sup>

A fee (15\$ in Australia) must also be paid for the registration of the birth.<sup>64</sup> At least in Australia, fines also apply if the birth is not registered within a certain time limit. If the birth is registered later than 2 months and before the end of the first year. Between 1 year and 14 years following the birth, a higher fine must be paid (242\$ in Australia) while after this period, the birth will only be registered by decision of a committee "in the concerned Syrian Governate".<sup>65</sup>

The information provided by an official at the Syrian Embassy in Washington, DC to the Immigration and Refugee Board of Canada corroborates certain requirements, as it cites the following documents: the marriage certificate or a copy proving the marriage is officially registered in Syria, proof of Syrian citizenship of the father (such as passport or ID), the birth certificate, and the birth registration form (only available in Arabic). However, there were no time limit nor costs associated with birth registration at the time the information was collected by Canadian authorities.<sup>66</sup>

<sup>62</sup> Z. Albarazi and L. van Waas, *Statelessness and displacement*, 2016, p. 23.

<sup>63</sup> The Syrian Honorary Consulate in Australia, *birth registration*, (2015), <http://www.syrianembassy.org.au/en/services/consulate-services/115-birth-registration>.

<sup>64</sup> *ibid.*

<sup>65</sup> *ibid.*

<sup>66</sup> Immigration and Refugee Board of Canada, *Current information on the procedures for registering babies of nationals living abroad and on whether the passports of both parents are required*, [SYR23213.E], 28 February 1996, [http://www.ecoi.net/local\\_link/196153/300116\\_en.html](http://www.ecoi.net/local_link/196153/300116_en.html).

Besides the costs associated with the registration of the birth, the documents cited in those two sources are the same. Therefore, it seems marriage is a precondition to the registration of the birth. Young couples whose marriage has not been legalised could therefore be prevented from registering the birth of their child. Moreover, the UN Committee on the Right of the Child reported—in its concluding observations on Syria in 2012—issues with birth registration in the case of a marriage between a Muslim and non-Muslim or children born out of wedlock.<sup>67</sup> Moreover, despite the law providing for the automatic acquisition of Syrian nationality, it seems that the registration of the birth is nonetheless still a prerequisite for acquiring Syrian nationality if born abroad. Furthermore, the discretionary powers by a committee to register the birth of a child once the latter is 14 years old or older might put currently recognized refugee children at risk of statelessness in the long term, due to lacking birth registration and thus proof of paternal link. This could be used as a tool against the opposition to prevent children from obtaining Syrian nationality.

### 5.1.1. Ensuring Paternal Filiation on the Birth Certificate

Ensuring filiation with the father is important to prevent statelessness as SNL discriminates against women in passing along their nationality if the child is born abroad. The birth certificate only mentions the name of the mother. The filiation with the mother is not problematic as it is automatically presumed to be the person designated as such on the birth certificate.<sup>68</sup> The filiation with the father however is established at the municipality where the birth occurred through recognition. Recognition of the child by the father can be done before the birth of the child, during the declaration of birth, or after the declaration of birth.<sup>69</sup> In the latter case, a court judgment will be necessary to establish the filiation.

Establishing the filiation with the father is much easier if the parents are married. The child born during the marriage has, as the father, the husband.<sup>70</sup> However, the documents presented, such as a marriage certificate, must be legalised in the country of origin even though exceptions apply while a country's internal situation makes such steps difficult, such as in the case of war.<sup>71</sup> Currently, the site of the Federal Public Service (FPS) Foreign Affairs of Belgium still gives four possibilities to legalise a document from the Syrian Republic: legalisation by the Foreign Affairs Ministry in Syria, legalisation by the Syrian Embassy in Beirut, legalisation by the Lebanese Foreign Affairs Ministry in Beirut or legalisation by the Belgian Embassy in Beirut.<sup>72</sup> None of those possible sites are located in Belgium and therefore the legalisation seems quite difficult to undertake to legitimise the marriage certificate. If the marriage cannot be proven due to lack of legalisation of the marriage certificate, the procedure to follow is the one applying to unmarried couples.

