

BRIEFING ON THE RIGHT TO A NATIONALITY OF CHILDREN BORN TO PALESTINIAN PARENTS IN BELGIUM

February 2024

In response to recent reports that the Belgian Immigration Office has incentivised municipalities to withdraw the Belgian nationality of children born to Palestinian parents in Belgium, this briefing sets out ENS's concerns about this practice and Belgium's relevant international legal obligations. The withdrawal of children's nationality in these cases contravenes international human rights law and risks leaving children in limbo, exposed to the risk of growing up stateless. ENS urgently calls on the Belgian authorities to protect and uphold the right to a nationality of every child born on its territory.

Belgium's obligations under international law

The right to a nationality is a right that is 'essential for the protection of every child'.¹ As a signatory to the Convention on the Rights of the Child (CRC), Belgium must implement Article 7 to provide for the right of every child to be registered immediately after birth and to acquire a nationality, as well as Article 8 to respect the right of the child to preserve their identity, including nationality. As a State party to the 1961 Convention on the Reduction of Statelessness, Belgium has further obligations to prevent and reduce statelessness on its territory.² Obligations deriving from the 1961 Convention require Belgium to grant nationality to children who would otherwise be stateless and must be interpreted in light of the CRC.³ This includes the underlying principles of non-discrimination (Article 2 of the CRC), and that all actions concerning children, including in the area of nationality, must be undertaken with the best interests of the child as a primary consideration (Article 3).

Belgian nationality law

According to Article 10 of the Belgian Nationality Code (BNC), a child born in Belgium is Belgian if they would otherwise possess no nationality at any moment before they reach the age of 18 or are emancipated.⁴ Since 31 December 2022, only the civil registrar of the child's place of birth is competent to rule on the application of Article 10, if necessary after obtaining the opinion of the public prosecutor. Article 10 also states that a child to whom Belgian nationality has been granted by virtue of this article retains that nationality as long as it has not been established, before they

¹ UNHCR (2018) Ensuring the right of all children to acquire a nationality: Connecting the Dots between the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness: <<https://www.refworld.org/docid/52206aa54.html>>

² 1961 Convention; UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, available at: <<https://www.refworld.org/docid/50d460c72.html>>; and also European Network on Statelessness, *No Child Should Be Stateless*, 2015, available at <https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf>

³ UNHCR Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness: <<https://www.refworld.org/docid/50d460c72.html>>

⁴ Belgian Nationality Code (adopted 28 June 1984, entered into force 22 July 1984) 1984-06-28/35, art 10 [hereinafter BNC] <<http://www.ejustice.just.fgov.be/eli/loi/1984/06/28/1984900065/justel>>

reach the age of 18, that they possess a foreign nationality. The provision is automatic in law, but in practice it must be proven that the conditions and requirements imposed by the law are met, and the burden of proof lies on the applicant.⁵

Recent practice towards children born to Palestinian parents

Since August 2023, the Immigration Office has exchanged correspondence with several municipalities in Belgium to withdraw the Belgian nationality of children born in Belgium to Palestinian parents, who had acquired this under Article 10 BNC.⁶ Their rationale is that these children have Palestinian nationality, and the Immigration Office is concerned that if granted Belgian nationality, so-called 'abuses' of the family reunification procedure could take place. According to a spokesperson for the Secretary of State for Asylum and Migration, "*The Immigration Office regularly notes that Palestinians in the European Union go to Belgium to have children there in order to acquire Belgian citizenship and, consequently, to benefit from family reunification [...] [We will] fight against practices where people who do not have the right to do so try to possess Belgian nationality*".⁷

We have serious concerns that the position of the Immigration Office is an incorrect interpretation of the international customary law definition of a stateless person, is contrary to the letter and spirit of international law, and will risk increasing statelessness in Belgium. This move will unnecessarily leave more children in limbo, unable to access their right to a nationality and exposed to the detrimental impacts of growing up stateless. The correspondence sent by the Immigration Office appears to violate the right of every child to acquire and retain a nationality under Article 7 CRC⁸ and to act with the best interests of the child as a primary consideration (Article 3 CRC,⁹ and Article 24(2) of the EU Charter of Fundamental Rights).¹⁰ It is never in the child's best interests to be left stateless. The practice also violates Belgium's international obligations to prevent statelessness, and the prohibition of arbitrary deprivation of nationality.¹¹ In addition, since December 2022, the civil registrar of the child's municipality of residence is no longer competent to rule on the application of Article 10 BNC. Assuming it is established that these children have a nationality other than Belgian, only the civil registrar of their place of birth could consider reversing the previous

