

Joint Submission
to the Human Rights Council
at the 41st Session
of the Universal Periodic Review.

The Netherlands

Introduction

1. ASKV Refugee Support, the Bhutanese Community in The Netherlands (BCN), New Women Connectors (NWC), Petkovski, Stichting Landelijk Ongedocumenteerden Steunpunt, Leiden University, Kinderrechtencollectief (The Dutch NGO Coalition for Children's Rights), Vluchtelingenwerk Nederland (Dutch Council for Refugees), the European Network on Statelessness (ENS), and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in the Netherlands.¹
2. This submission focuses on challenges for stateless persons in relation to the following issues:
 - I. Children's right to a nationality
 - II. Identification of stateless persons, determination of statelessness, and access to rights
 - III. Access to (facilitated) naturalisation
 - IV. Statistical data on statelessness

Previous UPR recommendations to the Netherlands

3. The Netherlands was reviewed during the 27th session in 2017 (Third Cycle), the 1st session in 2008 (Second Cycle), and the 13th session (First Cycle). In the Third cycle only, the Netherlands received a recommendation from Haiti directly related to statelessness. The Netherlands was urged to *'expedite efforts to introduce a statelessness determination procedure and provide persons recognised as stateless with legal status and access to basic human rights, in full consultation with key stakeholders'*.² To date, the Netherlands does not have a dedicated statelessness determination procedure (SDP) in place, but in December 2020 a Draft Law was submitted to Parliament that would establish an SDP.³ However, the legislative proposal has serious shortcomings, as further explained under Issue II.

¹ See Annex I for an overview of all co-submitting organisations. This submission also draws on information received from M. Van Burik (individual ENS member).

² See <https://index.statelessness.eu/country/netherlands>

³ [A/HRC/36/15](https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorstel%3A35687), recommendation 131.197 made by Haiti, which was accepted by the Netherlands.

⁴ <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorstel%3A35687>.

⁴ A/HRC/21/15, paras 98.1- 98.4. Recommending countries are Mexico, Argentina, Belarus, Algeria, Iran, Egypt.

4. During both the Second⁴ and Third Cycle⁵, four recommendations were issued to the Netherlands to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW). Article 29 of the CMW stipulates that *'each child of a migrant worker shall have the right [...] to registration and to a nationality'*. Despite multiple previous UPR recommendations, the Netherlands is not a signatory to the CMW.

Snapshot of Statelessness in The Netherlands

5. The Government of the Netherlands estimates that more than 36,267 people in the Netherlands do not or cannot possess a passport, which can be an indication of statelessness.⁶ As of 1 January 2021, an estimated 6,000 persons were registered as stateless, meaning they are not considered as a national of any State under the operation of its law, and 31,000 persons were registered as having 'nationality unknown'.⁷ There are inconsistencies in how nationality and statelessness are recorded in the Dutch national statistical database (StatLine). The two categories 'stateless' and 'nationality unknown' are at times combined and at times reported upon separately.⁸ Fully reliable data on statelessness in the Netherlands remains absent, including due to the absence of a procedure to determine who is stateless on the territory. Without a statelessness determination procedure (SDP), statelessness cannot be adequately identified and determined, leading to many stateless people not being registered as such and remaining registered under the category of 'nationality unknown'.
6. Further, stateless persons with the right to stay or reside in the Netherlands can ask their municipality to register them as stateless if they have the relevant documents, but municipalities implement the procedure differently and no assistance is provided at first instance to inform people how and when to ask for registration as a stateless person. Stateless people without a form of legal stay cannot register as a stateless person at their municipality. The lack of data makes it challenging to comprehend the actual scale of the issue.
7. The available data, nonetheless, shows that statelessness primarily exists in a migratory context, yet children are still born stateless in the Netherlands. Statelessness can be both a cause and a consequence of forced displacement. In a migratory context, statelessness may affect people whose statelessness was evident before they migrated and those whose statelessness became apparent during the course of their migration or displacement, including upon failed attempts to remove them from the Netherlands. Data published by Statistics Netherlands (*Centraal Bureau voor de Statistiek*) shows that the largest groups of stateless people in the Netherlands come from Syria, Saudi Arabia, Israel, Lebanon, Libya, United Arab Emirates, Egypt, Iraq, and the former Soviet Union.⁹ Causes of statelessness vary. For instance, 25 countries deny women the right to confer nationality on their children on an equal basis with men, creating risks of statelessness

⁴ A/HRC/21/15, paras 98.1- 98.4. Recommending countries are Mexico, Argentina, Belarus, Algeria, Iran, Egypt.

⁵ A/HRC/36/15, paras 131.1 - 131.4. Recommending countries are Syrian Arab Republic, Chile, Sudan, Philippines, Bangladesh, Guatemala, Algeria, Uganda, Ghana, Egypt, Sri Lanka, Burkina Faso.