If the parents are not married, the procedure for the father's recognition of the child is in accordance with the law of the state of which the father has the nationality when the recognition of the child takes place.<sup>73</sup> The head of the Liège Department however mentioned a recent judgment that

<sup>67</sup> UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations : Syrian Arab Republic*, 9 February 2012, CRC/C/SYR/CO/3-4, para. 43, <http://www.refworld.org/docid/5305e86f4.html>.

<sup>68</sup> Belgium. *Code Civil - Titre Préliminaire et Livre 1: des personnes* (Civil Code), 1804, Article 312.

<sup>69</sup> Belgian Federal Public Service, *Reconnaissance d'un enfant*, 2017, <https://www.belgium.be/fr/famille/enfants/naissance/reconnaissance>.

<sup>70</sup> Ibid. Article 315.

<sup>71</sup> Federal Public Service Foreign Affairs, *Questions and answers about the legalization of documents* (2012), [http://diplomatie.belgium.be/fr/Services/Legalisation\\_de\\_documents/fag/#5](http://diplomatie.belgium.be/fr/Services/Legalisation_de_documents/fag/#5).

<sup>72</sup> Ibid.

<sup>73</sup> Belgium, *Loi portant le Code de Droit International Privé* (Law on the Code of Private International Law), 2004, Article 62.

confirmed that the recognition of the child by the father by declaration was authorised by Syrian law.<sup>74</sup> Corroborating evidence was found.<sup>75</sup> Since, the Department has allowed the father to be mentioned on the birth certificate following such declaration, therefore preventing the lack of legalisation of the marriage certificate to be an obstacle.<sup>76</sup> However, despite this acknowledgement that Syrian law authorises such recognition, other verifications must still be fulfilled in order for the paternal recognition of the child to be authorised by the civil servant. The latter must verify that the mother is not married to another person and in some cases a judgment will still be necessary to allow for the father's recognition of the child.<sup>77</sup> Legal support will then likely be necessary for the father to navigate through the judicial procedure.

If the father is a recognised refugee, however, the recognition of the paternity of the child will be in accordance with Belgian legislation.<sup>78</sup> The paternity of the father can therefore more easily be established than if the Syrian legislation had to be applied. Once the filiation is established, the recognition certificate will be mentioned in the birth certificate.<sup>79</sup> This judgement is therefore significant in the longer term as, upon return to Syria, the necessary proof to ensure the child's access to Syrian nationality will be secured.

## 5.2. Acquisition of Belgian Nationality

The first condition to acquire Belgian nationality based on the safeguard against statelessness at birth is to be born on Belgian territory. Though acquisition of Belgian nationality on the basis of Article 10 BNC is automatic, it still must be proven that the child fulfils the conditions to obtain Belgian nationality on the basis of this Article. Namely, that the child is born on Belgian territory and that he or she will be stateless if he or she is not granted Belgian nationality. The first part of this section therefore looks into the birth registration process in Belgium, while the second part examines the effective proof of acquisition of Belgian nationality, namely the registration of the child as Belgian in the population register. Indeed, the nationality of an individual is not mentioned on the birth certificate yet is in the registers. Such registers will therefore be the material proof that Belgian nationality has been granted to the child. Yet, as discussed later, the division of competences for registering different population groups makes such registration difficult to trace in practice.

### 5.2.1. Birth Registration

The birth certificate is an important document to ensure children's acquisition of nationality. The document is an official source of information on the place of birth of the child and the filiation with the parents. Such information is essential to prove the right of the child to obtain his or her nationality, as nationality is transferred *jus soli* (through the soil) and/or *jus sanguinis* (through blood).

The declaration of birth to the municipality is mandatory and must be done within 15 days of the date the birth occurred.<sup>80</sup> Declaration is necessary in order to establish a birth certificate that will be saved in the birth register and can be retrieved at any time. Before the birth is declared, the hospital, doctor, sage-femme, gynaecologist, or witnesses if none of the previous were present, must give notice of the

<sup>74</sup> Information by Sandrine Cremer; Belgium, Court of First Instance, Liège, 11 December 2015, RG 15/399/A, unpublished.