⁵ European Network on Statelessness, 'Statelessness Index: Belgium' (last updated in February 2023) <<https://index.statelessness.eu/country/belgium>>

⁶ For more information, see The Brussels Times, "Municipalities ordered to strip Palestinian children of Belgian nationality" (*The Brussels Times*, 11 December 2023) <<https://www.brusselstimes.com/829066/municipalities-ordered-to-strip-palestinian-children-of-belgian-nationality>>; Julien Wolsey, 'Palestine : nos autorités face à leurs responsabilités' in Association pour le droit des étrangers, *Lettre d'information juridique n°201* (November 2023) <https://www.adde.be/images/2023/Newsletter_novembre2023.pdf>

⁷ The Brussels Times, "Municipalities ordered to strip Palestinian children of Belgian nationality" (*The Brussels Times*, 11 December 2023) <<https://www.brusselstimes.com/829066/municipalities-ordered-to-strip-palestinian-children-of-belgian-nationality>>

⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 U.N.T.S., article 7 <<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc.pdf>>

⁹ *Ibid*, art 3.

¹⁰ Charter of Fundamental Rights of the European Union (26 October 2012) 2012/C 326/02, article 24(2) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>>. Furthermore, with reference to the Fransson principle, it may be argued that an EU Member State does act under the scope of EU law when the acquisition of EU citizenship is at stake, see European Council on Refugees and Exiles, 'The Right to a Nationality of Refugee Children Born in the EU and the Relevance of the EU Charter of Fundamental Rights' (February 2017), pg. 8 <<https://helsinki.hu/wp-content/uploads/refugee-children-nationality-LEAP-leaflet.pdf>>

¹¹ Institute on Statelessness and Inclusion, 'Principles On Deprivation of Nationality as a National Security Measure' (June 2021) <<https://files.institutesi.org/PRINCIPLES.pdf>>. According to Principle 2.2.1., '[d]eprivation of nationality refers to any loss, withdrawal or denial of nationality that was not voluntarily requested by the individual. This includes where a State precludes a person or group from obtaining or retaining a nationality, where nationality is automatically lost by operation of the law, and where acts taken by administrative authorities result in a person being deprived of a nationality'.

attribution of Belgian nationality.¹² Accordingly, any municipality of residence (as opposed to birthplace) invited by the Immigration Office to withdraw Belgian nationality from the children targeted should be expected to reject these requests.

When dealing with attribution of nationality at birth, as well as in matters of migration and asylum policy, authorities should not lose sight of their core international obligations to prevent and reduce statelessness, and to give primacy to the best interests of the child in all decisions that affect them. In compliance with the principle of proportionality as reflected in international human rights law, UNHCR Guidelines state that States should conduct a thorough assessment of the consequences of deprivation of nationality for the individual, including whether they would be rendered stateless or at risk of statelessness given the severe consequences of statelessness in the enjoyment of other fundamental rights.¹³ This has been reaffirmed by the European Court on Human Rights (ECtHR), which has emphasised that a Contracting State will breach its Article 8 obligations if it deprives a person of nationality without demonstrating that the deprivation can be justified and is proportional under Article 8(2), which includes an assessment of whether the person would be rendered stateless.¹⁴ Furthermore, Article 53 ECHR also requires States to comply with their international obligations under other instruments, including the 1961 Convention and 1954 Convention.¹⁵ When depriving a person of nationality, the Contracting State must also ensure procedural safeguards are in place and that the person has the right to a fair trial.¹⁶

In this case, it appears that no assessment has been conducted, nor consideration given to the fact that, if a municipality withdraws the nationality of a child, their right to remain in the country will also be at risk as it will depend on whether the child will have acquired a residence permit through other means (such as through a decision on the child's refugee status). Furthermore, the protracted forced displacement and population transfer experienced by the Palestinian people, accompanied by the denial of the right of return, renders the decision made by several municipalities to withdraw Belgian nationality from a Palestinian child far more concerning, as it puts Palestinian children in a particularly vulnerable position and at a greater risk of statelessness. It is vital that Palestinians can access effective protection in other countries, as refugees and/or stateless people, and that children of Palestinian parents can access safeguards that prevent statelessness.

