60 YEARS

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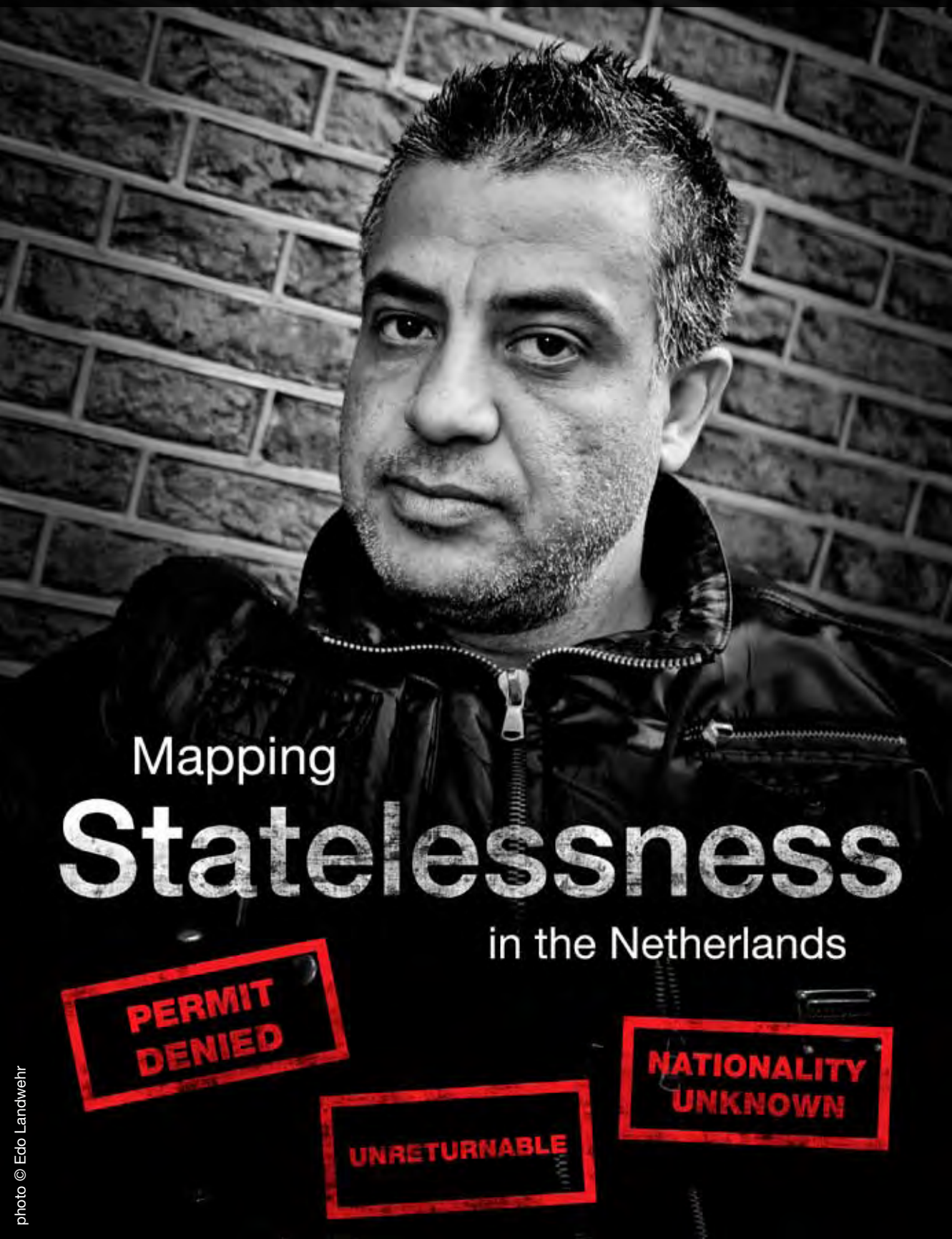

Mapping Statelessness in the Netherlands

photo © Edo Landwehr

United Nations High Commissioner for Refugees,
The Hague, November 2011

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CONTENTS

LIST OF ABBREVIATIONS

CBS	Central Bureau for Statistics *(Centraal Bureau voor de Statistiek)*
DNA	Dutch Nationality Act *(Rijkswet op het Nederlanderschap)*
DT&V	Repatriation and Departure Service *(Dienst Terugkeer en Vertrek)*
ECN	European Convention on Nationality
EMN	European Migration Network
EU	European Union
EUDO	European Union Democracy Observatory
ExCom	Executive Committee of the High Commissioner's Programme (of UNHCR)
GA	General Assembly
GBA	Municipal Basic Administration *(Gemeentelijke Basis Administratie)*
GGD	Municipal and Communal Healthcare Service (Gemeentelijke of Gemeenschappelijke Gezondheidsdienst)
ICCPR	International Covenant on Cultural and Political Rights
IND	Immigration and Naturalization Service *(Immigratie en Naturalisatie Dienst)*
IOM	International Organization for Migration
LP	Laissez-passer
MVV	Permission for temporary stay *(Machtiging Voorlopig Verblijf)*
NGO	Non-governmental organization
NVVB	Dutch Association for Civic Affairs *(Nederlandse Vereniging voor Burgerzaken)*
OPT	Occupied Palestinian Territories
PTSD	Post-traumatic Stress Disorder
Trb.	Official Gazette for treaties and decisions of international organizations *Tractatenblad*
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near-East
USSR	Union of Soviet Socialist Republics
VBL	Location with restricted freedom of movement *(Vrijheidsbeperkende Locatie)*

EXECUTIVE SUMMARY

1. The Netherlands is a Contracting State to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. These treaties entered into force in the Netherlands on 11 April 1962 and 11 August 1985 respectively.

2. In the Netherlands, there is no dedicated and accessible procedure to determine whether someone is stateless as defined in the 1954 Convention (and general international law), that is, whether they are someone who is "not considered as a national by any State under the operation of its law". The lack of such a procedure with a binding outcome for all authorities prevents the identification of individuals who are stateless and a more accurate estimate of the number and profile of stateless people in the Netherlands..

3. In collecting data on the number of stateless people residing on Dutch territory, the Central Statistical Bureau (CBS) relies on registration practice at the municipal level in the records of the Municipal Basic Administration (GBA). Whenever someone's nationality status cannot be readily determined upon registration with the GBA, the individual is registered in the CBS as being of unknown nationality. People are rarely registered as "stateless" in the GBA, as documentary evidence of statelessness for registration as such is required by law. Given that stateless people generally have no country willing or able to issue such documentation, it is often impossible for them to fulfil this condition. Consequently, the category "nationality unknown" is used significantly more frequently than the category "stateless" in the Municipal Basic Administration records and therefore also in the CBS statistics.

4. The Office of the United Nations High Commissioner for Refugees (UNHCR) commissioned this study on statelessness in the Netherlands on the occasion of the 50th anniversary of the 1961 Convention. First, it describes the current Dutch practice of determining statelessness at the municipal level; it investigates the effects of registration as "nationality unknown" or as "stateless"; and it assesses the consequences of the absence of a dedicated statelessness determination procedure. Secondly, the socio-demographic analysis in this report aims to provide the issue of statelessness in the Netherlands with a human face. For this purpose, quantitative and qualitative data were collected and analysed and numerous interviews were conducted with stateless people and people of uncertain nationality residing in the Netherlands.

5. In order to address statelessness, UNHCR generally aims for improvements in four specific areas: the *identification, prevention* and *reduction* of this phenomenon, as well as the *protection* of stateless people. This study finds that the Dutch approach to statelessness could be strengthened in these areas, both in the interests of the State and of individual stateless people.

6. *Identification* is probably the most problematic area. The statistical analysis in this report shows that often no distinction is made between stateless people and those whose nationality is unknown. No uniformity of approach exists between various authorities or institutions in the way stateless people are registered. The common practice in GBA registrations of labelling people as being of unknown nationality because they cannot fulfil the strict evidence requirements for registration as a stateless person precludes enjoyment of the rights enshrined in the 1954 Convention from being activated. The Netherlands has ratified this Convention and thus acknowledged the protection needs of stateless people, but without a proper procedure to establish statelessness, individuals are likely not to be accorded the rights to which they are entitled.

7. In the absence of a procedure to identify stateless persons, some stateless people may be among those who through no fault of their own cannot be returned to any country. The current "no-fault procedure" therefore allows some stateless people to receive a residence permit on non-removability grounds, but is not a substitute for a statelessness determination procedure.

8. A dedicated statelessness determination procedure, in which the burden of proof is shared between the individual and the State, would solve problems related to the unclear status of many stateless people in the Netherlands. It would make the extent of statelessness in the Netherlands more visible and enable appropriate solutions to be found for the individuals concerned. If, in the end, a person is determined to be stateless, depending on assessment of solutions, a residence permit should be issued to ensure access to the rights set out in the 1954 Convention. It may, for instance, be appropriate to grant a residence permit similar to the one issued at present following a successful no-fault procedure.

9. As concerns the *prevention* of statelessness, the study finds that it is arguable that the Dutch Nationality Act's requirement of legal stay for stateless children born in the Netherlands who wish to exercise their right to apply for Dutch nationality, is not in accordance with Article 1 of the 1961 Convention, which contains requirement of no lawful residence.

10. In addition, Dutch nationality can in principle not be revoked if this would result in statelessness. The one exception to this principle, namely the rule that Dutch nationality can be revoked if it was acquired by fraud, is allowed under the 1961 Convention. Considering the particular hardship of statelessness as described in the report, UNHCR would nevertheless recommend that the Netherlands apply a proportionality test which takes the effects of a revocation of Dutch nationality fully into account, if such an act were to result in statelessness.

11. The *reduction* of cases of statelessness is also an important subject for UNHCR. It is therefore welcome that stateless people in the Netherlands have facilitated access to Dutch nationality in the sense that only three years of legal stay are required, although they must also meet a number of other integration requirements.

12. The *protection* of stateless people in the Netherlands is a concern in many cases, depending in particular on the residence status of the individuals concerned. This is related to absence of effective procedures for the identification of statelessness in the Netherlands, but even those who have been determined to be stateless do not always enjoy the rights to which they are entitled. The interviews conducted for this study revealed that a number of respondents faced trouble in accessing essential healthcare and in acquiring means of identification. UNHCR proposes that in a future statelessness determination procedure, claimants be provided with means of identification. Similarly, applicants should be furnished with identity cards for the duration of the "no-fault procedure".

13. In the absence of a procedure to determine statelessness, some people are unable to secure legal stay and are at risk of detention. Detention in alien detention centres has proven to be frequent and lengthy. The repetitive nature of the process – detention, absent prospect of deportation, release with an order to leave the country, arrest and potential declaration of undesirability for illegal presence, again detention – can be daunting.

14. Finally, the research showed that a number of people who are not stateless but who cannot be returned through no fault of their own do want to return home. UNHCR therefore recommends that in such situations cooperation with countries of origin for the facilitation of repatriation be stepped up.

15. UNHCR makes the following key recommendations resulting from the research:

(i) To ensure the Netherlands is able to meet its international obligations under the 1954 Convention and human rights law, it should establish an accessible and efficient procedure to determine statelessness, with decisions being taken by a centralized, designated and independent authority.

(ii) To improve registration and identification by municipal authorities the label "nationality unknown" should not be so readily attributed upon registration in the GBA without further examination. Such registration should be amended as necessary following any subsequent determination of status. Statistics should be recorded and maintained in the GBA in a transparent manner that reflects the actual stateless population in the Netherlands and incorporates data by age, gender and country of birth and origin.

(iii) To ensure the early and correct identification of stateless persons and solutions for situations where the State of purported nationality refuses to cooperate in return, referral to a stateless determination procedure should take place as early as possible, if the individual claims to be stateless or this comes to light during the no-fault procedure. In such circumstances, he or she should be referred from this procedure to the statelessness determination procedure.

(iv) During the statelessness determination procedure and/or during the no-fault residence permit procedure, applicants should be issued an identity document and a temporary residence permit. Recognition of statelessness should generally result in the issuance of a residence permit. In some cases it may not be appropriate to do so, for example, where a stateless person enjoys the right of residence in another State and is able to return and live there with full respect for their human rights.

(v) Bearing in mind subsequent developments in international human rights law by which the Netherlands is bound, the two reservations regarding Articles 8 and 26 made to the 1954 Convention should be withdrawn.

(vi) In order to prevent statelessness in the Netherlands, the "legal stay" requirement under Article 6(1)b of the Dutch Nationality Act providing for a right to apply for Dutch nationality should be rescinded, as this prerequisite is not in conformity with the 1961 Convention. Instead, a requirement of habitual residence could be introduced. It is also recommended that children born on Dutch territory who would otherwise be stateless acquire Dutch nationality automatically, at least in the case of those children born to parents who are permanent residents. In addition, the effects of a revocation of Dutch nationality in case of fraudulent acquisition of that nationality should be fully taken into account, if such a revocation were to result in statelessness. In particular, in such cases, proportionality considerations should be taken into account.

16. A full list of UNHCR's recommendations is given at the end of the report.

1. INTRODUCTION

1. The year 2011 marks the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. In commemoration, UNHCR is encouraging States to strengthen their resolve to tackle problems related to statelessness. In this light, the purpose of this study is to provide an overview and analysis of the socio-demographic profile of people who are stateless in the Netherlands, as well as to examine existing legislation and procedures governing the recognition of their status and the enjoyment of their rights. The study sets out the difficulties stateless persons face and suggests possible ways to improve their position in Dutch society. It is hoped that this study may increase awareness of statelessness at the national level and promote synergies between influential actors working for improvements.

2. Statelessness is a phenomenon not confined to the developing world or distant countries; all across the globe there are people who live or survive without the elementary benefits of a nationality. The Netherlands is no exception, despite having ratified two Conventions designed to address this issue: the 1954 Convention relating to the Status of Stateless Persons entered into force for the Netherlands on 11 July 1962 and the 1961 Convention on the Reduction of Statelessness on 11 August 1985.[1] As a result, a legal framework with regard to statelessness could be expected to be in place.

3. In order to facilitate reading of the remainder of this study, we will start by briefly outlining the existing framework. From an immigration and aliens' law perspective, the most important legal texts in the Netherlands are the Aliens Act 2000 (*Vreemdelingenwet 2000*),[2] the Aliens Decree (*Vreemdelingenbesluit*), and the Aliens Act Implementation Guidelines (*Vreemdelingencirculaire*). The governmental executive agency is the Immigration and Naturalization Service (IND). The Return and Departure Service (DT&V), in turn, is responsible for making aliens leave Dutch territory if they do not have the right to stay in the Netherlands. Both agencies come under the responsibility of the Ministry of the Interior and Kingdom Relations. The Netherlands also has a Minister for Immigration and Asylum Policy, who is technically a minister without portfolio and is part of the Ministry of the Interior. With regard to nationality law, the Dutch Nationality Act (DNA, *Rijkswet op het Nederlanderschap*) governs the acquisition and loss of nationality of the Netherlands. The Minister of Security and Justice is responsible for its implementation.

4. Two concepts of Dutch aliens' law feature prominently with regard to stateless persons. The first is the "no-fault" residence permit (*buitenschuldvergunning*), which is not an asylum permit but a regular residence permit. The permit may be issued to any foreigner without other title to remain who demonstrates an inability to leave the Netherlands through no fault of his or her own. The "no-fault" residence permit is a temporary permit which is valid for a year, but which can be extended annually. After three years it can be replaced by a residence permit, which is also valid for one year and has to be renewed. Although the conditions that have to be met for the "no-fault" residence permit are particularly strict, it is only this permit that in principle allows stateless persons who have no other title to remain to reside legally in the Netherlands.

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1 Trb. 1967, 124.

2 Vreemdelingenwet 2000 (23 November 2000). Stb. 2000, 496.

5. The second prominent concept concerns the so-called W- and W2 identity documents. The former are for asylum-seekers who have not yet received a final decision on their application, whereas the latter are for a (relatively small) group of aliens who are allowed to stay in the Netherlands while their application for a regular residence permit is being decided upon. Both documents show the holder's identity and nationality and provide for legal residence in the Netherlands. These identity documents do not facilitate international travel. Importantly, W2 identity documents are not issued to persons applying for a "no-fault" residence permit while their – often protracted – application is pending. The government presumes that the grant of a W2 document removes the incentive for persons who may be stateless to contact the authorities of the country of origin and to ask for a passport or other proof of citizenship. According to the Government, this policy is in line with the 1954 Convention.[3]

6. Dutch immigration or aliens law has no procedure to determine in a binding way whether a person is stateless. Thus, the authorities concerned, such as the IND, the courts, but also the municipalities, do not necessarily agree on whether a person is stateless or not. Under the Law on the Municipal Basic Administration (*Wet GBA*), the nationality of a person is to be recorded by the municipality where the person is registered. However, the nationality as mentioned on residence documents issued by the IND to persons who cannot show their nationality (e.g. some or even most asylum-seekers) is not regarded as sufficient proof for registration of their nationality in the Municipal Basic Administration (GBA).[4] The absence of a statelessness determination procedure, the outcome of which is binding for all authorities, is thus clearly one of the most apparent omissions in the Dutch approach to statelessness.

1.1 Chapter outline

7. This report is divided into five chapters. In this introductory chapter key definitions are provided, methodologies are outlined and the ways in which government authorities register stateless persons are described. The second chapter describes the prevalence of statelessness across the globe and details both its causes and consequences. That chapter also elaborates on UNHCR's responsibility towards stateless persons. The third chapter is a demographic inquiry into the scale of statelessness in the Netherlands and interprets the available statistical material.[5] A fourth chapter provides a legal analysis with respect to statelessness and examines if and to what extent the Netherlands lives up to its obligations borne out of its ratification of two Conventions on statelessness. A fifth and final chapter summarizes the research findings and formulates a number of recommendations.

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3 See, e.g., Report 2007/328 of the Ombudsman (*Nationale Ombudsman*), available at: http://www.nationaleombudsman.nl/sites/default/files/rapporten/20070328__2006.14164.pdf [accessed 23 September 2011], at p. 4.

4 The Municipalities of Amsterdam, The Hague, Leiden and Rotterdam translate the term GBA in English as "Municipal Personal Records Database", while that of Dordrecht translates it as "Municipal Population Registry".

5 Another version of this report, which is to be published by the consultants separately, recounts in more detail the experiences of stateless persons interviewed as part of this project.

1.2 Definitions and distinctions

8. For the purposes of this report, nationality[6] will be defined as legal membership of a State.[7] A stateless person, according to Article 1 of the 1954 Convention relating to the Status of Stateless Persons, is someone "who is not considered as a national by any State under the operation of its law". This has sometimes been referred to as *"de jure"* statelessness. Following this classification, persons who strictly speaking do have a nationality but enjoy none of the benefits normally associated with it (such as the right to reside, leave and return, receive diplomatic protection abroad, etc.) are not considered to be stateless. However, many scholars have argued that a purely technical nationality, that is in many or all respects ineffective, in practice equals having no nationality at all.[8] Persons with such a "useless" nationality are commonly referred to as *de facto* stateless persons, but this group is much less clearly delineated and much more conceptually ambiguous than stateless persons as defined by the 1954 Convention. If one visualizes a continuum on which full, legal citizenship takes up one end of the spectrum, statelessness occupies the other – unfavourable – end.

9. In practice, "*de facto* statelessness" is a problematic concept. Put simply, one is only considered *de facto* stateless when one's nationality is ineffective. There is, however, no consensus as to when this criterion of ineffectiveness is met. Furthermore, even if this were the case, no legal imperatives exist to grant rights to *de facto* stateless persons *on grounds of their statelessness,* even though the Final Act to the 1961 Convention does include a resolution recommending "that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality". The utility of the concept thus remains rather limited. Whereas the absence or denial of a nationality is covered by the two Conventions on statelessness, the denial of rights attached to a nationality (*de facto*) is an issue addressed by the existing human rights regime.[9] All in all, this report aims to avoid using the term *"de facto"* as much as possible and unless mentioned otherwise the word "stateless" refers to those persons who fall under the international definition of a stateless persons given in the 1954 Convention.

10. It should be noted though that the report does not only cover officially recognized stateless persons. As will become apparent, there may be many reservations about the way statelessness is (or is not) determined in the Netherlands. Instead, in the absence of a procedure, individuals who are at particular risk of statelessness according to UNHCR's interpretation of the international treaty regime on the matter are also considered.

11. Another distinction, more tailored to the Dutch context than that between stateless persons under the 1954 Convention and *de facto* stateless persons, is that between stateless persons and "unreturnable" persons. This report elaborates on cases in both categories. The former refers to persons who fall under the definition of a stateless person outlined above. The latter category refers to persons who, despite their own express wishes or the attempts of the host State, can neither return (nor be returned) to their country of nationality, nor are legally entitled to reside in their current host country. Some of these people cannot be returned because their government does not cooperate or assist

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6 The terms "nationality" and "citizenship" are treated interchangeably in this study.

7 P. Boeles, "Het nut van nationaliteit", *Nederlands Juristenblad,* no. 42 (2007), 2666-2671.

8 C.A. Batchelor, "Stateless Persons: Some Gaps in International Protection", *International Journal of Refugee Law 7,* no. 2 (1995), 180. See also Equal Rights Trust, "Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons", (2010), 10, 78.