<sup>75</sup> 'A man who declares a child to be his will establish filiation with that child unless it is proved that he is not the father. If an unmarried couple engage in sexual relations then paternity is established if the child is born at least six months and a maximum of 1 year afterwards.', Reunites, *Islamic Information Resource: Syria*, (2005), <http://www.reunite.org/edit/files/Islamic%20Resource/Syria%20Text.pdf>, p. 3.

<sup>76</sup> Information by Sandrine Cremer.

<sup>77</sup> Information by Vanessa Noriega, head of the Birth and Nationality Department of the city of Liège, communication via telephone on August 2, 2016.

<sup>78</sup> CGRS, *You are recognised as a refugee in Belgium - Your rights and obligations* (2016), [http://www.cgra.be/sites/default/files/brochures/2016-06-30\\_brochure\\_recognised-refugee\\_eng\\_0.pdf](http://www.cgra.be/sites/default/files/brochures/2016-06-30_brochure_recognised-refugee_eng_0.pdf), p. 9.

<sup>79</sup> Belgium, *Civil Code*, Article 62(2).

<sup>80</sup> Belgium, *Civil Code*, Article 55.



birth to the municipality at the latest one working day after the birth occurred.<sup>81</sup> As Syrian legislation does not recognise a child's existence before he or she is born, the presence of both parents can as well be required during the birth declaration to establish the filiation. A certificate of marriage, a family record book or a certificate of celibacy will be asked in order to verify the matrimonial situation, as the presumption of filiation differs depending on whether the couple is married or not. A justification of residence will also be required if the parents are not registered in the national register. A certificate of custom (*'certificat de coutume'*), a document recalling the law of a country in a certain field, can be asked in order to establish the name of the child with respect to Syrian Law or to establish the mode of establishment of the filiation.<sup>82</sup> The child is then registered in the population register and parents receive a convocation to retrieve the identity documents of the child.<sup>83</sup>

The procedure for birth registration in Belgium is in theory accessible to all. Any person can declare the birth of a child. With regard to recognised stateless persons, registered asylum seekers, recognised refugees or those benefitting from subsidiary protection, besides the common cultural and linguistic barriers that any alien would encounter on Belgian territory, there does not seem to be other barriers to birth registration of their child in Belgium. The question of accessibility to birth registration services for persons in irregular stay must be discussed. As van Waas mentions, "[i]n practice, what proves to be a greater obstacle than this heightened risk of a conflict of nationality laws is the inability of migrants in irregular stay to register the birth of their child in the host state".<sup>84</sup> In Belgium, persons in irregular stay have the same access to birth registration procedures, described above.<sup>85</sup> When they make the declaration, parents in irregular situation receive the necessary documents in order to be able to retrieve the birth certificate at the municipality in which the child is born.<sup>86</sup> Official documents from the country of origin of the parents are also necessary in order to obtain the birth certificate.<sup>87</sup> In order to be valid, those documents must be legalised. However, if that is not possible, the birth certificate will use the mention 'declares' before the name. The code identifying the type of proof for other information provided, such as date and place of birth, will be 'without documentary evidence'.<sup>88</sup>

Therefore, the lack of official or legalised documents will not prevent a migrant in irregular stay from obtaining a birth certificate for his or her child. In cases where the mother gave birth without assistance, the mother must recognise the child at the municipality.<sup>89</sup> Moreover, Article 4 of the Royal Decree of 12 December 1996 on urgent medical aid mentions that confidential information collected while giving medical attention cannot be used for other means than reimbursement of costs.<sup>90</sup> Therefore, the persons in irregular stay are not prevented from seeking medical aid to give birth in fear of being reported to the authorities. However, as the municipality competent to deliver the birth certificate is also responsible for monitoring and enforcing immigration laws, the risk occurs that birth registration might lead to the identification of the parents' irregular situation.<sup>91</sup> This issue is exemplified by a circular of 2009, which explains how the municipality can help identify persons in

<sup>81</sup> Belgium, *Civil Code*, Article 56(1) indent 1-2.