For Palestinians who seek international protection, the consequences of governments failing to recognise them as refugees or stateless persons can be devastating. If they are not eligible for (or are not granted) refugee status or other protection, failure to recognise statelessness often relegates Palestinians who have no other legal status to a life of instability and destitution, unable to access basic human rights, including the right to a nationality. It also means that their children may be born into serious hardship and unacknowledged statelessness.

¹² < <https://www.agii.be/nieuws/zijn-in-belgie-geboren-kinderen-van-palestijnse-origine-belg-gemeenten-en-rechtbanken-zijn-bevoegd> >

¹³ UNHCR, 'Guidelines on Statelessness No.5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness' (May 2020) HCR/GS/20/05 <<https://www.refworld.org/docid/5ec5640c4.html>>

¹⁴ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (adopted 4 November 1950, entered into force 3 September 1953) ETS 5, art 8 [hereinafter ECHR] <<https://www.refworld.org/docid/3ae6b3b04.html>>; see, e.g., ECtHR, *Emin Huseynov v. Azerbaijan (no. 2)*, application no. 1/16, 13 July 2023.

¹⁵ ECHR, art 53 (n 9).

¹⁶ ECHR, art 6 (n 9); The AIRE Centre and European Network on Statelessness, Written submissions on behalf of the interveners in *Pham v United Kingdom* (19 April 2021) Application No. 37478/20, para III <<https://www.statelessness.eu/updates/news/ens-and-aire-centre-file-third-party-submission-ecthr-pham-v-uk>>

Palestinian statelessness under international law

While it is important to acknowledge and respect Palestinians' connection to Palestine and the right to self-identify as Palestinian nationals, under international law, Palestinians who have not acquired the nationality of any state should be considered not only refugees but also stateless persons. Indeed, many Palestinians consider themselves to be Palestinian nationals in view of their long-standing ties to the areas currently known as Israel, Gaza, the West Bank, and Palestine, as well as their ethnicity, and shared political and cultural affinity. However, the forced displacement and population transfer of Palestinians initiated by the creation of Israel in 1948 (and continuing subsequently), the denial of nationality by Israel,¹⁷ the negation of Palestinians' inalienable rights to self-determination and return,¹⁸ and the lack of Palestinian sovereignty and a Palestinian nationality law, has resulted in the de-nationalization and protracted, transgenerational statelessness of most Palestinians.

This is in line with the international definition of a stateless person as defined by Article 1 of the Convention Relating to the Status of Stateless Persons (1954 Convention), which forms part of customary international law and is applied in Belgium as it has direct effect in national law:¹⁹ "the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law".²⁰ Due to the abovementioned reasons, including that Palestine remains under occupation by Israel, does not have full sovereignty, does not have full control over issuance of official documentation or entry and exit to its territory, and because attempts to enact a Palestinian nationality law have failed, Palestinians should be recognised as stateless under the 1954 Convention, unless they hold another nationality. This is regardless of whether a country recognises Palestine as a State and does not negate the fact that Palestinians have an entitlement to Palestinian nationality under international law.

In applying the 1961 Convention to determine whether a child is entitled to nationality because they would otherwise be stateless, or whether a person would be rendered stateless by a deprivation decision, authorities should apply the same definition from Article 1 of the 1954 Convention.

