

COUNTRY BRIEFING
AUGUST 2024

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 \(ENS\)](#)ⁱ, a civil society alliance of over 180 organisations and individuals in 41 countries working to promote the right to a nationality and ensure that stateless people in Europe access their rights.

ENS worked with its membersⁱⁱ to research and compile comparative information on statelessness in the Netherlandsⁱⁱⁱ. This briefing summarises the findings on how Dutch law, policy and practice performs against international norms and good practice on the protection of stateless people 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 people 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 people 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 in 2023 removed the reservations it had made to the 1954 Convention. It is State Party to all other relevant regional and international treaties, except for the Convention on the Rights of Migrant Workers. This means the Netherlands has obligations to protect the right to a nationality and to prevent statelessness. The Netherlands retains reservations to Article 7 of the [European Convention on Nationality](#), which impact on childhood statelessness as they allow 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 Netherlands 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 and guarantee their fundamental rights.



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.^{iv} 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 only recent introduction of a procedure to identify stateless people in the country, the size of the stateless population is very likely to be underreported. The total number of people recorded as 'stateless' or 'with unknown nationality' by the Central Office for Statistics (*Centraal Bureau voor de Statistiek (CBS)*) was 27,637 on 1 January 2023. UNHCR reports government figures for the stateless population in the Netherlands. CBS also reports the number of stateless people who obtained a residence permit for the first time, by year, and type of permit. Mapping studies of statelessness have been undertaken by NGOs and UNHCR. Data from the Ministry of Security and Justice shows that about 50 people with 'unknown nationality' were held in immigration detention in 2023.

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. 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 (SDP).^v

There is a definition of a stateless person in Dutch law, but it is slightly narrower than the 1954 Convention definition. A procedure for determining statelessness was established in law in 2023, but this does not result in any residence rights or protections as a consequence of being recognised as stateless. There is no dedicated procedure for stateless people to regularise their stay in the country based solely on their statelessness. Statelessness can be determined by the civil chamber of the Court of The Hague, or by administrative authorities in specified cases of 'obvious statelessness'. There are no obligations in law on the authorities to consider a claim for statelessness made within an administrative procedure, while in the judicial procedure, the court must consider the claim but only when the applicant submits a petition to the court. Municipalities had developed expertise on statelessness having previously been able to register people as stateless in the Dutch Population Register (BRP). Under the new framework, municipalities no longer have discretion to decide on cases of 'obvious statelessness' that are not listed in the law, which may push individuals to seek lengthy and costly judicial proceedings. Free legal aid is available to challenge a decision in court where the applicant cannot meet legal costs and the decision to refuse statelessness determination is reasoned, but no interpreter is provided.

Identification as a stateless person does not lead to permission to stay, though a person recognised as stateless who already had a residence permit has access to several economic and social rights and can request a travel document.

Under the EU Temporary Protection Directive, the Netherlands provides temporary protection to some stateless people fleeing the war in Ukraine (those who had international protection or another form of temporary national protection, or who had a valid residence permit in Ukraine, and their family members) but this leaves protection gaps for others who do not meet these criteria.

The Dutch Government should establish in law a dedicated statelessness determination procedure in line with UNHCR Guidance and good practice on access to the procedure and procedural safeguards. It should fulfill its obligations to stateless people under the 1954 Convention by introducing a dedicated protection status in law including a right to residence, and other 1954 Convention rights.



DETENTION

Stateless people face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.^{vi} The Netherlands is bound by the [EU Returns Directive](#), which requires particular attention to be paid to the situation of vulnerable people; and the [EU Returns Handbook](#)^{vii} requires attention to be paid to the specific situation of stateless people, ensuring that there is a reasonable prospect of removal *prior to detaining* or prolonging a person's detention.

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 there is no referral to the procedure to determine statelessness. A return decision is required prior to detention, which must specify a country of removal.. 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 residence status is granted on release, putting people at risk of immediate re-detention.

[nationality at birth without conditions and remove all practical barriers to birth registration.](#)

The Dutch Government should take further steps to protect stateless people from arbitrary detention by improving the procedure to determine statelessness, introducing a 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, and providing access to legal advice and representation, translation, and interpretation.



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.

Stateless people, when officially registered as ‘stateless’, can apply for naturalisation after three years’ lawful stay, which is reduced from the standard five years. However, there is a fee, although it is reduced for stateless people and refugees, and stateless adults are not exempted from language and some other requirements. Safeguards are in place in the Netherlands to prevent statelessness in the case of foundlings and adopted children, but there are gaps for other children born on the territory who would otherwise be stateless.

The provision in Dutch nationality law for children born on the territory who would otherwise be stateless is not automatic. It either requires continuous, lawful residence of at least three years and proof of the child’s statelessness, or ‘uninterrupted stable residence’ for five years and additional stringent criteria. Children born to an unmarried Dutch father and a foreign mother are also disadvantaged by a requirement that the father officially acknowledge paternity before the child is seven years old. In practice, Dutch fathers can face difficulties and delays acknowledging their child when the mother does not have residence rights and official identification documents. If a parent acquires Dutch nationality after acknowledging the child, the child can only apply for Dutch nationality together with the parent if they hold a permanent residence permit immediately prior to the application.

Every child’s right to a legal identity and nationality is not only essential to the prevention and reduction of statelessness but is a core principle of international law.^{viii} Birth registration must be free and take place immediately after birth without delay. Dutch law provides for universal, immediate birth registration, and all children are issued birth certificates in the Netherlands. However, parents without lawful residence or who lack key documents may face barriers and the procedure for late birth registration is very complex.

The Dutch Government should amend the law to ensure that all children born on its territory who would otherwise be stateless acquire a

SUMMARY OF RECOMMENDATIONS

The Dutch Government should:

- 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 people 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.
- Establish in law a dedicated statelessness determination procedure in line with UNHCR Guidance and good practice on access to the procedure and procedural safeguards.
- Fulfill its obligations to stateless people under the 1954 Convention by introducing a dedicated protection status in law including a right to residence and other 1954 Convention rights. Put in place robust mechanisms to identify and protect stateless people from arbitrary detention, including a referral mechanism to the 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 people, provide access to legal advice and representation, translation, and interpretation.
- Amend its nationality law to ensure that *all* otherwise stateless children born in the Netherlands acquire a nationality at birth without conditions.
- 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.

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ⁱ <https://www.statelessness.eu>

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ⁱⁱⁱ <https://index.statelessness.eu/country/netherlands>

^{iv} 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/>
^v UNHCR (2014), Handbook on Protection of Stateless Persons, <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>

^{vi} 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

^{vii} 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

^{viii} UN Convention on the Rights of the Child, Article 7.