9 L. van Waas, *Nationality Matters. Statelessness under international law* (Antwerp: Intersentia, 2008), 25.

them in their efforts to return. These people share many problems usually associated with statelessness. They may find themselves stuck in a twilight zone when, for instance, re-entry to a country of origin is refused or when consular authorities prove unwilling or unable to issue travel documentation, after an application for a residence permit in the Netherlands has been denied.[10] In such cases, it may be appropriate to ask whether the government concerned indeed considers them nationals. As return can generally only be effected with the cooperation of the country of origin, the return criterion is in line with several of the principal functions of nationality in international law: the right of States to provide their nationals with diplomatic protection and consular assistance abroad, the obligation of States to allow the return of their nationals and the right of nationals to a passport which would allow them to leave any country, including their own and to return to their own country.[11] Demonstrated unreturnability thus points to the absence of several, inter-linked functions of an individual's presumed nationality.

1.3 Demographic and legal methodology

12. The demographic chapter of this report consists of a quantitative and a qualitative analysis. As far as the quantitative section is concerned, the calculation of the number of stateless persons in the world is primarily dependent upon two factors: the way in which statelessness is defined in each State and the practices in the registration process or other identification methodology used. In the Dutch context, the CBS relies on the GBAs, which in turn include as stateless only those who can accurately document their statelessness. This means that the number of people registered as stateless in the GBA is relatively low. By contrast, there are a large number of people registered in the GBAs as being of unknown nationality which may obscure thousands of people not formally recognized as stateless or alternatively who are not returnable. For this reason, both categories will be scrutinized to reveal the individuals behind the numbers. As for the way stateless persons are registered in the Netherlands, this practice was considered sufficiently complex to warrant special attention (see chapter 3.2). It should be noted that whenever CBS statistics conflicted with those of the IND, CBS figures were given precedence. Several interviews with IND personnel and municipal officials were conducted to shed additional light on the limited availability of data and the way stateless persons are registered in the Netherlands. Case law on registration practices will at times be provided to highlight and clarify striking statistical outcomes.

13. For the qualitative part, NGOs and law firms were asked to provide the authors with names and addresses of (potentially) stateless and/or unreturnable persons. Based on these referrals, 24 people were interviewed in 20 different interviews (family members in identical situations were in some cases interviewed together). Their ages ranged from 21 to 60 and seven out of 24 interviewees were female. They were interviewed in six different cities, in NGO offices, cafés and in one case in the interviewee's home. Additionally, three different aliens' detention facilities were visited in order to be able to speak to people in custody. All interviews were semi-structured to assure some level of comparability between the different cases presented here. In each case documentary support was sought to back

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10 In applying the distinction between stateless persons and unreturnable persons, we follow the UNHCR report "Mapping Statelessness in the United Kingdom", November 2011.

11 See Article 12 of the International Covenant on Civil and Political Rights and also UNHCR, "The Concept of Stateless Persons under International Law", Summary Conclusions of an Expert Meeting held in Prato, Italy on 27-28 May 2010, available at http://www.unhcr.org/refworld/docid/4ca1ae002.html.

up the story and experiences as told by the interviewee. Interviews lasted on average approximately 75 minutes and participation was entirely voluntary (no remuneration was offered). Most respondents gave permission to record the conversation. Nevertheless, complete anonymity was guaranteed, to allow respondents to talk freely without fearing potential ramifications of their candour. Throughout the report, therefore, pseudonyms have been used to portray their stories, although some interviewees had wanted their names to be mentioned.

14. The main goal of the legal part of this study is to build on the demographic analysis by investigating the implementation of the 1954 and 1961 Conventions in Dutch law. In analysing current Dutch approaches to statelessness in law and policy, particular attention will be paid to whether Dutch law and policy provide for the following three remedies for statelessness: pre-emptive remedies, which try to prevent statelessness before it develops; minimization remedies, which lessen the difficulties associated with statelessness and serve to protect stateless persons from discrimination; and remedies providing for the grant of nationality to persons who would otherwise be stateless or who are already stateless. While the 1961 Convention primarily deals with the first and last remedies, the 1954 Convention contains a considerable number of minimization remedies and also provides for facilitated naturalization in its Article 32. As will be seen throughout this report, the 1954 Convention has yet to be fully applied in the Dutch context.

Case: A couple from the former USSR

Eric and Gala are a couple from the former USSR. They were born in what is now the independent country of the Ukraine. They fled the USSR for the USA in 1990, before the dissolution of the USSR in December 1991. In the USA they applied for asylum. Their application was finally dismissed In 2002 after some 11 years. In the meantime, they had found employment, a home, and had become part of a vibrant Jewish community. They never applied for citizenship of newly independent Ukraine, hoping and expecting to become USA citizens one day. However, during their stay in the USA they became stateless due to the dissolution of the USSR.

In December 2006 they were arrested and detained for three months. In May 2007, they were deported to Ukraine. To carry out the deportation, unsigned, apparently fabricated identity documentation was used. Eric and Gala were not willing to stay in the Ukraine due to previous persecution (in the USSR) and successfully contested their Ukrainian citizenship. Not being Ukrainian nationals, Ukraine tried to deport them to the USA in August 2008. While at Schiphol airport, they were prevented by Dutch border police from boarding a plane to the USA. They have been in The Netherlands ever since. On two occasions, attempts to return them to Ukraine failed, as they were not granted admission by the Ukrainian authorities, which contested that they had previously had Ukrainian citizenship. They have no residence permit in the Netherlands; they don't even have identity documents. Most of their time has been spent in a reception centre for asylum-seekers, although the couple has also been in aliens' detention for some time.

2. STATELESSNESS ACROSS THE GLOBE

15. Globally, up to 12 million people are estimated to be stateless,[12] but their actual number is not known, because stateless people may not be counted in official statistics. Instead, if their presence is acknowledged at all, they are more often classified in undifferentiated categories such as "nationality unknown" or even as "aliens" in general.[13]

16. Stateless people hail from all continents, although certain populations have traditionally been at particular risk. After the Second World War millions of Jews and Roma were left stripped of citizenship and dispersed throughout Europe.[14] Although most Jews and Roma have since (re-)acquired a nationality, there are still some Roma who face problems acquiring proof of nationality.[15] The dire circumstances of all refugees in Europe after 1945, many of whom were stateless too, led to the formation of an Ad Hoc Committee on Statelessness and Related Problems, which in February 1950 adopted a Draft Convention relating to the Status of Refugees, subsequently opened for signature on 28 July 1951, and an accompanying Protocol relating to the Status of Stateless Persons. Initially, it had been thought that the overlap between problems of statelessness and refugee flows was substantial in post-war Europe, thus requiring preparation of a legal framework designed to address both problems. Later, however, it was realized that a separate instrument was needed for stateless persons, as not all stateless persons actually become refugees or necessarily cross borders. The Protocol thus became a separate Convention relating to the Status of Stateless Persons which was opened for signature in 1954.[16] This Convention "provides for the legal status of 'stateless person' for individuals who find themselves without a nationality and guarantees a minimum standard of protection".[17] In short, it revolves around improved protection of persons who are already stateless. As it did little in the way of *prevention* or *reduction* of statelessness, the 1954 Convention was complemented by the 1961 Convention on the Reduction of Statelessness, which deals "with the right to a nationality by identifying which State is actually responsible for conferring (or refraining from withdrawing) nationality in particular circumstances in order to prevent new cases of statelessness from arising".[18] These two legal instruments, which have 68 and 40 States parties respectively as of 29 November 2011, are at the heart of the legal regime to tackle statelessness.

17. Before elaborating on the consequences of statelessness, it is useful to understand how people become stateless. After all, nationality is a legal-philosophical construct, not a state of nature.[19]

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12 UNHCR, "Action to Address Statelessness: A Strategy Note", (2010), 4.

13 B. Frelick and M. Lynch, "Statelessness: a forgotten human rights crisis", *Forced Migration Review* 24 (2005), 66.

14 United Nations, "A study of statelessness", (1949).

15 These Roma, who are less than 30,000 in number, are mainly from the former Yugoslavia. Discrimination combined with problems obtaining documentation as a result of forced displacement and State succession have created obstacles to their acquisition of proof nationality.

16 C.A. Batchelor, "The 1954 Convention Relating to the Status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonization", *Refuge* 22, no. 2 (2005), 34.

17 L. van Waas, "Statelessness: A 21st century challenge for Europe", *Security and Human Rights,* no. 2 (2009), 137.

18 Ibid.

19 P. Boeles, "Het nut van nationaliteit", Afscheidscollege als hoogleraar immigratierecht (Leiden, 29 juni 2007).

2.1 Causes of statelessness

18. It is possible to become stateless in a considerable variety of ways. Different causes can be grouped into four categories: a) technical and bureaucratic causes; b) causes linked to State succession and restoration; c) causes linked to discrimination that particularly affect women and children; and d) causes linked to arbitrary deprivation of nationality.[20]

19. Firstly, technical causes can differ widely, but they all have in common that statelessness is the (sometimes unintentional) consequence of legislation or administrative practices. An individual can, for example, become the victim of a conflict of laws, in which two States each claim that the other is responsible for the bestowal of a nationality. This is especially likely to happen when a person's State of birth grants nationality by descent (*jus sanguinis*), while this person's parents were born in a State that attributes nationality by birth on its territory (*jus soli*).[21] In addition, some States employ a mechanism whereby automatic loss of nationality occurs, for instance after a prolonged absence from the country (although in some States as few as three or five years is already considered a "prolonged absence").[22]

20. Someone may also remain stateless, even though the person in question would in theory be eligible for citizenship, because of bureaucratic and other barriers. Nepal provides a case in point. In 2007 it amended its nationality laws to extend citizenship to anyone born in the country before April 1990, including various – previously stateless – minorities. While the authorities undertook a massive citizenship campaign in which they distributed almost 2.6 million certificates in the first four months of 2007, the poorest stateless people were nevertheless unable to acquire citizenship due to prohibitive fees and/or long distances that needed to be travelled to lodge an application. UNHCR monitoring missions also found that in some communities it was believed that some women and girls did not need certificates as their interests were represented by their husbands or fathers and because men did not want to share rights to property. In addition, contrary to the law, some authorities required the cooperation of the husband or father when processing applications submitted by married women, women and girls.[23]

21. Secondly, in Europe, causes linked to State disintegration have been especially prominent in recent times. The dissolution of both the USSR and the former Yugoslavia each caused tremendous problems for people for whom it was unclear to which of the many newly formed States they belonged. Similar problems resulted from Czechoslovakia's split and, before that, from the break-up of the Austro-Hungarian and Ottoman empires.[24]

22. A third cause can be found in discriminatory laws that particularly affect women and children. In Kuwait, for instance, nationality can by law only be passed on through the

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20 UNHCR, "Nationality and Statelessness: A Handbook for Parliamentarians", 27-39. A longer version of this report, which is to be published by the consultants separately, illustrates these categories in more detail through individual case studies.

21 Equal Rights Trust, "Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons", 57.

22 UNHCR, "Nationality and Statelessness: A Handbook for Parliamentarians", 33.

23 See, UNHCR, *UNHCR Handbook for the Protection of Women and Girls*, (January 2008), p 190. It should be noted in addition that draft constitutional provisions on citizenship and fundamental rights issued in November 2009 further restrict access to citizenship, raising the prospect of a significant increase in the size of the stateless population in Nepal.

24 B.K. Blitz and M.L. Lynch, "Statelessness and the Benefits of Citizenship: A comparative study", 10.

male line, although Kuwaiti nationality can be acquired by a foundling born in Kuwait and may also be granted by decree to an adult male born in or outside Kuwait to a Kuwaiti mother whose father is unknown or whose kinship to his father has not been legally established.[25] Similarly, in Burundi, nationality can only be passed on by a Burundian father. An illegitimate child can only acquire Burundian nationality through his or her Burundian mother, if paternity cannot be established either by voluntary or judicial means.[26] This means that children may be left stateless if their father is stateless, if he cannot confer nationality under the nationality law of his State or is unable or refuses to take the necessary administrative steps with the authorities of his country on behalf of his children (e.g. he abandons his family or dies). In some countries, marriage may also constitute a ground for the automatic loss of citizenship: Iranian women lose their nationality when they marry a foreign national.[27] Although these practices may be presented as legal technicalities, they in fact constitute a clear form of gender discrimination.[28]

23. The fourth and numerically most prominent cause of statelessness, certainly at the global level, is related to the denial or withdrawal of citizenship on discriminatory grounds. Discriminated minorities that are arbitrarily deprived of their citizenship at some point in their lives, or have never received it, abound. The approximately 800,000 Rohingya in Myanmar constitute an example of how explicit a *denial* of citizenship can be. The Rohingya do not appear on a list of 135 "national races" and are therefore by law classified as "Myanmar residents" as opposed to nationals. "Resident" is not a legal status at all and no rights can be derived from this status.[29]

2.2 Consequences of statelessness

24. Statelessness costs people dearly; this may become apparent soon after birth. Authorities may refuse to issue a birth certificate to a child whose parents cannot prove that they hold the nationality of their country of residence. Without such a birth certificate, the child in question is much more likely to experience trouble acquiring a nationality (or a host of other rights) in the future. Stateless people may experience similar hindrances in obtaining personal identification documentation. Considering that stateless people are often at increased risk of discrimination and abuse by the authorities, not being able to present an identity document may increase the incentive to shun participation in society altogether. While access to the labour market is either difficult or barred completely, stateless people can often not access national services such as public education or healthcare either. The right to own or inherit property may be restricted or denied. Similarly, it can be virtually impossible to start a business due to the inability to enter into contracts, obtain licences

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25 See Nationality Law [Kuwait], 1959 (and subsequently amendments), available at: http://www.unhcr.org/refworld/docid/3ae6b4ef1c.html, Articles 2 and 3. In the latter scenario, the Minister may afford such children the same treatment as that afforded to Kuwaiti nationals until they reach their majority.

26 Loi 1/013 du 18 juillet 2000 portant reforme du code de la nationalité [Burundi], 1/013, 18 July 2000, available at: http://www.unhcr.org/refworld/docid/452d01c94.html, Articles 2 and 3.

27 Equal Rights Trust, "Unraveling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons", 58.

28 For more information on specifically gender-related problems facing stateless women and girls, see UNHCR, *UNHCR Handbook for the Protection of Women and Girls,* (January 2008).

29 Equal Rights Trust, "Unraveling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons", 61. See also, UNHCR, *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia,* 2 March 2011, available at: http://www.unhcr.org/refworld/docid/4d6e09932.html [accessed 23 September 2011].

or open a bank account.[30] In this way, poverty becomes an integral part of stateless life. Small-scale fraud can be commonplace, as the stateless assume fake identities or purchase falsified documents to register a marriage or businesses.

25. On a wider level, statelessness may hamper social development efforts, because "the concept of statelessness introduces a power-dynamic that is particularly challenging for the design and delivery of effective pro-poor social development programmes".[31] Furthermore, the marginalization and disenfranchisement suffered by stateless people have negative effects for regions at large. "The refusal to grant citizenship to a large number of titular residents may severely affect the balanced integration of all groups in society. Thus, it may represent a security threat."[32]

26. Often, statelessness may result in the denial of a person's right to reside in the country, which results in a heightened chance of expulsion from their own country.[33] Even if this does not occur, it is rather conceivable that a stateless person would wish to leave behind all of the above. However, legitimate international travel may not be an option, resulting in significantly increased exposure to human smugglers and traffickers; "an industry that thrives on the desperation of individuals".[34]

2.3 Role of UNHCR in the protection of stateless persons

27. UNHCR is not explicitly mentioned in either the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. However, as outlined in greater detail below, the UN General Assembly has subsequently designated UNHCR as the appropriate "body" under Article 11 of the 1961 Convention and recognized UNHCR more generally as the UN institution with an international protection mandate for stateless persons.[35]

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30 UNHCR, "Action to Address Statelessness: A Strategy Note", 14.

31 B.K. Blitz, "Statelessness, Protection and Equality", Refugee Studies Centre, Forced Migration Policy Briefing no. 3 (2009), 3.

32 Address by K. Vollebaek, OSCE High Commissioner on National Minorities, to the Expert Consultation on "Issues related to minorities and the denial or deprivation of citizenship", convened by the UN Independent Expert on Minority Issues, G. McDougall, Geneva, 6 December 2007, available at http://www.osce.org/files/documents/a/4/29915.pdf [accessed 23 September 2011].

33 See generally, UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement),* 2 Nov. 1999, CCPR/C/21/Rev.1/Add.9, available at: http://www.unhcr.org/refworld/docid/45139c394.html.

34 M. Lynch, "Statelessness: International blind spot linked to global concerns", Refugees International Field Report (2 September 2009), 2.

35 "Keynote Address by Volker Türk on UNHCR's Role in Supervising International Standards in the Context of its Mandate", York University, Toronto, Canada, 19 May 2010, available at: http://www.unhcr.org/4bf406a56.html. See Article 33 of the 1954 Convention relating to the Status of Stateless Persons (the Secretary-General is nominally mentioned but it means in practice UNHCR); Article 11 of the 1961 Convention on the Reduction of Statelessness and both instruments in conjunction with General Assembly resolutions 3274 (XXIX) and 31/36 (where UNHCR was designated as the appropriate "body" under Article 11 of the 1961 Convention); see further GA resolutions 49/169 (para. 20); 50/152 (para. 14 where it was clarified that UNHCR's activities on behalf of stateless persons are part of the Office's statutory function of providing international protection, and para. 15); 61/137 (para. 4) and subsequent resolutions, as well as UNHCR Executive Committee Conclusions (in particular Conclusions Nos. 107, 106, 96, 90, 78, 68).

28. Following UNHCR's existing mandate with respect to the protection of refugees, granting the organization responsibility for stateless persons seemed logical. However, the problem of statelessness has been overshadowed by the refugee problem throughout most of UNHCR's history. Moreover, there was a general sense, both inside and outside UNHCR, that because of the relative stability of States during the Cold War, the issue of statelessness was a minor issue and that only a relatively small number of individuals were affected by it. Since then, the situation has changed notably with dissolution of a number of federal States and with new States being formed in the aftermath of the Cold War. In light of these developments, UNHCR increasingly realized that more needed to be done to highlight and address the plight of stateless persons.

29. In 1995 UNHCR was requested by the UN General Assembly to actively promote accession to the two Statelessness Conventions and to serve in a technical and advisory role to States interested in implementing the Conventions' provisions in their nationality laws.[36] UNHCR has provided support to this end ever since. In 2006, the Member States of the Executive Committee of the High Commissioner's Programme (ExCom) adopted a Conclusion that urged UNHCR "to strengthen its efforts in this domain by pursuing targeted activities to support the *identification, prevention* and *reduction* of statelessness and to further the *protection* of stateless persons".[37] These four areas therefore govern UNHCR's statelessness-related efforts. It was also confirmed that, in addition to the promotion of accession, UNHCR should take on the duty of providing training, technical expertise and operational support to States which were grappling with issues related to statelessness. UNHCR does not challenge States' prerogative to govern the acquisition or loss of nationality but provides advice to States to ensure that rules on conferral and withdrawal of nationality do not lead to statelessness. Moreover, the organization can for instance, assist stateless individuals through the dissemination of information on citizenship, the provision of documentation and legal advice, and the promotion of birth registration. Detailed guidance on how to determine whether or not a person is stateless is in development. ExCom has further encouraged UNHCR to "promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which lead to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem".[38] The present study was instigated as part of this renewed resolve.

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36 UN General Assembly resolution 50/152, 9 February 1996.

37 UNHCR, "Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 6 October 2006, No. 106 (LVII) - 2006", available at http://www.unhcr.org/refworld/docid/453497302.html [accessed 23 September 2011].

38 Ibid.

Case: Two sisters born in Ethiopia of mixed ethnic origin

Genet and Tirhas are sisters. They were born in 1989 and 1990 in Ethiopia, to an ethnic Eritrean father and an Oromo mother. Under the Ethiopian law in force at the time, children followed the nationality of their father. Their father died soon after the birth of the youngest sister. During the Ethiopian-Eritrean war in 1998-2000, Ethiopia stripped many ethnic Eritreans of their Ethiopian citizenship. Around 2002, the mother and the two girls fled to Kenya. There the mother died and someone arranged for the girls to go to the Netherlands. An asylum application was unsuccessful. The girls could not be deported, because – even though they speak Amharic, the daily language of Ethiopia, Ethiopia does not consider them as nationals. The sisters have no Ethiopian documents showing their Ethiopian origin. Many letters sent in recent years to institutions and individuals in Ethiopia in an effort to obtain such documents did not produce results. At the moment they are illegally in the Netherlands. They cannot work or study. A local NGO takes care of them.

Case: Rejected asylum-seeker from Guinea

Cheikh originates from Guinea. After he had been arrested during an anti-government demonstration, he managed to flee the country as a stowaway on a ship. He had no documents whatsoever with him to show his links to Guinea. This happened in 1999. The ship sailed to Rotterdam. Cheikh applied for asylum, which was denied. Since 2006, numerous attempts to obtain a travel document from the Guinean embassy, in order to return him to Guinea, remained without results. Without documents showing Guinean origin, he was told, the embassy could not do anything. Efforts to obtain documents directly in Guinea were without success. Cheikh was told that people, who remained outside the country for prolonged periods, were removed from all civil registries. Cheikh is now living illegally in the Netherlands. He has medical problems and needs regular check-ups and medication. He is afraid that due to his precarious status and lack of documents, which mean that he is only entitled to medical support if his medical situation is acute and urgent, he may not have timely access to medical assistance, if and when necessary.

3. A DEMOGRAPHY OF STATELESSNESS IN THE NETHERLANDS

30. Relatively few countries in the world have accurately identified the extent of statelessness on their territories. From a 2004 UNHCR questionnaire sent out to 191 States it appeared that only 45 per cent of the responding States had "general information available on the *potential* number of stateless persons in their country".[39] With regard to the Netherlands, which like a number of other States did not respond, it is this information gap that the present chapter attempts to fill. A first section briefly recounts the Dutch historical experience with issues related to statelessness, so that current data can be interpreted in light of past events. The second section then provides an overview of the population registration practice in the Netherlands and the third section presents all available statistical material on statelessness in the Netherlands. A fourth and final section interprets these findings and offers some concluding thoughts, also taking into account a number of in-depth interviews with stateless persons.

