

# Joint Submission to the Committee Against Torture

72<sup>nd</sup> Session  
8 Nov – 3 Dec 2021  
Eighth periodic report



## The Netherlands

Institute on Statelessness and Inclusion  
European Network on Statelessness

21 June 2021

# Joint Submission for the 72<sup>nd</sup> session of the Committee against Torture on the rights of stateless persons and human rights challenges pertaining to statelessness

## THE NETHERLANDS

### Introduction

1. The Institute on Statelessness and Inclusion (ISI)<sup>1</sup> and the European Network on Statelessness (ENS)<sup>2</sup> welcome the opportunity to make this submission to the Committee against Torture (hereinafter the “Committee”), on the rights, liberty and security of stateless people on the territory, the prohibition of arbitrary deprivation of nationality, and human rights challenges in The Netherlands pertaining to statelessness including cruel, inhumane or degrading treatment. The submission focuses on:
  - I. Deprivation of nationality on national security grounds and the prohibition against torture and cruel, inhuman or degrading treatment or punishment
  - II. Statelessness determination, the liberty and security of the person and arbitrary detention.
2. In light of the Netherlands’ obligations under the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (hereinafter “Convention against Torture” or “CAT”), The Principles on Deprivation of Nationality as a National Security Measure,<sup>3</sup> the Year of Action Against Citizenship Stripping,<sup>4</sup> and the importance of eradicating statelessness as expressed by UNHCR’s #IBelong campaign,<sup>5</sup> the submitting organisations hope the Committee will raise these longstanding matters and address relevant recommendations to the Netherlands.<sup>6</sup>

---

<sup>1</sup> 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 has made over 70 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 23<sup>rd</sup> to the 38<sup>th</sup> UPR Sessions. For more information see: [www.institutesi.org](http://www.institutesi.org).

<sup>2</sup> 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](http://www.statelessness.eu).

<sup>3</sup> Principles on Deprivation of Nationality as a National Security Measure, March 2020, available at:

<https://www.institutesi.org/year-of-action-resources/principles-on-deprivation-of-nationality>.

<sup>4</sup> <https://www.institutesi.org/year-of-action-resources/principles-on-deprivation-of-nationality>.

<sup>5</sup> UNHCR, #IBelong Campaign to End Statelessness (launched in November 2014), see: <https://www.unhcr.org/ibelong/>.

<sup>6</sup> Principles on Deprivation of Nationality as a National Security Measure, March 2020, available at: <https://www.institutesi.org/year-of-action-resources/principles-on-deprivation-of-nationality>.

## The Netherlands' international obligations

3. In addition to the CAT, the Netherlands is 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 International Convention on the Elimination of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD). 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 (CRMW).
4. In line with the above instruments, the Netherlands must comply with its obligations regarding the right to a nationality,<sup>7</sup> the prohibition of arbitrary deprivation of nationality, the prohibition of refoulement, the prohibition against torture and cruel, inhuman or degrading treatment or punishment, and the right to liberty and security of the person.
5. The prohibition of arbitrary deprivation of nationality is set out in Article 15(2) UDHR and is subsequently enshrined in different international and regional legal instruments. Article 18(1)(a) CRPD obliges States Parties to ensure that persons with disabilities “have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability”. Article 9(1) CEDAW also provides that “States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband”. Article 7 CRC sets out children’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”. The UN General Assembly has reiterated the importance of the prohibition of arbitrary deprivation of nationality by noting that it constitutes a “fundamental principle of international law”. Furthermore, the European Court of Human Rights has held that arbitrary denial or revocation of nationality might, in certain circumstances, raise an issue under Article 8 of the European Convention on Human Rights (ECHR) because of the impact of such a denial on the private life of the individual.<sup>8</sup>
6. The prohibition against torture or other inhuman and degrading treatment, as established in the Convention against Torture, is also enshrined in the UDHR (Article 5), the ICCPR (Article 7), the CRC (Article 37(a)), the ECHR (Article 3), the Charter of Fundamental Rights of the European Union (Article 4), and the Geneva Conventions (Common Article 3). The Committee against Torture also states that the prohibition against torture is a fundamental principle of customary international law.<sup>9</sup>

---

<sup>7</sup> Article 15 UDHR; Article 24(3) ICCPR.

