

Joint Submission to the  
Committee on the Rights  
of the Child

**89<sup>th</sup> Pre-Sessional  
Working Group**

07 – 11 June 2021

**Netherlands**

01 May 2021



Joint Submission  
to the Committee on the Rights of the Child  
at the 89<sup>th</sup> Pre-Sessional Working Group.

Civil society submission on the right of every child to acquire and preserve a nationality under Article 7 and 8 of the Convention of the Rights of the Child (CRC) in accordance with the Guiding Principles to the Convention

## Netherlands

### Introduction

1. The Institute on Statelessness and Inclusion (ISI)<sup>1</sup> and ASKV Refugee Support (ASKV)<sup>2</sup> welcome the opportunity to make this submission to the Committee on the Rights of the Child (hereafter the Committee) regarding the Netherlands' compliance towards every child's right to acquire a nationality under Article 7 and preserve their nationality under Article 8 CRC.<sup>3</sup> This submission also draws on the Guiding Principles of the Convention, in particular, the freedom from discrimination (Article 2) and the best interests of the child (Article 3).<sup>4</sup>
2. [Annex I](#) to this submission contains previous recommendations to the Netherlands on the child's right to a nationality, for ease of reference of the Committee. [Annex II](#) provides information about the co-submitting organisations.
3. This submission is based on the extensive work and research carried out by the submitting organisations on the issue of realising the right of every child to acquire a nationality in the Netherlands. In this thematic submission, we provide:
  - comments on the Netherlands' Periodic Report (combined fifth and sixth Periodic Reports) to the Committee, as well as on its Statistical Report,<sup>5</sup> both submitted on 5 November 2020,<sup>6</sup> in

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<sup>1</sup> See further <https://www.institutesi.org/about-us>

<sup>2</sup> See further <https://www.askv.nl/about-askv/>

<sup>3</sup> 1989 Convention on the Rights of the Child, Articles 7 and 8

<sup>4</sup> Ibid Articles 2 and 3

<sup>5</sup> See <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2020/11/05/statistical-information-and-data-answers-to-questions-34-54/statistical-information-and-data-answers-to-questions-34-54.pdf>

<sup>6</sup> See <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2020/11/05/report-of-the-kingdom-of-the-netherlands-answers-to-questions-1-33/report-of-the-kingdom-of-the-netherlands-answers-to-questions-1-33.pdf>

which the State Party responded to the List of Issues Prior to Reporting (LOIPR) issued by the Committee on 11 November 2019;<sup>7</sup> and

- suggested questions for the Netherlands for consideration of the Committee to include in its interactive dialogue can be found in a textbox under each substantive section;
  - recommendations, which may be drawn on by the Committee in formulating its Concluding Observations are listed at the end of the submission.
4. Many of the challenges raised through this submission are longstanding and have not been addressed by the government of the Netherlands despite numerous previous recommendations by the Committee and other human rights Treaty Bodies, the Universal Periodic Review, Special Procedures and by national, regional and international civil society groups. The Netherlands has not met its obligations to protect every child's right to acquire and preserve their nationality; to avoid statelessness; to not discriminate against children in relation to the exercise of their right to a nationality on the basis of protected characteristics of the child, their parents or guardians; and to take the best interests of the child as a primary consideration in relation to the exercise of these rights.

#### **The LOIPR and the Netherlands' Report to the Committee**

5. For ease of reference, the relevant paragraphs 16 and 39 of the Committee's LOIPR to the Netherlands, on the child's right to acquire a nationality, are quoted below:

##### ***Statelessness and nationality***

*16. Please update the Committee on the status of the legislative proposal concerning the establishment of a statelessness determination procedure, and describe the current policy or practice regarding the registration of stateless children present within the territory of the State party. Please also inform the Committee of any legislative measures taken or envisaged to ensure that all stateless children born or present within the territory of the State party, irrespective of residency status, have access to citizenship without any preconditions, and how the State party ensures that stateless children or children with an unknown nationality can access education, health and social provision and services.*

*39. Please provide data, disaggregated as described in paragraph 34 above, on:*

- (a) The number of stateless children and children with an unknown nationality, disaggregated by eligibility for Dutch nationality under the Nationality Act;*
- (b) The number of stateless children born in the State party who have acquired Dutch nationality, disaggregated by status of legal residence.<sup>8</sup>*

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<sup>7</sup> CRC/C/NLD/QPR/5-6

<sup>8</sup> CRC/C/NLD/QPR/5-6

6. It is of deep concern that these issues raised by the Committee are not adequately addressed in the State Report. The failure of the Netherlands to provide sufficient information in the State party report is reflective of the wider systemic lack of attention to realising the right of every child to a nationality.