3.1 A brief history of statelessness in the Netherlands[40]

31. An early example of Dutch experience with statelessness dates back to 1892, when a new Nationality Act replaced the more generous provisions of the 1838 Civil Code and the special nationality law of 1850.[41] The 1892 Act adopted the *jus sanguinis a patre* principle, meaning that citizenship could only be conferred by a Dutch father to his children. Until then Dutch nationality was acquired by birth on Dutch territory (*jus soli*), including the colonies. Considering that only Dutch men could now pass on citizenship, the government had to determine who exactly were citizens at that time, particularly in the colonies. In the Dutch East Indies the government decided to attribute citizenship along the lines of an already existing racial division, namely between "Europeans and assimilated" (predominantly Christians) and "Natives and assimilated" (Arabs, Chinese, Muslims and "pagans").[42] Due to their large numbers, the latter group was not granted Dutch nationality and corresponding political rights, although inhabitants of smaller colonies such as Suriname and the Antilles were allowed to retain their Dutch nationality. As of that moment these "natives" in the Dutch East Indies were without nationality, because as subjects of a colonial power they had no other State to turn to. However,

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39 Emphasis added. UNHCR, "Final Report Concerning the Questionnaire on Statelessness Pursuant to the Agenda for Protection", (2004), 5.

40 This section is primarily based on R. van Oers, B. de Hart, and K. Groenendijk, "Country Report: The Netherlands", *EUDO Citizenship Observatory Country Reports* (2010).

41 The nationality provisions of the 1838 Civil Code were used in matters concerning civil law, while the nationality law of 1850 defined Dutch nationality for the exercise of civic rights. See O. Vonk, *Dual Nationality in the European Union. A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States,* Dissertation European University Institute (Leiden/Boston: Martinus Nijhoff Publishers, Forthcoming), 145ff.

42 Van Oers et al. citing E. Heijs, "Nederlanderschap in de Nederlandse Koloniën: Regulering van immigratie vanuit de koloniën door nationaliteitsbeleid in Nederland", *Recht der Werkelijkheid* 12, no. 2 (1991), 24.

in 1910 the status of "Dutch subject non-Dutch national" (*Nederlands onderdaan niet-Nederlander*) was provided for in citizenship law. Thus, while the 1892 Act had left them without a nationality, the 1910 Act clarified their status as subjects, albeit not Dutch citizens. This state of affairs continued until Indonesia's independence in 1949.

32. Another example concerned the period 1945–49, when Indonesia became independent and the Moluccas – a group of islands to the northeast of Java – attempted to achieve autonomy from Indonesia. In 1951, as an armed conflict in the Moluccas increased in intensity, the Dutch Government transferred some 4,000 Moluccans, who had served in the Dutch Colonial Army, and their families (in total around 12,500 people) to the Netherlands and demobilized them. Both the Dutch Government and the exiled Moluccans assumed that this would be a temporary arrangement. It was expected that soon the Moluccans would have their own country to return to. Though this expectation is yet to be fulfilled, at the time their belief in an autonomous State was strong and therefore most had no desire to acquire Dutch citizenship. While the Moluccans in the Netherlands had obtained Indonesian citizenship in 1949, they lost their Indonesian citizenship as a result of the 1958 Indonesian Nationality Act, due to residence outside Indonesia for a continuous period of five years without having expressed a wish to remain an citizen of Indonesia. They thus became stateless. By the 1970s about 30,000 stateless persons of Moluccan origin lived in the Netherlands. The Dutch Government recognized the need for improvement and in 1976 the Law pertaining to the position of Moluccans (*"Faciliteitenwet Molukkers"*) was approved,[43] granting Moluccans (nearly) the same rights as Dutch nationals, without actually making them citizens. In their passports it was stated that they were to be treated as Dutch nationals on the basis of the 1976 Act. As this gave rise to practical problems, the Dutch Government decided in 1991 that all stateless Moluccans would be Dutch nationals for the purpose of the Passport Act. Although most have since acquired regular Dutch citizenship, according to Van Oers *et. al.* up to 1,000 people may still hold the quasi-citizenship bestowed by the *Faciliteitenwet*.

33. In April 2003, a significantly revised Dutch Nationality Act entered into force. Prior to this revision, children born out of wedlock but acknowledged by a Dutch father automatically acquired citizenship, but because this had apparently repeatedly led to fraudulent acknowledgments, this arrangement was adjusted. After the modification children born out of wedlock could only obtain Dutch nationality after having been cared for by their Dutch father for at least three years. If these children had not acquired their mothers' citizenship in the meantime, they were stateless for three years. However, the law was again amended in 2009. At present, children automatically receive Dutch citizenship if they are acknowledged by their Dutch father before they have reached the age of seven. After this age, parenthood has to be established through a DNA-test.

34. In 2010 a further amendment to the Dutch Nationality Act included measures to permit so-called "latent Dutch citizens" to acquire Dutch citizenship. This change concerned a group of people who were born of a Dutch mother before 1985, but who did not hold Dutch citizenship, because at the time Dutch citizenship could only be passed on via the father. Even though, as of 1985, children of a Dutch mother and a foreign father could also acquire Dutch citizenship and despite the fact that there was a transitional scheme in place for this group at the time, not everyone made use of it. The new Act thus regulated that those who are born before 1985 to a Dutch mother could apply for Dutch citizenship. Grandchildren, i.e. persons whose parent(s) were born before 1985 to a Dutch mother, could also acquire Dutch citizenship if their parent(s) opted for it or they could acquire it themselves if the relevant parent had died. As the government indicated at time this "does justice to the basic principle that men and women are fully equal in nationality law".[44]

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43 Stb. 1976, 468.

3.2 The registration of stateless persons

35. In theory, all inhabitants of the Netherlands are registered in the "municipal basic administration" (GBA).[45] Aliens who lawfully reside in the Netherlands on the basis of Article 8 of the Aliens Act 2000 and who are likely to remain in the Netherlands for at least six months are registered in the GBA as well. Registration can take place at the initiative of the person to be registered, or by order of the municipal authorities, if and when the latter obtain knowledge about the arrival or presence (or absence or departure) of persons in their municipalities. Asylum-seekers living in a reception centre are registered after having stayed there for at least six months. Children born to asylum-seekers living in a reception centre are registered immediately upon birth.[46] Decentralized registration data from all Dutch municipalities are collected and aggregated at the national level by the Central Bureau for Statistics.

36. According to Article 43 of the Act GBA, the nationality status of all legal residents is included in the registration. The article specifies that such data is to be based on documents issued by a person or institution that is competent to determine citizenship in the jurisdiction concerned, or that can issue a document testifying to the person's citizenship. The GBA operational guideline states that neither a declaration under oath by the person concerned, nor an IND document mentioning an individual's nationality are sufficient evidence.[47] Whenever citizenship cannot be readily determined, two options remain: an individual can in theory either be registered as being of unknown nationality, or as stateless.

37. With regard to statelessness, it is not specified in the guideline precisely how this determination is to be conducted, nor does the word "stateless" appear in the Act GBA. The guideline also remarks that statelessness "rarely ever occurs".[48] When it does, however, only those stateless persons able to accurately document their statelessness are registered in this way. It is unclear which law or regulation stipulates that the burden of proof borne by potentially stateless persons should be this high, but it is "common practice"

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44 Gerard-René de Groot and Maarten Vink, "Netherlands: Revision of the Nationality Act", 12 July 2010, available at: http://eudo-citizenship.eu/citizenship-news/348-revision-of-the-netherlands-nationality-act-. The mother still had to possess Dutch citizenship at the moment of the birth of the child involved. For children born within wedlock, this raised a difficulty as until 1 March 1964 Dutch women in principle lost their Dutch citizenship by marriage to a foreigner. If the Dutch mother married before that date, she only kept her Dutch citizenship if she did not acquire the citizenship of her husband or could not acquire this nationality easily. Access to Dutch citizenship to the (grand)children of women married to a foreigner before 1 March 1964 therefore depended on how discriminatory the citizenship rules were in the country of the husband.

45 Act on the Municipal Basic Administration (*Wet Gemeentelijke Basisadministratie (9 June 1994)*). Staatsblad 1994, 494. Article 34 Act GBA states that the nationality of a person is recorded by the municipality where the person is registered.

46 Besluit Gemeentelijke Basisadministratie (8 September 1994), Article 55.

47 Agentschap Basisadministratie Persoonsgegevens en Reisdocumenten, "Handleiding uitvoeringsprocedures", (2010), 49. See also P.H. Oostendorp, "Staatloosheid, onbekende nationaliteit en de GBA", in *Trends in het nationaliteitsrecht,* ed. H.U. Jessurun d'Oliveira ('s-Gravenhage: Sdu, 1998), 128.

48 Agentschap Basisadministratie Persoonsgegevens en Reisdocumenten, "Handleiding uitvoeringsprocedures", 75.

nonetheless.[49] Yet, even if someone succeeds in providing adequate documentary support to substantiate a claim to statelessness, the immediate legal consequences appear to be limited. A right to reside or work in the Netherlands can certainly not be inferred from it. A right to reside in the Netherlands is determined by the IND, but according to Dutch law statelessness in itself is not a ground on which one can acquire a residence permit. Moreover, although data from the GBA are indicative for all other governmental institutions, e.g. the IND, they are not binding.[50] It is nevertheless important for stateless persons to be registered as such for two reasons. The first reason pertains to the Dutch legislation, which requires a child to be stateless from birth if he or she is to be eligible for Dutch citizenship under Article 6(1)b of the DNA. It would facilitate a child's chances of acquisition of nationality if he or she were born to two *registered* stateless parents. Secondly, a registration as stateless in the GBA will in general be sufficient to qualify for an aliens' passport with a "statelessness clause".[51] Though the individual concerned will not be exempt from visa regulations in most countries, it is nonetheless an internationally accepted travel and identification document.

38. Alternatively, when the person concerned is suspected of having at least one, albeit undetermined, nationality or has reported citizenship of a country not recognized by the Netherlands, he or she is registered as being of unknown nationality. Children of asylum-seekers are also regularly registered in this way. Often asylum-seekers and refugees will not have evidentiary proof of their nationality and as such they cannot legally be required or expected to contact their national authorities to ask for confirmation of their identity/nationality. Quite a number of asylum-seekers arrive in the Netherlands without adequate documentation and it can be assumed that many will therefore be registered as being of unknown nationality. In the context of State succession, the GBA operational guideline prescribes that after the breakdown of a State, former citizens who have not yet acquired the citizenship of a successor State should be registered as being of unknown nationality. Also if someone loses his or her nationality following a State's breakdown or demise and it is unclear what other nationality he or she might be eligible for, the person concerned is considered to be of unknown nationality.[52]

39. Although commonplace, this registration practice encounters problems in terms of States' obligations under the 1954 Convention. The latter implicitly requires the determination of status if States are to be able to identify who is entitled to the rights under the Convention, including in the Dutch context those flowing from registration as stateless in the GBA. In this context, the Recommendation on the Nationality of Children (CM/Rec(2009)13) adopted by the Committee of Ministers of the Council of Europe on 9 December 2009 is relevant. It states that, with a view to reducing statelessness among children, member States should:

> "8. register children as being of unknown or undetermined nationality, or classify children's nationality as being 'under investigation' only for as short a period as possible".

40. In the Netherlands no time limit is imposed on the duration of a registration as "nationality unknown", nor does it result in a municipal duty to look into the matter and answer the implicit question as to nationality. Moreover, the fact that the Netherlands has ratified the

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49 Interview with Eric Gubbels, Advisor at the Nederlandse Vereniging voor Burgerzaken (NVVB) ('Dutch Association for Civic Affairs') – telephone, 27 January 2011.

50 Interview with Eric Gubbels – telephone, 27 January 2011.

51 Interview with Xander Seijs, Advisor at the NVVB - telephone, 27 January 2011.

52 Agentschap Basisadministratie Persoonsgegevens en Reisdocumenten, "Handleiding uitvoeringsprocedures", 75, 333-334.

1961 Convention, which is concerned with the *prevention* and *reduction* of statelessness, suggests that a duty to find out who is and who is not some country's national does exist. Recognition of statelessness, and registration as such, could in UNHCR's view, be a first step in the process of determining an individual's nationality. The case below illustrates some of the registration practices outlined above, as well as their challenging burden of proof.

Case law

A Syrian Kurd was registered in the GBA as being of unknown nationality. He requested that the registration be changed to "stateless" on the basis of a Syrian identity document issued by the *Mukhtar* (village head) of his place of origin.

The District Court of Roermond refused the request, holding that the Syrian identity document contained no information about nationality as required under Article 43(1) or 43(2) Act GBA. In addition, the court held that research conducted by the IND into Syrian nationality law had not shown that the claimant did not possess Syrian nationality. Consequently, the court, without further investigation, ruled that the IND had "conducted sufficient research from which it could conclude that it could not be inferred from the Syrian Nationality Act whether or not the claimant had acquired a nationality".[54]

41. Municipal authorities are not the only institutions keeping registers of individuals. The IND keeps a register of applications for residence permits, where a distinction is made between applications for "asylum permits" and "regular permits". Published IND statistics do not specifically count applications by stateless persons, but the category "nationality unknown" is applied. In 2009, out of 14,905 first-time asylum applications, 507 (3.4 per cent) concerned persons who had no known nationality.[55] However, apart from applying for asylum, newly arrived stateless persons in the Netherlands may also apply for a regular residence permit under the "no-fault" procedure. How many stateless persons or persons of unknown nationality have filed an application in this way is unclear. One reason for the lack of clarity in these IND statistics is that the organization's registration system "confuses persons with an unknown nationality with those who are stateless".[56]

42. The lack of uniformity as to the qualification and registration of statelessness is one of the most problematic aspects of the current Dutch approach to statelessness in law and policy. In this respect it is interesting to note that Evers and De Groot have recently argued for a statelessness determination procedure the outcome of which should be binding for all Dutch authorities dealing with statelessness.[57]

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53 Rechtbank Roermond, 23 April 2007, LJN BA4086.

54 In Syria, there are between 200,000 and 300,000 persons of Kurdish origin who do not possess Syrian nationality. Ministerie van Buitenlandse Zaken: Ambtsbericht Syrië, 17 September 2009, p. 60, available at: http://www.rijksoverheid.nl/ministeries/bz/documenten-en-publicaties/ambtsberichten/2009/09/17/syrie-2009-09-17.html. UNHCR estimates that there were some 300,000 persons of Kurdish origin without nationality in Syria at the end of 2010. See UNHCR, *Global Trends 2010: 60 years and still counting,* 20 June 2011, available at: http://www.unhcr.org/4dfa11499.html, table 1.

55 IND Information and Analysis Centre: Asylum Trends August 2010.

56 E-mail from an IND Senior Policy Official, 17 November 2010. On file with UNHCR.

57 L. Evers and G.-R. de Groot, "Staatloos of van onbekende nationaliteit of nationaliteit in onderzoek?", (2011, on file with UNHCR).

43. The incoherence resulting from these different registration practices can additionally be illustrated by the following observation. The Dutch Passport Act (*Paspoortwet*) reads in Article 13 that every alien who is admitted as a stateless person to one of the countries of the Kingdom of the Netherlands is entitled, within the limits established by law, to an aliens' travel document (*reisdocument voor vreemdelingen*), which is valid for at least three years and for all countries. Article 11(2) of the Passport Implementation Regulation (*Paspoortuitvoeringsregeling*) continues by stating that the alien's right to such a travel document is to be determined on the basis of his or her status in the GBA. If, however, there is any doubt about the alien's nationality status in the GBA, further research shall be conducted, according to Article 11(3), which is to take into account the IND's information about this person's status. In other words, the IND document containing a person's presumed nationality can be used to determine nationality for the purpose of issuing a *travel document.* Yet for the determination of a person's nationality in the GBA, the IND document is irrelevant.

44. Another authority, the Ministry of Security and Justice, from time to time publishes estimates of the number of illegal aliens staying in the Netherlands. In 2006, they estimated that a total of 128,907 illegal aliens were living in the Netherlands and in 2009 this estimate was 97,000, the fall being attributed to accessions to the European Union.[58] This data does not, however, estimate who among this group might be stateless. Therefore, when later we survey the statistical material available, it is important to bear in mind that an overview can only be provided of the limited percentage of *officially visible* stateless persons and persons of undetermined nationality.

3.3 Statistical overview

45. Stateless people often have no documents. Significant discrepancies between estimates of the prevalence of statelessness and actual statistical findings are therefore unsurprising. Globally, UNHCR has collected reliable worldwide data accounting for 3.5 million stateless persons; a little more than a quarter of the estimated total global stateless population of 12 million people.[59] These gaps not only characterize global statistics, but persist in national data too. Few countries keep detailed track of stateless persons on their soil.[60] As we have seen in the section above, only those who do have documentation to prove their statelessness are registered as such in the Netherlands, thus making the country no exception in this regard, even if at first sight this might appear otherwise.

Table 1. Stateless/unknown nationality – age

Younger than 15	15-30 years	30-45 years	45-65 years	65 years or older	Total
19,887 (23%)	29,982 (35%)	23,261 (27%)	10,200 (12%)	1,739 (2%)	85,069

Source: CBS, situation 1 January 2010

58 See Wetenschappelijk Onderzoek- en Documentatiecentrum, "Een schatting van het aantal in Nederland verblijvende illegale vreemdelingen in 2005", (2006) and "Schattingen illegaal in Nederland verblijvende vreemdelingen 2009", (2011).

59 UNHCR, "Global Trends 2010", 15.

60 K. Southwick and M.L. Lynch, "Nationality Rights for All: A Progress Report and Global Survey on Statelessness", (2009), 28.

Table 2. Stateless/unknown nationality – sex

Males	Females
50,194 (59%)	34,875 (41%)

Source: CBS, situation 01 January 2010

46. As table 1 shows, the Central Bureau for Statistics, in its "Statline" database, reported that on 1 January 2010 there were 85,069 persons living in the Netherlands without a nationality or with an unknown nationality. This category is defined by the CBS as "persons who are not considered as a national by any State or whose nationality cannot be established".[61] A little more than 85 per cent are younger than 45 years (table 1) and almost 60 per cent are male (table 2).[62] These 85,069 persons constituted 11.5 per cent of the total number of registered aliens in the Netherlands (735,197). This large category can be broken down into those registered as stateless persons and as persons of unknown nationality. The former group (stateless) is markedly smaller, consisting of 2,062 persons on 1 January 2010, whereas the latter group ("nationality unknown") comprises 83,007 individuals.[63] To the extent that individuals from these two categories migrated to the Netherlands, it is useful to inquire into the size of these migration flows (table 3).

Table 3. Migration flows in the Netherlands, 2008

	Total	Stateless	Unknown Nationality
Emigration	90,067	43	374
Immigration	143,516	207	9,021

Source: Eurostat, 2008

47. Clearly, in 2008, the most recent year for which data was available, immigration to the Netherlands outpaced emigration and this pattern extended to the flow of stateless persons and persons of unknown nationality as well.

48. It is possible for both stateless persons and persons of unknown nationality to acquire Dutch citizenship.

Table 4. Grounds on the basis of which Dutch nationality has been acquired by stateless persons and persons of unknown nationality, 2009

Ground for acquisition	Nationality Unknown	Stateless
Emigration	10	5
Immigration	45	13
Judicial determination of paternity	25	7
Right of option[64]	127	42
Naturalization	4,634	45
Co-naturalization	2,188	46
Total	7,029	158

Source: CBS, 2009

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61 CBS, available at http://tinyurl.com/3vr3urm [accessed 5 January 2011].

62 CBS, available at http://tinyurl.com/3a7mnzc [accessed 5 January 2011].

63 CBS, data not available on Statline but on file with UNHCR.

64 Refers to the possibility for applying for Dutch nationality under Article 6(1)b of the DNA.

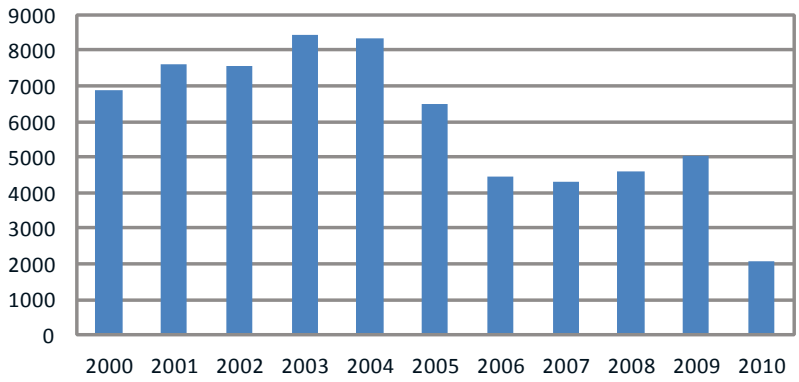
49. As shown in table 4, whenever persons of unknown nationality acquire Dutch nationality this usually happens through naturalization (and the concomitant co-naturalization of dependants). Naturalization is normally possible after one has had legal residence in the Netherlands for five years. Stateless persons who are registered as such have facilitated access to naturalization: only three years of legal stay are required, although they must also meet a number of other integration requirements, including assimilation into Dutch society, reasonable knowledge of the Dutch language, and a certain knowledge of the Dutch political system and society.[65] Nonetheless, this difference does not appear to be of much consequence: every year about 8 per cent of people from either category acquire Dutch nationality.

