

Joint Submission to the Committee on the Elimination of Racial Discrimination

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ASKV Refugee Support
European Network on Statelessness
Institute on Statelessness and Inclusion

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European
Network on
Statelessness



Institute on
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Introduction

1. The Institute on Statelessness and Inclusion (ISI)¹, ASKV Refugee Support (ASKV)², and the European Network on Statelessness (ENS)³ welcome the opportunity to make this submission to the Committee on the Elimination of Racial Discrimination (hereafter the “Committee”), on the prohibition and elimination of discrimination in the enjoyment of the right to a nationality as enshrined in Article 5.d.iii read in conjunction with Article 2 of the Convention on the Elimination of All Forms of Racial Discrimination (hereafter “Convention” or “ICERD”). The submission also focuses on the unlawful discrimination in the enjoyment of other rights guaranteed under Article 5 of the Convention, against members of minority communities who have been deprived of their right to a nationality and who are stateless, or indefinitely categorised as having ‘unknown nationality’ in the Netherlands.
2. In the Netherlands, members of ethnic and racial minorities are disproportionately impacted by statelessness, categorised as having ‘unknown nationality’ and subjected to citizenship deprivation. Those denied their right to a nationality are then more likely to be denied equal access to other rights. There is a strong nexus between discrimination on the basis of race, colour, descent, national or ethnic origin on the one hand, and statelessness or nationality deprivation on the other, with discriminatory laws and policies exacerbating the impact of statelessness and nationality issues on members of minority communities. According to UNHCR’s latest statistics, there are 2006 stateless people in the Netherlands.⁴ However, according to the national Central Statistics Bureau, a total of 45,947 people are registered as ‘stateless/nationality unknown’.⁵ It remains unclear how many people are officially registered as stateless or ‘nationality unknown’. The latter includes stateless people but also other people whose nationality cannot be determined. According to official 2019 data from the Netherlands, there were 12,869 known stateless people in the country, with a further 42,752 people categorised as

¹ The Institute on Statelessness and Inclusion (ISI) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI’s mission is to promote inclusive societies by realising and protecting everyone’s right to a nationality. The Institute had made over 80 country specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 38th UPR Sessions. For more information see: www.institutesi.org.

² ASKV is an Amsterdam-based NGO providing legal and social assistance to undocumented refugees in the Netherlands. 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. 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. For more information see: www.askv.nl/staatloosheid.

³ The European Network on Statelessness (ENS) is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 170 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. For more information about the European Network on Statelessness, see: www.statelessness.eu

⁴ See the Annex Table on Statelessness Statistics in UNHCR’s 2020 Global Trends Report, available for download here: <https://www.unhcr.org/2020-global-trends-annex-table-statelessness>.

⁵ Het Centraal Bureau voor de Statistiek, Statline, Bevolking; geslacht, leeftijd en nationaliteit op 1 januari, last updated 9 October 2020, <https://opendata.cbs.nl/#/CBS/nl/dataset/03743/table>.

‘nationality unknown’. The latter status leaves the individual in limbo without protection as a stateless person, unable to access routes to naturalisation that could resolve their statelessness.⁶ According to available statistical information, 21 people have been deprived of their Dutch nationality on national security grounds as of the end of April 2020. 16 of these people were Dutch-Moroccan dual nationals, with the other five holding other dual/multiple nationalities alongside their Dutch nationality.⁷ Minority communities and, in particular, those of migrant heritage, are disproportionately represented in all of these categories. This submission focuses on these issues, by covering:

Part 1 – The right to nationality: Article 5.d.iii ICERD

- I. Deprivation of nationality on discriminatory grounds;
- II. Limited access to Dutch nationality for stateless children born on the territory;

Part 2 – Other rights protected under Article 5.d & 5.e ICERD

- III. Lack of a statelessness determination procedure; and
 - IV. Limited access to basic rights for stateless children and children with “unknown nationality”.
3. 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. In light of the Netherlands’ obligations under the ICERD to protect the right to nationality of ethnic and racial minorities, and to protect the basic human rights of stateless minorities within the country, the submitting organisations urge the Committee to raise these longstanding matters and address relevant recommendations to the Netherlands.

The Netherlands’ international obligations

4. In addition to the ICERD, the Netherlands is a party to the core international human rights treaties, including the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD), all of which uphold and protect the right to non-discrimination and the rights of minorities deprived of their nationality, and most of which protect the right to a nationality and the prohibition of arbitrary deprivation of nationality and resultant statelessness. The Netherlands is also a party to the 1954 Convention Relating 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 (CASRSS). The Netherlands is not a party to the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW).
5. In line with what is set out in the above instruments, the Netherlands must comply with its obligations under the principle of non-discrimination regarding the right to a nationality, the prohibition of arbitrary deprivation of nationality, the right of every child to acquire a nationality and the right of all persons to access human rights, regardless of their nationality or legal status.