<sup>82</sup> Consulat Général de France à Bruxelles, *Déclarer la naissance à la commune belge*, (2016), <http://www.consulfrance-bruxelles.org/Declarer-la-naissance-a-la-commune-belge>.

<sup>83</sup> Service Public Fédéral Belge, *Déclaration de naissance*, (2016), <http://www.belgium.be/fr/famille/enfants/naissance/declaration/>.

<sup>84</sup> L. Van Waas, *Nationality matters*, p. 170.

<sup>85</sup> Medimmigrant, *Grossesse, Accouchement, Soins postnataux chez les femmes sans séjour légal*, (2010), <http://www.medimmigrant.be/uploads/Publicaties/Folders/zwangerschap/Zwangerschap%2011-2010%20WEB%20FR.pdf>.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Medimmigrant, *Grossesse et accouchement* (2013), <http://www.medimmigrant.be/?idbericht=62&idmenu=4&lang=fr>.

<sup>90</sup> Belgium, *Arrêté royal relatif à l'aide médicale urgente octroyée par les centres publics d'aide sociale aux étrangers qui séjournent illégalement dans le Royaume*, 12 December 1996.

<sup>91</sup> Ibid.

irregular stay in Belgium in order to facilitate their apprehension and return.<sup>92</sup> This practice can be problematic in preventing persons in irregular stay from declaring a birth by fear of repercussions and thus can present a barrier in acquiring a nationality for their child.

### 5.2.2. Registration in the Registers

Acquisition of Belgian nationality is confirmed by the registration of the child in the population register as Belgian. While the information on the birth declaration is collected by the municipality where the birth took place, the registration in the aliens or population register is executed by the municipality in which the child has his or her residence, which will be the same as where the parents reside. The municipalities are responsible for the aliens register and the population register, they ensure their management and updates.<sup>93</sup> Aliens authorised to reside more than three months in Belgium are registered in the Aliens register while aliens admitted or authorised to settle in Belgium are registered in the population register.<sup>94</sup> Recognised refugees and beneficiaries of subsidiary protection are therefore first registered in the aliens register, and, after the five years of residence necessary to be allowed to establish themselves in Belgium, in the population register.<sup>95</sup>

However, registered asylum seekers are registered in the waiting register until they receive a decision on their asylum claim.<sup>96</sup> The Immigration Office is responsible for the waiting register as well as its management and update. Also, a recent circular recalls that “the collection of asylum seekers' children cannot be done by the municipality nor the national register service, only the Immigration Office, Directorate Asylum, is competent for their collection.”<sup>97</sup> This means that following the birth of the child of registered asylum seekers, the Immigration Office becomes responsible for his or her registration. Between the responsibility of the municipality to hold the population registry—where every person residing in Belgium is registered—and the responsibility of the Immigration Office to collecting the information on asylum seekers' children, it is difficult to establish which entity is responsible to identify whether the child is stateless, and can benefit from Article 10 BNC and obtain Belgian nationality.

Such a division of competence can become problematic as no single department is responsible to assess the nationality of the child and therefore establish whether he or she is stateless and could obtain Belgian nationality, which is translated in practice as being registered in the population register.

## 6. Implementation of the Legislation by the Municipalities

### 6.1. Data Collection Methodology

As it has been established, in Belgium, the municipalities are competent for receiving the birth declaration and registering Belgian nationals and foreigners authorised to reside in Belgium in the population registry and aliens' registry. In order to monitor how the safeguard clause found in Article 10 BNC is applied in practice towards asylum seekers depending on their legal status, a survey was designed in the languages (Dutch/French) used by civil servants in order to collect information from the municipalities. The choice of semi-structured questions has been preferred in order to allow both

<sup>92</sup> Belgium, *Circulaire relative à l'identification d'étrangers en séjour irrégulier*, 23 November 2009.

<sup>93</sup> SPF Intérieur, *les registres de la population*, (2014), <http://www.ibz.rn.fgov.be/fr/population/faq/les-registres-de-la-population/>.

<sup>94</sup> Belgium, *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* (Law on entry to Belgian territory, residence, establishment and removal of foreign nationals), 15 December 1980, Articles 12 and 17.

