

Joint Submission to the
Human Rights Council

Universal Periodic Review

41st Session

4th Cycle

November 2022

THE NETHERLANDS

European Network on Statelessness
Institute on Statelessness and Inclusion

31 March 2022



European
Network on
Statelessness



Institute on
Statelessness and
Inclusion

Joint Submission
to the Human Rights Council
at the 41st Session
of the Universal Periodic Review.

THE NETHERLANDS

Introduction

1. The European Network on Statelessness (ENS) and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to deprivation of nationality or citizenship stripping¹ in the Netherlands in a national security context – where nationality has been instrumentalised with a view to countering terrorism.
2. This submission focuses on:
 - The prohibition of discrimination in relation to nationality deprivation measures;
 - The prohibition of arbitrary deprivation of nationality;
 - The prohibition against torture and cruel, inhuman or degrading treatment or punishment and the prevention of childhood statelessness in relation to nationality deprivation measures.
3. The [European Network on Statelessness](#) (ENS)² is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe, with over 170 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. This submission partially draws on information and analysis from the Statelessness Index on the Netherlands,³ maintained and developed by ENS and its members. The Index is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice.
4. The [Institute on Statelessness and Inclusion](#) (ISI)⁴ is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI's mission is to promote inclusive societies by realising and protecting everyone's right to a nationality. The Institute has made more than 80 country specific UPR submissions on the right to a nationality and the human rights of stateless people. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 40th UPR Sessions.⁵

¹ Please note that sometimes other terms are also used to refer to deprivation of nationality, including revocation of nationality.

² For more information about the European Network on Statelessness: www.statelessness.eu.

³ See <https://index.statelessness.eu/country/netherlands>.

⁴ For more information about the Institute on Statelessness and Inclusion: <https://www.institutesi.org/>.

⁵ For more information: <https://www.institutesi.org/pages/universal-periodic-review>.

Previous UPR of the Netherlands under earlier cycles

5. The Netherlands was last reviewed during the 27th session of the UPR in 2017. During the third cycle, the Netherlands received two recommendations pertaining to counter-terrorism measures more broadly, which were both noted by the State. It received a recommendation from Canada to “[r]eview any adopted or proposed counter-terrorism legislation, policies or programmes to provide adequate safeguards against human rights violations and minimize any possible stigmatizing effect such measures might have on certain segments of the population.”⁶ Furthermore, the Netherlands received a recommendation from Malaysia to “[r]eview counter-terrorism measures that target individuals and groups based on race, ethnicity and religion, including Muslims and Muslim communities, and ensure that such measures do not associate or contribute to associating terrorism with any religion, race, culture, ethnic group or nationality”.⁷

The Netherlands’ international obligations

6. The Netherlands has ratified nearly all core international and regional human rights treaties. These include:
 - ICCPR,⁸ Article 24(3), which states that every child has the right to acquire a nationality;
 - CRC,⁹ Article 7, which contains the same right, and emphasises that States Parties must ensure that no child is stateless;
 - CERD,¹⁰ Article 5(d)(iii), which guarantees the right to a nationality to everyone, regardless of race, colour, or national or ethnic origin;
 - CEDAW,¹¹ Article 9, which grants women equal rights with men to acquire, change or retain their nationality, as well as with respect to the nationality of their children.
7. The Netherlands is also a party to the Convention Against Torture (CAT), the European Convention on Human Rights (ECHR) and the European Convention on Nationality (ECN). The Netherlands has ratified the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Furthermore, the right to a nationality and prohibition of arbitrary deprivation of nationality is included in Article 15 of the Universal Declaration on Human Rights (UDHR). Article 9 of the 1961 Convention¹² “was designed to give effect to Article 15 of the UDHR and is complemented by provisions in, among others, CERD, CEDAW and CRPD”.¹³ These other human rights treaties explicitly prohibit discrimination on the basis of status, unlike the 1961 Convention.

⁶ UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Netherlands’ (18 July 2017) A/HRC/36/15, para. 131.113, <https://undocs.org/A/HRC/36/15>.