⁶ Statistics Netherlands, StatLine - Bevolking; geslacht, leeftijd, nationaliteit en regio, 19 October 2021, <https://opendata.cbs.nl/#/CBS/nl/dataset/84727NED/table?ts=1638291785870>.

⁷ Nota staatssecretaris n.a.v. het verslag, <https://www.tweedekamer.nl/kamerstukken/detail?id=2020Z25633&did=2021D50778>.

⁸ Statelessness Index, Netherlands, <http://index.statelessness.eu>.

⁹ Data obtained upon formal request at Statistics Netherlands (CBS). For more information about statelessness in the migratory context and some of the largest groups of stateless people, see <https://statelessjourneys.org/>.

for children born to mothers from these countries.¹⁰ Statelessness can also arise due to gaps in nationality laws, following decolonisation processes, State succession and the creation of new States (including further to the break-up of the former Soviet Union, for example). Co-submitting partners also observe cases of stateless Palestinians, Rohingya and former USSR citizens and their children in the Netherlands.

8. In the Netherlands, access to and enjoyment of human rights depends on whether a person has lawful residence in the country, their registered nationality status (i.e., 'stateless' or 'nationality unknown') and what type of residence permit they are issued.¹¹ Within the current framework, stateless people who do not have lawful residence are unable to have their statelessness adequately registered, and experience substantial difficulties accessing the rights accorded to them under the Convention Relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention).
9. A legislative proposal to introduce an SDP (see Issue II)¹² and another proposal to amend the Dutch Nationality Act to expand the 'option procedure' for stateless children born in the Netherlands without a residence permit as a facilitated pathway to acquire Dutch nationality (see Issue I)¹³ are scheduled for plenary debates in week 14 of 2022 (4 April to 8 April). The co-submitting partners welcome the plenary debate on the proposed bills but urge the Dutch Government to amend the bills taking into consideration the concerns expressed in this submission.
10. The co-submitting organisations are also concerned that the issues addressed in this submission are exacerbated in relation to particularly vulnerable groups or minoritized communities including children, women, and the Romani community, and urge the Netherlands to respect the principle of non-discrimination. The COVID-19 pandemic has also increased socio-economic exclusion. Stateless people have mentioned how they were affected by loss of informal employment, working whilst sick and without adequate protection from disease, and were unable to access government pandemic employment assistance and non-emergency or "medically necessary" healthcare. Many also described the difficulties in supporting continued home-schooling for children due to the lack of space, access to laptops, and internet.¹⁴

Issue I: Children's right to nationality

11. The Netherlands has recognised the importance of every child's right to a nationality by acceding to the instruments mentioned in the above section on international

¹⁰ UN High Commissioner for Refugees (UNHCR), Background Note on Gender Equality, Nationality Laws and Statelessness 2021, 5 March 2021, <https://www.refworld.org/docid/604257d34.html>.

¹¹ Justitiële Verkenningen (2018) Staatloosheid als moderne vorm van uitsluiting, pp. 99-116 https://repository.wodc.nl/bitstream/handle/20.500.12832/805/JV1802_Volledige_tekst_tcm28-327814.pdf?sequence=2&isAllowed=y

¹² Tweede Kamer der Staten-Generaal, Wet vaststellingsprocedure staatloosheid, <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A35687>.

¹³ Tweede Kamer der Staten-Generaal, Wijziging van de Rijkswet op het Nederlanderschap en de Paspoortwet alsmede intrekking van voorbeholden bij het Verdrag betreffende de status van staatlozen in verband met de vaststelling van staatloosheid, <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A35688%28R2151%29#activity-2020a06315>.

¹⁴ European Network on Statelessness, Situation assessment of statelessness, health, and COVID-19 in Europe, April 2021, https://www.statelessness.eu/sites/default/files/2021-04/ENS_Health_Situation_Assessment_Europe.pdf,

obligations.¹⁵ Consequently, clear and accessible nationality determination procedures for children born to non-nationals should be in place, to identify whether the child is entitled to another nationality or whether they would otherwise be stateless, and legal safeguards for the prevention of statelessness should therefore be applied. In particular, the Human Rights Committee held that the Netherlands' international obligations require the State [...] to ensure that a procedure for determining statelessness status is established, as well as reviewing its legislation on eligibility to apply for citizenship [...].¹⁶ Indeed, all otherwise stateless children must acquire the nationality of the State in which they are born, either automatically at birth or as soon as possible after birth. To this end, the Netherlands has included special rules in the Dutch Nationality Act to prevent statelessness. However, legislative and administrative gaps in these rules and their application mean that statelessness is not prevented for all children born in the Netherlands, and many are registered as having "nationality unknown", contrary to international law.