¹⁷ Palestinians are not considered nationals of Israel by operation of Israeli law, even though many have a right under international law to Israeli nationality. Some (relatively few) Palestinians have acquired Israeli "citizenship", but Israeli law reserves "nationality" to Jewish people, who have superior property and other rights compared to Palestinian "citizens" of Israel. Israel de-nationalised most Palestinians under its nationality law of 1952. In 2018, Israel passed its Nation State Basic Law, which expands on previous discriminatory laws and defines Israel as a State of and for Jewish people, and explicitly declares that the right of national self-determination in Israel is "unique to the Jewish people". Further, the Israeli Government does not recognise Palestine as a State and considers Palestinians living in the occupied Palestinian territory to be "non-citizen residents". For more information, see Basic Law: Israel - The Nation State of the Jewish People (2018) 5778-2018 <<https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf>>; and Susan M Akram, 'Palestinian Nationality and "Jewish" Nationality: From the Lausanne Treaty to Today' in Farsakh, Leila (ed) *Rethinking Statehood in Palestine: Self-Determination and Decolonization Beyond Partition* (University of California Press 2021) <<https://www.ucpress.edu/book/9780520385627/rethinking-statehood-in-palestine>>

¹⁸ The right of return is a right enshrined in international law, including in Article 13(2) of the Universal Declaration of Human Rights and Article 12(4) of the International Covenant on Civil and Political Rights. The right of return of Palestinian refugees specifically has also been established in international law, including in UN General Assembly Resolution 194(III) of 1948 and UN Security Council Resolution 237 of 1967. Furthermore, given that the right to enter, re-enter and reside in the territory of the State of one's own nationality is "considered as the essence of nationality as a matter of public international law", a State's denial of this right "could be interpreted as that State effectively denying that the individual is its national", see Alice Edwards and Laura Van Waas (eds), *Nationality and Statelessness Under International Law* (Cambridge University Press 2014), pg. 40-41.

¹⁹ ILC Draft Articles on Diplomatic Protection with commentaries (2006) 2(2) Yearbook of the International Law Commission <https://legal.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf>

²⁰ Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 U.N.T.S., art 1 (emphasis added) <https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.24_convention%20stateless.pdf>

Palestinians cannot be considered nationals of Palestine when assessing or determining their statelessness. Palestinians should be considered stateless for the purposes of the 1961 Convention and the 1954 Convention, unless and/or until they can be considered nationals of an independent, sovereign state, which has a nationality law.

As such, ENS is concerned that the actions of the Belgian Immigration Office in not recognising that children of Palestinian parents are otherwise stateless, amount to a violation of international law. ENS therefore recommends that:

- Palestinian children born in Belgium who do not possess any other nationality should be granted Belgian nationality automatically at birth, in compliance with the Belgian Nationality Code and with Belgium's obligations under the 1961 Convention, the Convention on the Rights of the Child, and other international human rights instruments.
- Belgian authorities must conduct a careful and thorough assessment, in accordance with the law and all international obligations, of whether deprivation of nationality of children of Palestinian parents is arbitrary, and whether the deprivation would result in statelessness. If statelessness would result from the deprivation, the 1961 Convention imposes strict circumscriptions on when this deprivation is permissible, as do other well-established standards of international law such as the avoidance of statelessness, the prohibition of discrimination, and the prohibition of arbitrary deprivation of nationality.
- Any process of revocation or loss of nationality should follow due process and should respect the internationally affirmed rights of the individual to a fair hearing and trial, remedy, and reparation.

For more detailed legal analysis and context on the status of Palestinians as stateless persons and their right to protection in Europe, see ENS and BADIL Resource Center's [report](#)²¹ and [advocacy briefing](#)²² on Palestinians and the search for protection as refugees and stateless persons in Europe.

[The European Network on Statelessness](#) (ENS) is a civil society alliance of organisations and individuals working to promote the right to a nationality in Europe. Our network brings together over 180 members in more than 40 countries and includes grassroots community organisations, national and international NGOs, legal advice agencies, think tanks, individuals with lived experience of statelessness, and other experts. We are dedicated to raising awareness about statelessness and the right to a nationality, supporting legal and policy development, and building civil society's capacity to act.

²¹ BADIL Resource Center on Palestinian Residency and Refugee rights (BADIL) and European Network on Statelessness (ENS), 'Palestinians and the Search for Protection as Refugees and Stateless Persons' (2022), <<https://www.statelessness.eu/updates/publications/palestinians-and-search-protection-refugees-and-stateless-persons>>

²² ENS and BADIL, 'Briefing: Palestinians and the search for protection as refugees and stateless persons in Europe' (European Network on Statelessness, 14 July 2022) <<https://www.statelessness.eu/updates/publications/briefing-palestinians-and-search-protection-refugees-and-stateless-persons>>