### **The Netherland's international obligations**

7. In addition to the CRC, the Netherlands is party to the core international human rights treaties, including the ICCPR, ICESCR, ICERD, CEDAW, CRPD, CED and CAT. The Netherlands is also party to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention), the 1961 Convention on the Reduction of Statelessness (1961 Convention), the 1997 European Convention on Nationality (ECN) and the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession (CoE Convention). The Netherlands is not a party to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
8. In line with what is set out in the above instruments, the Netherlands has to respect and guarantee the following obligations regarding the protection of every child's right to a nationality and the prevention of childhood statelessness:
  - I. The right of every child to acquire a nationality, with particular attention to those children who would otherwise be stateless;<sup>9</sup>
  - II. The acquisition of nationality by foundlings found on its territory who would otherwise be stateless;<sup>10</sup>
  - III. The acquisition of nationality by children born on its territory who do not acquire another nationality, either at birth or as soon as possible after birth if they remain stateless;<sup>11</sup>
  - IV. The Guiding Principles of the CRC including the prohibition of discrimination against any child or their parents or guardians and ensuring that the best interests of the child are a primary consideration for authorities in dealing with all the matters above.<sup>12</sup>

### **Childhood statelessness in the Netherlands**

9. The Netherlands has recognised the importance of the right to nationality by becoming a State Party to the instruments mentioned above. This means that it is legally bound by them and must adhere to the norms and principles they contain. To this end, the Netherlands has included special rules in its domestic law, in particular within the Dutch Nationality Act (DNA), that aim to prevent statelessness.<sup>13</sup>

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<sup>9</sup> 1989 Convention on the Rights of the Child, Article 7

<sup>10</sup> 1997 European Convention on Nationality, Article 6(1)(b); 1961 Convention on the Reduction of Statelessness, Article 2

<sup>11</sup> 1997 European Convention on Nationality, Article 6(2)(b); 1961 Convention on the Reduction of Statelessness, Article 1(2)(b)

<sup>12</sup> 1989 Convention on the Rights of the Child, Articles 2 and 3

<sup>13</sup> 2010 Dutch Nationality Act, available at: [https://www.legislationline.org/download/id/5937/file/Netherlands%20Nationality%20Act\\_2010\\_en.pdf](https://www.legislationline.org/download/id/5937/file/Netherlands%20Nationality%20Act_2010_en.pdf)

10. Nevertheless, children born in the Netherlands are not always protected against statelessness, and many cases remain unresolved. This is not only due to inadequate legislation, which is not in line with international obligations, but also to extensive bureaucratic obstacles. As a result, children are not able to receive the help they need to live their life with dignity, as affirmed in the Preamble of the Convention on the Rights of the Child.<sup>14</sup>
11. Dutch nationality law and related administrative procedures have been criticised by a multitude of human rights bodies (see [Annex 1](#)). Most recently, for example, the Human Rights Committee found a violation of international norms regarding the child's right to a nationality in the case of *Denny Zhao v. The Netherlands* (December 2020).<sup>15</sup> In this regard, the Government of the Netherlands has been working on a new bill that aims to resolve the problems that stateless children born on the Dutch territory face, but this reform has yet to be passed and the draft legislation is currently framed in such a way that it would still amount to a violation of children's nationality rights.<sup>16</sup> The following paragraphs provide further details of the specific issues of concern.

## **Specific issues of concern and suggested questions for the constructive dialogue**

12. The issues of concern highlighted in this submission cover five areas:
  - I. Limited access to Dutch nationality for stateless children born on the territory
  - II. Failure to identify stateless children and the practice of registering children with “nationality unknown”
  - III. Lack of a statelessness determination procedure
  - IV. Lack of transparency of data on stateless children and children with “nationality unknown”
  - V. Inadequate data collection on stateless children who have acquired Dutch nationality

## **Issue I - Limited access to Dutch nationality for stateless children born on the territory**

13. Protecting the right of every child to a nationality entails ensuring that children who would otherwise be stateless<sup>17</sup> can acquire the nationality of the state in which they are born, either automatically at birth or as soon as possible after birth. The examination of whether the child would otherwise be stateless should be carried out by a competent authority with the required expertise, and the issue resolved as soon as possible and in no longer than five years.<sup>18</sup> All measures involved in establishing

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<sup>14</sup> Preamble to the 1989 Convention on the Rights of the Child

<sup>15</sup> CCPR/C/130/D/2918/2016, available at:

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

<sup>16</sup> See: <https://www.government.nl/topics/dutch-nationality/statelessness>

<sup>17</sup> For instance children whose parents do not have a nationality or cannot confer their nationality under the laws of the country.