⁶ Petra Vissers, Gemeenten willen niet langer wachten op wetgeving en gaan mensen zonder paspoort zelf helpen, Trow, 8 June 2019, available at: <https://www.trouw.nl/nieuws/gemeenten-willen-niet-langer-wachten-op-wetgeving-en-gaan-mensen-zonder-paspoort-zelf-helpen~b45cb795b/>

⁷ Institute on Statelessness and Inclusion, ‘Deprivation of Nationality as a National Security Measure in the Netherlands’, available at: https://files.institutesi.org/Deprivation_of_Nationality_the_Netherlands.pdf

6. The prohibition of all forms of discrimination, including racial and ethnic discrimination, in the enjoyment of the right to a nationality is set out in Article 2 UDHR read in conjunction with Article 15 UDHR and has subsequently been enshrined in different international and regional legal instruments. Article 5.d.iii ICERD, read in conjunction with Article 2, enshrines the prohibition and elimination of discrimination in the enjoyment of the right to a nationality. The right to nationality without discrimination is also enshrined in Articles 2 and 24 ICCPR. Article 7 CRC sets out the child's right to acquire a nationality, and Article 8(1) provides that States "*undertake to respect the right of the child to preserve his or her identity, including nationality, [...] without unlawful interference*" which are read in conjunction with the principle of non-discrimination enshrined in Article 2 CRC. Article 9 CEDAW and Article 18(1)(a) CRPD also prohibit discrimination in relation to the enjoyment of the right to nationality, with the latter emphasising the multiple or aggravated forms of discrimination on the basis of race and ethnic origin, among other protected characteristics.
7. The Special Rapporteur on Contemporary Forms of Racism has also reiterated the importance of the principle of non-discrimination on the basis of citizenship, nationality and immigration status during the 75th Session of the UN General Assembly.⁸ Furthermore, Article 5 ECN sets out that "*The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin*" and that "*Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently*".

Latest Concluding Observations, The List of Themes and the Netherlands' Report to the Committee

8. In its 2015 Concluding Observations, the Committee recommended that the Netherlands:

*20. [...] take specific measures in favour of Roma, Sinti and Travellers including by creating better opportunities in the labour market, combating discrimination in education and housing, and tackling the problems faced by Roma, regarding **registration status and statelessness**. The Committee recommends that the State party base these measures on prior consultation with representatives of Roma, Sinti and Travellers to ensure that they are tailored to their particular problems and needs.*⁹

9. It is of deep concern that the Netherlands has not reported on steps taken to implement this recommendation, on problems faced by Roma regarding registration status and statelessness in its twenty-second to twenty-fourth Periodic Reports.¹⁰ Until today, a number of Roma in the Netherlands, of different ages, who have lived lawfully in the country for many years (some of them over 40 years), are still unable to apply for Dutch citizenship. The practice of registering some Roma as having an 'unknown nationality' and failing to identify their statelessness continues due to the absence of a statelessness determination procedure. This registration practice, combined with the particular residence status accorded to some Roma, raises obstacles to naturalisation by subjecting Roma to unreasonable bureaucratic requirements. These problems are compounded by anti-gypsyism (anti-Roma discrimination), a lack of consultation with Roma representatives on the problems encountered

⁸ UN General Assembly, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 10 November 2020, A/75/590, available at: <https://undocs.org/A/75/590>

⁹ 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, available at: <https://undocs.org/CERD/C/NLD/CO/19-21>

¹⁰ UN Committee on the Elimination of Racial Discrimination (CERD), Twenty-second to twenty-fourth periodic reports submitted by the Netherlands under article 9 of the Convention, 4 March 2019, available at: <https://undocs.org/CERD/C/NLD/22-24>

in relation to their registration status and statelessness and the failure to recognise the Roma as a national minority in the Netherlands.¹¹

10. For ease of reference, paragraph 19 of the Committee's List of Themes to the Netherlands referring to statelessness is quoted below:

19. Update on immigration laws, particularly the Civic Integration Act. Data on the use of administrative detention of asylum seekers and immigrants, including unaccompanied children and families with children. Information on the procedure to identify stateless persons to determine statelessness.

11. Particularly in light of the Netherlands' failure to provide an update on these matters in its Periodic Report and given the Netherlands' ongoing failures to effectively act on the recommendations of other Treaty Bodies and human rights mechanisms, the submitting organisations hope the Netherlands will provide precise information on the above issues during the dialogue according to the Committee's requests in its List of Themes.