<sup>8</sup> E.g. European Court of Human Rights, *Ramadan v. Malta*, application no. 76136/12, judgment of 21 June 2011; *Ghoumid and others v. France*, applications no. 52273/16, 52285/16, 52290/16, 52294/16 and 52302/16, judgment of 25 June 2020; *K2 v. the United Kingdom*, application no. 42387/13, decision of 7 February 2017.

<sup>9</sup> UN Committee against Torture, General Comment No. 2: Implementation of article 2 by State parties, 2008, CAT/C/GC/2, para. 1.

7. The right to liberty and security of the person is enshrined in Articles 3 and 9 UDHR, Article 9(1) ICCPR, Article 37 CRC, Article 16(1) CRMW, Article 14 CRPD, Article 5 ECHR, and Article 6 of the Charter of Fundamental Rights of the European Union, among others. The Human Rights Committee's General Comment No. 35 stipulates that "the inability of a State party to carry out the expulsion of an individual because of statelessness or other obstacles does not justify indefinite detention".<sup>10</sup>
8. The non-derogable nature of the principle of non-refoulement is also affirmed in human rights law in Article 2(2) CAT, which provides that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture". The Human Rights Committee (HRC) has interpreted Article 7 of the ICCPR on the prohibition of torture to include exposing individuals to the danger thereto by way of their extradition, expulsion, or refoulement.
9. The Committee Against Torture has stated in 2018 that "each State party must apply the principle of non-refoulement in any territory under its jurisdiction or any area under its control or authority, or on board a ship or aircraft registered in the State party, to any person, including persons requesting or in need of international protection, without any form of discrimination and regardless of the nationality or statelessness or the legal, administrative or judicial status of the person concerned under ordinary or emergency law".<sup>11</sup> The Committee also held that anyone at risk of torture should be allowed to remain in the territory as long as this risk persists. Furthermore, the person concerned should not be detained "without proper legal justification and safeguards".<sup>12</sup>

## Previous recommendations

10. In several recommendations made to other States, the Committee has demonstrated the importance of considering the impact of statelessness and nationality in assessing States' international obligations under the Convention against Torture, particularly in the context of forced displacement, non-refoulement and arbitrary detention. The Committee for instance recommended that Bolivia should establish a framework to determine whether a person is stateless in order to ensure that the State is fulfilling the international commitments assumed under the Convention relating to the Status of Stateless Persons (1954 Convention), and grant its nationality to persons who were not born on Bolivian territory but who would otherwise be stateless.<sup>13</sup> The Committee has also recommended that Romania consider establishing a statelessness determination procedure,<sup>14</sup> and North Macedonia and New Zealand adopt measures to ensure that stateless persons whose asylum claims have been refused are not held in detention indefinitely.<sup>15</sup> It noted that obstacles to birth registration in Montenegro, in

---

<sup>10</sup> UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and security of person), 2014, CCPR/C/GC/35, para. 18.

<sup>11</sup> UN Committee against Torture, General Comment No. 4 on the implementation of Article 3 of the Convention in the context of article 22, 2017, CAT/C/GC.4, para 10.

<sup>12</sup> UN Committee against Torture, General Comment No. 4 on the implementation of Article 3 of the Convention in the context of article 22, 2017, CAT/C/GC/4, para. 12. UN Committee against Torture, *Aemei v Switzerland*, Communication no. 034/1995 (9 May 1997) CAT/C/18/D/34/1995, para. 11.

<sup>13</sup> UN Committee against Torture, Concluding observations on the second periodic report of Bolivia as approved by the Committee at its fiftieth session, 14 June 2013, CAT/C/BOL/CO/2.