50. The remainder of this chapter attempts to provide an insight into the composition of the groups of registered stateless persons and persons of unknown nationality. By disaggregating and analysing these categories, we may be able to grasp the actual meaning of otherwise hollow numbers.

3.3.1 Statistics on stateless persons

51. Eurostat's most recent 2009 survey shows the Netherlands as having a stateless population of 2,060 persons.[66] Figure 1 displays the development of the number of registered stateless persons present in the Netherlands.[67]

Fig. 1 - Registered stateless people in NL



Source: CBS, situation 1 January

65 Dutch Nationality Act (Rijkswet op het Nederlanderschap), Articles 6(1)b and 8.

66 Eurostat 2009, available at http://tinyurl.com/mlzgzt [accessed 3 October 2011].

67 CBS, available at http://tinyurl.com/2vsx9px [accessed 5 January 2011].

52. The sharp decline visible after 2004 is difficult to clarify unambiguously. The most plausible explanation lies in the changed definition of a stateless person in the revised Dutch Nationality Act of 2003.[68] Until 1 April 2003 persons whose "nationality cannot be determined" were considered to be stateless under the Dutch Nationality Act. Many of them, as is the case at present, were nonetheless grouped into the category "nationality unknown", for instance because they could not meet the burden of proof required by the GBA to be registered as a stateless person. Nevertheless, with this broader definition of statelessness, naturally more individuals were registered as stateless than has been the case since April 2003. The sudden drop in 2010 is not due to changes in the policy environment, but a result of modifications in CBS's data collection methods. In order to acquire its data on statelessness, the CBS now aggregates information provided by municipalities to give an indication of the national state of affairs. According to a CBS demographer, before 2010 the bureau did not receive any information on an individual's previously registered nationalities. Instead, municipalities provided data on the situation as it prevailed on 1 January of every year. However, as of 1 January 2010, CBS has had access to these "historical" nationalities. Whereas an empty record was previously understood to point to a stateless person, at present this empty record may be complemented by a historical nationality still considered valid today. As a result, significantly fewer persons turn out to be stateless.[69] Consequently, data gathered using the new methodology cannot be accurately compared to earlier statistics on statelessness, but is likely to be more accurate than before.

The origins of stateless persons in the Netherlands

53. Out of the 2,060 people registered as stateless in 2010, figure 2 shows that a little over 71 per cent (1,471 people to be precise) were born in the Netherlands. Another 13 per cent (260 people) were born in Indonesia, whereas an additional 48 different countries combined make up the remaining 16 per cent (figure 2).[70] If we break down the group of Dutch-born stateless persons by their father's country of birth, the picture portrayed in figure 3 results.[71]

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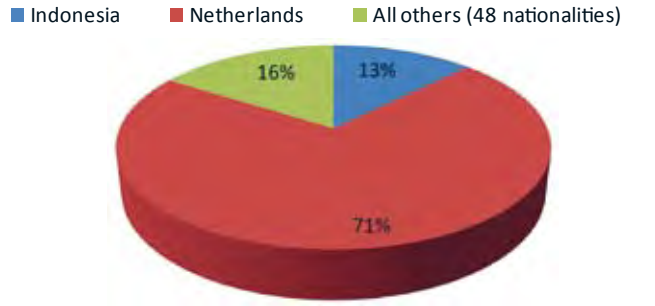
68 Changes in Dutch migration policy or more proactive deportation efforts are unlikely to be at the root of this decline, since stateless persons – especially those already registered as such – can in general not be deported and experience great difficulty in leaving the country of their own accord.

69 E-mail correspondence with a CBS demographer, 1 March 2011. On file with UNHCR.

70 CBS, data not available on Statline but on file with UNHCR.

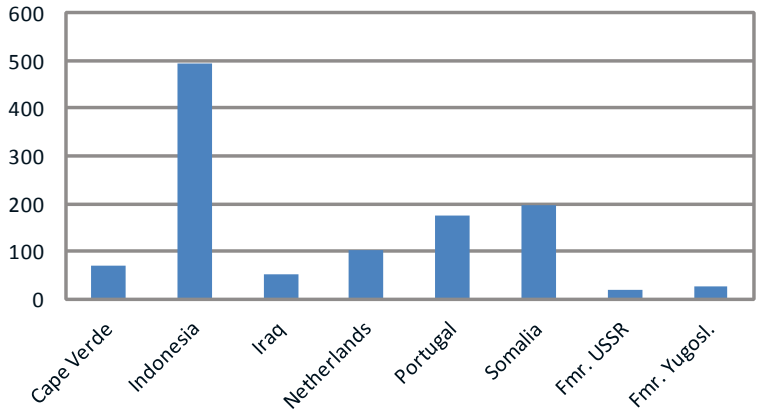
71 Ibid. The eight paternal nationalities depicted in figure 3 represent 76 per cent of the total number of stateless persons born in the Netherlands. The remaining 24 per cent are divided over dozens of other paternal nationalities. Please note, however, that the CBS data do not list the number of persons whose fathers are unknown. At present, the data portray a fictional situation in which every registered stateless person has an identified father. It has been opted to display paternal over maternal nationality in this chapter, because globally nationality laws exhibit a paternal bias. In short, if individuals have a nationality, it is in general most likely to have been passed on by their father.

Fig. 2 - Country of birth of registered stateless people in NL



Source: CBS, situation 1 January 2010

Fig. 3 - Registered stateless people born in the Netherlands - father's country of birth (N> 20)



Source: CBS, situation 1 January 2010. "N > 20" indicates that data is only included where it concerns at least 20 individuals.

54. Clearly, the vast majority of stateless persons born in the Netherlands are of Indonesian origins. These stateless persons born in Indonesia and of Indonesian descent may at least in part be the Moluccans and their children referred to in section 3.1 above. Where Van Oers et al. estimated this group to consist of approximately 1,000 individuals, according to these figures it would seem that this figure is lower. Of all registered stateless people in the Netherlands, a group of 260 persons was born in Indonesia, whereas another 494 persons were born in the Netherlands but to an Indonesian father. Taken together, the group of people of Indonesian origins comprises 754 individuals. The fact that these presumed Moluccans are registered in the GBA as stateless persons is consistent with the fact that – though for all intents and purposes treated as such – they are not

officially Dutch citizens.[72] In this regard, it is at first sight remarkable that virtually all these purportedly stateless Moluccans are registered as without a residence permit. However, when one considers that as quasi-citizens these individuals do not require a residence permit to reside legally in the Netherlands, even this makes sense.[73]

55. It should be noted that children of Somali and Portuguese parents, despite having been born in the Netherlands, appear to be at particular risk of remaining stateless. For the children of Portuguese parents, under the Portuguese Nationality Act of 3 October 1981, a child born abroad only receives Portuguese citizenship when the birth is entered into Portugal's nationality register or when the parents approach the Portuguese authorities with an explicit request to grant citizenship. Without such registration the child remains stateless. (The same applies to Cape Verdean nationality law.)[74] It should be noted that it is entirely possible that these children were stateless at birth and registered as such, but that their parents soon after applied for Portuguese nationality for their children without notifying the GBA.[75] In such circumstances, if the parents do not report this changed nationality status, the label "stateless" is never changed.[76] Therefore, persons of Portuguese origin are probably overrepresented in the available statistics. The situation is more complex for children of Somali parents. They are regularly registered as either stateless or of unknown nationality because Somalia lacks the "competent authority" to – among many other tasks – issue credible identity documents.[77] Children then in principle inherit their parents' absent or unknown nationality. Furthermore, according to Somali law, a woman may not transfer her nationality to her family. As a result, children of single or unaccompanied female migrants or asylum-seekers are stateless from birth, absent any evidence of acquisition of the nationality of the father.

56. With regard to the other origins mentioned in figure 3, there is no conclusive information on the characteristics of these individuals. It seems likely that the group of former USSR citizens became stateless during the process of State succession. Likewise, the break up of the former Yugoslavia would account for another group of individuals, especially when combined with the knowledge that the region is home to many stateless Roma.

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72 Though it is difficult to determine with absolute certainty, the plausibility of this explanation was backed up by Eric Gubbels and Hans Tomson at the NVVB. It should nevertheless be remembered that under the 1958 Indonesian nationality law many people born abroad were stateless either because their mother could not confer nationality and/or their parents were stateless due to the five-year automatic loss provision for residence abroad.

73 This finding also corroborates the argument in general, as the consistency in the way stateless persons of Indonesian origins are registered presupposes a rather homogenous group of people, such as Moluccans for instance. Out of a total of 754 registered stateless persons with an Indonesian background (either born there or with an Indonesian father), 738 persons do not have a residence permit. No more than 14 individuals have a regular permit, none hold an asylum permit. Two persons are registered as having "either" an asylum or a regular permit. Combined with the Moluccans' historic proneness to statelessness, the statistical homogeneity of this group renders it unlikely that many non-Moluccan stateless Indonesians have accidentally been filtered out too.

74 P.H. Oostendorp, "Staatloosheid, onbekende nationaliteit en de GBA", 127.

75 An inventory conducted by Eric Gubbels at the municipality of Amsterdam has shown that no cases appear to have been reported where parents inform the municipality of the child's acquisition of Portuguese nationality. UNHCR nevertheless assumes that stateless children born to Portuguese parents are at some point registered with the Portuguese authorities and granted Portuguese nationality. Interview with Eric Gubbels – telephone, 3 March 2011.

76 Interview with Eric Gubbels – telephone, 27 January 2011.

77 Ibid.

57. Almost 72 per cent of registered stateless persons, including those of Indonesian origin, were born in or after 1992 and are therefore still children.[78]

Case law

In 2003 the District Court in The Hague had to decide in the case of a Somali applicant for a "no fault" permit, where the respondent (the IND) had rejected the application because it considered the applicant to be a Somali national.[79] The case concerned the questions whether a) the applicant could be considered to be stateless and b) a "no fault" permit could be issued to de facto stateless persons. The court found that for more than 20 years there had been no effective authority in Somalia. It held that the respondent had not properly argued why, in these circumstances, the applicant was not stateless. The respondent had referred to "policy" for refusing a "no fault" permit. However, the "policy" as formulated in the Aliens Guidelines did not refer at all to de facto statelessness. The court held that hence the respondent could not have relied on the "policy" in refusing a "no fault" permit.

Stateless persons without a residence permit

58. According to the CBS data, a clear majority almost 65 per cent (or 1,299 persons) of registered stateless persons did not hold a residence permit on 1 January 2010.[80] Though strictly speaking the 1954 Convention does not oblige States to grant residence to stateless persons (see chapter 4), this is a striking percentage nonetheless. If, however, we filter out the Moluccans with quasi-Dutch citizenship, who are registered as without a residence permit as mentioned in paragraph 54 above (presumably 754 individuals), what remains is 545 stateless persons of non-Indonesian descent without a residence permit – 27 per cent of the total number of registered stateless persons, but still a significant number of people.

59. Children of Somali parents stand out among them. As noted above, Somali children are regularly registered as stateless by the Netherlands due either to Somalia's discriminatory laws or to the view that its statehood is questionable. A large majority of these 545 persons were born in the 2000s. It thus seems safe to conclude that the problems of this particular group usually started at birth. In this context, Article 1 of the 1961 Convention, requiring a contracting State to grant its nationality to a person born in its territory to persons who would otherwise be stateless and indeed Article 7 of the 1989 Convention on the Rights of the Child (CRC), which provides that all children should be able to acquire a nationality, would apply.[81] UNHCR therefore recommends that the particular situation of this group be investigated further and citizenship be granted as necessary, to ensure that the Netherlands upholds its obligations under these conventions.

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78 CBS, data not available on Statline but on file with UNHCR.

79 Rechtbank 's-Gravenhage, 27 June, 2003, LJN AI0720.

80 CBS, data not available on Statline but on file with UNHCR.

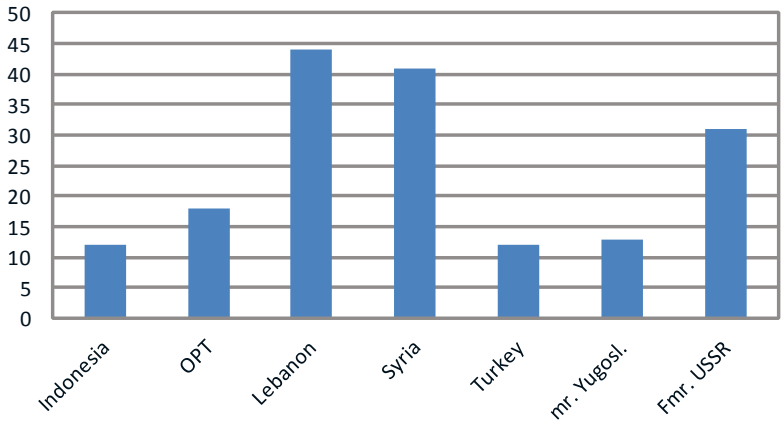
81 Article 7 of the Convention on the Rights of the Child, ratified by the Netherlands, reads:
"1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
"2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

Stateless persons with a residence permit

60. Approximately 35 per cent of registered stateless persons in the Netherlands, or 761 individuals, have a residence permit.[82] Almost 16 per cent of this group received a permit on asylum grounds, meaning that in all probability these individuals are stateless refugees. This means that the remaining 84 per cent of all persons registered as stateless have a regular residence permit.[83]

61. Most holders of a regular residence permit were born in the Netherlands, but had their origins in Somalia. However, roughly 40 per cent of regular permit holders were not born in the Netherlands. The data indicates (as visualized in figure 4)[84] that in this instance persons of – presumably – Palestinian background have been granted residency most often and are most commonly from the Occupied Palestinian Territories (OPT), Lebanon and Syria. Also, stateless Kurds born in Syria may be included. Citizens from the former Soviet Union make up another group that has been accorded regular residence permits relatively often.

Fig. 4 - Stateless people in NL with regular residence permits - country of birth (born in NL excluded, N>10)



Source: CBS, situation 1 January 2010. "N > 10" indicates that data is only included where it concerns at least 10 individuals.

82 CBS, data not available on Statline but on file with UNHCR.

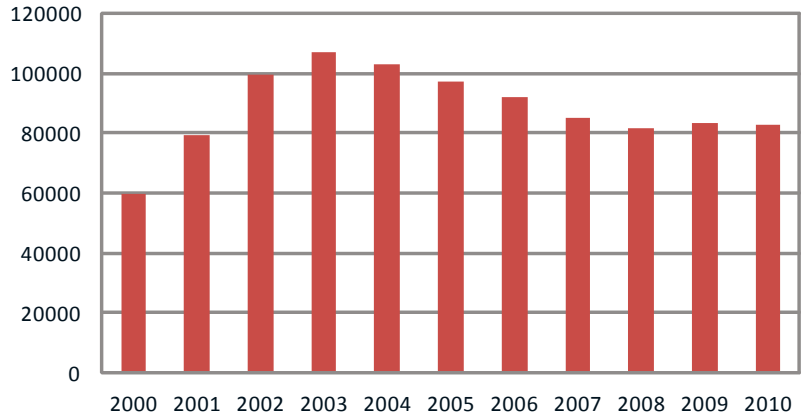
83 To be precise, the CBS data list four persons (or 0.5 per cent) as in possession of either an asylum or a regular residence permit. For clarity's sake, this category has been left out.

84 The total number of stateless persons in the Netherlands, excluding those of Dutch birth, holding a regular residence permit, split up by their fathers' country of birth, includes another 82 persons divided over 31 paternal nationalities. CBS data not available on Statline but on file with UNHCR.

3.3.2 Statistics on persons of unknown nationality

62. Regarding the group of persons whose nationality is registered as "unknown", the numbers involved are of an entirely different magnitude from that of those registered as stateless. At the start of 2010, 83,008 persons were registered as of unknown nationality in the municipal administrations. Among this group were 22,881 children (born in or after 1992), which is roughly 28 per cent of all persons registered as having no known nationality. European Commissioner for Human Rights Thomas Hammarberg raised concerns about this high number in 2008.[85]

Fig. 5 - People of unknown nationality in NL



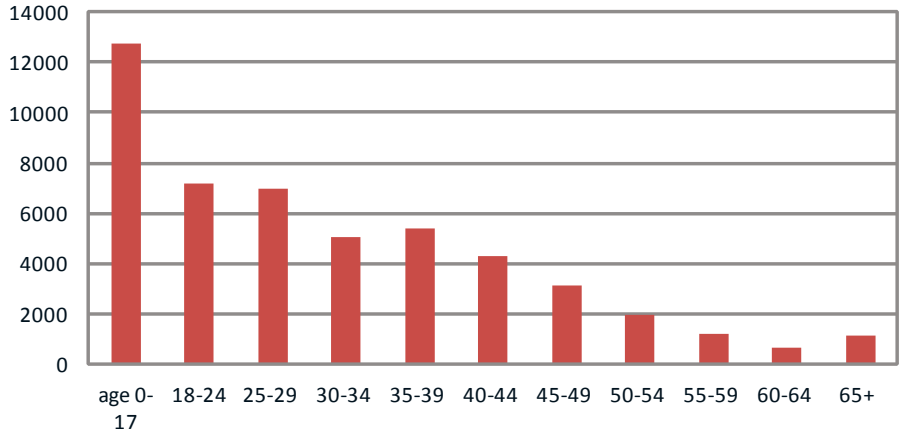
Source: CBS Statline

63. Although the category "nationality unknown" appears to be of consistently substantial size, figure 5 shows a decline after 2003. There is no clear information available, but the drop can perhaps be attributed to a generally stricter immigration policy and more proactive deportation efforts.

64. The fact that someone's nationality is unknown does not apparently imply a legal duty on the authorities to inquire into the matter. Almost 60 per cent of all persons of unknown nationality (49,568 individuals) have been registered as such for more than three years. As figure 6 reveals, around a quarter of these people are children.

[85] T. Hammarberg, "Report by the Commissioner for Human Rights Thomas Hammarberg on his visit to the Netherlands, 21-25 September 2008", (2009), 19.

Fig. 6 - People registered with an unknown nationality for more than three years



Source: CBS, situation 1 January 2010

65. Almost 13,000 children have been registered for longer than three years as being of unknown nationality, although the graph suggests that as time passes the issue is often resolved. Considering that naturalization is possible from the age of majority onwards and that children are naturalized together with their parents, the sudden drop at age 18 is logical. Nonetheless, at later ages too the declining trend persists and most individuals apparently acquire some form of acknowledgment in the course of their lives (either of a nationality or of statelessness). A little over 1,000 people over the age of 65 have (still) not been able to substantiate any nationality. Presumably, these persons are in the Netherlands without a residence permit or have arrived relatively recently, since otherwise they could have applied for Dutch nationality after five years of legal stay.

66. As indicated above, the category "nationality unknown" covers a wide array of cases, including undocumented refugees, persons from collapsed States awaiting a new nationality and stateless persons unable to meet the GBA's high standard of proof to be registered as such. According to Busser and Rodrigues, a thus far undetermined number of people in this category have at least an "ineffective nationality" and are thereby *de facto* stateless.[86] In the year 2008 alone, the IND counted 9,021 individuals of unknown nationality who migrated to the Netherlands.[87] The lack of clarity about the meaning of this considerable figure is compounded by the experience that the category "nationality unknown" is in practice used by municipal officials as a lump-category for all individuals who have trouble substantiating their nationality status.[88] However, examining the residence status of persons of unknown nationality may yet provide greater clarity.

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86 A. Busser and P.R. Rodrigues, "Staatloze Roma in Nederland", *Asiel- en Migrantenrecht,* no. 8 (2010), 387.

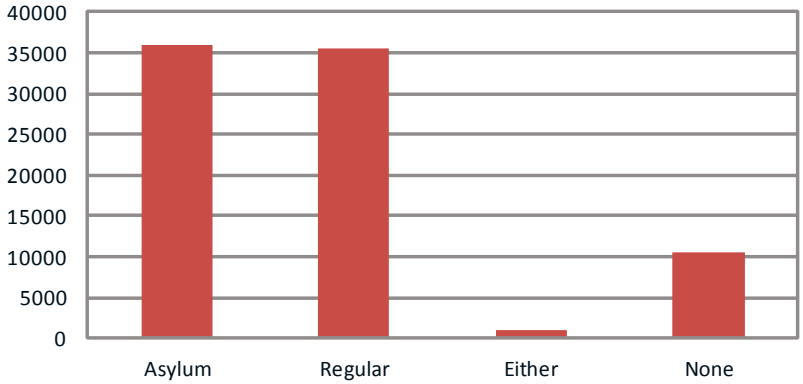
87 Nederlands nationaal contactpunt voor het Europees migratienetwerk (EMN), "Statistisch Jaaroverzicht Migratie en Internationale Bescherming – Nederland 1 januari 2008 - 31 december 2008", (2010), 31.

88 The 9,021 immigrants of unknown nationality who arrived in the Netherlands in 2008 constituted more than 6 per cent of the country's total immigration. Considering that no other State in Europe (apart from Cyprus) receives even nearly this many persons of unknown nationality, the suspicion that this classification is being used as a "catch-all" category is reinforced (Source: Eurostat, 2008).

Persons of unknown nationality with a residence permit

67. As reflected in figure 7,[89] 36,000 persons of unknown nationality have a residence status on asylum grounds in the Netherlands.

Fig. 7 - Residence status of people with unknown nationality in the Netherlands



Source: CBS, situation 1 January 2010

68. Applying the same reasoning used above when describing registered stateless persons with an asylum permit, this group most likely consists mainly of refugees whose reasons for flight were convincing despite having limited documentary support. This assumption is corroborated by the fact that 54 per cent of this group originates from Afghanistan, Iraq or Somalia,[90] which have been the top three countries of origin of asylum-seekers and refugees in the Netherlands for several years.