<sup>18</sup> UNHCR (2012), *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*, HCR/GS/12/04, para 22, available at: <https://www.refworld.org/docid/50d460c72.html>

whether a child would otherwise be stateless must be undertaken in accordance with the best interests of the child as a primary consideration as indicated in Article 3 of the CRC.<sup>19</sup>

14. The Dutch Nationality Act (DNA) provides that a child can obtain Dutch citizenship if one of her or his parents is a Dutch citizen.<sup>20</sup> Birth on the territory of the Netherlands does not generate an automatic entitlement to Dutch nationality. However, for children born in the Netherlands, whose parents do not have a nationality or who cannot confer their nationalities under the laws of their countries, Article 6(1)(b) of the Dutch Nationality Act (DNA) provides for a procedure to obtain Dutch nationality: the so-called “option procedure”. Nonetheless, 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.”<sup>21</sup>*

15. The language of “admission and principle residence” in this provision means that **Dutch law currently requires stateless children to have three years’ legal residence for before being able to opt for Dutch nationality**. Therefore, stateless children born in the country without a residence status are excluded from accessing Dutch nationality. These conditions are not consistent with Article 7 CRC on realising every child’s right to a nationality and Article 3 CRC on the best interests of the child as their status remains uncertain for years.<sup>22</sup> Likewise, they are in violation of the prohibition of discrimination contained in Article 2 of CRC.<sup>23</sup>
16. In 2011, the United Nations High Commissioner for Refugees (UNHCR) raised this issue with the Dutch authorities following the publication of a research report.<sup>24</sup> In 2013, these concerns were echoed in the findings of a study by the Advisory Committee on Migration Affairs.<sup>25</sup> In 2014, the High Commissioner for Human Rights of the Council of Europe recommended that the Dutch authorities should remove the requirement of lawful stay to opt for Dutch nationality.<sup>26</sup> In 2015, the Committee on the Rights of the Child addressed these problematic conditions in its Concluding Observations for the Netherlands, as follows:

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<sup>19</sup> 1989 Convention on the Rights of the Child, Article 3

<sup>20</sup> 2010 Dutch Nationality Act, Article 3, available at:

[https://www.legislationline.org/download/id/5937/file/Netherlands%20Nationality%20Act\\_2010\\_en.pdf](https://www.legislationline.org/download/id/5937/file/Netherlands%20Nationality%20Act_2010_en.pdf)

<sup>21</sup> 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”.

<sup>22</sup> 1989 Convention on the Rights of the Child, Article 3

<sup>23</sup> Ibid Article 2

<sup>24</sup> UNHCR (2011), *Mapping Statelessness in the Netherlands*, available at: <https://www.refworld.org/docid/4eef65da2.html>

<sup>25</sup> ACVZ (2013), *Geen land te bekennen*, available in English at:

[https://www.adviescommissievoorvreemdelingenzaken.nl/binaries/adviescommissievoorvreemdelingenzaken/documenten/publicaties/2014/09/11/no-country-of-one%E2%80%99s-own/No\\_country\\_of\\_ones\\_own\\_ACVZ\\_report\\_20140911.pdf](https://www.adviescommissievoorvreemdelingenzaken.nl/binaries/adviescommissievoorvreemdelingenzaken/documenten/publicaties/2014/09/11/no-country-of-one%E2%80%99s-own/No_country_of_ones_own_ACVZ_report_20140911.pdf)

<sup>26</sup> High Commissioner for Human Rights of the Council of Europe (2014), *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>

*“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”.*

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17. In response to these criticisms, the Dutch Ministry for Security and Justice developed a Draft Law to address the existing deficiencies in the Netherlands’ option procedure (published for internet consultation in 2016).<sup>28</sup> However, the Draft law 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 instruments. Rather than simply removing the condition of lawful residence, the Draft Law proposed the introduction of a new option procedure for stateless children born in the country who have completed five years of ‘stable’ residence. According to the draft Explanatory Memorandum, the child and his or her 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<sup>29</sup>, making the child’s right to a nationality contingent on the actions of the parents.
18. After several years of stalling, the legislative process continued in December 2020, when a revised Draft Law was communicated to the Parliament.<sup>30</sup> Following the March 2021 national elections, this revised Draft Law is now pending for consideration by the Parliament. The text of the revised Draft Law fails to take account of the explicit recommendation made by the Committee on the Rights of the Child that *“the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to citizenship without any conditions. [...] the State party not adopt the proposed requirement of parents’ cooperation with the authorities.”*<sup>31</sup> The revised Draft Law maintains the requirement of ‘stable residence’ and further extends the period of such residence that the child must satisfy from five to ten years.<sup>32</sup> Moreover, the revised Explanatory Memorandum confirms the provision which conditions access to nationality on the cooperation of the child’s parents with the Dutch immigration authorities.<sup>33</sup>
19. Specifically, the Revised Draft Law would add a new paragraph to Article 6(1) of the Dutch Nationality Act (paragraph p) as follows:

*After making a written statement to this effect Dutch citizenship is obtained by [...] p) a non-national who:*

*1°. has not reached the age of 21;*

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<sup>27</sup> CRC/C/NLD/CO/4, 2015, para. 32-33.