Part 1 – The Right to Nationality: Article 5.d.iii ICERD

Issue I – Deprivation of nationality on discriminatory grounds

12. As stated by the Committee in its General Recommendation XXX, "*deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality*".¹²
13. The *Principles on Deprivation of Nationality as a National Security Measure*,¹³ and the *UNHCR Guidelines on Statelessness No 5: Loss and Deprivation of Nationality*¹⁴ provide important guidance on the question of deprivation of nationality; the former, from a wider international law perspective, and the latter, more specifically in relation to the 1961 Convention. Accordingly, State discretion in this area is subject to the individual right to nationality,¹⁵ the prohibition of arbitrary deprivation of nationality,¹⁶

¹¹ Information provided by Dra. Michelle Mila van Burik, India ki Rasta Foundation, July 2021.

¹² UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXX on Discrimination Against Non Citizens, 1 October 2002, para 14, available at: <https://www.refworld.org/docid/45139e084.html>

¹³ Principles on Deprivation of Nationality as a National Security Measure, March 2020. Available at: <https://files.institutesi.org/PRINCIPLES.pdf>. The Principles were drafted by ISI in collaboration with the Open Society Justice Initiative and with support from the Asser Institute and Ashurst LLP. They were developed over a 30-month research and consultation period, with input from more than 60 leading experts in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas. At the time of submission, they have been endorsed by over 100 individual experts and organisations, including leading academics, UN Special Rapporteurs and Treaty Body members, litigators, judges, parliamentarians and diplomats. The Principles restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, regional and national law and practice. They articulate the international law obligations of States and apply to all situations in which States take or consider taking steps to deprive a person of nationality as a national security measure. More information is available here: <https://www.institutesi.org/year-of-action-resources/principles-on-deprivation-of-nationality>.

¹⁴ UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness*, May 2020, HCR/GS/20/05, available at: <https://www.refworld.org/docid/5ec5640c4.html>. The Guidelines provide authoritative guidance on the interpretation of Articles 5 – 9 of the 1961 Convention on the Reduction of Statelessness. They draw on the Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation held in Tunis, Tunisia on 31 October-1 November 2013 ("Tunis Conclusions") and the Expert Meeting on Developments related to Deprivation of Nationality held in Geneva, Switzerland on 5-6 December 2018.

¹⁵ *Human Rights Council Resolution 7/10, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/7/10 (27 March 2008); *Human Rights Council Resolution 10/13, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/10/13 (26 March 2009); *Human Rights Council Resolution 13/2, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/13/2 (24 April 2010); *Human Rights Council Resolution 20/4, The right to a nationality: women and children*, UN Doc A/HRC/RES/20/4 (16 July 2012); *Human Rights Council Resolution 20/5, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/20/5 (16 July 2012); *Human Rights Council Resolution 26/14, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/26/14 (11 July 2014); *Human Rights Council Resolution 32/5, Human rights and arbitrary deprivation of nationality*, UN Doc A/HRC/RES/32/5 (15 July 2016).

¹⁶ Principles on Deprivation of Nationality as a National Security Measure, March 2020. Available at: <https://files.institutesi.org/PRINCIPLES.pdf>, Principle 7. See also, the Draft Commentary to the Principles, available at: files.institutesi.org/PRINCIPLES_Draft_Commentary.pdf.

the prohibition of discrimination¹⁷ and the obligation to avoid statelessness.¹⁸ Furthermore, the impact of nationality deprivation on the enjoyment of other human rights, humanitarian and refugee law obligations and standards must be taken into consideration when assessing the legality of citizenship deprivation. These include, the right to enter and remain in one's own country, the prohibition of *refoulement*, the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the liberty and security of the person, the right to private and family life, legal personhood and the rights of the child.¹⁹ Any measures to deprive nationality must also comply with due process safeguards and the right to a fair trial.²⁰

14. The use of deprivation of nationality in the Netherlands raises serious human rights concerns related to the principle of non-discrimination, in particular on the basis of race, colour, descent, national or ethnic origin, as well as the prohibition of *refoulement* and the prohibition against torture and cruel, inhuman or degrading treatment. Under the current, discriminatory national law, only dual nationals may be subject to deprivation of nationality.
15. Since 2010, there has been a gradual expansion of the powers to revoke nationality under the Dutch Nationality Act (DNA), with new grounds added in 2010, 2016 and 2017.²¹ The most recent of these amendments allows for the revocation of nationality without the need for a criminal conviction, if a person voluntarily enters the foreign military service of a State involved in hostilities against the Netherlands (Article 14(3)) or joins an organisation that is listed as constituting a threat to national security (Article 14(2)). This measure was introduced on the pretext that it is needed to protect national security, aiming to prevent the return of alleged foreign terrorist fighters, mainly from Syria and Iraq, to the Netherlands. It has been used to target Dutch citizens who are outside the country at the time of their nationality revocation.
16. In an *amicus brief* issued in October 2018, the UN Special Rapporteur (SR) on Racism raised concern that Dutch law discriminates between mono and dual citizens, results in discriminatory tiers of citizenship and disproportionately affects dual nationals of "non-Western origin" – in particular, Dutch-Moroccan and Dutch-Turkish dual nationals.²² She also underlined that:

*"This tiered citizenship is further impermissible because it discriminates on the basis of ethnicity, national origin and descent. Because Dutch dual nationality is typically held by specific national origin or ethnic origin groups, the Netherlands' citizenship revocation policies and their resulting classes of citizenship establish a regime of differential treatment on the basis of descent, or national or ethnic origin. This discriminatory result violates the Netherlands' human rights law obligations to ensure racial equality and prevent all forms of indirect racial discrimination".*²³

She further noted that *"although ICERD does not extend to every aspect of nationality and citizenship law, States must not discriminate on the basis of race, ethnicity or national origin when deciding whether to deprive an individual of their citizenship. (ICERD Art. 1(2)-1(3))"*.²⁴

¹⁷ Ibid Principle 6.

¹⁸ Ibid Principle 5.

¹⁹ Ibid Principle 9.

²⁰ Ibid Principle 8.

²¹ Art. 14(2) – introduced on 17 June 2010: Revocation of nationality following conviction for various criminal offences, including the commission terrorist offences, joining foreign armed forces, and offences under the Rome Statute; Art. 14(2b) – introduced on 5 March 2016: Revocation of nationality following conviction for assistance in or preparation of the commission terrorist offences; Art. 14(3) – introduced on 10 February 2017: voluntarily entering the foreign military service of a State involved in hostilities against the Netherlands; Art. 14(4) – introduced on 10 February 2017: Joining an organization that is listed as constituting a threat to national security.

²² UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Amicus Brief to the Dutch Immigration and Naturalisation Service, 23 October 2018, available at: https://www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration_Amicus.pdf.

²³ Ibid, para 56

²⁴ Ibid, para 42

17. The SR on Racism recommended that the Netherlands review, without delay, the policy of nationality revocation as a counterterrorism measure, in light of the credible evidence that it is in violation of Article 2(1)(c) ICERD and other international legal obligations because it has *“the effect of creating or perpetuating racial discrimination”*.²⁵
18. In 2020, in her report on her visit to the Netherlands, the SR on Racism reiterated that the Dutch citizenship-stripping legislation and policies disproportionately affect Dutch dual nationals of Moroccan and Turkish descent and aggravate stereotypes by linking people of certain ethnic and national background to terrorism, making these policies and their impact incompatible with international human rights principles of equality and non-discrimination.²⁶ Moreover, due to the potential loss of Dutch nationality, the rights of dual nationals are less secure while this differential treatment can exacerbate cases in which groups of particular ethnic or national backgrounds face discrimination.²⁷
19. In 2020, two comprehensive domestic evaluations of Article 14(4) DNA were carried out: by the Dutch Review Committee on the Intelligence and Security Services (CTIVD) and by the Research and Documentation Centre (WODC).²⁸ Neither evaluation provided evidence of the effectiveness of the measure. On the contrary, the data suggested that denationalisation is not a useful national security tool, and it is likely to actually be counter-effective. The CTIVD reiterated, for instance, that is *“uncertain whether the measure will have the desired effect of preventing return of [foreign terrorist fighters] uitreizigers”*. The public prosecutor (OM) viewed deprivation of Dutch nationality as an encroachment on prosecution interests and raised objections in all cases in which there had not yet been a criminal conviction. Nevertheless, before any substantive debate of the findings of these evaluations was held, the first steps were taken towards removing the sunset clause on the use of this power. In December 2020, the Netherlands published a draft bill for public consultation that would make the current temporary power to revoke nationality from a citizen who joins a terrorist organisation, without criminal conviction, as set out in Article 14(4), a permanent power.²⁹ The draft explanatory memorandum stated that *“the withdrawal of Dutch citizenship has made an important contribution to the protection of national security”* but no explanation was given as to how this conclusion was reached.³⁰
20. Regarding the above, the SR on Racism has noted that the *“inability to evaluate effectiveness [of the counter-terrorism policy] is of grave concern because, among other things, an all too common effect of this policy is to stigmatize ethnic and religious minorities, especially Muslim communities. In turn, this exacerbates polarization, which can undercut national security.”*³¹
21. At present, it is reported that tens of thousands of women and children with links to territories formerly controlled by the Islamic State of Iraq and the Levant (‘ISIL’) are detained in detention camps in Northeast Syria.³² Reports suggest that hundreds of these women and children are nationals of the

²⁵ Ibid, para. 51.

²⁶ Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Report on Visit to the Netherlands, 2 July 2020, para 60, available at: <https://undocs.org/A/HRC/44/57/Add.2>

²⁷ Amnesty International, Paspoortmaatregel en uitreisverbod, September 2017, p. 8. (Passport measure and exit ban), available at: https://www.amnesty.nl/content/uploads/2017/09/AMN_17_13_Rapport-paspoortmaatregel-en-uitreisverbod_web.pdf?x92184.