<sup>14</sup> UN Committee against Torture, Concluding observations on the second periodic report of Romania, 5 June 2015, CAT/C/ROU/CO/2.

<sup>15</sup> UN Committee against Torture, Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia, 5 June 2015, CAT/C/MKD/CO/3; and UN Committee against Torture, Concluding observations on the sixth periodic report of New Zealand, 2 June 2015, CAT/C/NZL/CO/6.

particular for Roma, Ashkali and Egyptians, put them at risk of statelessness and recommended the establishment of a simplified and accessible procedure for birth registration.<sup>16</sup>

11. Other human rights bodies have also previously made relevant recommendations. The Netherlands was reviewed during the third cycle, 36<sup>th</sup> session, of the Universal Periodic Review (UPR) in 2017. Haiti recommended that the Netherlands expedite efforts to introduce a statelessness determination procedure and provide persons recognised as stateless with legal status and access to basic human rights, in full consultation with key stakeholders.<sup>17</sup> The Committee on the Rights of the Child issued a recommendation to the Netherlands in 2015, to ensure that all stateless children born in its territory, irrespective of residency status, have access to citizenship without any conditions. In particular, it recommends that the State party not adopt the proposed requirement of parents' cooperation with the authorities.<sup>18</sup>
12. During the second UPR cycle, the Netherlands received various recommendations including on the topics of addressing arbitrary detention and implementing alternatives to detention for undocumented immigrants. The Netherlands only accepted a recommendation by Sweden to "Introduce measures to reduce detention of individuals solely for immigration purposes and consider other alternatives than detention to use when possible".<sup>19</sup>

---

<sup>16</sup> UN Committee against Torture, Concluding observations on the second periodic report of Montenegro, 17 June 2014, CAT/C/MNE/CO/2.

<sup>17</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, Netherlands, 18 July 2017, A/HRC/36/15. Available at: <https://undocs.org/A/HRC/36/15>

<sup>18</sup> Committee on the Rights of the Child, Concluding observations on the fourth periodic report of the Netherlands, 16 July 2015, CRC/C/NLD/CO/4. Available at: <https://undocs.org/CRC/C/NLD/CO/4>.

<sup>19</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, Netherlands: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 12 October 2012, A/HRC/21/15/Add.1/Rev.1, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/174/54/PDF/G1217454.pdf?OpenElement>

## ISSUE 1 – Deprivation of nationality on national security grounds, the prohibition on refoulement, and the prohibition against torture and cruel, inhuman or degrading treatment or punishment

13. 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.<sup>20</sup> 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(4)).<sup>2</sup> 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.
14. In 2020, two comprehensive 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).<sup>21</sup> Neither evaluation provided evidence of the effectiveness of the measure. On the contrary, the data suggests that denationalisation is not a useful national security tool and it is likely to actually be counter-effective. The CTIVD reiterates, for instance, that it is “uncertain whether the measure will have the desired effect of preventing return of [foreign terrorist fighters] *uitreizigers*”. The public prosecutor (OM) views 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 a criminal conviction, as set out in Article 14(4), a permanent power. The draft explanatory memorandum states that “the withdrawal of Dutch citizenship has made an important contribution to the protection of national security” but no explanation is given as to how this conclusion is reached.
15. The use of deprivation of nationality raises serious human rights concerns related to the principle of non-discrimination, the prohibition of refoulement and the prohibition against torture and cruel, inhuman or degrading treatment. Only dual nationals may be subject to deprivation of nationality under the aforementioned provisions. In an *amicus brief* issued in October 2018, the Special Rapporteur on Racism raised concerns that this policy discriminates between mono and dual citizens, and disproportionately affects dual nationals of “non-Western origin” – in

---

<sup>20</sup> 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.

<sup>21</sup> WODC, Evaluatie wijziging van de Rijkswet op het Nederlanderschap in het belang van de nationale veiligheid, 2020.