⁷ *ibid*, para. 131.114.

⁸ International Covenant on Civil and Political Rights (ICCPR).

⁹ Convention on the Rights of the Child (CRC).

¹⁰ Convention on the Elimination of All Forms of Racial Discrimination (CERD).

¹¹ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

¹² Art. 9 of the 1961 Convention reads as follows: “A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.”

¹³ UNHCR, ‘Summary Conclusions: Expert Meeting on Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality’ (2013) para. 70, <https://www.refworld.org/pdfid/533a754b4.pdf>.

8. Different human rights monitoring bodies have previously expressed concern about nationality deprivation policy and practice in the Netherlands. In 2019, the Human Rights Committee (HRC) expressed concern “about the amendments to the Dutch Nationality Act, which provide for the revocation, in absentia, of the Dutch nationality of dual nationals based on information that they have left the country to voluntarily join the military service of a foreign State or a terrorist organization, and the implications that this would have for their family members”.¹⁴ Accordingly, it recommended that the Netherlands “should regularly review its counter-terrorism legislative measures, with a view to assessing their human rights impact and bringing those measures and judicial safeguards on their manner of application into line with international due process standards and the provisions of the Covenant, and ensure meaningful participation of civil society in the process. In particular, it should revise the Dutch Nationality Act with a view to ensuring effective safeguards against arbitrary loss of nationality and discriminatory effects as well as the effective exercise of the right to appeal.”¹⁵

9. Following his visit to the Netherlands in 2020, the UN Special Rapporteur (SR) on freedom of religion or belief noted that “Dutch dual nationals reported that their freedom of movement was often limited by fears that travel to regions deemed to be security threats under the Acts on nationality and on temporary administrative counter-terrorism would lead to revocation of their Dutch citizenship.”¹⁶ In addition, and after her visit to the Netherlands in 2020, the SR on contemporary forms of racism, racial discrimination, xenophobia and related intolerance voiced her concerns as follows: “[a]lthough being neutral on the face of it, the Netherlands’ citizenship-stripping legislation, policies and procedures apply only to citizens with dual nationality and therefore disproportionately affect Netherlanders of Moroccan and Turkish descent. Because of its limited applicability, citizenship-stripping legislation in the Netherlands aggravates stereotypes of terrorism by associating terrorism with people of certain ethnic and national origins. The associated policies and their effects are incompatible with international human rights principles of equality and non-discrimination. [...] citizenship-stripping orders are based primarily on information gathered by the security services and that the individuals affected only have recourse through an appeal to administrative courts on procedural grounds. Such a limited review prevents access to an effective remedy. Those facing a citizenship-stripping order should have access to sufficient information and appeals processes to challenge the order.”¹⁷

10. Moreover, on the basis of Article 5 of CERD, the Committee on the Elimination of Racial Discrimination recommended the Netherlands in 2021 to “[t]ake measures to ensure that its policy of stripping dual nationality is only applied with regard to grave criminal offences, does not lead to statelessness, is subject to effective legal remedies, and does not lead to discriminatory effects based on race, ethnicity, national origin or descent.”¹⁸

¹⁴ UN Human Rights Committee, ‘Concluding observations on the fifth periodic report of the Netherlands’ (22 August 2019) CCPR/C/NLD/CO/5, para 50,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/NLD/CO/5&Lang=en

¹⁵ *ibid*, para 51.

¹⁶ UN Human Rights Council, ‘Visit to the Netherlands – Report of the Special Rapporteur on freedom of religion or belief’ (12 February 2020) A/HRC/43/48/Add.1, para 63,

<https://spinternet.ohchr.org/Download.aspx?SymbolNo=A/HRC/43/48/Add.1&Lang=en>.

¹⁷ UN Human Rights Council, ‘Visit to the Netherlands – UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance’ (2 July 2020) A/HRC/44/57/Add.2, para 60,

<https://spinternet.ohchr.org/Download.aspx?SymbolNo=A/HRC/44/57/Add.2&Lang=en>.

