

CHILDHOOD STATELESSNESS IN THE NETHERLANDS

Despite being party to different international treaties that ensure every child's right to a nationality, children born in the Netherlands are not always protected against statelessness. This is due to inadequate legislation and extensive bureaucracy. Dutch nationality law has been criticised by various experts and UN human rights bodies for being in violation of international norms. The new bill that aims to solve these problems, however, leaves children in limbo for 10 years of their lives and makes their nationality dependent on the actions of their parents – still violating children's rights. This bill should therefore be amended and be brought in line with international obligations before its adoption into law.

THE IMPORTANCE OF NATIONALITY FOR CHILDREN

Nationality plays an often unseen but fundamentally important part in the life of a child. Without a nationality, children can have difficulty exercising their rights, become outcasts in their own country and struggle to feel like they belong. Stateless children and youth “frequently described themselves as ‘invisible’, ‘alien’, ‘living in a shadow’, ‘like a street dog’ and ‘worthless’”¹

International human rights law protects the right of every child to a nationality in Article 7 of the Convention on the Rights of the Child and Article 24 of the International Covenant on Civil and Political Rights. Children born in the country who would otherwise be stateless, are to acquire the nationality of that country – a rule also stipulated explicitly in the 1961 Convention on the Reduction of Statelessness and the European Convention of Nationality. According to European case law, nationality also forms an important element of a person's social identity and an interference with nationality rights or a situation of prolonged uncertainty as to a child's nationality may amount to a violation of the right to private life.²

The Netherlands has recognised the importance of the right to a nationality by becoming a state party to these instruments and including special rules in the Dutch Nationality Act to prevent childhood statelessness. However, there are gaps in these rules that allow some children to remain stateless and in practice there are many more children who are not able to get the help they need due to bureaucratic obstacles.

UN HUMAN RIGHTS COMMITTEE:

“NETHERLANDS IS FAILING TO HELP STATELESS CHILDREN”

Denny was born in Utrecht in 2010. However, because of **bureaucracy** and **discrimination**, Denny has been unable to benefit from safeguards under Dutch law that are designed specifically to help stateless children born in the Netherlands to acquire a nationality:

- Denny's registration in the Dutch population registry remains as a person of “unknown nationality”, but there is no provision in the Dutch nationality act for acquisition of nationality by a child of “unknown nationality”.
- Even if recognized as stateless, Denny is excluded from the safeguard designed to realise his right to a nationality due to his lack of a residence permit – something else that is entirely beyond his own control.

On 28 December 2020, the UN Human Rights Committee issued a ground-breaking decision about the situation of 10-year-old Denny and other children without nationality in the Netherlands.³ The Committee ruled not only that Denny's nationality status is to be reviewed, but that Dutch law should also be amended immediately to prevent similar cases in the future.

Article 6(1)(b) Dutch Nationality Act:

After making a written statement to this effect [...] Dutch citizenship is obtained by 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 [i.e. lawful residence] and has been stateless from birth.

“

You literally don't belong anywhere and that's how it feels. I cannot call myself a Dutch citizen despite the fact that I participate in society and that is painful.

I feel like a nobody.”

Leyla, aged 22, describes how it feels to grow up stateless in the Netherlands⁴

“

The State party is under the obligation to take all steps necessary to avoid similar violations in the future, including by reviewing its legislation [...] to ensure that a procedure for determining statelessness status is established, as well as reviewing its legislation on eligibility to apply for citizenship [...].”

UN Human Rights Committee
in its decision on the case of Denny⁵

“

This ruling is a great victory for human rights. The Committee not only says something about the mistakes made in Denny's case, but also shows the Netherlands clearly how things can and should be done differently, for Denny and all other stateless children.”

Jelle Klaas (PILP-NJCM),
one of Denny's lawyers⁶

Relevant references and resources

¹ UNHCR (2015), *I am here. I belong. The urgent need to end childhood statelessness*, p. 15. http://www.unhcr.org/ibelong/wp-content/uploads/2015-10-StatelessReport_ENG16.pdf.

² European Court of Human Rights, *Mennesson v. France*, Application No. 65192/11, 26 June 2014.

³ CCPR/C/130/D/2918/2016. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26631&LangID=E>.

⁴ <https://www.linda.nl/nieuws/interview/staatloos-in-nederland/>.

⁵ CCPR/C/130/D/2918/2016, para. 10.

⁶ <https://njcm.nl/actueel/tweede-kamer-is-aan-zet-na-baanbrekend-oordeel-vn-comite-over-kinderstaatloosheid-in-nederland/>.