Available at: <https://www.wodc.nl/onderzoeksdatabase/3107-evaluatie-wijziging-vande-rijkswet-op-het-nederlanderschap-in-het-belang-van-de-nationale-veiligheid.aspx>; CTIVD, “Toezichtsrapport. Over het handelen van de AIVD in het kader van 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-nederlanderschap>.

particular Dutch-Moroccan and Dutch-Turkish dual nationals.<sup>22</sup> She 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”.<sup>23</sup>

16. 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.<sup>24</sup> Reports suggest that hundreds of these women and children are nationals of the Netherlands, Belgium, France, Germany and the United Kingdom.<sup>25</sup> They are being detained without charge and 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’.<sup>26</sup> Real risks exist that these camps, and women and children detained there, may be caught up in renewed ISIL violence.<sup>27</sup> The women and children are subject to treatment and conditions that have been classified by international 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’.<sup>28</sup> 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.<sup>29</sup>
17. The prohibition on refoulement is absolute and includes the extradition of a national to a country where they face a real risk of being subjected to ill-treatment.<sup>30</sup> The prohibition on refoulement extends to situations where there is a risk of ill-treatment from non-State actors and situations in which the national has been deemed a threat to national security. It can also include violations relating to prison conditions,<sup>31</sup> 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 leaves persons trapped in such detention conditions.
18. The prohibition on refoulement is also related to the right of individuals to enter and remain in their own country. This right implies that 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

---

<sup>22</sup> 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](https://www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration_Amicus.pdf)

<sup>23</sup> Ibid, para. 51.

<sup>24</sup> Rights and security international, Europe’s Guantanamo: The indefinite detention of European women and children in North East Syria, [https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE\\_REPORT.pdf](https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE_REPORT.pdf)

<sup>25</sup> Ibid.

<sup>26</sup> Rights and security international, Europe’s Guantanamo: The indefinite detention of European women and children in North East Syria, [https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE\\_REPORT.pdf](https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE_REPORT.pdf)

<sup>27</sup> Ibid. p. 3.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid., p.4.

<sup>30</sup> Principles on Deprivation of Nationality as a National Security Measure, March 2020, Principle 9.2 of non-refoulement, available at: [https://files.institutetsi.org/PRINCIPLES\\_Draft\\_Commentary.pdf](https://files.institutetsi.org/PRINCIPLES_Draft_Commentary.pdf).

<sup>31</sup> 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.

prevent them from returning to their own country. In 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.”<sup>32</sup> It was stated by the HRC in General Comment No. 27 that “liberty of movement is an indispensable condition for the free development of a person. 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.

19. Article 2(2) of the Convention against Torture emphasises that ‘no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification of torture’. The Committee against Torture identifies threats of terrorist acts or violent crime to be among these exceptional circumstances that cannot constitute justification of torture.<sup>33</sup> The European Court of Human Rights also states that: “Since the prohibition of torture or inhuman or degrading treatment or punishment is absolute, the conduct of applicants, however undesirable or dangerous, cannot be taken into account”.<sup>34</sup> By depriving persons of their nationality, States risk violating the absolute and customary prohibition of torture, cruel, inhuman or degrading treatment or punishment. In and of itself, deprivation of nationality may cause severe mental suffering, as the identity of the person concerned has been taken away and that person is left in a state of uncertainty. It was recognized by the Inter-American Commission on Human Rights in *Maritza Urrutia v. Guatemala* that “the elements of the concept of torture [...] include methods to obliterate the personality of the victim in order to attain certain objectives, such as [...] intimidation or punishment”.<sup>35</sup> In *Trop v. Dulles*, the United States Supreme Court found that denaturalization was cruel and unusual because “the punishment strips the citizen of his status in the national and international political community. [...] in short, the expatriate has lost the right to have rights”.<sup>36</sup>
20. In addition to directly constituting inhumane treatment, measures following the deprivation of nationality, such as leaving the individual stateless, may also violate this provision of international law and could rise to the level of constituting torture. The African Commission on Human and Peoples' Rights emphasised this by stating that “[b]y forcing [the applicants] to live as stateless persons under degrading conditions, the government [...] has deprived them of their family and is depriving their families of the men’s support, and this constitutes a violation of the dignity of a human being, thereby violating Article 5 of the [ACHPR]”.<sup>37</sup> Thus, deprivation of nationality, particularly in the case of an individual at risk of statelessness, may cause a level of mental anguish that constitutes torture, in light of the fact that stateless people are left in legal limbo, lacking access to basic rights.