69. Another large number of people of unknown nationality, 35,527 to be exact, possess a regular residence permit. In theory, people whose absent or unclear nationality prevents them from leaving the Netherlands should be able to obtain legal residence through the "no-fault" procedure. However, permits on this ground are rarely issued and are therefore unlikely to extend beyond the group of "recognized stateless persons with regular permits" described above.[91] Nevertheless, looking at the countries of origin of these regular residence permit holders, 26 per cent of them (or 9,252 individuals) come from two regions of the world particularly prone to statelessness: the former Yugoslavia

89 CBS, data not available on Statline but on file with UNHCR.

90 Ibid.

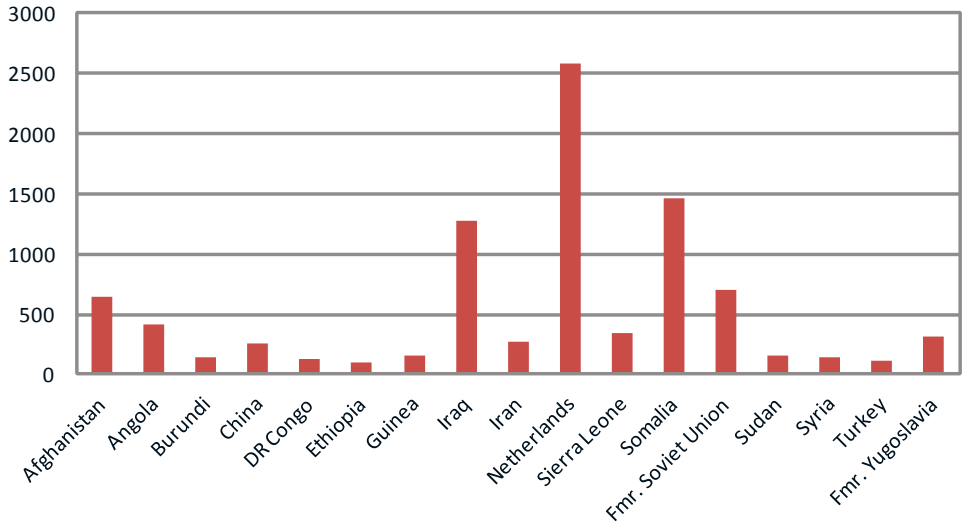
91 In 2008, only 50 permits out of 1,990 regular permits issued to stateless persons or persons of unknown nationality were granted as a result of a no-fault procedure. No-fault permits: Reactie Staatssecretaris van Justitie op kamervragen Tweede Kamer, TK 2009-2010, 19 637, nr. 1302. Total regular permits: CBS, available at http://tinyurl.com/678ma92 [accessed on 11 January 2011]. According to information received from the DT&V approximately 50 and 30 persons respectively received a residence permit in 2009 and 2010 as a result of the no fault procedure (email of 17 March 2011).

and the former Soviet Union.[92] Even those of unknown nationality with regular permits born in the Netherlands (20 per cent) are in one quarter of cases children of Yugoslav and Soviet fathers (only 2 per cent are of actual Dutch descent). Whether or not they are stateless, the fact of the matter is that all persons in this category have legal residence in the Netherlands and are therefore not particularly vulnerable to the difficulties generated by a stateless existence.[93]

Persons of unknown nationality without a residence permit

70. There are 10,493 registered persons of unknown nationality who reside in the Netherlands without a residence permit. Their situation is seriously affected by the lack of such a permit. Figure 8 displays their countries of birth.[94]

Fig. 8 - People of unknown nationality without a residence permit - country of birth (N>100)



Source: CBS, situation 1 January 2010. "N > 100" indicates that data is only included where it concerns at least 100 individuals.

71. Clearly, the largest group of persons of unknown nationality without permits were born in the Netherlands, though in 97 per cent of the cases the father was born abroad (see figure 9).[95]

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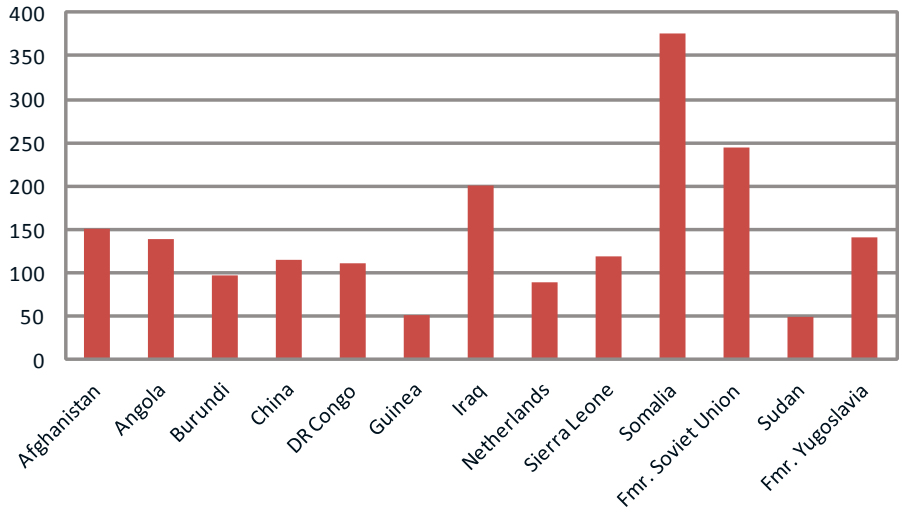
92 Regular residence permit holders of unknown nationality are predominantly born in the Netherlands (20 per cent), the former Soviet Union (14 per cent), and the former Yugoslavia (12 per cent). CBS, data not available on Statline but on file with UNHCR.

93 It should be noted that successful application for a no-fault residence permit is not the only way to acquire a regular residence permit. For example, requests for family reunification and study or work-related applications (if successful) all result in regular permits. Available data does not, however, specify the grounds on which persons of unknown nationality have been issued a regular permit.

94 Ibid.

95 Ibid.

Fig. 9 - People of unknown nationality born in NL with no residence permit - father's country of birth (N>50)



Source: CBS, situation 1 January 2010. "N > 50" indicates that data is only included where it concerns at least 50 individuals.

72. It is interesting to note that 90 persons born in the Netherlands to a father also born on Dutch territory have no known nationality. Although no clear information is available, it may be that part of this figure corresponds to individuals who lost their Dutch citizenship because they fought in the Spanish civil war, complemented by a statistical "remnant" of children born out of wedlock between April 2003 and March 2009 (see section 3.2). In addition, it should be noted that the vast majority (94 per cent) of Dutch-born persons of unknown nationality without a residence permit appear to be children, born in the 2000s, pointing to the difficulties in acquiring a nationality for many children born to foreign parents in the Netherlands. Presumably the high numbers of persons of Afghan, Iraqi and Somali origin visible in figures 8 and 9 reflect those whose claim to asylum was rejected due to absent or questionable (identity) documents, but who did not leave the country after this unfavourable decision. It is impossible to tell precisely how many people of unknown nationality experience all difficulties related to statelessness, but cannot live up to the no-fault procedure's high standard of proof and are thus left without a permit. Nonetheless, judging by the data displayed in figures 8 and 9, persons of Somali, Yugoslav and Soviet origin, as well as those originally from Angola, Burundi, China, the Democratic Republic of the Congo, Guinea, Sierra Leone and Sudan are at particular risk of being left without both an (agreed upon) nationality and a permit to reside.

3.3.3 Concluding remarks

73. Based on the statistical evidence presented above, it is difficult to estimate the total number of stateless persons living in the Netherlands. To do so would be to deny the significant inaccuracies in the available quantitative data. The current statistics only contain those stateless persons and persons of unknown nationality who have been registered by their municipalities. No statistical material is available on the number of illegal and unregistered stateless persons; they remain completely invisible. Recalling that in 2009 an estimated total of 97,000 illegal aliens lived in the Netherlands, the number of stateless persons among them could be substantial. Furthermore, people who have erroneously or unilaterally been attributed a nationality do not show up in statelessness-related statistics even though they may be stateless. The story of the boy born in the Netherlands to a Sri Lankan mother recounted just after paragraph 122 below is an example of this.

74. Coming up with a total tally of the number of stateless persons in the country is further complicated by the lack of clear and consistent registration guidance and practice. For instance, some 37 per cent of registered stateless persons are in all likelihood Moluccans with quasi Dutch citizenship. Children of parents born in Portugal make up another 9 per cent of all officially stateless persons in the Netherlands, but they can in principle acquire Portuguese citizenship whenever they so desire. Moreover, as the GBA is not automatically updated when they do acquire Portuguese nationality, many of these individuals may no longer be stateless. Another 3 per cent of registered stateless persons are of Cape Verdean origin, to whom the same reasoning applies. All in all, this leaves us with less than a thousand registered stateless persons (around half of the original total) who are likely to be stateless. Although this is a relatively small figure, it is important to realize that a clear majority of these persons are still children and that most have been born in the Netherlands. Many do not hold a residence permit. A specific inquiry into this group in particular seems warranted, as at present it appears as if, among other legal instruments, the 1961 Convention and the Convention on the Rights of the Child are not respected in all cases.

75. Finally, employing the available statistical material, it is impossible to gauge exactly how many persons are stateless within the category “nationality unknown”. What we do know is that children are manifestly present among this group. Moreover, taking the heavy burden of proof upon the applicant to be registered as a stateless person into account, combined with the fact that stateless persons are often inherently unable to meet these stringent documentary requirements, it is probable that a considerable number of stateless individuals are hidden within the label “nationality unknown”. The group of persons whose nationality is unknown and who do not hold a residence permit either (comprising 10,493 individuals) may be at particular risk of statelessness, or at least unreturnability.

3.4 Analysis and conclusions based on the interviews

76. As noted above, 24 people were interviewed in the course of the research.[96] This section outlines some of the conclusions that can be drawn from the information collected in these interviews.

77. The interviewees originated from countries that particularly appear to shun responsibility for some of their nationals or people with former habitual residence on their territory. The risk groups identified in this way largely overlap with the people who proved statistically speaking most likely to be stateless.[97] Only one of the 24 people interviewed was actually registered as stateless in the GBA and only a handful were designated as "nationality unknown". All the others were simply living invisible lives. Taking the commonalities between statistics and practice into account, there is nevertheless no immediate reason to doubt how representative the statistical data available is. The interviews do confirm, however, that a significant percentage of stateless people stay completely "under the radar".

78. People from the following backgrounds emerged as regularly stateless or unreturnable from both quantitative and qualitative sources: Roma (mainly from former Yugoslavia), ex-citizens of the former Soviet Union, Palestinians, and people of Sudanese, Somali, West African (Guinea, Liberia, and Sierra Leone), Burundian, Ethiopian, and Chinese backgrounds. Each of these origins is represented by at least one, but generally two, respondents.[98] Though not demonstrated to be at significant risk statistically speaking, two people with roots in Surinam were also interviewed, due to the direct Dutch responsibility for their statelessness and the historical ties between the two countries.

79. Various issues, both procedural and practical, revolve around the most pervasive and disturbing problem experienced by all but four of the interviewees: the incidence of lengthy, repeated, and hopeless periods of detention. As the UN Secretary-General has noted: "Stateless persons are also uniquely vulnerable to prolonged detention and States should be sensitized to respect the rights of stateless persons to be free from arbitrary detention as a result of their stateless status."[99] The interviews undertaken in the course of this research show that this appears to be the case in the Netherlands, as it is in a number of other countries including Australia, the United Kingdom and the United States.[100] Every year approximately 8,000–10,000 people are being held in alien detention facilities in the Netherlands.[101] About 20 per cent of these people (1,575 individuals according to Amnesty International) were in custody for more than six months.[102] How many people

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96 For information on the selection criteria for interviews, see section 1.3 Demographic and legal methodology above. Further information about the interviews is contained in a version of this report to be published independently by the consultants.

97 Only Angola and the Democratic Republic of the Congo appear statistically relevant, but were not mentioned by any of the law firms or NGOs as of particular significance.

98 Due to time constraints was impossible to speak to respondents of Chinese origin.

99 UN Secretary-General, *Guidance Note of the Secretary-General: The United Nations and Statelessness,* June 2011, available at: http://www.unhcr.org/refworld/docid/4e11d5092.html [accessed 9 October 2011], p. 6.

100 Equal Rights Trust, "Unraveling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons", chapter 4.

101 Dienst Justitiële Inrichtingen (Ministerie van Justitie), "Vreemdelingenbewaring in getal. 2005-2009", (2010).

102 Amnesty International, "Vreemdelingendetentie: In strijd met mensenrechten (updated version)", (2010), 12.

actually wish to return to their country of origin (or of former habitual residence), but cannot because no State accepts responsibility for them, is unclear.

80. Numerous interviewees described the practice of being detained for months, in a regime sometimes no different from criminal prisons[103] and without indications as to when they would be expelled, only to be released because a judge ruled that "the perspective of deportation was absent". Many interviewees said that upon being released, they were then given notice to leave the country within 24 hours. In 2008 alone, 1,679 persons of unknown nationality were told to depart from the Netherlands this way.[104] Without means or the right to either stay in or leave the country, most respondents were arrested a second or third (and in some cases even fourth and fifth) time and then sent back to aliens' detention awaiting deportation. Usually, not being able to present identification documents caused the arrest in the first place. This vicious cycle has a tremendously detrimental effect on the mental state of stateless persons, who often do not dare to leave their house or shelter at all anymore. Indeed, "[e]ven where detention is not initially prohibited, it may become arbitrary over the course of time owing to the length [and regularity] of detention".[105] It should be noted in this regard that up until 24 December 2010, when the EU Return Directive entered into force, the Netherlands operated without legal restrictions on the duration of alien detention.[106] Still, with this Directive now in place detention may last as long as 18 months when "a lack of cooperation by the third-country national" has been found or "delays in obtaining the necessary documentation from third countries" arise.[107] The latter issue is particularly common where people who are stateless or of unknown nationality are concerned.

81. While it is undoubtedly true that in some cases self-proclaimed refugees or stateless persons have destroyed their means of identification with a view to hindering their expulsion, in general deportation is not just dependent upon the willingness of the person to be removed. The cooperation of friends or kin in the individual's country of origin may be required to establish an identity and they may be found unable or unwilling to do so, or not found at all; alternatively the Dutch government may not expend the resources required to achieve removal; most importantly, a country of origin may refuse its cooperation for a variety of reasons, chief among them a sincere or pretended unawareness of a link with the person in question. In this context it has been suggested that "[i]f no information can be acquired within a reasonable time the person involved should be deemed to be stateless".[108] Especially when a failure to deport is not proven to be due to an individual's own (in)action, punishment for an inability to leave is particularly harsh. UNHCR would therefore recommend the imposition of a time limit on these attempts at expulsion. In fact, "under Article 7 of the ICCPR [International Covenant on Civil and Political Rights,

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103 Amnesty International, "Vreemdelingendetentie: In strijd met mensenrechten (updated version)", 16. See also European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, "Report to the authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe, Aruba and the Netherlands Antilles", (2007), 33.

104 Nederlands nationaal contactpunt voor het Europees migratienetwerk (EMN), "Statistisch Jaaroverzicht Migratie en Internationale Bescherming – Nederland 1 januari 2008 - 31 december 2008", 37.

105 K. Perks and J. Clifford, "The legal limbo of detention", *Forced Migration Review,* no. 32 (2009), 42.

106 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

107 Ibid., Article 15 (section 6 under a and b).

108 G.-R. de Groot, "A clarification of the fundamental rights implications of stateless and persons erased from the register of residents", Briefing paper European Parliament (2007), 3.

ratified by the Netherlands] repeated attempts at expulsion to a country which is not guaranteed to admit the individual concerned may amount to inhuman or degrading treatment".[109] If, as happened almost certainly in the case of one of the interviewees, a bilateral deal is struck to return someone despite his or her statelessness, "[g]uarantees that the individual will be treated in accordance with international human rights law and, where nationality is not on offer, the standards set out in the Statelessness Convention would surely be appropriate".[110]

82. The adverse connection between the interviewees' inability to establish their identity and the likelihood of detention has already been emphasized. This is particularly true for the situation after 2004, when a general obligation to carry personal identification was introduced in the Netherlands. Another consequence of a lack of means of identification pertains to difficulties in accessing healthcare that should by law be available to *all* residents in the Netherlands.[111] Various interviewees indicated that they had been either refused essential care, or that they had postponed important check-ups for fear of being "discovered". A majority of respondents struggled with psychological issues, often related to post-traumatic stress disorder (PTSD) and depression. These mental issues were either a manifestation of traumatic experiences in the past, or had been caused or aggravated by the apparent lack of judicial or other means to resolve their situation. Many interviewees repeatedly expressed the desire to be treated "as a human being". Those who were fortunate enough to be assisted by an NGO experienced considerably fewer problems, as these organizations regularly paid for essential treatment. Nevertheless, although the Aliens Act 2000 mentions that all aliens should have access to "medically necessary healthcare",[112] the line between necessary and optional is not clear and appears to be applied in an unpredictable and *ad hoc* fashion.

83. Even stateless people, who were still in an (asylum) procedure and were thus lawfully resident in the Netherlands, experienced trouble establishing their identity themselves. Several interviewees should in theory have been entitled to a W2 identity document, but had nonetheless not been provided with this crucial piece of documentation. This was because, as the former State Secretary of Justice explained in a letter to the National Ombudsman in 2007, no ID documents were (or are) issued during the procedure of persons who had claimed to be stateless. The rationale behind this was that "issuing an aliens' passport or identity document will remove the incentive to fully commit to acquiring a passport".[113] If the person in question was later officially found to be stateless but not granted a residence permit, no aliens' passport or identity document would be granted either.[114] The National Ombudsman took up the case of one stateless person of Latvian origin and concluded that the State Secretary ought to reconsider her position, as the person concerned deserved a means of identification on the basis of Article 27 of the 1954 Convention.[115] This recommendation has so far not resulted in any change in policy.

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109 R. Mandal, "Discussion Paper no. 4: What Status Should Stateless Persons Have at the National Level?", Discussion papers series for the establishment of a UNHCR Handbook on the Determination of Statelessness (2010), 20.

110 Ibid., 25.

111 This inaccessibility of healthcare to stateless persons has previously been reported in the case of Roma individuals. See Dokters van de Wereld, "Stateloos maakt radeloos. De situatie van stateloze Roma in Nederland 2009", (2010), section 6.4.

112 Aliens Act 2000, Article 10(2).

113 Letter of the State Secretary of Justice to the National Ombudsman, 29 June 2007. Report 2007/328.

114 A. Busser and P.R. Rodrigues, "Staatloze Roma in Nederland", 386.

115 Nationale Ombudsman, report 2007/328.

84. In general, interviewees were confronted with significant difficulties in accessing the rights attributed to them under the 1954 statelessness convention. This was mainly because they were all either unregistered, registered as being of unknown nationality or of unconfirmed nationality. This is a troubling situation, as classifying stateless persons as being of unknown nationality or by attributing an unproven citizenship pre-empts the activation of rights enshrined in the 1954 Convention.[116] One of the interviewees, for example, had variously been attributed as "Russian", "Georgian", and as "nationality unknown", or no citizenship at all. In the first two instances, no verification for this attribution was sought and nationality was unilaterally determined. On this matter De Groot wrote the following:

> "If the foreign State refuses to recognize the person involved as a national, other States are absolutely not entitled to conclude that the person in question is nevertheless a national of this foreign State. If the person involved does not possess any other nationality, this person is de jure stateless and must enjoy the advantages of statelessness avoiding or reducing provisions."[117]

85. While Article 17(2) of the 1954 Convention calls on signatories to "give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals", it was forbidden for nearly all interviewees to earn a living, or even perform voluntary work to keep themselves occupied. Other basic needs, a roof over one's head in particular, were similarly difficult to access. Various respondents were homeless and scraped a living together on the streets. For those who had found shelter, eviction posed a constant threat. Finally, although education appeared to be available to all minors, the inability to complete an internship obstructed the acquisition of a diploma.[118]

86. Many of the interviewees complained about the lack of procedural solutions to their plight. Due to the absence of a dedicated statelessness procedure in the Netherlands, stateless people ended up moving from one ill-fitting procedure to another. Although the "no-fault" procedure in theory serves the needs of stateless persons, in practice such permits are rarely granted. Moreover, the "no-fault" procedure can only be accessed after an application for an asylum or regular residence permit has been denied, causing considerable and unnecessary delays. After all, many stateless people do not even wish to apply for asylum and may not in any case be refugees. A statelessness status determination procedure would help clarify those who are indeed stateless. For some interviewees, residence in the Netherlands was not necessarily the aim or viewed as the general optimum solution. Some showed no desire to stay in the Netherlands, either because of a longing to return home or because of profound disillusionment with life in the Netherlands. In these cases actively advocating for and assisting the individual in acquiring or confirming another country's citizenship or at least re-admittance and enjoyment of a secure status and rights would be more in line with his or her wishes.

87. Even if there had been a more readily accessible procedural solution to statelessness, many of the interviewees would still not have benefited from it. Eight of the respondents had been declared an undesirable alien, mostly for minor offences such as petty theft and posing as someone else to be able to work. This kind of subsistence crime, though not to be condoned, is one consequence of a situation where stateless persons have no right

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116 G.-R. de Groot, "A clarification of the fundamental rights implications of stateless and persons erased from the register of residents", 4.