<sup>95</sup> *Ibid.*, Article 15.

<sup>96</sup> *Ibid.*, Article 12, indent 2.

<sup>97</sup> Foreign Public Service Intérieur, *Registre national des personnes physiques - annulation de dossiers - attribution d'un nouveau numéro de dossier* (National Register of persons - cancellation of files - attribution of a new file number), 24 April 2010, [http://www.ibz.rn.fgov.be/fileadmin/user\\_upload/fr/rn/circulaires/DossiersRN-Annulations.pdf](http://www.ibz.rn.fgov.be/fileadmin/user_upload/fr/rn/circulaires/DossiersRN-Annulations.pdf), p. 2.

a quantitative and qualitative analysis of the results. The first set of questions deals with the application of Article 10 BNC for each asylum seeker category to monitor if the municipalities apply the law correctly. The second set of questions deals with the father's filiation, which is important to monitor, as it is an essential condition for the child's acquisition of Syrian nationality. The third set of questions deals with their specific knowledge of the Belgian legislation on Article 10 BNC and the related jurisprudence as well as their knowledge of Syrian Nationality Law, to verify whether they can make an informed decision when implementing the law. The choice of questions was informed by preliminary conversations with the heads of the Birth and Nationality Department of the city of Liège on the implementation in their municipality of nationality law for children of asylum seekers, regardless of their status.

As there are 589 municipalities in Belgium, the scope of this paper does not allow to review the implementation in all of them. The survey was submitted to 96 municipalities selected based on the share of Syrians residing in their municipality<sup>98</sup> and the number of available places for registered asylum seekers, according to the geographical 'distribution plan' for asylum-seekers.<sup>99</sup> Only twelve municipalities answered the survey, five from Flanders, four from Wallonia, and three from the Brussels-capital region. Among those, four confirmed having received at least one visit of a Syrian to register the birth of their child. The fact that the other municipalities, to the knowledge of the responder, have not experienced such a situation can influence their knowledge of the applicable law. Nonetheless, it is important to assess their answers as well, due to the high number of Syrians and/or registered asylum seekers residing in their municipality who might give birth in the future.

## 6.2. Results and Analysis

### 6.2.1. On the Application of Article 10 BNC

The main observation from the received answers is that there is no common practice of the municipalities in their application of Article 10 BNC. Municipalities do not systematically apply Article 10 BNC. Some of them acknowledge their lack of expertise and request the opinion from the SPF Justice and/or the Immigration Office. Overall, only very few municipalities grant Belgian nationality without further conditions being imposed, with the least being granted to children of illegal migrants (0) and the most being granted to children of recognised stateless parents (4). An interesting observation is that the majority of municipalities apply the same criteria for beneficiaries of international protection, regardless of their status (as recognised refugees or beneficiaries of subsidiary protection), which shows at least some consistency.

Deviations from the principles of Article 10 BNC is common. Some municipalities require a statelessness judgment for the parents or the child, which is contrary to the jurisprudence. Though such document can indeed help assess the statelessness of the child, UNHCR highlighted in its report several deficiencies with the statelessness registration procedure in Belgium: the procedure is decentralised, practices vary among tribunals, varying standards of proof are applied, and the

<sup>98</sup> FPS Economie - Direction Générale Statistique - Statistics Belgium, *répartition par communes pour la nationalité syrienne au 1er janvier 2016*, unpublished;

Specific statistics on the geographical distribution of asylum seekers disaggregated by nationality could not be obtained from the Immigration Office. Similarly, statistics on residents in each municipality are not disaggregated by type of residence permit and their status therefore cannot be identified.

<sup>99</sup> Het Laatste Nieuws, 'In kaart: zoveel vluchtelingen vangt uw gemeente op', 21 December 2015, <http://www.hln.be/hln/nl/34662/Vluchtelingencrisis/article/detail/2563277/2015/12/21/In-kaart-zoveel-vluchtelingen-vangt-uw-gemeente-op.dhtml>.

