



Institute on Statelessness and Inclusion

Submission in Advance of
UN Special Rapporteur on contemporary forms of racism, racial
discrimination, xenophobia and related intolerance
Visit to the Kingdom of the Netherlands

September 2019

Introduction

1. The Institute on Statelessness and Inclusion¹ makes this submission in advance of UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance's (hereinafter SR Racism) visit to the Kingdom of the Netherlands. This submission focuses on deprivation of nationality, the right of every child to a nationality and discrimination against stateless persons in the territory of the Kingdom in Western Europe (hereinafter the Netherlands).

The Netherlands' International obligations

2. The Netherlands ratified the *1954 Convention on the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* in 1962 and 1985 respectively. It ratified the European Convention on Nationality in 2001. The Netherlands has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party, including among others the ICCPR (article 24), CRC (articles 2, 3, 7 and 8), CEDAW (article 9), ICERD (article 5(d)(iii)) and CRPD (article 18).

Deprivation of nationality

3. 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. 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 organization that is listed as constituting a threat to national security (article 14(4)).²
4. Only dual nationals may be subject to deprivation of nationality under the aforementioned provisions. In an *amicus brief* issued in October 2018, the SR Racism raised concern that this policy discriminates between mono- and dual citizens, and disproportionately affects dual nationals of "non-Western origin" – in particular Dutch-Moroccan and Dutch-Turkish dual nationals.³ 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 ICERD and other international legal obligations because it has "the effect of creating or perpetuating racial discrimination".⁴
5. In April 2019, the National Coordinator of Counterterrorism and Security reported that between December 2017 and March 2019, the Dutch Minister of Justice and Security had revoked the

¹ ISI is an independent non-profit organisation dedicated to fostering more inclusive societies by promoting and protecting the right to a nationality. Since its establishment in 2014, ISI has made over 50 country specific UPR submissions on the human rights of stateless persons, and made active contributions to the CEDAW, CRC, CMW and various Special Mandate Holders. For more information about the Institute on Statelessness and Inclusion, see: www.institutesi.org.

² <https://zoek.officielebekendmakingen.nl/stb-2017-52.html>.

³ https://www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration_Amicus.pdf.

⁴ ICERD Article 2(1)(c).

nationality of 13 persons.⁵ In two cases, the revocation was reversed following a ruling of the Council of State because it violated procedural due process standards (namely non-retroactivity).⁶ In July 2019, the Minister for Security and Justice reported that although an estimated 100 dual nationals may fall within the scope of article 14(4) DNA and could be subject to revocation of nationality, evidential issues mean it is unlikely that the Netherlands will proceed to deprivation of nationality in many more cases.⁷ Nevertheless, members of the VVD (People's Party for Freedom and Democracy) and PVV (Party for Freedom) parties have been pressing the Minister for Security and Justice to ensure that the public prosecutor will “prioritise deprivation of nationality, rather than criminal prosecution”, demonstrating their interest in *increasing* the use of the measure and linking this to xenophobic rhetoric.⁸

6. By maintaining a policy of deprivation of nationality that disproportionately effects dual nationals of “non-Western origin”, for which the necessity has not been demonstrated, the Netherlands risks perpetuating “stereotypes resulting in discrimination, hostility and stigmatization of certain groups such as Muslims, foreigners and migrants”.⁹

Right of every child to a nationality

7. The Netherlands is failing to guarantee the right of every child to acquire a nationality, in accordance with its obligations under the CRC, ICCPR and 1961 Convention on the Reduction of Statelessness. Specifically, Article 6(1)(b) of the Dutch Nationality Act discriminates against children born stateless in the territory based on residence status and only accords children with *lawful* residence the right to opt for Dutch nationality.
8. The UN High Commissioner for Refugees (in 2011),¹⁰ the Commissioner for Human Rights of the Council of Europe (in 2014),¹¹ the Netherlands Institute on Human Rights (in 2014),¹² the UN Committee on the Rights of the Child (in 2015),¹³ and the UN Human Rights Committee (in 2019)¹⁴ have all called upon the Netherlands to find solutions for stateless children born in the Netherlands, notably by rescinding the requirement of lawful stay for their acquisition of Dutch nationality. A judgment by the District court in Overijssel found Article 6(1)(b) DNA to be in violation with international law,¹⁵ and an individual communication is currently also pending on

⁵ National Coordinator of Counterterrorism and Security, *Report Integrated Approach Terrorism* (2019). Available at: https://www.nctv.nl/binaries/Rapportage%20integrale%20aanpak%20terrorisme_tcm31-385959.pdf (pp. 11).

⁶ B v State Secretary of Justice and Security [2019] Ruling 201806104/1/V6; Z v State Secretary of Justice and Security [2019] Ruling 201806107/1/V6.

⁷ <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/07/15/tk-uitvoering-motie-laan-geselschap-en-van-toorenborg-over-de-intrekken-van-het-nederlandschap>.