²⁸ WODC, Evaluatie wijziging van de Rijkswet op het Nederlanderschap in het belang van de nationale veiligheid, 2020, available at: <https://www.wodc.nl/onderzoek-in-uitvoering>; CTIVD, “Toezichtsrapport. Over het handelen van de AIVD in het kader intrekking van het Nederlanderschap in het belang van de nationale veiligheid”, 2020, p. 10, available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/06/16/aanbieding-ctivd-rapport-intrekking-%20nederlanderschap>.

²⁹ Overheid.nl, Permanentmaking bevoegdheid tot intrekking Nederlanderschap, <https://www.internetconsultatie.nl/intrekkingnederlanderschap#:~:text=De%20bevoegdheid%20tot%20intrekking%20van,inhoudelijke%20wijzigin g%20van%20deze%20bevoegdheid>.

³⁰ Ibid.

³¹ Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Report on Visit to the Netherlands, 2 July 2020, para 58, available at: <https://undocs.org/A/HRC/44/57/Add.2>

³² Rights and security international, Europe’s Guantanamo: the indefinite detention of European women and Children in North East Syria, available at: https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE_REPORT.pdf.

Netherlands, Belgium, France, Germany and the United Kingdom.³³ They are being detained without charge, afforded no legal rights and placed outside the protection of the law. The camps in which they are being held are ‘fundamentally unsafe environments in which physical violence is common, the conditions are barbaric, and psychological trauma is rife’.³⁴ Real risks exist that these camps, and women and children detained there, may be caught up in renewed ISIL violence.³⁵ The Netherlands’ failure to repatriate its citizens and (former) citizens who have been stripped of their nationality, through the implementation of the discriminatory law, amounts to a failure to fulfil its obligations to protect the security of the person and ensure State protection against violence or bodily harm, as articulated in Article 5(b) ICERD.³⁶

22. These women and children are being subject to treatment and conditions that have been classified by experts as amounting to cruel, inhuman and degrading treatment. It has been reported that “*Children of various nationalities have died from war wounds, malnutrition, severe dehydration, respiratory illness, hypothermia, and carbon monoxide poisoning from tent heaters, or from tent fires caused by the same unsafe heating devices*”.³⁷ Rights and Security International (‘RSI’) also documented instances of severe abuse and violence in the detention camps. This ranges from camp guards opening fire on women and forcibly removing male children at night, to fights between detainees in crowded facilities where tensions are high and women who retain ISIL loyalties victimise others in a lawless environment. Children are subject to sexual abuse, and unaccompanied minors are abducted.³⁸
23. The prohibition on *refoulement* is absolute and covers the extradition of a national to a country where they face a real risk of being subjected to ill-treatment;³⁹ situations in which non-State actors are the likely perpetrators; and situations in which the national has been deemed a threat to national security. It can also include violations relating to prison conditions,⁴⁰ solitary confinement and incommunicado detention, including depriving an individual of contact with their family. Refusing to repatriate and/or blocking the right to (re)admission through deprivation of nationality, which disproportionately impacts those of minority communities and migrant heritage, leaves persons trapped in such detention conditions.
24. The prohibition on *refoulement* is also related to the right of individuals to enter and remain in their own country. States are not permitted under international law to, by depriving a person of their nationality, violate their right to remain in their own country or prevent them from returning to their own country. Such treatment amounts to a violation of Article 5(d)(ii) ICERD.⁴¹ Further, in its General Comment No. 27, the HRC stated that “*a State Party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country*”, and further that “*liberty of movement is an indispensable condition for the free development of a person*”.⁴² As such, it is every person’s prerogative to enter, remain in, and return to their own country, regardless of whether or not they have been stripped of their nationality. Under no circumstance may a person be arbitrarily deprived of their right to enter, return and remain in their own country.

³³ Ibid.

³⁴ Rights and Security International, Europe’s Guantanamo: the indefinite detention of European women and Children in North East Syria, available at: https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE_REPORT.pdf.

³⁵ Ibid, p.3.

³⁶ 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(b).

³⁷ Rights and security international, Europe’s Guantanamo: the indefinite detention of European women and Children in North East Syria, available at: https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE_REPORT.pdf.

³⁸ Ibid, p.4.

³⁹ Principles on Deprivation of Nationality as a National Security Measure, March 2020, Principle 9.2 of non-refoulement, available at: https://files.institutesi.org/PRINCIPLES_Draft_Commentary.pdf.

⁴⁰ See Human Rights Committee, ‘General Comment No. 9: Article 10 (humane treatment of persons deprived of liberty)’, 1982, HRI/GEN/1/Rev.9 Vol I, p. 180, para.1.

⁴¹ 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Article Article 5(d)(ii).

⁴² Human Rights Committee, ‘General Comment No. 27’, (1999), CCPR/C/21/Rev.1/Add/9., para. 21.