Legislative gaps in ensuring the right to a nationality for stateless children in the Netherlands

12. In the Netherlands, birth on the territory does not generate an automatic entitlement to Dutch nationality. For children born in the Netherlands who would otherwise be stateless, Article 6(1)(b) of the Dutch Nationality Act (DNA)¹⁷ provides for a procedure to obtain Dutch nationality: the so-called "option procedure". However, it discriminates against children born stateless on the territory on the basis of their residence status. Accordingly, this Article requires that:

"After making a written statement to this effect Dutch citizenship is obtained by [...] b) a non-national who is born in the European part of the Netherlands, Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius or Saba, and during an uninterrupted period of at least three years has admission and principal residence and has been stateless from birth."¹⁸

13. The language of "admission and principal residence" in this provision means that **Dutch law currently requires stateless children to have three years' legal residence in the territory before being able to opt for Dutch nationality.** Therefore, stateless children born in the country without a residence status are excluded from acquiring Dutch nationality. Furthermore, where the statelessness of a child cannot be proven with official documents upon registration in the Dutch population registry – a highly bureaucratic burden – then a child is instead registered as having "unknown" nationality. This prevents them from using the 'option procedure' and amounts to a violation of their right to a nationality. This and the aforementioned conditions are inconsistent with Article 7 CRC on realising every child's right to a nationality and Article

¹⁵ E.g. Art. 7 & 8 CRC, Art. 24(3) ICCPR, Arts. 1-4 1961 Convention; see also UNCHR 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, 2012, available at: <https://www.refworld.org/docid/50d460c72.html>; Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 2017, available at: <https://www.refworld.org/docid/5a12942a2b.html>; Recommendation CM/Rec(2009)13, adopted by the Committee of Ministers of the Council of Europe on 9 December 2009, available at <https://rm.coe.int/16807096bf>.

¹⁶ CCPR/C/130/D/2918/2016. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26631&LangID=E>.

¹⁷ 2010 Dutch Nationality Act, Article 3,

https://www.legislationline.org/download/id/5937/file/Netherlands%20Nationality%20Act_2010_en.pdf

¹⁸ Ibid Article 6(1)(b) Dutch Nationality Law. The original text in Dutch reads: "Na het afleggen van een daartoe strekkende schriftelijke verklaring verkrijgt door een bevestiging als bedoeld in het derde lid het Nederlanderschap [...] b) de vreemdeling die in het Europese deel van Nederland, Aruba, Curaçao, Sint Maarten of de openbare lichamen Bonaire, Sint Eustatius en Saba, is geboren, aldaar gedurende een onafgebroken periode van tenminste drie jaren **toelating en hoofdverblijf** heeft en sedert zijn geboorte staatloos is".

3 CRC on the best interests of the child, as children are denied their right to a nationality for years.¹⁹ The provisions are also in violation of the prohibition against discrimination contained in Article 2 CRC.²⁰

14. In 2011, the United Nations High Commissioner for Refugees (UNHCR) raised this issue with the Dutch authorities following the publication of its mapping of statelessness in the Netherlands.²¹ In 2013, these concerns were echoed in the findings of a study by the Advisory Committee on Migration Affairs.²² In 2014, the High Commissioner for Human Rights of the Council of Europe recommended that the Dutch authorities remove the requirement of lawful stay to opt for Dutch nationality.²³ In 2015, the Committee on the Rights of the Child addressed these problematic conditions in its Concluding Observations on the Netherlands, as follows: ‘The Committee recommends that the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to citizenship without any conditions. In particular, it recommends the State party not to adopt the proposed requirement of parents’ cooperation with the authorities’.²⁴ This recommendation was reiterated by the Committee in 2022.
15. In response to these criticisms, the Dutch Ministry for Security and Justice developed a legislative proposal to address the existing deficiencies in the ‘option procedure’. The legislative proposal was published for internet consultation in 2016 and finally submitted to Parliament in December 2020.²⁵ However, the legislative proposal only tackled some of the above concerns and still would not bring stateless children’s right to acquire Dutch nationality in line with either international or regional standards. Rather than simply removing the condition of lawful residence, the legislative proposal introduces an additional requirement for stateless children born in the Netherlands without lawful residence. Namely, the child would need to have enjoyed stable, principal residence for a period of at least ten years, of which five years should be uninterrupted residence prior to the application. According to the Explanatory Memorandum, the child and their parent(s) must have continuously and fully cooperated with the immigration authorities, including in the context of deportation proceedings, for residence to be considered stable, making the child’s right to a nationality contingent on the actions of the parents.²⁶
16. The additional requirement of ‘stable residence’ is not in compliance with Article 1 of the 1961 Convention, because it adds a requirement of continuous cooperation with the authorities, which is not part of the 1961 Convention.²⁷ The Dutch Council of State

¹⁹ 1989 Convention on the Rights of the Child, Article 3.