<sup>28</sup> Available at: <https://www.internetconsultatie.nl/staatloosheid/details>

<sup>29</sup> <https://www.internetconsultatie.nl/staatloosheid/document/2493> at page 24.

<sup>30</sup> See <https://www.tweedekamer.nl/downloads/document?id=ca8d1f4f-10fe-4883-bffc-3e6fb87e8b9b&title=Voorstel%20van%20rijkswet.pdf>.

<sup>31</sup> CRC/C/NLD/CO/4, 2015, para. 32-33.

<sup>32</sup> An amendment has since been submitted to the Parliament to reduce this term to back to five years, but this has yet to be considered.

<sup>33</sup> 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”.

2°. *has enjoyed stable, principal residence for a period of at least ten years, of which five years of uninterrupted residence prior to the application;*

3°. *is born in the European part of the Netherlands, Aruba, Curaçao, Sint Maarten, Bonaire, Sint Eustatius or Saba;*

4°. *has been stateless from birth; and*

5°. *cannot reasonably acquire another nationality.*<sup>34</sup>

20. This approach goes against the advice of the Dutch Council of State<sup>35</sup> and falls short of the Netherlands' international commitments as it denies children their right to a nationality (Article 7 CRC). 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 remains insecure for an extended period of time after birth.<sup>36</sup> Moreover, stateless children born in the country without a residence status are still excluded from accessing Dutch nationality and the child's legal status remains contingent on the choices or actions of his or her parents violating Article 2 CRC.<sup>37</sup> Finally, not granting Dutch nationality also interferes with the right of children's identity and sense of belonging outlined in Article 8 CRC.<sup>38</sup>

**In light of the context outlined above, the Committee is urged to ask the Netherlands:**

- **How does the Netherlands justify that the new Draft Law maintains the requirement of 'stable residence', including the requirement of parents' cooperation with the authorities, and further extends the period of such residence from five to ten years, despite the explicit recommendation made by the CRC?**
  
- **What steps, in line with the Netherlands' international obligations, is the Dutch Government taking to ensure that all stateless children can access Dutch citizenship and enjoy their full CRC rights without discrimination?**

## **Issue II - Failure to identify stateless children and practice of registering children as "nationality unknown"**

21. Determining statelessness is an important first step in ensuring that stateless people, in particular stateless children, have access to their rights – including to safeguards to protect the right to a nationality. The application of the principle of the best interests of the child, as set out in Article 3 of

<sup>34</sup> The original text of the revised Draft Law in Dutch reads: "p. *de vreemdeling die: 1°. de leeftijd van eenentwintig jaar nog niet heeft bereikt; 2°. gedurende een periode van in totaal ten minste tien jaar stabiel hoofdverblijf heeft, waarvan ten minste vijf jaar onafgebroken onmiddellijk voorafgaand aan de verklaring; 3°. in het Europese deel van Nederland, Aruba, Curaçao, Sint Maarten of de openbare lichamen Bonaire, Sint Eustatius en Saba is geboren; 4°. sedert zijn geboorte staatloos is; en 5°. in redelijkheid geen andere nationaliteit kan verkrijgen.*"

<sup>35</sup> See <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2020/12/14/tk-advies-rvs-rijkswet/tk-advies-rvs-rijkswet.pdf>

<sup>36</sup> 1989 Convention on the Rights of the Child, Article 3

<sup>37</sup> Ibid Article 2

<sup>38</sup> Ibid Article 8



the CRC, 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 of time, nor with their nationality status undetermined. It is not in the best interests of stateless children to deny or limit their access to other Convention rights. However, extensive bureaucratic obstacles are preventing children from being recognised as stateless in the Netherlands, with the result that many are left with their nationality undetermined for an extended period of time.