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The vast majority of children acquire their nationality at birth; immediately, automatically and without any difficulty. This is, however, not the case for all children. Children whose parents do not have a nationality themselves, or who cannot pass on their nationality under the laws of their country, are born stateless.⁷ To fulfil their right to a nationality, Article 6(1)(b) of the Dutch Nationality Act allows a stateless child born in the Netherlands to acquire Dutch nationality through a procedure called “option”.

However, where the statelessness of a child cannot be proven with official documents upon registration in the Dutch population registry – a high bureaucratic burden – then a child is instead registered as having an “unknown” nationality. This prevents them using the option procedure and amounts to a violation of their right to a nationality.

Statelessness and unknown nationality among children born in the Netherlands (until age 14), as of 1 January 2019 ⁸	
Stateless 1,440	Unknown nationality 6,303

The option procedure also requires the child to have been lawfully resident for three years, meaning that children without a residence status are excluded.⁹ Although the number of children affected in this way is believed to be very small, the consequences for them are severe – as in Denny’s case.

THE WAY FORWARD: GUARANTEEING EVERY CHILD’S RIGHT TO A NATIONALITY

Over the past 5 years, an average of only 15 persons born in the Netherlands opted for Dutch nationality based on this provision.¹⁰ Yet many more children born in the Netherlands have problems with their nationality. It is time for this hidden issue to receive the attention it deserves and for the well-documented problems with Dutch law and practice to be addressed.

In December 2020, two draft laws were submitted to Parliament. One would amend the “option” procedure to also allow children without legal residence to acquire a nationality – but only after a 10-year wait and entry to the procedure is still conditional on the parents’ behaviour in migration proceedings.¹¹ This approach goes against the advice of the Dutch Council of State¹² and falls short of the Netherlands’ international commitments as it denies children their right to a nationality because of the status and actions of their parent(s). The second draft law would establish a procedure for the determination of statelessness.¹³ This could help to address situations of “unknown” nationality – but this bill also has serious shortcomings.¹⁴

The government must report back to the UN Human Rights Committee on implementation of the ruling in Denny’s case by mid-2021, and in September 2021 the Netherlands will again be before the UN Committee on the Rights of the Child, that has also raised this issue. This gives a clear window of opportunity for the necessary reforms to be achieved. Before adopting either of the draft laws, Parliament should review the content carefully to ensure full compliance with international law.

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Thousands of children born in the Netherlands do not have a nationality. [...]

This happens if their parents also do not have a nationality, for example because they did not get a new one when the Soviet Union fell apart and their country of birth therefore disappeared from the map. Or when a single mother cannot pass on her nationality; in many countries this is only possible through the male line”.

Report in Trouw, 8 June 2019¹⁵

“

You try proving that no country wants you”.

Irene Gefferie (57), foster mother of two stateless girls¹⁶

“

The Committee recommends that the Netherlands ensure that all stateless children born in its territory, irrespective of residency status, have access to citizenship without any conditions”.

UN Committee on the Rights of the Child¹⁷

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At the end of 2020, a bill was sent to the Lower House that aims to improve the current situation.

The proposed arrangements do not yet provide full protection. It is of the utmost importance that the groundbreaking statement of the UN Human Rights Committee is respected”.

Netherlands Institute for Human Rights¹⁸

⁷ See further Institute on Statelessness and Inclusion, *Childhood Statelessness*, 2017 <https://files.institutesi.org/childhood-statelessness.pdf>.

⁸ <https://www.trouw.nl/nieuws/gemeenten-willen-niet-langer-wachten-op-wetgeving-en-gaan-mensen-zonder-paspoort-zelf-helpen-b45cb795b/>.

⁹ See further Advisory Committee on Migration Affairs, *No country of one's own*, 2014 https://www.adviescommissievoorvreemdelingenzaken.nl/binaries/adviescommissievoorvreemdelingenzaken/documenten/publicaties/2014/09/11/no-country-of-one%E2%80%99s-own/No_country_of_ones_own_ACVZ_report_20140911.pdf.

¹⁰ Memorie van toelichting bij wet vaststellingsprocedure staattoosheid, Kamerstukken II 2020/21, 35 687, nr. 3, p. 48.

¹¹ <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2020Z25636&dossier=35688-%28R2151%29>.

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

¹³ <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A35687>.

¹⁴ See comments from different organisations available at <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/12/14/tk-nader-rapport-vaststellingsprocedure-wet-vaststelling-procedure>

¹⁵ <https://www.trouw.nl/nieuws/gemeenten-willen-niet-langer-wachten-op-wetgeving-en-gaan-mensen-zonder-paspoort-zelf-helpen-b45cb795b/>

¹⁶ Ibid

¹⁷ CRC/C/NDL/CO/4, 2015, para. 32-33.

¹⁸ <https://mensenrechten.nl/nl/nieuws/nederland-moet-betere-bescherming-bieden-aan-kinderen-zonder-nationaliteit>.