117 Ibid.

118 On 28 June 2011, in answer to written questions from members of Parliament, the Minister for Social Affairs stated that he considered it undesirable that children without a residence permit performed internships in the course of their studies. Ref. No. 2011Z09769.

to legal residence, social services or to work. A declaration of undesirability criminalizes and penalizes an alien's presence on Dutch territory, making it impossible to pursue a resolution of his or her dilemma afterwards. The Aliens Act and the Aliens Decree, for instance, block one avenue to lift such a declaration of undesirability as they stipulate that such a declaration will be lifted after an individual has been outside the Netherlands for either ten or five years (depending on the severity of the crime committed) and does not repeat the offence during this period.[119] For stateless and unreturnable persons it is often impossible to depart legally from the Netherlands, which effectively prevents their rehabilitation. This is in spite of Article 6 of the 1954 Convention, which states in relation to stateless persons that:

> "any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling."[120]

88. In practice, however, the crucial criterion to be fulfilled to rescind a declaration of undesirability is by nature singularly unattainable for a stateless person. It should be noted that the Aliens Circular provides that in extraordinary cases, when danger to the public order has receded or when the personal interest of the alien ought to prevail, a declaration could be lifted before the prescribed period has passed.[121] Despite ample attempts, none of the interviewees had thus far qualified for this particular provision.

Case: Man from South Ossetia (Georgia)

Zviad Gelovani was born in the former Soviet Union. More precisely, in South Ossetia, Georgia. In 1990, South Ossetia declared itself independent from Georgia. This led to an armed conflict between Georgia and South Ossetia in 1991-1992. There were armed clashes again in 2004. In the summer of 2008, the situation in South Ossetia led to a brief armed conflict between Georgia and the Russian Federation.

South Ossetia's independence is not recognized by the majority of countries in the world. South Ossetian passports are useless. There are no South Ossetian embassies.

When Zviad was called up for the armed forces of South Ossetia, he left the country and ended up in the Netherlands in 2008. He had no proof of his South Ossetian identity: he only had an old USSR "Form No. 9" by which to identify himself and this was not accepted. (It is also no longer valid in the Russian Federation.) An asylum application was denied. From January to September 2010 Zviad was put in aliens' detention awaiting deportation. Then, after eight months, he was released by order of the court in The Hague, as there was no prospect of successful deportation. Zviad cannot get either a South Ossetian or a Russian travel document. Georgia also refused to issue a laissez-passer as it could not find registration of him anywhere in its registers. Zviad is living illegally in The Netherlands. He now depends on charity for survival.

[119] Aliens Act 2000, Article 68; Aliens Decree, Article 6.6(1).

[120] 1954 Convention relating to the status of stateless persons, Article 6. Emphasis added.

[121] Aliens Circular, paragraph A5/4.1

Case: Palestinian now illegally in the Netherlands

When Amin Kassir was a baby in 1967, his parents had to flee from Gaza, part of what is now known as the "occupied Palestinian territories". He came to the Netherlands at the end of the 1980s. For some time, he had legal residence in the Netherlands, when he was married to a Dutch woman. However, the marriage broke down and Amin lost his residence permit. He became illegal. In addition, he committed a criminal offence. As a result, he was declared undesirable. His continued stay in the Netherlands is now in itself punishable by law. Yet, as a Palestinian, there is no country that will give him a travel document. The Palestinian Authority only issues passports to residents of the Occupied Territories. Indeed, in a recent judgment, the Court of Utrecht took as a starting point that it was not disputed that Amin is stateless. Even if he had a travel document, it is unlikely that he would be allowed to return to the Occupied Territories, as the borders are controlled not by the Palestinian Authority but by Israel. The Dutch Repatriation and Departure Service put him on a plane to various other countries in the Middle East, to see if any of them would allow him entry, but no country complied. So Amin remains in The Netherlands and lives in an emergency shelter, which was only made available to him because of his serious medical problems.

4. A LEGAL ANALYSIS OF STATELESSNESS IN THE NETHERLANDS

4.1 Statelessness under international law with reference to treaty obligations and implementation in The Netherlands

89. The Netherlands is a party to a number of treaties that deal with, or have a bearing on, nationality issues: the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws[122] as well as its Protocol relating to statelessness,[123] the 1965 Convention on the Elimination of all forms of Racial Discrimination,[124] the 1966 International Covenant on Economic, Social and Cultural Rights,[125] the 1966 Covenant on Civil and Political Rights,[126] the 1979 Convention on the Elimination of all forms of Discrimination against Women,[127] and the 1989 Convention on the Rights of the Child.[128] The Netherlands was party to the 1957 Convention on the Nationality of Married Women[129] and the 1973 Berne Convention on the Reduction of the Number of Cases of Statelessness,[130] but denounced these Conventions in 1991 and 2001 respectively because they have been superceded by subsequent developments in international law.[131] It should also be noted that the right to a nationality has long since been regarded as a human right. Article 15 of the 1948 Universal Declaration of Human Rights provides that "everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality".

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122 Trb. 1967, 73. Entry into force in the Netherlands on 2 April 1937.

123 Trb. 1967, 74.

124 Trb. 1966, 237. Entry into force in the Netherlands on 9 December 1972. Articles 1 and 5 refer to nationality.

125 Trb. 1969, 100. Entry into force in the Netherlands on 11 December 1978.

126 Trb. 1978, 177. Entry into force in the Netherlands on 10 March 1979.

127 Trb. 1980, 146. Entry into force in the Netherlands on 22 August 1991.

128 Trb. 1990, 170. Entry into force in the Netherlands on 8 March 1995. The Netherlands has signed but not yet ratified the 2006 Convention on the Rights of Persons with Disabilities, which also contains provisions with a bearing on statelessness.

129 Trb. 1965, 218. Entry into force in the Netherlands on 6 November 1966 and no longer in force as of 16 January 1993.

130 Trb. 1974, 32. Entry into force in the Netherlands on 19 May 1985 and no longer in force as of 13 September 2001.

131 The 1957 Convention was denounced because it violated the 1979 Convention on the Elimination of All Forms of Discrimination against Women. The 1973 Convention was denounced because it had become irrelevant once gender equality in Dutch nationality law was secured. (The Berne Convention obliged States to grant their nationality *iure sanguinis a matre* to children of a mother who was a national of the State involved if the children did not acquire the nationality of their father). See G.-R. de Groot, "A clarification of the fundamental rights implications of stateless and persons erased from the register of residents", 3.

90. Finally, two Council of Europe conventions contain provisions which address the problem of statelessness. The first is the 1997 European Convention on Nationality (hereafter: 1997 ECN), Articles 4 and 6–8 of which have a bearing on statelessness.[132] The second is the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession,[133] which entered into force on 1 May 2009.[134]

The 1954 and 1961 Statelessness Conventions

91. The Netherlands is also a party to the 1954 and 1961 Statelessness conventions. The 1954 Convention entered into force in the Netherlands on 12 April 1962.[135] Upon ratification of the 1954 Convention, two reservations were made.[136] The first states that "the government of the Kingdom reserves the right not to apply the provisions of Article 8 of the Convention [which concerns exemption from exceptional measures] to stateless persons who previously possessed enemy nationality or the equivalent thereof with respect to the Netherlands". The second reservation provides that "with reference to Article 26 of the Convention [which concerns freedom of movement], the Government of the Kingdom reserves the right to designate a place of principal residence for certain stateless persons or groups of stateless persons in the public interest".

92. Article 1 of the 1954 Convention relating to the Status of Stateless Persons gives a definition of statelessness which has subsequently been copied in national legislation in many countries: "For the purposes of the Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law."[137]

93. As mentioned in section 3.2, the GBA operational guideline does not specify precisely how statelessness is to be determined. The Netherlands does not have a specific procedure to establish statelessness. While the 1954 Convention does not require a State to grant entry and residence if it finds a person to be stateless, the 2010 UNHCR Expert Meeting in Geneva on Stateless Determination Procedures and the Status of Stateless Persons has concluded:

> "When States recognize individuals as being stateless, they should provide such persons with a lawful immigration status from which the standard of treatment envisaged by the 1954 Convention flows. Having a lawful status contributes significantly to the full enjoyment of human rights."[138]

94. In this context, it should be noted that in the Netherlands stateless people, who are still in an (asylum) procedure and are thus lawfully resident in the Netherlands, experience trouble establishing their identity. As was seen in the demographic analysis, they are in theory entitled to a W2 document, but do nonetheless not receive it because no identity

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132 Trb. 1998, 10 and 149. Entry into force in the Netherlands on 1 July 2001.

133 Trb. 2010, 99. The Convention was signed by the Netherlands on 16 September 2010, ratified on 30 June 2011 and entered into force on 1 October 2011.

134 See generally L. van Waas, "Statelessness: A 21st century challenge for Europe", 133-146.

135 Trb. 1957, 22.

136 Stb. 1961, 468.

137 As outlined in greater detail in section 4.2 below, this definition is reproduced in Dutch legislation.

138 UNHCR "Stateless Determination Procedures and the Status of Stateless Persons", Summary Conclusions, of the Expert Meeting, Geneva, 6–7 Dec. 2010, para. 25. See also para. 27 regarding possible exceptions, such as for a stateless person who could immediately return to a State of former habitual residence, enjoy permanent residence and the full range of civil, economic, social and cultural rights there, and have a reasonable prospect of acquiring nationality there .

documents are issued during the procedure to persons who claim to be stateless. The rationale behind this policy, which has been criticized by the Dutch Ombudsman, is that the issuance of an aliens' passport or identity document will remove the incentive to fully commit to acquiring a passport. If, however, the person in question is later officially deemed stateless but is not granted residence, he or she is still not granted an aliens' passport or identity document.

95. With regard to the Dutch reservation to Article 8, it should be noted that this Article was drafted in the context of the aftermath of the Second World War and principally refers to the possibility to exclude persons, for instance, from Germany and Japan. In addition, as noted by Nehemiah Robinson in his commentary on the 1954 Convention:

> "Under its first sentence, Article 8 does not preclude the application of exceptional measures to stateless persons, it only prohibits (within the limitation of the second sentence) their application to a stateless person 'solely on account of his having previously possessed the nationality …'. In other words, a state is free to apply to a stateless person exceptional measures if they are taken on grounds other than his former nationality. Thus Article 8, sentence one, would not hinder the application of exceptional measures on account of the economic or political activity or special unwanted contacts of a stateless person, if such activity or contacts are, in general, a reason for applying all or some of the exceptional measures."[139]

96. Since 1954, developments in international human rights law have strengthened non-discrimination principles. For instance, under Article 2(1) of the 1966 International Covenant on Civil and Political Rights, by which the Netherlands is bound, each State Party undertakes "to respect and the ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as … national or social origin, property, birth or other status". Bearing in mind Robinson's commentary and subsequent developments in international human rights standards, UNHCR therefore recommends that the Netherlands withdraw this reservation to the 1954 Convention.

97. With regard to Article 26 of the 1954 Convention, Robinson's Commentary reports that Dutch concerns regarding granting stateless persons lawfully on the territory the right to freedom of movement on the same basis as other aliens were raised during the negotiation of the Convention. Since then, however, the Netherlands has ratified various human rights instruments which include commitments on freedom of movement at the same time as giving scope for their limitation for reasons of *ordre public,* but not for discrimination on grounds of nationality or absence thereof. Among these rights is that under Article 12 of the 1966 Covenant on Civil and Political Rights stating that "everyone lawfully in the territory of a State, shall, within that territory, have the right to liberty of movement and freedom to choose his [or her] residence".[140]

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[139] UNHCR, *Convention relating to the Status of Stateless Persons, Its History and Interpretation, A Commentary by Nehemiah Robinson,* 1997, available at: http://www.unhcr.org/refworld/docid/4785f03d2.html.

[140] See similarly Protocol No. 4 to the 1950 European Convention on Human Rights, which the Netherlands ratified on 23 June 1982. Articles 2(1) and 2(3) read: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. … No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public,* for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

98. Bearing in mind non-discrimination principles by which the Netherlands is bound, UNHCR therefore also recommends that the Netherlands withdraw this reservation to the 1954 Convention.

99. The 1961 Convention entered into force in the Netherlands on 11 August 1985. The Convention does not define statelessness, but it is generally assumed that the definition is the same as that in the 1954 Convention. Batchelor has stated that the 1961 Convention focuses not on the development of a right to a nationality, but on how best to avoid statelessness.[142] In other words:

> "the 1961 Convention does not require a contracting State unconditionally to grant nationality to any stateless person but seeks, rather, to balance factors of birth and descent in an effort to avoid the creation of statelessness by reflecting on an individual's genuine and effective existing connection with the State."[143]

4.2 Statelessness under Dutch law

100. This section assesses the incorporation of the objectives of the Statelessness Conventions in Dutch law. Section 4.2.1 investigates the approach towards statelessness in Dutch aliens' law, while section 4.2.2 explores the provisions on statelessness in the Dutch Nationality Act.

101. As of 1 April 2003, Article 1 of the Dutch Nationality Act (DNA) defines a stateless person as "a person who is not regarded as a national by any State under its legislation". Before that, a stateless person was defined as "a person who does not have a nationality or whose nationality cannot be ascertained".

102. In the literature remedies for statelessness are sometimes classified into three categories: pre-emptive remedies, which try to prevent statelessness before it develops; minimization remedies, which lessen the difficulties associated with statelessness and serve to protect stateless persons; and naturalizing remedies, which attempt to secure nationality for those already stateless.[144] *Pre-emptive* and *naturalizing* remedies can be found in Articles 6(1)b and 8(4) DNA respectively. The *minimization* remedies laid down in the 1954 Convention have not, however, been implemented in Dutch law; the implementing legislation as found in the official records (*Staatsblad*) does not indicate that legislation was amended following the entry into force of the Convention in the Netherlands.[145] Finally, Article 14(6) DNA is a very relevant provision. It does not contain a remedy for statelessness, but allows for the loss of Dutch nationality acquired by fraud, even if this loss results in statelessness.

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141 Trb. 1967, 124.

142 C.A. Batchelor, "Statelessness and the Problem of Resolving Nationality Status", *International Journal of Refugee Law* 10, no. 1/2 (1998), 161.

143 Emphasis in original. Ibid., 161-162.

144 D.S. Weissbrodt and C. Collins, "The Human Rights of Stateless Persons", *Human Rights Quarterly* 28, no. 1 (2006), 271.

145 Stb. 1961, nr. 468.

4.2.1 Dutch aliens law in respect of stateless persons: the "no-fault residence permit"

103. As stated before there is no specific procedure to establish statelessness. The basic premise of Dutch aliens' policy is that all aliens who do not have the right to stay in the Netherlands can and should in principle return to their country of origin.[146] The government has frequently stated that it has no knowledge of countries not complying with their obligation under international law to take back their own nationals.[147]

104. However, confronted with unreturnable aliens, the so-called "no-fault" procedure for obtaining a residence permit was introduced: an alien whose asylum application has been rejected, but also irregular, undocumented or unreturnable persons, can be granted a residence permit for a limited time (*een verblijfsvergunning regulier voor bepaalde tijd*) under Article 3.4(1)w in conjunction with Article 3.6(1a) of the Aliens Decree (*Vreemdelingenbesluit*) if the alien is unable to leave the Netherlands through no fault of his or her own. The residence permit is a so-called no-fault residence permit (*buitenschuldvergunning*),[148] which is granted on condition that the alien leaves the Netherlands if this becomes possible at a later stage.[149] After three years the holder of the no-fault residence permit becomes eligible for another residence permit for limited time, the so-called residence permit for limited time under the limitation "prolonged residence" (*verblijfsvergunning regulier onder de beperking "voortgezet verblijf",* see Article 3.4(1)u of the Aliens Decree). The latter permit differs from the no-fault residence permit in that an employment permit[150] is no longer required, thus making access to the labour market easier.

105. Under the current no-fault procedure[151] the burden of proof lies exclusively with the applicant. The Aliens Act Implementation Guidelines explain that this approach is allowed under the 1954 Convention, because it contains no procedural provisions. The assessment of the evidence is not the exclusive privilege of a specifically designated judicial or administrative authority, but pertains to the normal tasks of the IND.[152]

106. As reception facilities are not provided during the no-fault procedure, most stateless foreigners who arrive in the Netherlands in an irregular manner try the asylum procedure first as this procedure provides reception facilities. Many such people are therefore pushed into starting an asylum procedure, even if they have no interest in doing so.

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146 H.W. Groeneweg and J.H. van der Winden, eds., *Commentaar Vreemdelingenwet 2000. Editie 2004-2005* (Den Haag: Sdu uitgevers, 2004), 300.

147 Tweede Kamer, 2009-2010, 19 637, nr. 1336, p. 3. See also J. Kleijne, *Artikelsgewijs commentaar op de Vreemdelingenwet 2000 en het Vreemdelingenbesluit 2000* (Deventer: Kluwer, 2001), 250.

148 VluchtelingenWerk Nederland, "Geen Pardon, geen Terugkeer. De stand van zaken rond de uitvoering van het Project Terugkeer", (2006), 29-33.

149 VluchtelingenWerk Nederland, "Geen Pardon, geen Terugkeer. De stand van zaken rond de uitvoering van het Project Terugkeer", (2006), 29-33.

150 An employment permit (*tewerkstellingsvergunning*) is compulsory for employers wishing to employ someone from outside the European Economic Area, which includes the EU, Norway, Iceland and Liechtenstein.

151 This procedure is laid down in paragraph B14/3 of the Aliens Act Implementation Guidelines.

152 See B11/17.2 of the Aliens Act Implementation Guidelines.

107. From the above, it follows that, in the absence of a statelessness determination procedure, Article 3.4(1)w in conjunction with Article 3.6(1a) of the Aliens Decree, although not explicitly referring to stateless persons, are particularly relevant to this group. It should be stressed, however, that even when a situation of statelessness has been established, this does not automatically lead to a no-fault residence permit.[153] The stateless person has to meet a number of stringent cumulative requirements[154] which are listed in paragraph B14/3.2. of the Aliens Act Implementation Guidelines (*Vreemdelingencirculaire*):

> "1. the alien must prove that he or she has independently (*zelfstandig*) tried to leave the Netherlands;
> 2. the International Organization for Migration must have indicated that it is not able to assist the alien in leaving due to lack of travel documents;
> 3. mediation by the Return and Departure Service (*DT&V*) to obtain the necessary travel documents has not been fruitful;
> 4. the applicant must show through objective and verifiable facts and circumstances that he or she cannot leave the Netherlands through no fault of his or her own; and
> 5. the alien must be residing in the Netherlands without a valid title and not meet other conditions for a residence permit."

108. As stated above, an application for a no-fault residence permit can only be lodged after an application for asylum or a regular residence permit has been rejected.[155] In a number of other countries, where there is also no procedure to determine statelessness:

> "nationality, and thus statelessness, [may be considered] in deportation or refugee determination proceedings even though statelessness is not itself a ground for preventing deportation or for the receipt of protection. In such cases a finding of statelessness may impact on the outcome of the refugee or complementary protection determination in so far as it is pertinent to the identification of the State in respect of which the risk of *refoulement* must be assessed but in itself it will not generally affect the individual's status. This would appear to be the situation, for example, in Australia, Canada, Ireland and the UK."[156]

109. In some cases, however, all that may then left is the possibility of a discretionary grant of residence rights, for instance, on humanitarian grounds. The length of time individuals may spend in sometimes lengthy procedures not designed to address statelessness has led some commentators to argue in favour of a statelessness procedure separate from the asylum procedure. Another main argument in favour of separate procedures is that the need for confidentiality in refugee cases is hard to reconcile with the obligation in statelessness cases to contact foreign authorities.[157] UNHCR is not against combined procedures per se, as long as adequate safeguards regarding the confidentiality required vis-à-vis asylum-seekers and refugees are in place.

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153 Dokters van de Wereld, "Stateloos maakt radeloos. De situatie van stateloze Roma in Nederland 2009", Section 5.3.

154 T.P. Spijkerboer and B.P. Vermeulen, *Vluchtelingenrecht* (Nijmegen: Ars Aequi Libri, 2005); G.G. Lodder, *Vreemdelingenrecht in vogelvlucht* 3rd ed. (Den Haag: Sdu uitgevers, 2008), 119ff.

155 This seems to follow from paragraph B14/3.4.3 of the Aliens Act Implementation Guidelines.

156 R. Mandal, "Discussion Paper no. 3: Procedures for Determining Whether a Person is Stateless", Discussion papers series for the establishment of a UNHCR Handbook on the Determination of Statelessness (2010), 7.

157 Ibid., 13–14.

4.2.2 Dutch nationality law in respect of stateless persons

110. Having described the statelessness practice under Dutch aliens' law in the previous paragraph, we will now analyse how the objectives of the Conventions have been incorporated into Dutch nationality law. This concerns Article 6(1)b (sometimes known as a "right of option", although it is best described as an application procedure), Article 8 (naturalization), and Article 14(6) DNA (loss of nationality).

Article 6(1)b DNA: Application procedure for Dutch nationality

111. The 1961 Convention and the 1997 ECN both provide for the acquisition of the nationality of the country of birth if the child would otherwise be stateless.

112. Article 1(1) of the 1961 Convention provides that:

> "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:
> a. at birth, by operation of law, or
> b. upon an application being lodged with the appropriate authority... in the manner prescribed by the national law."

113. The grant of nationality under Article 1(1)b of the Convention may, however, be subject to a number of conditions. Among these are "[t]hat the person concerned has *habitually resided* in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all." (emphasis added)

114. Article 6(2) ECN provides:

> "Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
> a. at birth *ex lege;* or
> b. subsequently, to children who remained stateless... Such an application may be made subject to the *lawful and habitual residence* on its territory for a period not exceeding five years immediately preceding the lodging of the application." (emphasis added)

115. The difference between the two Conventions is immediately apparent: under the ECN a nationality application may be subject to the requirement of lawful and habitual residence, while this is only habitual residence under the 1961 Convention. The Netherlands is a contracting State to both conventions and the relevant provision in the DNA, Article 6, provides that:

> "1. After making a written declaration to that effect, the following persons shall acquire Netherlands nationality... :
> b. an alien who was born in the Netherlands, the Netherlands Antilles or Aruba and has been admitted[158] to and who has had his or her principal place of residence there during a continuous period of at least three years and has been stateless[159] since his or her birth...