22. In its current form, the Dutch Nationality Act does not outline a specific procedure for the determination of statelessness or the identification of children as stateless for the purposes of accessing the option procedure set out above. Under the Dutch Act on the Municipal Basic Administration, all inhabitants are registered at municipality through the Basic Registration of Persons Database (BRP)<sup>39</sup> and their nationality is recorded. Where a person is found not to hold any nationality, it is possible for the BRP to reflect this by recording “stateless” in the nationality field. This means that the person is identified as stateless for the purposes of application of other laws and policies in the Netherlands – including access to the option procedure for acquisition of Dutch nationality. However, due to the strict evidentiary burden for registration and the undetermined duration of this procedure before having it amended to stateless, there is a widespread practice of registering children as “nationality unknown”. There is no provision in the Dutch Nationality Act for the 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.
23. The Dutch Government has been criticised for leaving children in limbo due to the lack of a clear stateless determination procedure. For example, in *Denny Zhao v. the Netherlands*, the Human Rights Committee<sup>40</sup> expressed their deep concerns regarding the registration procedure of children with “undetermined nationality” in the Netherlands. Denny Zhao was born in Utrecht in 2010. However, because of bureaucracy and discrimination, Denny has been unable to benefit from safeguards under Dutch law that are designed specifically to help stateless children born in the Netherlands to acquire a nationality. Denny’s registration in the Dutch population registry remains as a person of “unknown nationality”, but there is no provision in the Dutch nationality act for acquisition of nationality by a child of “unknown nationality”. In December 2020, the Human Rights Committee issued a groundbreaking decision on the right to a nationality for Denny and other children without nationality in the Netherlands since 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. Therefore, the Netherlands must report back to the Human Rights Committee on the implementation of the ruling in Denny Zhao’s case by mid-2021.<sup>41</sup>

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<sup>39</sup> 2014 Dutch Act on the Municipal Basic Administration, available at: <https://wetten.overheid.nl/BWBR0006723/2014-01-01>

<sup>40</sup> See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26631&LangID=E>

<sup>41</sup> CCPR/C/130/D/2918/2016, available at:

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

**In light of the above, the Committee is urged to ask the Netherlands:**

- **What measures is the Netherlands taking to implement and improve safeguards in place to ensure that all children born on territory only remain registered as being of “unknown nationality” for the shortest possible time?**
- **What steps are being taken to protect the rights of the child when a child is registered as “unknown nationality” and to ensure that their right to acquire a nationality is fulfilled?**

### **Issue III - Lack of a statelessness determination procedure**

24. As mentioned above, the Netherlands does not currently have a dedicated mechanism to identify statelessness. The determination of statelessness is however of absolute importance in guaranteeing the rights of stateless persons living in the country. Without an effective determination procedure, there is a lack of monitoring in relation to their status and treatment. Although the 1954 Convention does not specifically address statelessness determination procedures, the UNHCR observed that states are implicitly responsible to identify stateless individuals in order to fulfil all the principles set out in the 1954 Convention.<sup>42</sup>
25. According to UNHCR and its Guidelines on identifying statelessness, a competent authority with expertise on nationality and statelessness should be responsible for such a procedure.<sup>43</sup> However, under the current Dutch legal framework, there is no specific authority charged with establishing statelessness. Therefore, the issue arises at the point of registration when Dutch municipalities are asked to record an individual’s nationality in the Basic Registration of Persons Database (BRP). Once the incorrect status has been entered, a number of problems arise. Stateless people, especially children, find themselves in vulnerable situations where the principles of non-discrimination and identity are often endangered (Articles 2 and 8 of the CRC).<sup>44</sup>
26. A Draft Law on statelessness determination was submitted to the Dutch Parliament in December 2020.<sup>45</sup> If passed, this law would finally establish a determination procedure for stateless people, helping to address the problematic practice of leaving individuals indefinitely with an “unknown nationality”. However, serious shortcomings are still present in the revised Draft Law, which will not bring about full compliance of the Netherlands with its international obligations of determination and protection of stateless persons. The Draft Law states that neither the submission of an application for statelessness identification, nor the establishment of statelessness, will convey the right of residence

<sup>42</sup> UNHCR (2014), *Handbook on Protection of Stateless Persons*, para. 144, available at: <https://www.refworld.org/docid/53b676aa4.html>

<sup>43</sup> UNHCR (2012), *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*, HCR/GS/12/04, para. 54, available at: <https://www.refworld.org/docid/50d460c72.html>

<sup>44</sup> 1989 Convention on the Rights of the Child, Articles 2 and 8

<sup>45</sup> See <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2020Z25633&dossier=35687>

in the Netherlands.<sup>46</sup> Accordingly, the denial of residence permits to recognised stateless people, including children, can endanger the respect of their private lives (Article 16 CRC) and the principle of non-discrimination (Article 2 CRC).<sup>47</sup> The failure to provide an avenue to residence rights will also affect the enjoyment of the right to a nationality by stateless children who are not born in the Netherlands because access to naturalisation is contingent on a period of lawful residence. To meet its international obligations, the Dutch Government should amend its Draft Law and grant resident status to those who are identified as stateless, in particular to stateless children.