²⁰ Ibid Article 2. On the question of habitual residence, see also UNCHR 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, 2012, <https://www.refworld.org/docid/50d460c72.html>, paras 40-43.

²¹ UNHCR, Mapping Statelessness in the Netherlands, 2011, <https://www.refworld.org/docid/4eef65da2.html>.

²² ACVZ, Geen land te bekennen, 2013, available in English at:

https://www.adviescommissievoorvreemdelingenzaken.nl/binaries/adviescommissievoorvreemdelingenzaken/documenten/publicaties/2014/09/11/nocountry-of-one%E2%80%99s-own/No_country_of_ones_own_ACVZ_report_20140911.pdf.

²³ High Commissioner for Human Rights of the Council of Europe, Report by Nils Muiznieks following his visit to the Netherlands from 20-22 May 2014, p. 31-33, available at: <https://www.refworld.org/docid/54bd1d604.html>.

²⁴ CRC/C/NLD/CO/4, para. 33

https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT_CRC_COE_NLD_20805_E.pdf.

²⁵ Ibid. N.13.

²⁶ See

<https://www.tweedekamer.nl/downloads/document?id=e10340d8-92ef-4157-849b-0436876b6631&title=Memorie%20van%20toelichting.pdf>. The original language of this passage from the Draft Explanatory Memorandum in Dutch is as follows: “Slechts indien het kind en de ouders het vertrek niet hebben gefrustreerd en zich niet hebben onttrokken aan toezicht, kan het verblijf stabiel worden geacht”.

²⁷ 1961 Convention on the Reduction of Statelessness, Article 1.

has confirmed this in its advice relating to the legislative proposal and has urged the Government to remove the additional requirement.²⁸ In addition, the requirement of 10 years' stable residence is considerably longer than the requirement of three years for stateless children born in the Netherlands with lawful residence. With the current text of the legislative proposal, the Dutch Government ignores the previous recommendation of the CRC from 2015 and falls short of the Netherlands' international obligations, as it denies children their right to a nationality (Article 7 CRC).²⁹ In addition, these limiting conditions do not take into consideration the best interests of the child, as set out in Article 3 CRC, given that the child's nationality, social identity and legal status remain insecure for an extended period of time after birth.³⁰ Moreover, the child's legal and nationality status remain contingent on the choices or actions of their parents, violating Article 2 CRC.³¹ In contradiction with the explanatory memorandum migration control is no objective justification for unequal treatment of minors. Finally, not granting Dutch nationality also interferes with the child's right to an identity and sense of belonging established in Article 8 CRC.³²

Administrative gaps to identify stateless children, and the practice of registering children as having "unknown nationality"

17. Determining statelessness is an important first step in ensuring that stateless people, particularly stateless children, have access to their rights – including safeguards to protect the right to a nationality. The application of the principle of the best interests of the child (set out *inter alia* in Article 3 of the CRC) in connection with the child's right to a nationality,³³ implies that a child must acquire a nationality at birth or as soon as possible after birth. Children must not be left stateless for an extended period, nor with their nationality status undetermined.
18. However, extensive bureaucratic obstacles prevent children from being recognised as stateless in the Netherlands, with the result of leaving them with their nationality undetermined for an extended period. As of January 2020, 7,323 children between 0-14 years-old were registered as 'nationality unknown', among which 5,556 children were born in the Netherlands. In addition, there were 5,659 persons registered as 'nationality unknown' aged between 15-24 years, among which 1,287 were born in the Netherlands.³⁴
19. Under the Dutch Act on the Municipal Basic Administration, registration of all inhabitants takes place at municipality level, in the Basic Registration of Persons Database (BRP).³⁵ The BRP also records people's nationality. Where a person is found

28 See <https://www.raadvanstate.nl/@116933/w03-17-0286-ii/>.

29 Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 2017, <https://www.refworld.org/docid/5a12942a2b.html>, para 24.

30 1989 Convention on the Rights of the Child, Article 3.

31 Ibid, Article 2.

32 Ibid., article 8.

33 Article 7 of the CRC, Article 24(3) of the ICCPR. See also UNCHR 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, 2012, available at: <https://www.refworld.org/docid/50d460c72.html>, para 22: where a child is found to be of 'undetermined nationality', States should establish whether they would otherwise be stateless as soon as possible and within a period not exceeding five years; Recommendation CM/Rec(2009)13, adopted by the Committee of Ministers of the Council of Europe on 9 December 2009, available at <https://rm.coe.int/16807096bf>: urges States to register a child as being of 'unknown' or 'undetermined' nationality only for as short a period as possible.