⁸ <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2019/06/25/antwoorden-kamervragen-over-het-bericht-nederlandschap-afpakken-van-syrierganger-blijkt-ondanks-wet-lastig/antwoorden-kamervragen-over-het-bericht-nederlandschap-afpakken-van-syrierganger-blijkt-ondanks-wet-lastig.pdf>.

⁹ CCPR/C/NLD/QPR/5, para. 10. See also SR Racism in A/HRC/38/52, para. 56.

¹⁰ UNHCR, Mapping Statelessness in the Netherlands, November 2011 <https://www.refworld.org/docid/4eef65da2.html>.

¹¹ Report by Nils Muiznieks following his visit to the Netherlands from 20-22 May 2014, CommDH(2014)18, https://rm.coe.int/16806db830?mc_cid=24df302e1c&mc_eid=52b81a63d2.

¹² *Status naturalisatie van staatloze kinderen zonder verblijfsrecht*, 12 November 2014, https://www.mensenrechten.nl/en/node/592?mc_cid=24df302e1c&mc_eid=52b81a63d2.

¹³ CRC/C/NLD/CO/4, para. 33.

¹⁴ CCPR/C/NLD/CO/5, para. 23.

¹⁵ District Court Zwolle, 09-09-2010, Awb 09/2212.

this issue before the UN Human Rights Committee.¹⁶ To date, no legislative amendment to address this issue has been tabled for debate in Parliament.

Discrimination against stateless persons

9. The Netherlands lacks a statelessness determination and protection procedure. As a result, statelessness is often not identified and there is a failure to treat stateless persons in accordance with their specific needs and circumstances. This leads to discrimination in procedures relating to immigration and international protection status; protection from arbitrary detention; family reunification; naturalization; access to identity documents; and enjoyment of other basic rights.¹⁷
10. A related problem is the lack of adequate data on stateless persons on the territory of the Netherlands. According to UNHCR global statistics, the Netherlands hosts 1,951 persons under UNHCR's statelessness mandate; the national government gives the figure of 4,000 stateless people and a further 80,000 persons of "unknown nationality";¹⁸ yet the Central Statistics Bureau puts the figure at 12,869 persons in the Netherlands are registered as stateless (and 42,752 persons are of "unknown nationality").¹⁹ The poor quality and conflicting reporting of data makes it difficult to monitor treatment and track the extent to which stateless persons experience discrimination.
11. During its Third Cycle of the Universal Periodic Review, in 2017, the Netherlands received and accepted a recommendation by Haiti to "Expedite efforts to introduce a statelessness determination procedure and provide persons recognized as stateless with legal status and access to basic human rights, in full consultation with key stakeholders".²⁰ A public consultation on a law providing for a statelessness determination procedure (SDP) was held in 2016, but the draft was heavily criticized.²¹ As of September 2019, no draft Bill has been presented to Parliament.²²

Recommendations

12. Based on the foregoing, we urge the SR Racism to raise the following issues during her visit to the Netherlands:
 - I. Expediting a comprehensive review of legislative powers allowing dual nationals to be targeted for deprivation of nationality as a counter-terrorism measure on the basis of its discriminatory effect and contribution to xenophobic rhetoric against Dutch citizens of minority or migrant background;

¹⁶ Denny Zhao v. The Netherlands, UN Human Rights Committee, Communication No. 2001/2010 (case filed in 2016, decision pending).

¹⁷ 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.

¹⁸ <https://www.rijksoverheid.nl/onderwerpen/nederlandse-nationaliteit/staatloosheid>.

¹⁹ <https://www.trouw.nl/nieuws/gemeenten-willen-niet-langer-wachten-op-wetgeving-en-gaan-mensen-zonder-paspoort-zelf-helpen~b45cb795b/>.

²⁰ Report of the Working Group on the Universal Periodic Review: Netherlands (A/HRC/36/15), July 2017; see also CCPR/C/NLD/CO/5, para. 23.

²¹ See responses by the Netherlands Institute for Human Rights, international and national NGOs, UNHCR and lawyers groups here: <https://www.internetconsultatie.nl/staatloosheid/reacties>.

²² <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2019/07/19/antwoorden-kamervragen-over-het-wetsvoorstel-staatloosheid/antwoorden-kamervragen-over-het-wetsvoorstel-staatloosheid.pdf>.

- II. Ensuring the urgent adoption of the necessary legislative measures in order to eradicate statelessness of children in the Netherlands and to guarantee children's right to a nationality without discrimination;
- III. Expediting efforts to introduce a statelessness determination procedure, which is accessible to all persons on the territory of the Netherlands, regardless of their legal status and provides persons recognised as stateless with a legal status that provides protection and guarantees non-discriminatory access to basic human rights;
- IV. Strengthening statistical data on statelessness in the Netherlands, including in relation to stateless children born in the Netherlands, stateless persons in detention and stateless migrants, asylum seekers and refugees.