**In consideration of the analysis outlined above, the Committee is urged to ask the Netherlands:**

- **How does the Netherlands justify not issuing residence permits to identified stateless children?**
- **What steps are being taken to amend the Draft Law that introduces a statelessness determination procedure in order to guarantee residence status to stateless children?**

#### **Issue IV - Lack of transparency of data on stateless children and children with “nationality unknown”**

27. States should collect reliable quantitative and qualitative data on statelessness. Identifying stateless people is the first step in being able to assist them and having accurate data helps States – as well as international entities – to monitor whether they are meeting their obligations in respect of protecting the rights of stateless persons and realising the right to a nationality.
28. The absence of a statelessness determination procedure and the widespread practice of registering people as “nationality unknown” due to the high burden of proof to identify a person as stateless result in a data gap in the Netherlands that leaves many people in vulnerable circumstances. In the 2019 CRC List of Issues Prior to Reporting, the Committee expressively asked the Netherlands to provide:

*“the number of stateless children and children with unknown nationality, disaggregated by eligibility for Dutch nationality under the Nationality Act”.*<sup>48</sup>

The 2020 Dutch Statistical Report to the Committee fails to provide the data requested. Rather, the Dutch Government provided a single data table in which statistics for the number of stateless children and children with unknown nationality are combined. So, although the data covers the period of 2013

<sup>46</sup> Explanatory memorandum statelessness determination procedure, p. 4, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2020/12/14/tk-mvt-wetsvoorstel-vaststellingsprocedure-rvs-versie>

<sup>47</sup> 1989 Convention on the Rights of the Child, Articles 2 and 16

<sup>48</sup> CRC/C/NLD/QPR/5-6

to 2019 and is disaggregated by age and by gender, it does not offer any insight into the number of children currently treated as stateless by the Dutch state, nor of the relative scale of the problem of registering children as “nationality unknown”.<sup>49</sup>

29. Statistics Netherlands (CBS), the Dutch governmental institution that gathers statistical information about the Netherlands, similarly does not disaggregate the annual population data it publishes into the distinct categories of statelessness and “unknown nationality”. This contributes to these issues remaining very hidden and poorly understood in the Netherlands. It is also impossible to determine on the basis of such data how many children are currently eligible for Dutch nationality and have not obtained it, nor how many remain ineligible until the Dutch law is amended. Moreover, this data does not account for stateless children or children of “unknown nationality” in the Netherlands who do not hold residence permits and are therefore not registered in the Basic Registration of Persons Database (BRP).

**According to the above information, the Committee is urged to ask the Netherlands:**

- How can the Netherlands justify that it does not provide separated data on stateless children and children of unknown nationality?**
- How can the Netherlands’ authorities identify and distinguish between those children who are eligible for Dutch nationality and have not acquired it, and those who cannot acquire it?**
- Which authority is responsible for collecting information on stateless children?**

## **Issue V - Inadequate data collection on stateless children who have acquired Dutch nationality**

30. In line with what was indicated above on the importance of collecting reliable information on stateless children and monitoring the implementation of safeguards designed to protect the child’s right to acquire a nationality, the Committee also asked the Netherlands to provide information on:

*“The number of stateless children born in the State party who have acquired Dutch nationality, disaggregated by status of legal residence”.*<sup>50</sup>

<sup>49</sup> See page 7: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2020/11/05/statistical-information-and-data-answers-to-questions-34-54/statistical-information-and-data-answers-to-questions-34-54.pdf>

<sup>50</sup> CRC/C/NLD/QPR/5-6

Similarly to the inaccurate data on stateless children and children identified as “nationality unknown”, the Dutch Government failed to meet the request made by the Committee. The Netherlands did not provide any data at all in response to this question.<sup>51</sup>

31. Some information on how the option procedure operates in practice for stateless children born on the territory can be found in the explanatory memorandum to the Draft Law presented to the Parliament in December 2020. It was reported that, on average over the past five years, only 15 stateless children per year obtained Dutch nationality through the option procedure under Article 6(1)(b) of the Dutch Nationality Act.<sup>52</sup> This number, however, is very low compared to the number of stateless children and children of “unknown nationality” born in the country as of 1 January 2019:

<b>Statelessness and unknown nationality among children born in the Netherlands (until age 14)<sup>53</sup></b>	
<i>Stateless</i>	<i>Unknown nationality</i>
1,440	6,303

This suggests that there may be problems with awareness of and/or access to the option procedure for acquiring Dutch nationality. It is therefore important that the State collects and publishes data on the acquisition of nationality by stateless children as well as identifying and addressing any impediments that prevent children from fulfilling their right to acquire a nationality in practice.