34 Statistics Netherlands (CBS), January 2020.

35 2014 Dutch Act on the Municipal Basic Administration, available at: <https://wetten.overheid.nl/BWBR0006723/2014-01-01>.

not to hold any nationality, the applicable municipality could reflect this by recording “stateless” in the nationality field. Being identified as stateless enables enjoyment of other rights, including the acquisition of Dutch nationality. However, due to the strict evidentiary burden to register someone as stateless in the BRP and the absence of a uniform determination process, a widespread practice exists of registering children as ‘nationality unknown’. The Dutch Nationality Act does not stipulate acquisition of nationality by a child of “unknown nationality”, therefore this practice directly impacts the child’s right to acquire a nationality as protected under Article 7 CRC. In its current form, the Dutch Nationality Act does not outline a specific procedure for the determination of a child’s nationality or statelessness or the identification of children as stateless for the purposes of accessing the ‘option procedure’ set out above.

20. The Dutch Government has been criticised for leaving children in limbo due to the lack of a clear procedure to determine their nationality or statelessness. In *Denny Zhao v. the Netherlands*, the UN Human Rights Committee³⁶ expressed their deep concerns regarding the registration procedure for children with “undetermined nationality” in the Netherlands. Denny Zhao was born stateless in Utrecht in 2010. However, because of bureaucracy and discrimination, Denny was unable to acquire Dutch nationality. In December 2020, the Human Rights Committee issued a ground-breaking decision on the right to Dutch nationality for Denny and other stateless children in the Netherlands. It found that the Netherlands violated Article 24 of the International Covenant on Civil and Political Rights. The Committee ruled not only that Denny Zhao’s case should be reviewed, but that the Dutch Nationality Act should be amended to avoid similar violations in the future.³⁷

Issue II: Identification of stateless persons, determination of statelessness, and access to rights

21. The Netherlands presently does not have a dedicated mechanism to identify stateless persons on its territory, determine their statelessness, and facilitate their access to rights. The determination of statelessness is of absolute importance in guaranteeing the rights of stateless persons living in the country. Without early identification and formal determination of statelessness, stateless persons cannot enjoy their rights under the 1954 Convention and human rights instruments, including exemption from requirements which by their nature a stateless person is incapable of fulfilling. Given the barriers that stateless people face in accessing their rights, lack of identification and determination leads to discrimination in procedures relating to immigration and international protection status; limited protection from arbitrary detention; and barriers to family reunification, naturalisation, access to identity documents, and enjoyment of other human rights.³⁸
22. Although the 1954 Convention does not specifically stipulate how statelessness should be determined, UNHCR guidance has confirmed that this is best fulfilled through a dedicated statelessness determination procedure (SDP) with the necessary safeguards

³⁶ See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26631&LangID=E>.

³⁷ CCPR/C/130/D/2918/2016,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/130/D/2918/2016&Lang=en.

³⁸ UNHCR, Mapping Statelessness in the Netherlands, November 2011; Advisory Committee on Migration Affairs, No country of one’s own, 2013; ISI, ENS and ASKV, From Syria to Europe: Experiences of Stateless Kurds and Palestinian Refugees from Syria Seeking Protection in Europe, 2019.

and procedural guarantees.³⁹ Establishing an SDP also helps States understand the issue of statelessness at national level, through the collection of data and information on trends and developments, to which it can adequately respond and therefore meet its duties to protect the rights of stateless persons and reduce statelessness.

23. According to UNHCR Guidelines, a competent authority with expertise on nationality and statelessness should be responsible for such a procedure.⁴⁰ However, under the current Dutch legal framework, there is no specific authority charged with determining statelessness. For example, Dutch municipalities are asked to record an individual's nationality in the Basic Registration of Persons Database (BRP). People staying legally in the Netherlands can be registered as stateless in the BRP based on identity documents evidencing statelessness or a statement by the Minister of Security and Justice at the Dutch Immigration Service. However, the BRP procedure is only a registration procedure, which records established data about a person. The procedure does not assess evidence of nationality beyond a standard passport or straightforward rule of nationality law, and challenges with policy implementation lead to protection gaps. Registration as stateless in the BRP provides additional rights for stateless persons with lawful residence (for example, a travel document for stateless persons and accelerated access to Dutch nationality). However, if an incorrect status has been entered in the BRP, most often 'nationality unknown', several problems can arise including barriers to naturalisation and travel. Stateless people, especially children, find themselves in vulnerable situations where the principles of non-discrimination and personal identity are often endangered (Articles 2 and 8 of the CRC).⁴¹ No lawful residence or an official legal status is granted based on statelessness identification and registration.
24. A legislative proposal for an SDP was submitted to the Dutch Parliament in December 2020 and will be discussed in Parliament in week 14 of 2022.⁴² If passed, this law would finally establish an SDP, helping to address the problematic practice of leaving individuals indefinitely registered as having "unknown nationality". However, serious shortcomings are present in the revised legislative proposal, which will not bring about full compliance of the Netherlands with its obligations under the 1954 Convention.
25. The legislative proposal states that neither the submission of an application under the SDP, nor the determination of statelessness, will convey a right of residence in the Netherlands.⁴³ Access to all social services and general participation in society is linked to lawful stay in the Netherlands. Without legal residence on another basis, stateless people have access only to 'medically necessary' healthcare and they are not entitled to work, social security, social housing, education (except for minors), the right to vote, or family reunification. Without a right to residence, stateless persons often find themselves on the margins of society, unable to leave the country and excluded from any rights in the Netherlands. The legislative proposal as it stands will not resolve these violations of the Netherlands' obligations under the 1954 Convention.