¹⁸ UN Committee on the Elimination of Racial Discrimination, ‘Concluding observations on the combined twenty-second to twenty-fourth periodic reports of the Kingdom of the Netherlands’ (16 November 2021) CERD/C/NLD/CO/22-24, para 26(d).

11. In 2022, the Committee on the Rights of the Child recommended that the Netherlands “[e]nsure that no child, including those between 16 and 17 years of age, is deprived of his or her nationality for actions that are considered to constitute a threat to national security, and also consider children’s best interests when such withdrawals of nationality are imposed on parents”.¹⁹

National law and practice

12. In its original form, as promulgated in 1984, Article 14 of the Dutch Nationality Act (DNA) only provided for deprivation of nationality where it had been obtained by fraud (currently Art. 14(1)).²⁰ Since 2010, there has been a gradual expansion of the powers to deprive a person of their nationality for national security reasons under the DNA, with new grounds added in 2010, 2016 and 2017.²¹
13. The most recent of these amendments allows for the deprivation of nationality without the need for a criminal conviction, if a person voluntarily enters the foreign military service of a State involved in hostilities against the Netherlands (Article 14(3)) or joins an organisation that is listed as constituting a threat to national security (Article 14(4)).² This measure was introduced on the pretext that it is needed to protect national security, aiming to prevent the return of alleged ‘foreign fighters’, mainly from Syria and Iraq, to the Netherlands. It has been used to target Dutch nationals who are outside the country at the time of deprivation of nationality. The measure of Article 14(4) DNA was adopted with a sunset clause, such that the power to deprive individuals of Dutch nationality on national security grounds would expire in 2022, unless legislation would be passed to extend it. An evaluation of the measure was furthermore mandated to inform any further extension.
14. In 2020, two comprehensive evaluations of Article 14(4) DNA were carried out: by the Dutch Review Committee on the Intelligence and Security Services (CTIVD) and by the Research and Documentation Centre (WODC).²² Neither evaluation provided evidence of the effectiveness of the measure. On the contrary, the data suggests that deprivation of nationality is not a useful national security tool and is likely to actually be counter-effective. The CTIVD reiterates, for instance, that it is “uncertain whether the measure will have the desired effect of preventing return of foreign fighters”. The public

¹⁹ UN Committee on the Rights of the Child, ‘Concluding observations on the combined fifth and sixth periodic reports of the Netherlands’ (11 February 2022) CRC/C/NLD/CO/5-6, para 18(e). See similarly, ‘Concluding observations on the report submitted by the Netherlands under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict’ (8 July 2015) CRC/C/OPAC/NLD/CO/1, para 15.

²⁰ For instance, when a person fails to declare in their naturalisation process that they have been convicted in the past, this would constitute an omission of a fact relevant to the naturalisation process, and would provide a ground for deprivation of nationality under Art. 14(1)). See the Handbook Dutch Nationality Act 2003, <https://wetten.overheid.nl/BWBW33099/2022-01-01>.

²¹ Art. 14(2) – introduced on 17 June 2010: Revocation of nationality following conviction for various criminal offences, including the commission terrorist offences, joining foreign armed forces, and offences under the Rome Statute; Art. 14(2b) – introduced on 5 March 2016: Revocation of nationality following conviction for assistance in or preparation of the commission terrorist offences; Art. 14(3) – introduced on 10 February 2017: Voluntarily entering the foreign military service of a State involved in hostilities against the Netherlands; Art. 14(4) – introduced on 10 February 2017: Joining an organization that is listed as constituting a threat to national security.