---

<sup>32</sup> Human Rights Committee, ‘General Comment No. 27; (1999) CCPR/C/21/Rev.1/Add/9., para. 21.

<sup>33</sup> Committee against Torture, General Comment No. 2: Implementation of article 2 by State parties, 2008, CAT/C/GC/2, para 5.

<sup>34</sup> ECtHR, *Al Husin v Bosnia and Herzegovina* (2012), Application no. 3727/08.

<sup>35</sup> IACtHR, *Maritza Urrutia v Guatemala* (2003), Series C No. 103, para 94.

<sup>36</sup> United States Supreme Court, *Trop v Dulles*, 356 US 86 (1958), available at:

<https://supreme.justia.com/cases/federal/us/356/86/>.

<sup>37</sup> Amnesty International v Zambia (Communication No. 212/98), 5 May 1999, para. 50.

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

- How does Article 14(4) DNA comply with the prohibition of arbitrary deprivation of nationality, the prohibition of refoulement, the prohibition of torture, the prohibition of statelessness, and the principle of non-discrimination?
- How do 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, relate to the draft bill to make Article 14(4) DNA 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? And how is the use of more intrusive measures (nationality deprivation) to reach the same goal justified?

## **ISSUE 2 - Statelessness determination, liberty and security of the person and arbitrary detention**

21. Identifying stateless people in the country is the first step to providing adequate protection and rights enshrined in the 1954 Convention, and it is best fulfilled through a dedicated statelessness determination procedure, in line with UNHCR’s recommendation.<sup>38</sup>
22. The Netherlands presently does not have a dedicated mechanism to identify stateless persons on its territory, determine their statelessness, and grant them the rights they are due under the 1954 Convention. This issue was also raised in the List of Issues prior to submission of the seventh periodic report of the Netherlands 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 presented to parliament in 2017”.<sup>39</sup> So far, the Bill has been submitted to Parliament in December 2020, but no further progress has been made.<sup>40</sup>

<sup>38</sup> UNHCR (2014), Handbook on Protection of Stateless Persons, available at:

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

<sup>39</sup> 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://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjfHYHQxe1N%2bHx2j7Cm8OLDqzLPlmgV%2bCO5SFnPxadRO9BgjkesiWzAKohlbmd6AEddWU1MOnudEM2WQ3E59sEyNjKfJZigLmk%2bKPCrVtkmx>.

<sup>40</sup> More information is available at:

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

23. 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, serious shortcomings are still present 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.
24. 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 emergency 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 will prevent the Netherlands from fulfilling its international obligations to stateless persons under the 1954 Convention.<sup>41</sup> 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.<sup>42</sup>
25. In the current proposal, it is stated in article 2(1) that a request to determine statelessness can only be submitted in the case of an “immediate interest” for the person involved.<sup>43</sup> This concept of “immediate interest” is not further defined in the Act or the memorandum. It is therefore unclear what the impact of this statement will be. It has proven complicated in the past to establish “immediate interest”. For example, a man born in Azerbaijan when it was part of the Soviet Union requested the Court in The Hague determine his statelessness in the absence of a procedure. The State concluded that the concrete interest in his claim was unclear, as statelessness under current law does not result in the issuing of a residence permit.<sup>44</sup> Since the current proposal for a statelessness determination procedure does not grant residence rights either and this may be the most convincing ground on which to justify an immediate interest to request status determination, there is a risk that the concept of “immediate interest” will significantly obstruct access to the procedure for many stateless persons. We would therefore recommend that this concept be further explained, and that new arrangements ensure access to the procedure for everyone.
26. Further, as indicated in the response of the Netherlands to the LOI, the Government proposed an amendment to the Dutch Nationality Act, which aims to enable stateless children born in the Netherlands with no legal residence to opt for Dutch citizenship. The amendment is of concern and can leave children stateless and exposed to violations of their rights under CAT and international human rights law more generally, for the following reasons:

---

<sup>41</sup> 1954 Convention Relating to the Status of Stateless Persons; UNHCR, *Handbook on Protection of Stateless Persons*, 2014, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

<sup>42</sup> European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, 2017 [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS\\_LockeInLimbo\\_Detention\\_Agenda\\_online.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf); European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A regional toolkit for practitioners*, 2017 [https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_Detention\\_Toolkit.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf)

<sup>43</sup> Draft Act statelessness determination procedure, Article 2 (1), see [www.internetconsultatie.nl/staatloosheid](http://www.internetconsultatie.nl/staatloosheid).

<sup>44</sup> Rechtbank Den Haag, JV 2015/158, r.o. 4.2, 4.3.

- a. The stateless child is required to have had a factual residence<sup>45</sup> in the Netherlands of five consecutive years, as opposed to three in the case of children with legal residence;
- b. At least one of the parents of the stateless child should not be able to resolve the statelessness of the child through his or her own actions, e.g. by reporting the child's birth to the country of origin's embassy so the child may acquire its nationality; and
- c. The residence of the child should be "stable": the parents should not have obstructed their departure or evaded supervision by the Immigration and Naturalisation Service (IND), the Repatriation and Departure Service, the Central Agency for the Reception of Asylum Seekers or the Immigration Police (*Vreemdelingenpolitie*) in the context of any obligation to report to the relevant authorities.

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

- How will the Netherlands protect the rights of stateless persons as set out in the 1954 Convention (such as facilitated naturalisation (Art. 32), public relief (Art. 23), employment (Art. 17), and labour rights and social security (Art. 24)) if the statelessness determination procedure does not lead to the granting of lawful residence?
- Can the requirement of 'immediate interest' for a statelessness determination procedure be further explained? How can the requirement of 'immediate interest' ensure access to the statelessness determination procedure in line with UNHCR guidelines on the protection of stateless persons?

---

<sup>45</sup> The concept of 'factual residence' is comparable to 'habitual residence'. See also UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness (21 December 2012) HCR/GS/12/04, para 41; UNHCR, UNHCR's legal observations regarding the Proposal to amend the Nationality Act - Conditions to grant stateless children born in the Netherlands the right to apply for Dutch nationality (30 January 2015) available online at <http://www.refworld.org/docid/5617c2c74.html>.

## Recommendations

- I. Ensure that (the use of) measures to protect national security, in particular nationality deprivation, complies with the prohibition of arbitrary deprivation of nationality, the prohibition on refoulement, the prohibition of torture, the prohibition of statelessness, and the principle of non-discrimination.
- II. Ensure that in deliberations about the draft bill to make Article 14 (4) of the Dutch Nationality Act a permanent power, 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 - is further considered, as well as observations from national security experts that object deprivation of nationality as a tool to protect national security as it can be counter-effective.
- III. Establish a dedicated statelessness determination procedure that leads to adequate protection, including granting legal residence, in line with UNHCR's guidelines and best practice.<sup>46</sup>
- IV. Ensure that the statelessness determination procedure is accessible for everyone, and not obstructed by the 'immediate interest' requirement.
- V. Ensure that women and children who are in the camps in Northeast Syria are protected from torture and cruel, inhuman or degrading treatment or punishment.

---

<sup>46</sup> UNHCR, Handbook on Protection of Stateless Persons, 2014, available at: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>