

COUNTRY BRIEFING
NOVEMBER 2018

Netherlands



INTRODUCTION

The Statelessness Index (<https://index.statelessness.eu/>) is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#)¹, a civil society alliance of over 120 organisations and individuals in 40 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with its members² to research and compile comparative information on statelessness in the Netherlands³. This briefing summarises the findings on how Dutch law, policy and practice performs against international norms and good practice on the protection of stateless persons and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the Dutch Government for reform in priority areas.

To be stateless is not to be considered as a national by any state under the operation of its law. It is a legal anomaly that prevents more than 10 million men, women and children around the world - and more than half a million in Europe - from accessing fundamental civil, political, economic, cultural and social rights.

INTERNATIONAL AND REGIONAL INSTRUMENTS

Different international and regional treaties provide for the protection of stateless persons and the prevention and reduction of statelessness. Positively, the Netherlands is party to all four of the core statelessness conventions ([1954 Convention Relating to the Status of Stateless Persons](#); [1961 Convention on the Reduction of Statelessness](#); [European Convention on Nationality](#); [2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession](#)) and is state party to all other relevant regional and international treaties. This means the Netherlands has obligations to protect the right to a nationality and to prevent statelessness. The country retains reservations to Articles 8 and 26 of the 1954 Convention but it has committed to removing them. Having said this, it has reservations to Article 7 of the [European Convention on Nationality](#), which impacts on childhood statelessness as it allows for the loss of the Dutch nationality by a child whose parents renounce Dutch nationality. Additionally, its reservations to the [Convention on the Rights of the Child](#), including in relation to the right to legal representation, age of majority, and access to social security, do not directly affect statelessness but may affect stateless children in The Netherlands.

The Dutch Government should consider withdrawing its reservations to the [European Convention on Nationality](#) and the [Convention on the](#)

[Rights of the Child to fully protect children on its territory from statelessness.](#)



STATELESS POPULATION DATA

States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.⁴ The availability of reliable data is linked to whether procedures to identify and determine statelessness exist. The Dutch national statistical database contains some data on the stateless population that is disaggregated, but due to inconsistencies in how nationality and statelessness are recorded and the lack of an effective mechanism to identify stateless people in the country, the size of the stateless population is very likely to be underreported. Official figures of the Central Office for Statistics (*Centraal Bureau voor de Statistiek*) only reports old figures of 1,978 stateless persons in 2014, while unpublished figures from the same Office reported in the media show an increase in the number of people registered as stateless in the Netherlands from 2,005 in January 2012 to 12,477 in January 2017. The category of stateless/nationality unknown in 2018 amounted to 63,982 persons. In official communication by the Dutch Government, it notes that 4,000 registered stateless persons are recorded in the Dutch Population Register (*Basisregistratie Personen* (BRP)). Therefore, without a dedicated statelessness determination procedure and a lack of guidance and updates for authorities recording statelessness, data on the stateless population remains unreliable.

The Dutch Government should take concrete steps to improve the recording of statelessness, including by harmonising and defining the statistical categories used by different agencies and introducing a separate 'stateless' category, which is up to date. It should ensure that registration officials are trained to accurately identify and record statelessness.



STATELESSNESS DETERMINATION AND STATUS

To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.⁵ Statelessness may be determined through certain administrative procedures in the Netherlands including through local Municipalities in the Dutch Population Register (for legally residing persons) and through the Immigration and Naturalisation Service (IND) in the Database on Foreigners (for those without legal residence). However, there is no formal statelessness determination procedure (SDP), there are no obligations in law on the authorities to consider a claim for statelessness made within another procedure and there is no dedicated protection status. A legislative procedure for an SDP is planned and due to be discussed in Parliament, but there are concerns about the draft that require addressing, namely: stateless determination will lead to *no* legal rights whatsoever, the burden of proof is expected to be on the applicant, and stateless children without legal residence need to wait longer before they can opt for Dutch citizenship (five years instead of three) and need 'stable principal residence' that requires parents to cooperate.

The Dutch Government should establish in law a dedicated statelessness determination procedure in line with UNHCR Guidance and good practice and fulfil its obligations to stateless persons under the 1954 Convention, including to grant them a residence permit, right to work, study and facilitated naturalisation. Stateless children without legal residence should be treated the same as those with residence rights in line with the best interests of the child principle.