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

- How does entrenching the power to deprive nationality under Article 14(4) DNA as a permanent power comply with the Netherlands' obligations under international law, in relation to the principle of non-discrimination, the prohibition of arbitrary deprivation of nationality, the prohibition of refoulement, the prohibition of torture and the obligation to avoid statelessness particularly considering the concerns raised by UN experts, treaty bodies, the Universal Periodic Review and other human rights experts?
- Why have the outcomes of the evaluations carried out by the Dutch Review Committee on the Intelligence and Security Services (CTIVD) and by the Research and Documentation Centre (WODC), in particular the lack of evidence that nationality deprivation enhances national security, been disregarded, leading to the Netherlands decision to entrench the power to deprive nationality under Article 14(4) DNA, as a permanent power?
- To what extent has the Netherlands taken into consideration widely published work from national security experts who object to the use of deprivation of nationality as a tool to protect national security, deeming it to be counter-effective?
- What have been the results of the use of less intrusive measures to prevent the return of "uitreizigers" (alleged foreign terrorist fighters), such as invalidating passports? How does the Netherlands justify the use of more intrusive measures, including nationality deprivation, to reach the same objectives?

Issue II – Limited access to Dutch nationality for stateless children born on the territory

25. The Netherlands is failing to guarantee the right of every child to acquire a nationality, disproportionately impacting children from racial and ethnic minorities, in contravention of ICERD Article 5.d.iii. As such, the Netherlands is also failing to fulfil its obligations under the CRC, ICCPR and the 1961 Convention on the Reduction of Statelessness.
26. Article 6(1)(b) of the Dutch Nationality Act (DNA) discriminates against children born stateless in the territory on the basis of their residence status, and only accords children with lawful residence the right to opt for Dutch nationality. In the Netherlands, birth on the territory does not generate an automatic entitlement to Dutch nationality. The Act provides that a child can obtain Dutch citizenship if one of their parents is a Dutch citizen.⁴³ 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". Accordingly:

*"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."*⁴⁴

⁴³ 2010 Dutch Nationality Act, Article 3, available at:

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

⁴⁴ 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".

27. The language of “admission and principle residence” in this provision means that Dutch law currently requires stateless children to have three years’ uninterrupted legal residence before being able to opt for Dutch nationality. Stateless children born in the country without a residence status are excluded from accessing Dutch nationality. These conditions are not consistent with the principle on non-discrimination and the right to nationality as enshrined in Article 2 and 5(d)(iii) ICERD as well as in Article 2 and 7 CRC,⁴⁵ and they contravene the Netherlands’ international obligations under the 1961 Convention on the Reduction of Statelessness.⁴⁶ Moreover, they contradict the Committee’s recommendation to State parties to reduce statelessness, in particular statelessness among children.⁴⁷
28. In response to numerous criticisms,⁴⁸ the Dutch Ministry for Security and Justice developed a Draft Law to address the existing deficiencies in the Netherlands’ option procedure (published for online consultation in 2016).⁴⁹ However, the Draft law only tackles some of the above concerns and would not bring stateless children’s right to acquire a nationality in line with international and 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,⁵⁰ making the child’s right to a nationality contingent on the actions of the parents.
29. After several years of stalling, the legislative process continued in December 2020, when a revised Draft Law was communicated to the Parliament.⁵¹ Following the March 2021 national elections, this revised Draft Law is now pending for consideration by the Parliament. 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.⁵² 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.⁵³
30. This approach contradicts the advice of the Dutch Council of State⁵⁴ and falls short of the Netherlands’ international commitments as it violates the principle of non-discrimination regarding the right to a nationality for children.⁵⁵

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

- **How does the Netherlands justify that the new Draft Law is compliant with its international obligations, particularly in view of Article 5(d)(iii) of the Convention, when it maintains the ‘stable residence’ requirement and the requirement that parents’ cooperate with the authorities, and further extends the period of such residence from five to ten years?**

⁴⁵ 1989 Convention on the Rights of the Child, Articles 2 and 7.

⁴⁶ 1961/1989 Convention on the Reduction of Statelessness, Article 12.

⁴⁷ UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXX on Discrimination Against Non Citizens, 1 October 2002, para 16, available at: <https://www.refworld.org/docid/45139e084.html>

⁴⁸ Institute on Statelessness and Inclusion, *Joint Submission to the Committee on the Rights of the Child. Netherlands*, (2021), para. 16, available at: https://files.institutesi.org/CRC_89_pre-session_Netherlands.pdf.

⁴⁹ See <https://www.internetconsultatie.nl/staatloosheid/details>.

⁵⁰ <https://www.internetconsultatie.nl/staatloosheid/document/2493> at page 24.

⁵¹ See <https://www.tweedekamer.nl/downloads/document?id=ca8d1f4f-10fe-4883-bffc-3e6fb87e8b9b&title=Voorstel%20van%20rijkswet.pdf>.