³⁹ UNHCR, Handbook on Protection of Stateless Persons, 2014:

<http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

⁴⁰ 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, 2012, HCR/GS/12/04, para. 54, <https://www.refworld.org/docid/50d460c72.html>.

⁴¹ 1989 Convention on the Rights of the Child, Articles 2 and 8

⁴² See <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2020Z25633&dossier=35687>

⁴³ Explanatory memorandum statelessness determination procedure, p. 4, <https://www.rijksoverheid.nl/documenten/rapporten/2020/12/14/tk-mvt-wetsvoorstel-vaststellingsprocedure-rvs-versie>

26. Stateless people also face a heightened risk of arbitrary and lengthy detention, particularly where statelessness is not identified and determined, and the specific vulnerabilities of stateless people are not addressed.⁴⁴ In 2021, an estimated 30 persons with an 'unknown nationality' entered immigration detention.⁴⁵ No current figures are available for the number of stateless persons in immigration detention. The absence of an SDP means it is unclear how many of those currently identified as 'nationality unknown' are in fact stateless, which highlights the urgent need for an SDP to prevent prolonged and potentially arbitrary immigration detention.
27. The denial of a right of residence for stateless people, including children, endangers their right to a private life (Article 16 CRC and Article 8 of the European Convention on Human Rights) and the principle of non-discrimination (*inter alia* Article 2 CRC and Article 24(1) ICCPR).⁴⁶ It is also contrary to UNHCR guidance and Articles 2 and 5 ICERD, and prevents the Netherlands from fulfilling its international obligations to stateless persons.⁴⁷ It is also contrary to the Netherlands' international obligations to reduce statelessness (Article 31 of the 1954 Convention) because access to naturalisation is contingent on a period of lawful residence. While the 1954 Convention does not explicitly require States to grant stateless people a residence permit, UNHCR has noted that granting such a permit would be consistent with the object and purpose of the Convention. The granting of a residence permit would allow full access to the rights enshrined in the 1954 Convention and, in practice, is required for States to comply with their international obligations to protect and respect the rights of stateless people.⁴⁸
28. Currently, stateless persons without lawful stay are often forced to make use of the 'no-fault procedure'. This procedure is designed for people without permission to stay in the Netherlands, but who cannot leave the territory through no fault of their own. If it is proven they cannot leave the Netherlands due to no fault of their own, a one-year renewable residence permit may be granted. However, this procedure has been strongly criticised due to its one-sided and stringent burden of proof, its low approval rate, of the lack of any determination of statelessness in the decision-making process, and subsequent difficulty in invoking the rights enshrined in the 1954 Convention. The immigration authorities have significant discretionary powers to determine whether a person has sufficiently collaborated with the competent authorities to leave the country, and it remains unclear which criteria must be met to prove that a person has done everything they can to leave the country but cannot through no fault of their

⁴⁴ European Network on Statelessness & ASKV Refugee Support, Protecting stateless persons from arbitrary detention in the Netherlands, 2015, https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Reports_Netherlands.pdf
European Network on Statelessness, Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, 2017, <https://www.statelessness.eu/updates/publication/protecting-stateless-persons-arbitrary-detention-agenda-change>; European Network on Statelessness, Protecting Stateless Persons from Arbitrary Detention: a Regional Toolkit for Practitioners, 2017, https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf

⁴⁵ See <https://data.overheid.nl/dataset/immigratie-nationale-politie-vreemdelingenbewaring-instroom#panel-resources>

⁴⁶ 1989 Convention on the Rights of the Child, Articles 2 and 16

⁴⁷ 1954 Convention Relating to the Status of Stateless Persons; UNHCR, Handbook on Protection of Stateless Persons, 2014, <https://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>; 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5

⁴⁸ UNHCR Handbook on Protection of Stateless Persons, para. 147-148, https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf.