Le Soir, 'Asile: le plan de répartition commune par commune (carte interactive)', <http://www.lesoir.be/1075792/article/actualite/belgique/2015-12-22/asile-plan-repartition-commune-par-commune-carte-interactive>.

procedure is lengthy.<sup>100</sup> In light of these deficiencies, requiring a statelessness judgment is only further impeding access to Belgian nationality. Some municipalities also register the child with an undetermined nationality. It should be noted that in 2016, 5.822 persons were registered as being of undetermined nationality (excluding asylum seekers, as national statistics do not include persons registered on the waiting register).<sup>101</sup> As there is no obligation for the municipality to ever determine the nationality of the child, this can become problematic in assessing the child's right to Belgian nationality, which depends upon recognition of his or her statelessness. Another misapplication of Article 10 BNC is observed when municipalities consider revoking the child's Belgian nationality under conditions other than obtaining another nationality. In some circumstances, municipalities also register the child with the nationality of the parent(s), without ensuring that the child has acquired such nationality and that the concerned country recognises the child as a national.

For children of asylum seekers, some municipalities automatically do not apply Article 10 BNC but transfer the responsibility of assessing the stateless status to the Immigration Office. The follow-up and responsibility of the Immigration Office to undertake such efforts could, however, not be verified.<sup>102</sup> This illustrates how the division of competences between departments can hinder the application of the safeguard against stateless at birth. For children of illegal migrants, no municipality grants the Belgian nationality up front, which proves a higher vulnerability of illegal migrant children to statelessness. The denial of registration of the child is worrisome and underlines the differentiated treatment in practice towards children born in Belgium to persons in irregular stay, despite Article 10 BNC being silent on a legal residence criteria. Moreover, one municipality mentioned the issuance of an order to leave the territory, which feeds the fears of repercussions and creates an obstacle to birth registration.

For children of Palestinian parents not recognised as stateless, no municipalities granted the Belgian nationality up front, without additional conditions or enquiries. The answers to the questionnaire reveal additional difficulties for municipalities linked to the lack of understanding of the Palestinian context. Indeed, a surprising element is the mention by a municipality that Palestine is a recognised state and that the nationality of the child can be registered as such. Belgium does not recognise Palestine and statelessness determination judgments exist that recognised the statelessness of Palestinians. The Nationality Department of the FPS Justice has also already given positive opinions on statelessness.<sup>103</sup> Though the Department explained that some Palestinians do hold the nationality of another state in which they were born or resided, those that lived in Syria are not granted Syrian citizenship, as was underlined in the first part of this research.

### 6.2.2. *On Filiation*

The survey highlighted the recurrent difficulties to establish the filiation with the father, experienced by all municipalities who had cases of Syrians, which could put the children at risk of statelessness. The issues recalled concerned the content of the Syrian legislation applicable to filiation, and the difficulties with obtaining proof of their civil status (no documents proving the marriage or the celibacy, or non-legalized documents written in Arabic, thus their authenticity is doubted). One municipality related that sometimes only the filiation with the mother is mentioned in the birth certificate. However, the same municipality informed that the registers are consulted in order to verify the marriage. When applicable, consultation of registers by municipalities to confirm the parents' marriage could therefore prevent requiring legalised documents proving it.

<sup>100</sup> UNHCR, *Mapping statelessness* (2012), p. 47-64.

<sup>101</sup> Eurostat, *Population au 1er janvier par classe d'âge, sexe et nationalité*, 2017, <http://ec.europa.eu/eurostat/web/population-demography-migration-projections/population-data/database>.

<sup>102</sup> Many attempts were made to contact the Immigration Office directly, its specialized department dealing with administration, and through Immigration Office attachés to the European Migratory Network Belgium Contact Point.

<sup>103</sup> Information by Virginie Schira and Valerie Deprez from the Nationality Department of the FPS Justice, August 2 and August 29, 2016.

### 6.2.3. *On their Knowledge of the Law*

The survey also underlined the lack of knowledge by civil servants of the jurisprudence related to Article 10 BNC and of access and/or knowledge of the Syrian Nationality Law. The judgments that do not concern directly their citizens are not communicated to the municipalities. This creates an obstacle to the correct interpretation and application of Article 10 BNC. These observations shed light on the wrongful implementation by the municipalities of the safeguard clause against statelessness in their decision on the granting of Belgian nationality to a child born to Syrian parents.