⁵² 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.

⁵³ 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”.

⁵⁴ See <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2020/12/14/tk-advies-rvs-rijkswet/tk-advies-rvs-rijkswet.pdf>.

⁵⁵ 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(d)(iii).

- What steps, in line with the Netherlands' international obligations, is the Dutch Government taking to ensure that all stateless children born in the Netherlands, including children from minority communities, can access Dutch citizenship and effectively enjoy their human rights without discrimination?

Part 2 – Other Rights Protected Under Article 5.d & 5.e

Issue III – Lack of a statelessness determination procedure

- Identifying stateless people in the country, is the first step to providing adequate protection and rights enshrined in the ICERD, as well as other core human rights treaties and the 1954 Statelessness Convention. The task of identifying stateless people and determining their status is closely linked with upholding the ICERD since the majority of stateless people are members of racial/ethnic minorities and is best fulfilled through a dedicated statelessness determination procedure, in line with UNHCR guidance.⁵⁶
- 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. Due to the lack of a statelessness determination and protection procedure, statelessness is often not identified. This leads to discrimination in procedures relating to immigration and international protection status; protection from arbitrary detention; family reunification; naturalisation; access to identity documents; and enjoyment of other human rights.⁵⁷
- The Roma community are among those impacted by the failure to adequately identify statelessness, which has a knock-on effect on their access to naturalisation. Individuals registered as having an 'unknown nationality' (and not identified as stateless) 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 1977/1978 and who are still unable to access Dutch nationality.⁵⁸ These problems relating to Roma registration and statelessness remain unresolved.⁵⁹ A recently adopted government policy to waive the passport and birth certificate requirements for a specific category of immigrants (persons granted amnesty in the 'General Pardon' of 2007) has not been extended to other groups who face the same obstacles, including the Roma.⁶⁰
- Under its List of Themes, the Committee has asked the Netherlands to provide information on the procedure to identify stateless persons and determine statelessness. This issue was also raised in the List of Issues prior to submission of the seventh periodic report of the Netherlands to the Committee against Torture in 2016. The Netherlands answered as follows: *"A bill to establish a procedure for determining statelessness (SDP) in the Netherlands is in preparation. The procedure will be open to all stateless persons, regardless of their migratory status, place of birth, income or age. A person claiming to be stateless can have his/her status determined in a specialised civil court in a procedure in which the Immigration and Naturalisation Service has an advisory role. A new right to acquire Dutch nationality for stateless children will also be incorporated in the bill; in certain circumstances this right will be extended to children residing illegally in the Netherlands. The bill is expected to be*

⁵⁶ UNHCR, *Handbook on Protection of Stateless Persons*, (2014), available at: <https://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

⁵⁷ 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.

⁵⁸ 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].

⁵⁹ Information provided by Dra. Michelle Mila van Burik, India ki Rasta Foundation, July 2021.

⁶⁰ Dutch Refugee Council, *Breaking: álle 10.000 pardonners krijgen een Nederlands paspoort*, 7 July 2021, <https://www.vluchtelingenwerk.nl/nieuws/breaking-alle-10000-pardonners-krijgen-een-nederlands-paspoort>

presented to parliament in 2017".⁶¹ So far, a draft law 'Voorstel Rijkswet vaststellingsprocedure staatloosheid' has been submitted to Parliament in December 2020 and is now pending for consideration by the Parliament.⁶²

35. If passed, this law would finally establish a statelessness determination procedure, helping to address the problematic practice of leaving individuals indefinitely registered as having "unknown nationality" and unable to realise their rights under the 1954 Convention. However, there are serious shortcomings in the revised Draft Law, which will not bring about full compliance of the Netherlands with its international obligations to protect stateless persons and prevent and reduce statelessness.
36. The Draft Law states that neither the submission of an application for statelessness determination, nor the recognition of a person as stateless, will convey the right of residence. 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. By not linking statelessness determination to legal residence, the proposed SDP runs the risk of being an empty gesture, is contrary to UNHCR guidance and Article 2 and 5 ICERD, and will prevent the Netherlands from fulfilling its international obligations to stateless persons.⁶³ Moreover, stateless people 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.⁶⁴ Additionally, without the prospect of obtaining legal residence, stateless persons in the Netherlands will also not be able to obtain Dutch nationality and end their statelessness in the future.

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

- **How will the Netherlands protect the rights of stateless persons (including members of minority communities), as protected by Article 5 ICERD, if the Dutch statelessness determination procedure does not lead to the granting of a right to reside and consequently hinders access to other human rights?**

Issue IV – Limited access to basic rights for stateless children and children with "unknown nationality"

37. According to Article 5 of ICERD, *"in compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following [...] economic, social and cultural rights in particular: [...] the right to public health and social security (5.e.iv) education and training (5.e.v).* This is also enshrined in the UN Sustainable Development Goals (SDGs), in particular

⁶¹ UN Committee against Torture, Consideration of reports submitted by States Parties under Article 19 of the Convention pursuant to the optional reporting procedure, (14 September 2017), CAT/C/NLD/7, available at: <https://undocs.org/Home/Mobile?FinalSymbol=CAT%2FCO%2FNLD%2FCO%2F7&Language=E&DeviceType=Desktop>.