DETENTION

Stateless persons face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.⁶ The Netherlands is bound by the [EU Returns Directive](#),² which requires particular attention to be paid to the situation of vulnerable persons; and the revised [EU Returns Handbook](#)⁷ requires attention to be paid to the specific situation of stateless persons, ensuring that there is a reasonable prospect of removal *prior to detaining* or prolonging a person's detention. In practice, Dutch law provides for some procedural safeguards and limited protections against arbitrary detention, but there are significant gaps. Although it is set in law that detention should only be a last resort and there must be a real prospect of removal, statelessness is not considered a juridically relevant fact in decisions to detain and a country of removal is not required to be set prior to detention. Alternatives to detention exist in

practice though not in law, and reports suggest these are not fully considered prior to detaining. There is a time limit, a right to legal aid, judicial oversight, and rules governing the redocumentation process, but there are barriers to accessing legal assistance in practice and no legal status is granted on release, putting people at risk of immediate re-detention.

The Dutch Government should take further steps to protect stateless persons from arbitrary detention by introducing a statelessness determination procedure and protection status and ensuring clear referral routes from returns proceedings, as well as embedding consideration of statelessness as a juridically relevant fact in all decisions to detain.



PREVENTION AND REDUCTION

As State party to the 1961 Convention and the European Convention on Nationality, the Netherlands has obligations to prevent and reduce statelessness on its territory. Positively, full safeguards are in place in the Netherlands to prevent statelessness in the case of foundlings and adopted children, but there are gaps for other stateless children born on the territory or to Dutch nationals abroad. The provision in Dutch nationality law for children born on the territory who would otherwise be stateless is not automatic and requires continuous, legal, permanent residence of at least three years, as well as proof of the child's statelessness. New draft legislation before parliament proposes to positively amend the safeguard for stateless children born on the territory by revoking the residence requirement, but the proposal is problematic as it makes a child's right to acquire nationality conditional on the status or actions of its parents. Children born to unmarried Dutch fathers abroad are also disadvantaged by a requirement that the father officially acknowledges paternity before the child is seven.

Every child's right to legal identity and nationality is not only essential to the prevention and reduction of statelessness but is a core principle of international law.⁸ Birth registration must be free and take place immediately after birth without delay. In the Netherlands, law and practice in relation to birth registration is problematic, with strict deadlines, documentation requirements and a complex late birth registration procedure.

The Dutch Government should consider amending the law to ensure that all children born on its territory who would otherwise be stateless acquire a nationality at birth without conditions, and remove all practical barriers to birth registration.

SUMMARY OF RECOMMENDATIONS

- Withdraw all reservations to the European Convention on Nationality and the Convention on the Rights of the Child.
- Harmonise and disaggregate quantitative data on stateless persons in the Netherlands and build the capacity of officials to accurately identify and record statelessness across government agencies at all administrative levels.
- Consider carrying out a comprehensive exercise to accurately map the stateless population in the Netherlands.
- Implement a statelessness determination procedure and protection status in law and in line with good practice to give full effect to the rights enshrined in the 1954 Convention to stateless people in the Netherlands, including legal stay.
- Put in place robust mechanisms to identify and protect stateless people from arbitrary detention, including a referral mechanism to a procedure to determine statelessness and residence rights for those released from detention to protect against re-detention.
- Ensure full implementation of the EU Returns Directive in line with the Revised EU Returns Handbook, including the requirement to pay attention to the specific circumstances of stateless persons, provide access to legal advice and representation and linguistic assistance.
- Amend nationality laws to ensure that *all* otherwise stateless children born in the Netherlands acquire a nationality at birth without introducing cooperation requirements for the parents.
- Remove all practical barriers to birth registration and ensure that the documentation requirements of parents or criteria for late birth registration do not prevent immediate registration.

ENDNOTES

- 1 <https://www.statelessness.eu>
- 2 Lead Country Researcher for the Statelessness Index in the Netherlands is ENS Advisory Committee Member, ASKV Refugee Support (Marlotte van Dael)
- 3 <https://index.statelessness.eu/country/netherlands>
- 4 Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>
- 5 UNHCR (2014), Handbook on Protection of Stateless Persons, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>
- 6 ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf
- 7 European Commission (2017) ANNEX to the COMMISSION RECOMMENDATION establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_recommendation_on_establishing_a_common_return_handbook_annex_en.pdf
- 8 UN Convention on the Rights of the Child, Article 7.

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