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[158] Admission is defined in Article 1(1)g DNA as "permission by the competent authority with respect to a lasting place of residence of an alien in the Netherlands, the Netherlands Antilles or Aruba".

[159] Defined in Article 1(1)f DNA as "a person who is not regarded as a national by any State under its legislation".

> "4. It shall refuse the confirmation if there are grave reasons for believing, on the ground of the behaviour of the person concerned that he or she may constitute a danger to public order, public morals or the security of the Kingdom, unless this is in conflict with international law obligations."

116. It is arguable that Article 6(1)b DNA is not in accordance with the 1961 Convention, since the latter does not allow the State to require *lawful* residence. As the September 2011 Summary Conclusions of the expert meeting in Dakar on preventing statelessness among children affirm, the "1961 Convention does not allow Contracting States to make an application for the acquisition of nationality of otherwise stateless individuals conditional on *lawful* residence". The Conclusions also note that habitual residence "should be understood as stable, factual residence".[160] As UNHCR noted in a memorandum to the Ministry of Justice in 2007:

> "'habitual residence' is determined solely by factual criteria and does not depend upon whether an individual is lawfully or unlawfully resident within the territory of a Contracting State to the 1961 Convention on the Reduction of Statelessness. Therefore … Article 1(2)(b) of the 1997 European Convention on Nationality, in requiring 'lawful and habitual residence', imposes more stringent criteria for the acquisition of nationality than Article 1(2)(b) of the 1961 Convention on the Reduction of Statelessness."[161]

117. Although a requirement of lawful and habitual residence is allowed under the ECN, De Groot also submits that the Netherlands is bound by the stricter rule as laid down in the 1961 Convention.[162] He therefore concludes that where an individual applies for Dutch nationality under Article 6(1)b, Article 94 of the Dutch Constitution requires that the requirement of "admission" be set aside in order to avoid a violation of the 1961 Convention.[163] The same has been argued by Busser and Rodrigues,[164] as well as by Evers and De Groot.[165] This view is reinforced by the fact that the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession provides in Article 1d that habitual residence means "a stable factual residence". In private international law, finally, it is common knowledge that the term habitual residence refers to a factual situation.[166]

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160 UNHCR, "Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children", Summary Conclusions, Expert Meeting, Dakar, Senegal, September 2011, available at http://www.unhcr.org/refworld/docid/4e8423a72.html, para. 28. See also, G.-R. de Groot, "The acquisition of nationality by potentially stateless children: Observations on the Articles 1–4 of the 1961 Convention on the Reduction of Statelessness", UNHCR paper (forthcoming).

161 UNHCR Statelessness Unit, memorandum to Ms van Hoppe, Ministry of Justice of the Netherlands, 21 Dec. 2007.

162 It is also subject to doubt whether the ground for refusal in Article 6(4) DNA is compatible with Article 1(2)c of the 1961 Convention. See G.-R. de Groot, "Weer verder op weg naar een vernieuwd Nederlands nationaliteitsrecht", *Migrantenrecht* 9, no. 10 (1994), 214.

163 G.-R. de Groot, "A clarification of the fundamental rights implications of stateless and persons erased from the register of residents", 8. On the practical application of Article 6(1)b, see G.-R. de Groot, *Achtentwintig Nederlanders? Bewerkte adviezen en casus over de toepassing van de Nederlandse nationaliteitswetgeving* ('s-Gravenhage: Elsevier Overheid, 2007), 17-21, 257-272.

164 A. Busser and P.R. Rodrigues, "Staatloze Roma in Nederland", 389.

165 L. Evers and G.-R. de Groot, "Staatloos of van onbekende nationaliteit of nationaliteit in onderzoek?".

166 L. Strikwerda, *Inleiding tot het Nederlandse internationaal privaatrecht* 9th ed. (Deventer: Kluwer, 2008), 81. See also the explanatory report to the 2006 Convention on the Avoidance of Statelessnes in Relation to State Succession.

118. It has become clear from answers to the rare parliamentary questions relating to statelessness that the Dutch government does not share this view. On 26 February 2008, the Minister of Justice, answering questions by MP Azough concerning stateless children in the Netherlands, stated that Dutch nationality law contains very lenient conditions for stateless persons who wish to acquire Dutch nationality. The Minister *inter alia* pointed to Article 6(1)b, which permits a stateless person born in the Netherlands to apply for Dutch nationality, provided that he or she has been admitted to the Netherlands and has had his or her principal place of residence there for a continuous period of at least three years prior to lodging an application. The Minister stated that "in principle this means that a stateless child born in the Netherlands and *legally residing there* has a right to opt for Dutch nationality after his or her third birthday".[167]

119. The Minister pointed out that when confronted with a stateless child born in the Netherlands, the legislation of the State of which the parent(s) hold(s) nationality should be applied in order to know whether this State recognizes the child as a national. Although this could be a difficult and time-consuming procedure, the Minister was of the opinion that one could not conclude that a child was stateless if it was (merely) difficult to acquire the relevant foreign documents. As the Dakar Summary Conclusions affirm:

> "Some States may make a finding that a child is of 'undetermined nationality'. When this occurs, States should seek to determine whether a child is otherwise stateless as soon as possible so as not to prolong a child's status of undetermined nationality. For the application of Articles 1 and 4 of the 1961 Convention, such a period should not exceed five years which is the maximum period of residence which may be required under Article 1(2)(b) of the Convention where a State has an application procedure in place…
>
> Responsibility to grant nationality to otherwise stateless children is not engaged where a child is born in a State's territory and is stateless, but could acquire the nationality of a parent by registration with a State of nationality of a parent, or a similar procedure such as declaration or exercise of a right of option. However, as a general rule it is only acceptable for Contracting States to maintain an exception for granting their nationality to children who would otherwise be stateless if a child can acquire the nationality of a parent immediately after birth and the State of a parent does not have any discretion to refuse the grant of nationality…"[168]

120. More recently, on 23 December 2010, the Minister of the Interior and Kingdom Relations, answering parliamentary questions related to a Dutch study on statelessness among the Roma population (*Stateloos maakt radeloos*), took the same position as was adopted on 26 February 2008.[169] In particular, the Minister noted that Article 6(1)b DNA was not contrary to Article 1(1) of the 1961 Convention, Article 6(2)b ECN or Article 7 of the Convention on the Rights of the Child.

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167 Emphasis added. Tweede Kamer, vergaderjaar 2007-2008, Aanhangsel. No. 1455, pp. 3115–3116.

168 UNHCR, "Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children", Summary Conclusions, Expert Meeting, Dakar, Senegal, September 2011, para. 14. See also G.-R. de Groot, "A clarification of the fundamental rights implications of stateless and persons erased from the register of residents", 5, who argues in connection with Article 10 ECN that "if no information can be acquired within a reasonable time, the person involved should be deemed to be stateless".

169 Tweede Kamer, vergaderjaar 2010–2011, Aanhangsel nr. 640.

121. It should be noted, finally, that the legislation implementing the 1961 Convention was discussed in parliament in the mid-1980s. With regard to the former Article 6(1)b, the then State Secretary, Ms Korte-van Hemel, made the relevant statement that "the three-year term should provide sufficient guarantee that it concerns children who will remain in the Netherlands. An unrestricted *jus soli* that is also applicable to persons travelling through the Netherlands is in my view not desirable".[170] This comment seems to reflect a common misconception: that rather than addressing only those cases of children born on the territory who would otherwise be stateless, Article 1 of the Convention establishes a general *jus soli* rule. But the Convention establishes no general requirement for *jus soli* or *jus sanguinis.*

122. Based on the 1961 Convention read in light of the Convention on the Rights of the Child, UNHCR therefore recommends that the Netherlands adopt a more inclusive approach to the implementation of Article 1 of the 1961 Convention which pertains to grant of nationality to persons born on Dutch territory who would otherwise be stateless. It is recommended that such children should acquire Dutch nationality automatically, at least those children born to parents who are permanent residents. This would follow the practice of the majority of States Parties to the 1961 Convention. As the Dakar Summary Conclusions note, this Article permits States:

> "either [to] provide for automatic (ex lege, or by operation of law) acquisition of its nationality upon birth pursuant to Article 1(1)(a), or for acquisition of nationality upon submission of an application pursuant to Article 1(1)(b)". …
>
> "A Contracting State may apply a combination of these alternatives for acquisition of its nationality by providing different modes of acquisition based on the level of attachment of the individual to that State. For example, a Contracting State might provide for automatic acquisition of its nationality by otherwise stateless children born in their territory whose parents are permanent or legal residents in the country, whereas it might require an application procedure for those whose parents are not legal residents. Any distinction in treatment of different groups, however, cannot be based on discriminatory grounds and must be reasonable and proportionate."[171]

Case: Stateless child born in the Netherlands to a Sri Lankan mother

A boy called Nalin was born in the Netherlands on 22 July 2001. His father was unknown, but his mother was from Sri Lanka and in possession of a Sri Lankan passport when she applied for asylum in the Netherlands. Her application was eventually rejected and she was forced to return to Sri Lanka. As a result of the mother's serious psychiatric problems, the Office for Youth Care (Bureau Jeugdzorg) had already acquired custody over the child before the mother's return to Sri Lanka. The mother had not registered Nalin with the Sri Lankan authorities (and had always refused to do so), but he was registered in the Municipal Basic Administration (GBA) as possessing Sri Lankan nationality.

The boy obtained a regular residence at birth which was renewed regularly. Nalin lived with Dutch foster parents, but could not travel with his residence permit. The Office for Youth Care therefore tried actively to obtain a Dutch passport for him. The Office claimed

170 Handelingen Tweede Kamer of 27 March 1984, 1983–1984, p. 4024.

171 UNHCR, "Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children", Summary Conclusions, Expert Meeting, Dakar, Senegal, September 2011, paras. 20–21.

that Nalin was stateless and that he was incorrectly registered in the GBA as a Sri Lankan national. They explained that he was unknown to the Sri Lankan authorities as he had not been registered with the Sri Lankan embassy in the Netherlands. In the view of the Office, Nalin had a right to apply for Dutch nationality under Article 6(1)b Dutch Nationality Act (DNA).[172] *This was, however, denied by the IND, which claimed (based on the GBA registration) that Nalin was not stateless but Sri Lankan.*

An expert report containing information about Sri Lankan nationality law as well as an analysis of the incompatibility of the current Article 6(1)b DNA with Article 1 of the 1961 Convention was submitted to the municipality where Nalin lived.[173] *In the end the municipality was convinced of the boy's statelessness and he has in the mean time acquired Dutch nationality under Article 6(1)b*.[174]

Case law on Article 6(1)b DNA

123. The case law concerns either the requirement of having been stateless since birth or the requirement of lawful stay.

124. In a judgment by the Dutch Supreme Court (*Hoge Raad*) of 14 January 2005,[175] the question was whether two minor children had been stateless from birth. In 1995, two Armenian nationals had entered the Netherlands with valid USSR passports, which were at the time accepted as valid by the authorities of the Republic of Armenia pending the approval of new citizenship legislation at the end of 1995, and applied for a residence permit on humanitarian grounds. No final decision had been taken on this application at the time of the decision by the Supreme Court. In 1997 and 1999, two daughters were born to the couple while in the Netherlands. In 2001, the parents tried to make an application for nationality under Article 6(1)(b) DNA on behalf of their children. The authorities refused, however, to grant nationality and the parents brought the case to court. The District Court investigated Armenian nationality law and found it likely that the parents possessed Armenian nationality and that therefore the children also possessed this nationality. The court held that, despite a letter from the Armenian consul that children of Armenians recognized as refugees elsewhere were not eligible for Armenian nationality; the parents had not proved that their children had been stateless since birth. The Supreme Court confirmed the decision by the District Court: the letter from the Armenian consul could have no effect, as the parents had not (yet) been recognized as refugees in the Netherlands.

125. A judgment by the Supreme Court of 28 March 2008 concerned a Syrian Kurdish family which had tried to apply for Dutch nationality on behalf of their minor daughter.[176] The family had arrived in the Netherlands in April 1999, with only Syrian identity documents, issued by the *Mukhtar* (village head). The authorities refused to grant the application,

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172 Article 6(1)b: "After making a written declaration to that effect, the following persons shall acquire Netherlands nationality ... : b) an alien who was born in the Netherlands ... and has been admitted to and who has had his or her principal place of residence there during a continuous period of at least three years and is stateless since his or her birth".

173 G.R. de Groot, 'Notitie over de verwerving van de nationaliteit van Sri Lanka door afstamming' [Note on the acquisition of Sri Lankan nationality by descent], 19 June 2010 (on file with UNHCR).

174 Email message from the Office for Youth Care of 17 January 2011. On file with UNHCR.

175 Hoge Raad, 14 January 2005, LJN AR4847.

176 Hoge Raad, 28 March 2008, LJN BC7919.

holding that the nationality of the daughter (and the parents) was "nationality unknown" and not "stateless". The family started a procedure under Article 17 DNA before the District Court of The Hague for an order confirming that the child had acquired Dutch nationality under Article 6(1)b DNA. The District Court, relying on extensive research by the Ministry of Foreign Affairs, upheld the authorities' refusal, holding that the parents had not been able to sufficiently prove their (and their daughter's) identity and nationality status.[177] The Supreme Court, finally, held that the case could not lead to a cassation procedure because answering the complaints was not imperative in the interest legal uniformity (*rechtseenheid*) or the development of the law (*rechtsontwikkeling*).

126. In September 2010, the District Court in Zwolle handed down a ruling in line with the interpretation of Article 6(1)b DNA as advocated by UNHCR and the authors mentioned above.[178] The case concerned a stateless Palestinian father (from Lebanon) who tried to apply for Dutch nationality under Article 6(1)b DNA on behalf of his minor son. It was neither disputed that both father and son were stateless, nor that the son had been born in the Netherlands and had resided there uninterruptedly for three years since his birth. Since the family had no residence permit, the authorities therefore refused, however, to grant nationality because of the fact that they did not meet the requirement of "lawful residence" (*toelating*). The court had regard to Article 94 of the Dutch constitution, which provides that treaty rules having direct effect prevail over national legislation. It found that Article 1(2)(b) of the Convention on the Reduction of Statelessness had direct effect. This Article reads:

> "A Contracting State may make the grant of its nationality in accordance with subparagraph (b) of paragraph 1 of this article subject to one or more of the following conditions: …
>
> > (b) That the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor the ten years in all."

127. According to the court, "habitually resided" referred to the situation where someone "has his or her lasting place of residence (*duurzaam verblijf*) in the Netherlands and has developed a social life here". It held that it cannot be inferred from the treaty text that the authorities must have agreed with this lasting place of residence. Consequently, it annulled (*vernietigen*) the authorities' decision to refuse to grant Dutch nationality. Although the municipality initially appealed this ruling, the boy was later given a residence permit with retroactive effect and therefore became able to comply with the requirements of Article 6(1)b DNA.

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177 Rechtbank Den Haag, 12 December 2006.

178 Rechtbank Zwolle-Lelystad, 9 September 2010, Jurisprudentie Vreemdelingenrecht 2011, nr. 58, annotated by H. de Voer. For the view of the municipality involved, see G. Reijgersberg, "Jurisprudentie, onder redactie van mr. J.C. Tomson", *Burgerzaken & Recht,* no. 10 (2010), 350-351.

Article 14(6) DNA: deprivation of Dutch nationality which results in statelessness

128. Article 14 DNA limits the conditions under which deprivation of nationality which results in statelessness can take place and as such contributes to the prevention of statelessness. It provides:

> "1. Our Minister may revoke the acquisition or grant of Netherlands nationality if it is based on a false declaration made by the person concerned or fraud and/or on concealment of any fact relevant to the acquisition or grant.
> ...
> 6. Without prejudice to the case referred to in the first subsection, Netherlands nationality may not be lost if this would lead to statelessness."[179]

129. Article 8 of the 1961 Convention reads:

> "(1) A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless.
>
> "(2) Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State: … (b) Where the nationality has been obtained by misrepresentation of fraud."

130. Although Article 14(6) DNA is therefore compatible with Article 8 of the 1961 Convention, De Groot nonetheless argues that the introduction of this provision in 2003 violated the spirit of the 1961 Convention.[180] Article 14(6) is also compatible with the 1997 ECN, since the latter provides in its Article 7 for an exception to the general rule that a State Party may not provide in its internal law for the loss of its nationality *ex lege* except, *inter alia,* in case of "acquisition of the nationality … by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant".

131. The judgment of the Court of Justice of the European Union (CJEU) in the *Rottmann* case[181] is relevant in this context. It ruled that a Member State may withdraw its nationality, when granted by way of naturalization, from a citizen of the EU, when that person has obtained it by deception, even if as a consequence of that withdrawal the person concerned loses their EU citizenship because they no longer possess the nationality of a Member State. Nevertheless, the judgment of the CJEU also determined that the withdrawal must observe the principle of proportionality. In particular, it has to be ascertained whether the withdrawal of naturalization and, therefore, the loss of the rights enjoyed by every EU citizen are justified and proportionate in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalization decision and the withdrawal decision, and to whether it is possible for that person to recover their original nationality. It held that it is for the national court to determine whether, before a decision withdrawing naturalization on the basis of deception takes effect, having regard to all the relevant circumstances, observance of the principle of proportionality requires the person concerned to be afforded a reasonable period of time in order to try to recover the nationality of his or her Member State of origin.

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179 See critically on the Minister's power to withdraw Dutch nationality under Article 14(1) if this results in statelessness, G.-R. de Groot, *Handboek Nieuw Nationaliteitsrecht* (Deventer: Kluwer, 2003), 82. Article 14(1) jo. (6) arguably violates Article 8(4) of the 1961 Convention which reads: 'A Contracting State shall not exercise a power of deprivation … except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body'.

180 Ibid., 353–354.

181 Court of Justice of the European Union (Grand Chamber), Case C-135/08 *Janko Rottmann v. Freistaat Bayern,* 2 March 2010, available at: http://www.unhcr.org/refworld/docid/4be130552.html.

Article 8 DNA: naturalization

132. Article 8 DNA contributes to the reduction of statelessness and reads as follows:

> "1. Only the following applicants shall be eligible for the grant of Netherlands nationality pursuant to Article 7:
>
> ...
>
> c. who has been admitted to and has had his or her principal place of residence in the Netherlands, the Netherlands Antilles or Aruba for a minimum period of *five years* immediately preceding his or her application;
>
> ...
>
> 4. The period referred to in the first subsection under c shall be *three years* for an applicant who has either been living with a Netherlands national in a permanent relationship other than marriage for a continuous period of at least three years, or who is *stateless* (emphasis added)."

133. Stateless persons therefore have facilitated access to Dutch nationality through naturalization – an obligation for contracting States to the 1954 Convention under Article 32[182] – but still have to meet all the requirements laid down in Article 8(1) DNA.[183]

4.3 Concluding remarks

134. In dealing with statelessness in the Netherlands, it is the identification of cases of statelessness that is the most problematic area. There is, as we have seen, no explicit obligation under the 1954 Convention for State parties to put in place a determination procedure. Nevertheless, without some form of determination mechanism it is difficult to see how contracting parties can fulfil their obligations under the Convention.[184] UNHCR therefore considers the creation of a statelessness determination procedure to be a practical consequence of ratification of the 1954 Convention. A dedicated procedure can better identify stateless persons, thereby allowing for more tailored protection measures, improving (statistical) awareness of the actual scope of the problem and enhancing States' ability to fulfil their international obligations under the 1954 Convention. A centralized, designated authority with a degree of specialization in determining statelessness would also help build up necessary expertise.

135. In the Dutch context, UNHCR supports the institution of a stateless determination procedure. This could draw inspiration from Article 17 DNA, as suggested by de Groot and Evers, who also argue that a separate statelessness determination procedure could be established, which would allow the District Court of The Hague to deliver a binding judgment as regards a person's alleged statelessness.[185] Under Article 17 DNA, a person can submit an application to the *specialized* District Court in The Hague for an order confirming that he or she possesses or has possessed Dutch nationality. The

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182 The current Dutch government expressly refers to this provision in its recent plan of 28 March 2011 to amend the DNA. See http://www.internetconsultatie.nl/nationaliteitsrecht/document/300.

183 De Groot has argued that it would have been better to also grant an option right (rather than a right to naturalization) to stateless persons and refugees. See G.-R. de Groot, "Weer verder op weg naar een vernieuwd Nederlands nationaliteitsrecht", 213.

184 Ibid., 8.

185 L. Evers and G.-R. de Groot, "Staatloos of van onbekende nationaliteit of nationaliteit in onderzoek?".

case mentioned after paragraph 40 above, of a Syrian Kurd who claimed to be stateless and therefore contested his registration as "nationality unknown" in the GBA indeed raises the question whether *non-specialized* courts should be burdened with the task of assessing a person's statelessness.

136. In de Groot and Evers' view, the court's conclusion that a person is stateless does not per se have any automatic consequences in terms of residence rights, but it would allow the stateless person to invoke the rights granted by the 1954 and 1961 Conventions. UNHCR, however, favours a residence right being granted in principle in the Netherlands whenever the court concludes that a person is stateless and where no residence right in another country exists.[186] Only then would the spirit of the 1954 Convention be truly "activated", since most of the Convention's rights are dependent on lawful stay. Virtually all cases in the demographic analysis show that people lacking a nationality have difficulties accessing basic rights such as health care, education and employment. Mere recognition as stateless would not, strictly speaking, change anything for them in this respect, since it does not currently translate into a right to legal stay.