⁴⁹ For example, see <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2013/7/1/waar-eeen-wil-is-maar-geen-weg> and https://www.vluchtelingenwerk.nl/sites/default/files/Vluchtelingenwerk/Publicaties/images/DEF_VWN%20Rapport%20Buiten%20Schuld_LR.pdf

own.⁴⁹

29. Both UNHCR and the Dutch Advisory Council on Migration (ACVZ) recommend that the Dutch Government provides a right of residence to applicants under the SDP, and a residence permit as a consequence of statelessness determination.⁵⁰ Not granting residence rights to persons determined to be stateless is contrary to UNHCR guidance and good practice standards set by other countries worldwide. In not granting residence rights to stateless persons, the Netherlands would be an exception among other countries with an SDP. To meet its international obligations, the Dutch Government should amend its legislative proposal to ensure applicants under the SDP and persons determined to be stateless acquire a residence permit.
30. Lastly, the current legislative proposal establishes that the burden of proof in determining statelessness would be shared between the applicant and the authorities. Whilst a shared burden of proof is in line with UNHCR guidance, the co-signatories are concerned that applying this without explicitly considering the inherent difficulties in proving statelessness, could prevent stateless people from accessing protection. This is especially the case if the SDP applicant is required to make every effort to demonstrate their nationality status *by means of documents*, as many stateless people lack identity documents or any other documentary evidence of their lack of nationality precisely due to the nature of statelessness. If the lack of documentation is used as evidence to undermine the credibility of a statelessness claim, stateless persons will find themselves stuck in a vicious circle. In line with UNHCR guidance, it is recommended that the burden of proof is shared but that authorities should take into account the difficulties in substantiating statelessness through documentary evidence. The standard of proof necessary to determine statelessness should establish "to a reasonable degree" that the person is not considered a national by any State under the operation of its law.⁵¹ Additionally, when determining statelessness, it is important that all possible pieces of evidence are considered, including testimonies, and not just the submission of documents. To this end, UNHCR guidance, as well as official UNHCR letters and/or interventions that further clarify certain pieces of evidence, can be taken as a guideline.

Issue III: Access to facilitated naturalisation

31. The Netherlands is obliged to facilitate the naturalisation of stateless persons, in line with Article 32 of the 1954 Convention. Under the current national legal framework, stateless persons whose statelessness has not been determined due to the lack of an SDP do not benefit from the expedited process. They are - like all other persons – required to establish at least five years of legal residence in the country and to present a valid passport as part of the procedure.
32. Those registered as stateless in the BRP have access to a facilitated naturalisation

49 For example, see <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2013/7/1/waar-een-wil-is-maar-geen-weg> and https://www.vluchtelingenwerk.nl/sites/default/files/Vluchtelingenwerk/Publicaties/images/DEF_VWN%20Rapport%20Buiten%20Schuld_LR.pdf

⁵⁰ UNHCR, Mapping Statelessness in the Netherlands, November 2011, <https://www.refworld.org/docid/4eef65da2.html>; ACVZ, No country of one's own, 2013, <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2014/09/11/no-country-of-one%E2%80%99s-own>

⁵¹ UNHCR, Handbook on Protection of Stateless Persons, para 90-91, https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf.

procedure. They can apply for naturalisation after three years, instead of five years. While they are exempt from the passport requirement, proof of their identity (i.e. a birth certificate) is a requirement stateless people often cannot meet.⁵² Given that many stateless people lack of documents and many States are unwilling to issue birth certificates for non-nationals, this requirement may still pose an insurmountable and discriminatory barrier to some stateless people, undermining the objective of facilitated naturalisation.

33. The Romani community is significantly impacted by the failure to adequately identify and determine statelessness, which impacts on their access to naturalisation. It has been reported that some stateless Romani people are registered as having ‘unknown nationality’, which means they must produce a foreign passport (as well as a birth certificate) when applying for naturalisation – an unreasonable impediment to naturalisation for stateless people. Those affected include Roma who were granted residence status in the Netherlands in 1977/78 and who are still unable to access Dutch nationality, some of them having lived lawfully in the country for over 40 years.⁵³ These problems are compounded by antigypsyism (discrimination against Romani people), a lack of consultation with Roma representatives on the problems encountered in relation to their registration status and statelessness, and the failure to recognise the Roma as a national minority in the Netherlands. The Committee on the Elimination of Racial Discrimination has issued several recommendations to the Netherlands to address this issue, which have not yet been implemented.⁵⁴
34. Another group of stateless persons in the Netherlands who are disproportionately affected by barriers to naturalisation are Bhutanese refugees who were resettled in the country from 2009.⁵⁵ Although most Bhutanese refugees in the Netherlands were successful in acquiring Dutch nationality, some community members have been denied Dutch nationality on the grounds that they could not fulfil the language criteria, and therefore remain stateless. This requirement is particularly difficult to meet for Bhutanese refugees who are elderly and have never been to school, who are therefore unable to participate in the integration course, which is mandatory for acquiring Dutch nationality.
35. A further group at risk is victims of human trafficking, who, due to confiscation of their documents by their traffickers and inability to contact their countries of origin for new documents, may be unable to prove their identity and/or nationality status.⁵⁶
36. A recently adopted government policy to waive the passport and birth certificate requirements for people granted an amnesty under the ‘General Pardon’ of 2007 has not been extended to other groups who face similar obstacles, including Romani

⁵² ACVZ, No Country of One’s Own (The Hague: ACVZ, September 2014), p. 63.