**In relation to the above analysis, the Committee is urged to ask the Netherlands:**

- **Why do relatively few stateless children use the option procedure under Article 6(1)(b) of the Dutch Nationality Act?**
- **Are information and assistance provided to parents of children born stateless in the Netherlands on the option procedure? If so, how are they provided?**
- **Do the Dutch authorities actively invite parents of stateless children born on the Dutch territory to apply for the option procedure?**

<sup>51</sup> See <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2020/11/05/statistical-information-and-data-answers-to-questions-34-54/statistical-information-and-data-answers-to-questions-34-54.pdf>

<sup>52</sup> Explanatory memorandum statelessness determination procedure, p. 34, available at: <https://www.rijksoverheid.nl/documenten/rapporten/2020/12/14/tk-mvt-wetsvoorstel-vaststellingsprocedure-rvs-versie>

<sup>53</sup> See <https://www.tweedekamer.nl/downloads/document?id=43d16ba4-aaa4-4209-84fc-3bcef02964d1&title=Memorie%20van%20toelichting.pdf>

## Recommendations

32. Based on the content of this submission, the following recommendations are made, which we hope the Committee will consider in urging the Government of the Netherlands the right of every child to acquire a nationality:

- I. Amend the proposed Draft Law to ensure that access to Dutch nationality for stateless children born on territory is not contingent on their residence status, nor on the cooperation of the child's parents with the authorities;**
- II. Include concrete safeguards in Dutch legislation to ensure that children born in the Netherlands only remain registered as being of unknown nationality for the shortest possible period.**
- III. Include concrete safeguards in Dutch legislation to ensure that all stateless children born on the territory have access to the option procedure to acquire Dutch nationality. A specific state authority should be appointed as responsible for taking action ex officio to apply these safeguards in practice, with due regard to the child's best interests;**
- IV. Introduce an effective and accessible statelessness determination procedure that conveys residence rights in the Netherlands and is mandated to a competent authority with expertise on nationality and statelessness;**
- V. Strengthen statistical data on statelessness in the Netherlands by providing separated data on stateless children, children with unknown nationality and children who have acquired Dutch nationality;**
- VI. Ensure information and assistance is provided to parents of children born stateless in the Netherlands to improve the accessibility of the option procedure.**

## **ANNEX 1: Previous recommendations to the Netherlands on the child's right to a nationality**

### **Committee on the Rights of the Child, 8 June 2015**

Concluding observations on the fourth periodic report of the Netherlands (CRC/C/NLD/CO/4)

32. *The Committee welcomes that the State party is in the process of amending the Nationality Act in order to extend the access to Dutch citizenship for stateless children born in the Netherlands without a legal residence permit. However, it notes that the proposed amendments do not extend such right to children whose parents did not cooperate with the State party's authorities.*

33. *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.*

\* \* \*

### **Human Rights Committee, 25 July 2019**

Concluding Observations on the fifth periodic report of the Netherlands (CCPR/C/NLD/CO/5)

22. *The Committee is concerned by reports that the draft legislation establishing a statelessness determination procedure does not grant a residence permit to a person recognized as stateless and that the stateless determination procedure envisaged in the draft legislation, including the criteria for the acquisition of Dutch citizenship by children with stateless parents, is not in line with international standards (art. 24).*

23. *The State party should review and amend the draft legislation with a view to ensuring that a person recognized as stateless is granted a residence permit so as to fully enjoy the rights enshrined in the Covenant and that the stateless determination procedure is fully in line with international standards, is aimed at reducing statelessness and considers in cases involving children the best interests of the child.*

\* \* \*

### **Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 2 July 2020**

Visit to the Netherlands (A/HRC/44/57/Add.2)

88. *During its visit to the Netherlands, the Working Group of Experts on People of African Descent expressed concern about the lack of procedures in the Netherlands to identify and protect stateless persons. Since then, the Government has taken steps to establish a statelessness determination procedure. Unfortunately, as of the Special Rapporteur's visit, the parliament had yet to adopt such a procedure. In addition, the procedure outlined in draft piece of legislation before parliament does not appear to comply with international human rights standards, especially because it does not grant persons confirmed as stateless a right to lawful residence and associated social benefits. The Special Rapporteur is also concerned that current and proposed laws limit the likelihood that children born in the Netherlands will acquire citizenship and benefit from lawful residence status.*