137. UNHCR is aware that granting recognized stateless persons a right to legal stay may be viewed as a far-reaching proposal. At the same time, to do so would seem to be a logical corollary of recognition which is necessary to ensure that the Netherlands is able to uphold its obligations under the 1954 and 1961 Conventions. One good practice example in this respect is that of Spain, where all recognized stateless persons are provided with a five-year, renewable residence permit, which includes the right to work. In Latvia, a four-year renewable residence permit is provided to recognized stateless persons, while France, Italy and Mexico offer renewable residence permits of one or two years on recognition of statelessness.[187] In any case, in view of the wider goal of reducing statelessness, possession of a nationality is generally preferable to recognition and protection as a stateless person.

138. The no-fault procedure is not the solution to the problem. Under the current no-fault procedure[188] the burden of proof lies exclusively with the applicant. The Aliens Act Implementation Guidelines explain that this policy is allowed under the 1954 Convention, because this instrument does not contain procedural provisions.[189] UNHCR recommends that the burden of proof be shared between the individual and the State and that a specifically designated authority be assigned the task of assessing the evidence.[190] Moreover, the State may well be in a better position than the individual to find out the content of foreign nationality law which, in turn, allows for a better assessment of the veracity of the applicant's statelessness claim.

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186 See UNHCR "Stateless Determination Procedures and the Status of Stateless Persons", Summary Conclusions, of the Expert Meeting, Geneva, 6–7 Dec. 2010, paras. 25–27.

187 See Ruma Mandal, "UNHCR Handbook on the Determination of Statelessness, Discussion Paper No. 4, What Status Should Stateless Persons have at the National Level?", (draft prepared for Expert Meeting on Statelessness Determination Procedures and Statelessness Status, Geneva, 6-7 Dec. 2010), Nov. 2010.

188 This procedure is laid down in paragraph B14/3 of the Aliens Act Implementation Guidelines.

189 See B11/17.2 of the Aliens Act Implementation Guidelines.

190 See UNHCR, "Statelessness Determination Procedures and the Status of Stateless Persons", Summary Conclusions of an Expert Meeting Held in Geneva, Switzerland on 6-7 December 2010. "If an individual can demonstrate, on the basis of all reasonably available evidence, that he or she is evidently not a national, then the burden should shift to the State to prove that the individual is a national of a state."

139. It can be concluded from the legal analysis that, apart from the identification and determination problems described above, Dutch legislation generally complies with its international obligations in the field of statelessness. An exception is to be found in the requirement of lawful residence for children who want to apply for Dutch nationality. The fact that Dutch aliens and nationality law is generally in accordance with the 1954 and 1961 Conventions does not mean, however, that there is no room for improvement. To tackle statelessness effectively, it may be necessary to go beyond the terms of the conventions. The next chapter will therefore point out the areas where Dutch statelessness law and policy could usefully be improved.

Case: A stateless Roma family

Mirela Nikolić is a Roma mother. Statelessness has been a recurring problem for generations: for her grandparents, her parents, herself and her children. Mirela was born in Italy. She came to the Netherlands when still a child. Due to the difficulties encountered in the Netherlands, her whole family went (with false identity and travel documents; they never had real ones) to the USA. She didn't have a residence permit in the USA. Because of that, fearing to be exposed, she did not register her four children who were born in the USA with the authorities there.

In 1998, Mirela and her family moved back (with false documents again, as they still had no genuine ones) to the Netherlands. Efforts to regularize their stay and obtain a residence permit failed. Mirela still has no identity document, she is not allowed to work and as a result at one point of time she stole food from a shop. Due to that event, she is now an undesirable alien. Although the family is registered as stateless with the municipality in which they live, the authorities continue trying to find a country to which they can deport Mirela and her family. So far, without result. In the meantime, because they are still minors, her children can go to school. Once they turn 18, they too may face an existence without documents, without access to work, medical care etc.

Case: A Somali without papers

Ahmed Hassan belongs to the Bajuni tribe, which inhabits a few islands off the Somali coast. Members of the Bajuni tribe speak a dialect of Swahili. Due to the ongoing armed conflict in Somalia, Ahmed decided to flee. First he went to Yemen. From there he managed to reach the Netherlands in 2007. An asylum application was denied, as his claim to be a Somali was deemed not credible. In order to prepare his expulsion from the Netherlands, Ahmed was presented to the Kenyan and Tanzanian embassies. Both considered Ahmed not to be their national. Ahmed was then deported to Somalia in February 2010. As Ahmed cannot speak the Somali language, he was refused entry by the local authorities and returned to the Netherlands. For most of the time he has been in the Netherlands, Ahmed has either been living in a reception centre or detained in an aliens detention centre. It is not clear what will happen to Ahmed. He has decided that it would be best for him to return to Somalia, but he has no travel documents which would allow him to travel to his place of origin in a safe manner.

5. CONCLUSION AND RECOMMENDATIONS

"The issue of statelessness has been left to fester in the shadows for far too long. It is time to take the necessary steps to rid the world of a bureaucratic malaise that is, in reality, not so difficult to resolve. It is simply a question of political will and legislative energy."

António Guterres, UN High Commissioner for Refugees
Louise Arbour, former UN High Commissioner for Human Rights[191]

5.1 Conclusions

140. In 2006, UNHCR's Executive Committee issued a Conclusion on the *identification, prevention* and *reduction* of statelessness, as well as on the *protection* of stateless persons.[192] UNHCR has aimed for improvements in these four specific areas and urges States to do the same.

141. Firstly, as concerns the situation in the Netherlands, the research shows that the matter of *identification* may be the most problematic area. Sound policies on the prevention and reduction of statelessness and the protection of stateless persons are predicated upon knowledge of the size and characteristics of this group. At present, information on either is limited. This report's statistical analysis reveals that often no distinction is made between stateless persons and those whose nationality is unknown. The statistics that are available are therefore not a reflection of the true extent of statelessness in the Netherlands. No uniformity exists between various institutions in the way statelessness is registered. Thousands of people carry the label "nationality unknown" for many years and few attempts are made to resolve their situation. The common practice of labelling individuals as of unknown nationality because they cannot live up to the GBA's administrative requirements to be registered as a stateless person, precludes the rights enshrined in the 1954 Convention from being activated. The Netherlands is party to this convention, thereby acknowledging stateless persons' special protection needs, but has not yet put a statelessness determination procedure in place. Without a clear and consistent means of establishing statelessness, individuals may not be accorded the rights to which they are entitled. Currently, the GBA operational guideline does not mention statelessness and consequently does not contain any guidance on how to determine statelessness.

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191 A. Guterres and L. Arbour, "The Hidden World of Stateless People", United Nations Office of the High Commisssioner for Human Rights (28 November 2007), available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=4964&LangID=E [accessed 23 September 2011].

192 UNHCR, "Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons", 6 October 2006, No. 106 (LVII) - 2006.

142. While the no-fault procedure is currently the most important Dutch way of granting a form of legal stay to those who are stateless and others who cannot return due to lack of consular or other support from their government, it is in fact not a statelessness determination procedure. As Batchelor observed, allowing people to stay in the country on non-removability grounds "does little to identify cases of statelessness generally and, therefore, misses an opportunity to address the broader question of identifying increased flows of stateless persons due to changed circumstances in their countries of origin".[193] Consequently, she adds, it is "impossible to determine the magnitude of the problem of statelessness within EU Member States as there is no consistent way of identifying cases".[194] A dedicated statelessness procedure would solve problems both related to the unclear status of stateless persons in the Netherlands, as well as give visibility to the problem. Furthermore, it could decrease the number of ill-fated asylum applications made only because no more appropriate procedure exists. Experiences in countries which have instituted a statelessness determination procedure, such as France, Hungary, and Spain, demonstrate that procedural improvements enhance awareness, protection standards, and the identification of stateless persons.[195] Also, it should be noted that the situation of being stateless, like that of being a refugee, is governed by international law. There should be a mechanism that allows individuals to have their claim to be stateless assessed and recognized.[196]

143. In the Netherlands, proper recognition of statelessness does not take place and the burden of proof used by the GBA is high. For example, repeated statements by foreign embassies denying any attachment to, or responsibility for, an individual are usually not sufficient for the Dutch authorities to consider the person stateless. Similarly, the repeated unreturnability of a person, due to lack of cooperation by the country of origin, does not result in responsibility being assumed by the Netherlands. The burden of proof of establishing statelessness is also put squarely on the individual. While a requirement to cooperate in establishing statelessness should be expected, at present the burden on the individual is so onerous that it is precluding some stateless persons from being recognized and therefore undermines the 1954 Convention. As the Geneva Conclusions note:

> "The 1954 Convention requires proving a negative: establishing that an individual is not considered as a national by any State under the operation of its law. Because of the challenges individuals will often face in discharging this burden, including access to evidence and documentation, they should not bear sole responsibility for establishing the relevant facts. In statelessness determination procedures, the burden of proof should therefore be shared between the applicant and the authorities responsible for making the determination. It is incumbent on individuals to cooperate to establish relevant facts. …
>
> "Determination procedures should adopt an approach to evidence which takes into account the challenges inherent in establishing whether a person is stateless. The evidentiary requirements should not be so onerous as to defeat the object and purpose of the 1954 Convention by preventing stateless persons from being recognized. It is only necessary to consider nationality in relation to States with which an individual applicant has relevant links (in particular by birth on the territory, descent, marriage or habitual residence)."[197]

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193 C.A. Batchelor, "The 1954 Convention Relating to the Status of Stateless Persons", 39.

194 Ibid., 40.

195 G. Gyulai, "Remember the forgotten, protect the unprotected", *Forced Migration Review,* no. 32 (2009), 48.

196 UNHCR "Stateless Determination Procedures and the Status of Stateless Persons", Summary Conclusions, of the Expert Meeting, Geneva, 6–7 Dec. 2010, para. 1.

197 Ibid., paras. 13-14.

144. The right to a nationality is a positive right. It is in this regard important to reiterate that States ought not to unilaterally ascribe a nationality to an individual if the presumed country of nationality has previously denied that a bond of citizenship exists. If the person concerned does not have the nationality of any other State, he or she is stateless and should benefit from all rights laid down in the 1954 Convention.

145. Secondly, the research shows that the implementation of Article 1 of the 1961 Convention – which aims at the *prevention* of statelessness – is being made difficult by the requirement of lawful residence (*toelating*) in Article 6(1)b DNA. Since the Convention explicitly speaks of habitual residence, States party to that Convention are not allowed to require *lawful* residence. As the Summary Conclusions of the expert meeting in Dakar on preventing statelessness among children affirm, the "1961 Convention does not allow Contracting States to make an application for the acquisition of nationality of otherwise stateless individuals conditional on *lawful* residence". The Conclusions also note that habitual residence "should be understood as stable, factual residence".[198] Similarly, the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession provides that habitual residence means "a stable factual residence". Habitual residence also refers to a factual situation in other fields of law, such as private international law. The clear wording of Article 1 of the 1961 Convention has been acknowledged by the District Court in Zwolle in September 2010. This court held that habitual residence refers to a situation where someone "has his or her lasting place of residence in the Netherlands and has developed a social life here".

146. Thirdly, the *reduction* of cases of statelessness is an important area of focus for UNHCR. Although it can be questioned whether Article 32 of the 1954 Convention, which deals with naturalization, is sufficiently effective in reducing statelessness, it was seen that Dutch law complies with the Convention on this point. Dutch nationality law is also in accordance with the provisions concerning the loss of nationality of the 1961 Convention by taking as a starting point that loss of Dutch nationality cannot result in statelessness. The one exception to this principle, namely the rule that Dutch nationality can be revoked if it was acquired by fraud, is allowed under the 1961 Convention.

147. Lastly, the *protection* of stateless persons in the Netherlands is a major concern. This is related to the identification of those in need of protection and to the fact that even those who are, by one authority or another, deemed to be stateless do not enjoy all rights they ought to. The interviews conducted for this study reveal that numerous respondents face difficulties accessing essential healthcare and in acquiring means of identification (despite being legally present in the Netherlands) and that these two issues are often interlinked. In line with a recommendation made by the Ombudsman, UNHCR would propose that in a future statelessness determination procedure all claimants be provided with means of identification. Similarly, pending the no-fault procedure, applicants should be furnished with ID cards. Furthermore, incarceration in alien detention centres proved to be frequent and lengthy. The repetitive nature of the process – detention, absent prospect of deportation, release with an order to leave the country, arrest and potential declaration of undesirability for illegal presence, followed by renewed detention – is daunting. Some scholars have already identified this type of practice as inhuman and/or degrading treatment. The research found that psychological difficulties and complaints as a result of detention are widespread.

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198 UNHCR, "Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children", Summary Conclusions, Expert Meeting, Dakar, Senegal, Sept. 2011, available at http://www.unhcr.org/refworld/docid/4e8423a72.html, para. 28. See also, G.-R. de Groot, "The acquisition of nationality by potentially stateless children: Observations on the Articles 1–4 of the 1961 Convention on the Reduction of Statelessness", UNHCR paper (forthcoming).

5.2 Recommendations

148. In conclusion, in order to facilitate the Netherlands' full compliance with its obligations under the 1954 and 1961 statelessness conventions and to ensure that stateless persons are able to enjoy the rights to which they are entitled, UNHCR makes the following suggestions and recommendations. Some are of a definitional or procedural nature; others are intended to allow for the more humane treatment of a group of persons whose visibility and limited entitlements to assistance are not yet adequately understood or addressed. All fall within one or more of the four categories of *identification, prevention,* and *reduction* of statelessness, and/or of *protection* of stateless persons.

Determination of statelessness

1

It is recommended that an accessible and efficient statelessness determination procedure be established. A dedicated procedure can better identify stateless persons, thereby allowing for more tailored protection measures, improving (statistical) awareness of the actual scope of the problem, and enhancing the Netherlands' ability to fulfil its international obligations under the 1954 Convention.

2

It is recommended that one centralized, designated and independent authority to determine statelessness be appointed. Such an authority should have expertise in statelessness and nationality matters and relevant expertise, financial and staff resources. Designating a specific authority would be important to ensure transparency and develop specialization and expertise within the authority concerned. Statelessness raises many issues that are distinct from those considered in refugee status determination.

3

Based on experience in other countries where stateless determination procedures exist and on UNHCR's expert roundtable discussions and conclusions in 2010–11, UNHCR makes the following recommendations as to the operation of such a procedure:

a) Bearing in mind that many stateless people are children, the procedure should be subject to a decision within a reasonable time limit.

b) An unduly high standard of proof should not be imposed in the procedure. This would frustrate the object and purpose of the 1954 Convention, as it could prevent stateless persons from being recognized. The procedure should adopt an approach to evidence which takes into account the challenges inherent in establishing whether someone is stateless.

c) The burden of proof should be shared between applicant and the determining authority. The 1954 Convention requires a negative to be proven – that an individual is not considered as a national by any State under the operation of its law. While individuals are obliged to cooperate in establishing relevant facts, they will often face challenges accessing the relevant evidence and documentation needed to prove their absence of

nationality. They should thus not bear sole responsibility for establishing relevant facts. Sharing the burden of proof will also recognize the role of the State to obtain more reliable information from the relevant authorities of other States' embassies.

d) The statelessness determination procedure should be non-adversarial and ensure due process guarantees, including access to free legal advice and the right to an effective remedy where an application is rejected. Any administrative fees levied on statelessness applications should be reasonable and not act as a deterrent to stateless persons seeking protection.

e) Where, despite the cooperation of the individual, it is not possible to establish within a reasonable time frame (to be determined at national level by relevant authorities) that someone registered as of unknown nationality does possess a nationality, a determination of statelessness would be appropriate.

f) It is recommended that specialized training on nationality law and practice, international standards and statelessness be provided to officials responsible for making statelessness determinations. More generally, awareness raising initiatives regarding the existence of the statelessness determination procedure should be undertaken.

4

The research has identified around 500 people who are registered as stateless in the municipal basic administration (GBA) who are likely to be genuinely stateless, as opposed to another approximately 1,500 people who are registered as stateless, who are of Indonesian descent with quasi-Dutch citizenship or who are of Portuguese parents who have a right to Portuguese citizenship. The majority of these 500 people are children and most have been born in the Netherlands, but do not hold a residence permit. UNHCR therefore recommends that the assessment of this group be prioritized to determine their statelessness or nationality. Where necessary, Dutch citizenship and a residence permit should be granted. This would be important to ensure that the Netherlands upholds its obligations under Article 1 of the 1961 Convention and Article 7 of the Convention on the Rights of the Child.

5

Where an applicant expresses protection concerns vis-à-vis his or her country of origin, a full assessment of refugee status or subsidiary protection needs to be done. Contact with the country of origin for the purposes of assessing statelessness should only be made if the individual is found not to be in need of international protection. For those no longer in the asylum procedure, the fact that they have applied for asylum should not be revealed to the country of origin.

Registration and identification by municipal authorities

6

To avoid gaps in the identification of statelessness, the research shows that the label "nationality unknown" should not be so readily attributed upon registration in the GBA without further examination. When it is attributed, efforts should be made to assess the individual's nationality and to resolve it as quickly as possible.

7

To ensure consistency and full recognition of status by all relevant authorities, registration in the GBA should be amended as necessary following any subsequent determination of status, whether of refugee status and/or statelessness or following the granting of another nationality. For instance, when someone is determined to be stateless, registration in the GBA should be amended from "nationality unknown" to "stateless".

8

The research indicates that it would be useful to develop guidelines on how the GBA should be amended to ensure changes in status are reflected in the GBA and to undertake appropriate training of relevant authorities to ensure implementation.

9

To better assess the stateless population, statistics should be recorded and maintained in the GBA in a transparent manner and in such a way that they reflect the actual stateless population in the Netherlands and incorporate data by age, gender, origin and birth.

Solutions for situations where the State of purported nationality fails to cooperate in return

10

To ensure early and correct identification of stateless persons, referral to a determination procedure should take place as early as possible, if the individual him- or herself claims to be stateless or this comes to light during the no-fault procedure. In such circumstances, they should be referred from this procedure to the statelessness determination procedure.

11

To render the procedure accessible and effective, information should be provided by the IND to potentially stateless persons and legal advice bodies about the existence of such a statelessness determination procedure. Local authorities and other relevant bodies should also be informed about the procedure and their responsibilities.

12

On human rights and humanitarian grounds and for the purposes of preventing statelessness in the medium and long-term, the no-fault procedure could continue to be available for persons not claiming to be stateless where the State of purported nationality refuses to cooperate in their return.

13

In light of the impact on persons unable to meet the criteria under the no-fault procedure, the Dutch authorities may wish to consider partially redistributing the burden of proof to reflect the considerable difference in resources and influence between State and individual, so that a decision can be reached within a reasonable time frame.

14

Restraint should be exercised in issuing declarations of undesirability on account of illegal presence to unreturnable persons. Such a declaration has the effect of criminalizing and penalizing their presence on Dutch territory, when it may be legally and practically impossible to return them through no fault of their own. This can result in a damaging cycle of arrest, detention, release, rearrest and renewed detention. It makes a solution to the situation of this category of people even less attainable.

15

One way to facilitate the return to countries of origin of stateless persons and/or persons of unknown nationality who have expressed a wish to return, would be for the Dutch authorities to increase cooperation with countries of origin. If there are indications that the embassy concerned would be more likely to respond to a government request, then it could be useful to make an official request regarding the individual's nationality and return, rather than expecting this to be done by the individual.

Provision of documentation and issuance of residence permits

16

UNHCR recommends that during a statelessness determination procedure and/or during a no-fault residence permit procedure, applicants be issued an identity document, so that they can fulfil the Dutch legal requirement of always being able to identify themselves. A temporary residence permit should be issued for the duration of the relevant procedure.

17

It is recommended that recognition of statelessness should generally result in the issuance of a residence permit. In some cases it may not be appropriate to do so, for example, where a stateless person enjoys the right of residence in another State and is able to return and live there with full respect for their human rights. Such a residence permit could, for example, be on at least a one-year renewable basis. Possession of a residence permit would enable full enjoyment of the rights set out in the 1954 Convention.

Withdrawal of Dutch reservations to 1954 Convention

18

It is recommended that, bearing in mind subsequent developments in international human rights law by which the Netherlands is bound, the two reservations regarding Articles 8 and 26 made to the 1954 Convention be withdrawn.

Prevention of statelessness in the Netherlands

19

In the provision under Article 6(1)b DNA providing for a right to apply for Dutch nationality, it is recommended that the "legal stay" requirement be rescinded, as this prerequisite is not in conformity with the 1961 Convention. Instead, it is suggested that a requirement of habitual residence be introduced.

20

Based on the 1961 Convention read in light of the Convention on the Rights of the Child, it is recommended that the Netherlands adopt a more inclusive approach to implementation of Article 1 of the 1961 Convention which pertains to the grant of nationality to persons born on Dutch territory who would otherwise be stateless. It is recommended that such children should acquire Dutch nationality automatically, at least in the case of children born to parents who are permanent residents. This would follow the practice of the majority of States Parties to the 1961 Convention.

21

The effects of a revocation of Dutch nationality in case of fraudulent acquisition of that nationality should be fully taken into account, if such a revocation were to result in statelessness. In particular, in such a case, proportionality considerations should be taken into account, in line with the *Rottmann* judgment of the Court of Justice of the European Union.

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Statelessness

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United Nations High Commissioner for Refugees
The Hague, November 2011

This study investigates the situation of stateless persons in the Netherlands. UNHCR has reviewed all available statistical information and scrutinized Dutch law and policy in order to shed light on the complex and hidden issue of statelessness. Numerous stateless persons in the Netherlands were interviewed in an attempt to provide the phenomenon of statelessness with a human face.

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