## 7. Conclusions

This paper aimed at answering the following research question: *how do Belgian laws and their implementation effectively prevent statelessness among asylum seekers' children from Syria who are born in Belgium?* From a Syrian perspective, a child can inherit the stateless status from his parents when these are not recognised as national in Syria (specifically the *Maktoumeen*, *Ajnabi* and Palestinian populations). A child can also not be granted the Syrian nationality as a consequence of the gender discriminatory law when born abroad from a Syrian mother and when the filiation with a Syrian father cannot be established.

From a Belgian perspective, strong legal safeguards exist to prevent statelessness for children born on Belgian soil, which are regulated under Article 10 of the Belgian Nationality Code. If otherwise stateless, any child under 18 or not yet emancipated born in Belgium acquires Belgian nationality and only loses it upon acquisition of another nationality. The acquisition is only refused when the child could acquire the nationality of one of his parents through a basic administrative step, such as registration at the consulate or embassy. The proof that another nationality cannot be acquired might be requested or not, depending on the legal status of the parents in Belgium. Among the five different legal statuses that asylum seeker parents can hold, which are registered asylum-seekers, recognised refugees, beneficiaries of subsidiary protection, migrants in irregular stay or as recognised stateless persons, only persons in irregular stay will have to provide such proofs. Though not explicitly mentioned, recognised stateless persons are exempted since the parents do not have an embassy nor consulate to turn to. In their judgments, Belgian courts have always interpreted the law strictly and rejected further mandatory requirements imposed by municipalities for Belgian nationality to be granted. They also confirmed the only ground for loss of nationality is the effective possession of another nationality, and that the possibility to acquire another nationality is not a legitimate ground for loss of Belgian nationality.

However, an analysis of the acquisition in practice of Syrian or Belgian nationality following a birth in Belgium has shed light on obstacles asylum seekers' children might encounter with acquiring a nationality. Obstacles identified to acquisition of Syrian nationality were the costs of the birth registration, the requirements of a marriage certificate for the parents, and the difficulty with ensuring the filiation of the child with the father on the birth certificate. However, there is evidence that a solution was found to overcome the latter obstacle, via a judgment authorising the recognition of the child by a Syrian father. On the acquisition of Belgian nationality, birth registration was only found to be an obstacle for children of parents in irregular stay. However, for children of registered asylum seekers, the division of competence between the municipalities and the Immigration Office for keeping the aliens and population registers and the waiting register respectively were found to be an obstacle to acquisition of Belgian nationality.

Finally, the field research, conducted through a questionnaire sent to selected municipalities, underlined the gaps between the legislation and practice. It identified the overall lack of expertise of

civil servants to correctly implement the safeguard against statelessness at birth, and the lack of consistency in their practice. Bad practices identified were the tendency to register the child as having undetermined nationality, or to request mandatory documents, such as a statelessness judgment for the parents or the child. The survey confirmed identified obstacles to acquisition of nationality, such as ensuring paternal filiation, the division of competence between the authorities responsible for the birth registration and those responsible for the registers in which children of asylum seekers' are registered, or birth registration for children of parents in irregular stay. It also underlined that children of migrants in irregular stay are the least likely to benefit from the safeguard against statelessness at birth due to the lack of a legal residence of their parents. A welcome observation was, however, the initiative of some municipalities to turn to the FPS Justice to help them determine the statelessness of the child.

This article has shown that— despite strong existing safeguards against statelessness at birth in the Belgian legislation— in practice, proper application of existing safeguards is impaired by administrative obstacles or lack of expertise of civil servants who implement the law, which leave the children of asylum seekers at risk of statelessness. The identification of children at risk of statelessness or the assessment a child's statelessness is a difficult task for civil servants, who are not trained on the issue. Therefore, training for civil servants on Article 10 BNC, the development of a centralised body that could systematically help them assess children's statelessness and the issuance of guidelines for municipalities on persons at risk of statelessness would be a welcome development to ensure the correct implementation of Article 10 BNC.