⁶² More information is available at: <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A35687>; <https://www.internetconsultatie.nl/staatloosheid/details>.

⁶³ 1954 Convention Relating to the Status of Stateless Persons; UNHCR, *Handbook on Protection of Stateless Persons*, (2014), available at: <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.

⁶⁴ European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, (2017), available at: <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), available at: https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf.

Goal 3 on good health, Goal 4 on quality education and Goal 10 on reduced inequalities, aimed to be reached by 2030.⁶⁵

38. Stateless children in the Netherlands, especially those who do not meet the requirement of lawful residence, face barriers accessing education, healthcare and other services. Such children are more likely to belong to racial and ethnic minority communities. Moreover, due to extensive bureaucratic obstacles preventing children from being registered as stateless, there is a widespread practice in the Netherlands of registering children as "nationality unknown". This results in their nationality being left undetermined for an extended period of time. As there is no provision in the Dutch Nationality Act for the acquisition of nationality by a child of "unknown nationality", this practice directly hinders the child's ability to acquire a nationality and leads to their exclusion from accessing other rights and to their marginalisation from society. This practice directly violates the child's right to a nationality as well as a number of rights enshrined in Article 5 ICERD.⁶⁶
39. The Dutch Government has been criticised for the practice of leaving children in limbo. In the case of *Denny Zhao v. The Netherlands* (December 2020), the Human Rights Committee⁶⁷ expressed their deep concern regarding the registration procedure of children with "undetermined nationality". Denny Zhao, an ethnic minority child, 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 prevent and reduce statelessness by enabling stateless children born in the Netherlands to acquire a nationality. During his case it was noted:

*"The author notes that denial of nationality has profoundly and negatively shaped his entire childhood, sending him the message that he and his family do not belong anywhere. (...) The author further notes that his lack of nationality has caused him to be physically isolated from society, and has irreparably harmed his education and social development."*⁶⁸

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 a ground-breaking decision, the Human Rights Committee found that the Netherlands violated Article 24 of the International Covenant on Civil and Political Rights, protecting the right to a nationality for Denny and other children born without nationality in the Netherlands. 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-2021.⁶⁹

40. Furthermore, even if recognised as stateless, Denny and other stateless children who do not meet the requirement of lawful stay are still excluded from the safeguard designed to realise their nationality. It is thus of utmost importance that access to Dutch nationality is not contingent on residence status in order to allow all children to enjoy their rights on equal terms, including the right to a nationality.

⁶⁵ See <https://www.undp.org/content/undp/en/home/sustainable-development-goals.html>.

⁶⁶ 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5.

⁶⁷ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26631&LangID=E>.

⁶⁸ 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.

⁶⁹ Id.

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

- Which steps are being taken by the State Party to ensure that stateless children and children with “unknown nationality” who belong to minority communities, can access their human rights as protected under Articles 5.d and 5.e of the Convention?
- What measures is the Netherlands taking to implement and improve safeguards to ensure that all children born on territory only remain registered as being of “unknown nationality” for the shortest possible time and ensure that their right to acquire a nationality is fulfilled without any delay?

Recommendations

41. Based on the content of this submission, we urge the Committee to consider making the following recommendations to the Government of the Netherlands:

- I. Review and repeal the Netherlands current discriminatory nationality deprivation powers, in order to ensure that (the use of) measures to protect national security comply with the principle of non-discrimination, the prohibition of arbitrary deprivation of nationality, the prohibition on refoulement, the prohibition of torture and the prohibition of statelessness;
- II. Take immediate steps to repatriate members of minority communities – in particular women and children – who are currently stranded in camps in Northeast Syria, regardless of whether they have been deprived of their Dutch nationality or not.
- III. 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;
- IV. 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;
- V. Establish a dedicated and accessible statelessness determination procedure as a means of identifying and protecting all stateless persons in the Netherlands, including the majority who are members of ethnic and racial minority communities, thereby protecting their rights under the ICERD, including by granting a right to reside, in line with UNHCR’s guidelines and best practice;⁷⁰
- VI. Include concrete safeguards in Dutch law to ensure that children born in the Netherlands only remain registered as being of unknown nationality for the shortest possible period.
- VII. Ensure that stateless children and children with “unknown nationality” have access to the rights guaranteed under ICERD and other international and human rights instruments applicable to the Netherlands.

⁷⁰ UNHCR, *Handbook on Protection of Stateless Persons*, (2014), available at: <https://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.