⁵³ Advisory Committee on Migration Affairs (ACVZ), Geen land te bekennen, 2013, p. 32-33 [please note that the specific information on Roma statelessness in the Netherlands is only provided in the Dutch-language version of the report and not in the shorter English translation].

⁵⁴ UN Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined nineteenth to twenty-first periodic reports of the Netherlands, 24 September 2015, CERD/C/NLD/CO/19-21, para. 20; UN Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined twenty-second to twenty-fourth periodic reports of the Kingdom of the Netherlands, 16 November 2021, CERD/C/NLD/CO/22-24, para 32.

⁵⁵ Ram Karki, ‘Statelessness among resettled Bhutanese refugees in Europe: An unresolved problem’, ENS Blog, 10 June 2021: <https://www.statelessness.eu/updates/blog/statelessness-among-resettled-bhutanese-refugees-europe-unresolved-problem>

⁵⁶ Stateless Journeys, <https://statelessjourneys.org/resources/statelessness-and-refugees-in-the-netherlands/#:~:text=Naturalisation%20There%20is%20a%20limited%20facilitated%20naturalisation%20procedure,which%20cannot%20be%20met%20by%20many%20stateless%20people>. This may seem like a low turnout, however, other requirements such as naturalisation fees are still applicable and can be as high as EUR 945 per person. This can cause delays in people applying.

people, Bhutanese refugees, victims of trafficking, and other people who are stateless or at risk of statelessness in the Netherlands.⁵⁷ If a similar exemption were granted to people who lack identity documents, this would significantly reduce and prevent statelessness in the Netherlands and provide a durable solution for the many individuals affected.

Issue IV: Statistical data on Statelessness

37. Collecting and publishing accurate, disaggregated data on statelessness and the risk thereof is crucial to implementing and reviewing law, policy and practice to prevent and reduce statelessness. The Council of the EU and the Governments of EU Member States adopted Conclusions on Statelessness in 2015, which include the obligation for States to collect reliable quantitative and qualitative data on statelessness. Statelessness must be visible to combat (further) stigmatisation, ensure adequate respect for the rights of stateless persons under international law, and prevent and reduce statelessness in law and practice. In the Netherlands, the official population figures and available data on nationality (including statistics on acquisition of Dutch nationality) do not capture the distinction between statelessness and 'nationality unknown'. The categories are recorded separately, but the figures are merged in the publicly available data. Also, no data is available on stateless people in immigration detention. The lack of transparency in data contributes to the invisibility of statelessness and stateless people and the challenges they face.

Recommendations

38. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to the Netherlands:
- I. Align proposed amendments to the Dutch Nationality Act with the international law obligations of the Netherlands and the most recent recommendations of the Committee on the Rights of the Child and the Human Rights Committee. Amend the proposed legislative Bill to ensure that access to Dutch nationality for stateless children born on the territory is in line with the 1961 Convention.
 - II. Introduce safeguards in Dutch nationality law, policy and practice to ensure that children born in the Netherlands have their nationality status determined and only remain registered as having 'unknown nationality' for the shortest possible period, in order to guarantee the child's right to a nationality and ensure that stateless children born in the Netherlands acquire Dutch nationality.
 - III. Build the capacity of the competent authorities to proactively identify and determine statelessness and ensure that people are only registered as having 'unknown nationality' where absolutely necessary and for the shortest possible period of time.
 - IV. Introduce an effective statelessness determination procedure in line with UNHCR guidance and good practice standards, which is accessible to all persons on the territory of the Netherlands and automatically leads to the granting of a residence permit and all rights protected under the 1954 Convention relating to the Status of Stateless Persons.

⁵⁷ Dutch Refugee Council, Breaking: alle 10.000 pardonners krijgen een Nederlands paspoort, 7 July 2021, <https://www.vluchtelingenwerk.nl/nieuws/breaking-alle-10000-pardonners-krijgen-een-nederlands-paspoort>

- V. Ensure that relevant competent authorities have the necessary expertise, guidance, and resources to effectively identify and assess statelessness and nationality issues, facilitate cooperation between public authorities who may encounter stateless people, and introduce cross-referral mechanisms between asylum, detention, the no-fault procedure, and statelessness determination procedures.
- VI. Ensure that refugee status determination procedures take into consideration the issue of statelessness, where relevant and appropriate, to allow statelessness to be assessed as a factor when determining a well-founded fear of persecution.
- VII. Improve the recording of statelessness, namely by harmonising quantitative data on stateless persons and those at risk of statelessness, ensuring that statistical data covers the entire population affected by statelessness, and publish annual reliable, transparent, disaggregated and comparable statistics, in particular by publishing the 'stateless' and 'nationality unknown' datasets separately.