89. *About 80,000 persons of unknown nationality currently reside in the Netherlands. Many of these individuals lack the documents necessary to prove or disprove their statelessness. The Special Rapporteur has learned that only 4,000 persons of unknown nationality have received formal statelessness status and are listed in the Netherlands' Personal Records Database.*

\* \* \*

## **Commissioner for Human Rights of the Council of Europe**

Report by Nils Muiznieks following his visit to the Netherlands from 20-22 May 2014, October 2014

*In 2012, 5,641 children born in the Netherlands who were five years old or older were still registered as being of unknown nationality. [...]*

*Another concern is that, under Dutch law, the granting of Dutch nationality to a child who would otherwise be stateless only applies to children who have been lawfully resident in the Netherlands for three years, contrary to the 1961 UN Convention on the Reduction of Statelessness which only requires habitual residence. According to the ACVZ, registration statistics suggest that at least 85 stateless children born in the Netherlands could have acquired Dutch nationality by now were it not for this added condition of lawful residence.*

*The situation of children born in the Netherlands who are stateless is of particular concern to the Commissioner. In the light of Article 7 of the UN CRC, which provides that all children have a right to a nationality, and Article 1 of the UN 1961 Convention on the Reduction of Statelessness, which requires states parties to grant nationality to a person born on their territory who would otherwise be stateless, the Commissioner strongly recommends that the Dutch authorities find solutions for stateless children born in the Netherlands, notably by rescinding the requirement of lawful stay for their acquisition of Dutch nationality. The Commissioner also recalls that in its Recommendation on the Nationality of Children, the Committee of Ministers stressed that member states should register children as being of unknown nationality only for as short a period of time as possible.*



## ANNEX 2: About the co-submitting organisations

1. ISI is an independent non-profit organisation committed to promoting the human rights of stateless persons and fostering inclusion to ultimately end statelessness. Addressing childhood statelessness is one of the core thematic priorities of ISI.<sup>54</sup> As part of this work, ISI has made around 20 country submissions to the Committee,<sup>55</sup> developed a range of resources on the child's right to a nationality and childhood statelessness, including a Toolkit on *Addressing the Right to a Nationality through the Convention on the Rights of the Child*,<sup>56</sup> *Statelessness Essentials Booklets on Childhood Statelessness*,<sup>57</sup> *the Convention on the Rights of the Child*<sup>58</sup> and other related issues,<sup>59</sup> *The 2017 World's Stateless Report: Children*,<sup>60</sup> and a range of resources for children, which can be found online. ISI has also contributed its expertise and information towards General Recommendations of the Committee as well as Joint General Recommendations by the Committee and the CMW.
2. ASKV is an Amsterdam-based organisation providing legal assistance and social support to rejected asylum seekers in the Netherlands. Over the past thirty years, ASKV has supported undocumented refugees by providing shelter, legal and social assistance, daytime activities, and vocational training. Within the organisation there is a dedicated focus on direct assistance to stateless persons and we work on structural improvements in their situation including through strategic litigation, research and awareness campaigns<sup>61</sup>. ASKV is a vocal advocate for refugee and stateless rights, both locally and nationally and engages in direct policy advocacy for durable improvements in Dutch policy. ASKV's multifaceted approach to assistance and support for undocumented (stateless) refugees ultimately aims to secure their right to residence in the Netherlands and end their precarious and marginalised existence.

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<sup>54</sup> See <https://www.institutesi.org/focus-areas/children>

<sup>55</sup> See <https://www.institutesi.org/core-activities/human-rights-advocacy-crc>

<sup>56</sup> Institute on Statelessness and Inclusion (2016), *Addressing the Right to a Nationality through the Convention on the Rights of the Child: A Toolkit for Civil Society*, available at: [https://files.institutesi.org/CRC\\_Toolkit\\_Final.pdf](https://files.institutesi.org/CRC_Toolkit_Final.pdf)

<sup>57</sup> Institute on Statelessness and Inclusion (2018), *Statelessness Essentials, Childhood Statelessness*, available at: <https://files.institutesi.org/childhood-statelessness.pdf>

<sup>58</sup> Institute on Statelessness and Inclusion (2018), *Statelessness Essentials, Statelessness & Human Rights, The Convention on the Rights of the Child*, available at: <https://files.institutesi.org/statelessness-and-CRC.pdf>

<sup>59</sup> For all the *Essentials Booklets*, see <https://www.institutesi.org/core-activities/statelessness-essentials-booklet-series>

<sup>60</sup> Institute on Statelessness and Inclusion (2017), *The World's Stateless Children*, available at: <https://files.institutesi.org/worldsstateless17.pdf>

<sup>61</sup> <https://www.askv.nl/wat-doen-we/campagnes/staatloosheid/>