²² WODC, ‘Evaluatie wijziging van de Rijkswet op het Nederlanderschap in het belang van de nationale veiligheid’ (2020), <https://repository.wodc.nl/handle/20.500.12832/2488>; CTIVD, ‘Toezicht rapport. Over het handelen van de AIVD in het kader van intrekking van het Nederlanderschap in het belang van de nationale veiligheid’ (2020), p. 10, <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/06/16/aanbieding-ctivd-rapport-intrekking-nederlanderschap>. The WODC is the knowledge institute for the Dutch Ministry of Justice and Security; the CTIVD supervises the Dutch intelligence and security services.

prosecutor (OM) views deprivation of Dutch nationality as an encroachment on prosecution interests and raised objections in all cases in which there had not yet been a criminal conviction. Nevertheless, before any substantive debate of the findings of these evaluations was held, the first steps were taken towards removing the sunset clause on the use of this power.

15. In December 2020, the Netherlands published a draft bill for public consultation that would make the current temporary power to revoke nationality from a citizen who joins a terrorist organisation, without a criminal conviction, as set out in Article 14(4), a permanent power. This bill was, however, amended before being adopted by parliament, and it was decided that the power was not to be made permanent, but only extended for another five years and made subject to further evaluations, as well as continued CTIVD supervision. Moreover, it will no longer be possible to subject minors of 16 years and older to this measure - the extended power to deprive will only apply to adults.²³

ISSUE I The principle of non-discrimination

16. The nationality deprivation powers laid down in Article 14(4) DNA can only be invoked against dual nationals, with a view to avoiding statelessness, yet creating a difference in treatment as compared to nationals who hold only Dutch nationality.²⁴ The Netherlands must comply with its obligations under international norms to prevent and reduce statelessness and those prohibiting discrimination. The current practice leads to indirect discrimination against Dutch nationals from particular minority groups, in particular Dutch-Moroccans.²⁵ Maintaining such a system also has a stigmatising effect on these communities and can negatively impact on social cohesion.
17. This is contrary to international obligations of the Netherlands, as summarised in the Principles on Deprivation of Nationality as a National Security Measure, which include that “[a] State must not deprive any person or group of persons of their nationality as a result of direct or indirect discrimination in law or practice, on any ground prohibited under international law, including race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation.”²⁶ Moreover, “[e]ach State is bound by the principle of non-discrimination

²³ Act of 23 February 2022, amending the Dutch Nationality Act in relation to deprivation of Dutch nationality in the interest of national security, <https://zoek.officielebekendmakingen.nl/stb-2022-84.html>.

²⁴ See also Meijers Committee, ‘Policy brief on differential treatment of citizens with dual or multiple nationality and the prohibition of discrimination’ (2020) CM2016, https://www.commissie-meijers.nl/wp-content/uploads/2020/12/cm2016_policy_brief_on_differential_treatment_of_citizens_with_dual_or_multiple_nationality_and_the_prohibition_of_discrimination.pdf.

²⁵ WODC, Evaluatie wijziging van de Rijkswet op het Nederlanderschap in het belang van de nationale veiligheid (2020), p. 41, <https://repository.wodc.nl/handle/20.500.12832/2488>; UN Human Rights Council, ‘Visit to the Netherlands – UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance’ (2 July 2020) A/HRC/44/57/Add.2, para 60, <https://spinternet.ohchr.org/Download.aspx?SymbolNo=A/HRC/44/57/Add.2&Lang=en>.

²⁶ Principles on Deprivation of Nationality as a National Security Measure (2020), <https://www.refworld.org/docid/5f3bf26d4.html>, Principle 6.1. The Principles on Deprivation of Nationality as a National Security Measure were developed over a 30-month research and consultation period, with input from more than 60 leading experts in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas. The Principles restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, regional and national law and practice. They articulate the international law obligations of States and apply to all situations in which States take or consider taking steps to deprive a person of nationality as a national security measure.

between its nationals, regardless of whether they acquired nationality at birth or subsequently, and whether they have one or multiple nationalities”.²⁷

Issue II The prohibition of arbitrary deprivation of nationality

18. According to the UDHR, “[n]o one shall be arbitrarily deprived of [their] nationality”, which is a fundamental principle of international law closely linked with the right to a nationality. At a minimum, deprivation of nationality is arbitrary if it is not prescribed by law, is not the least intrusive means and proportionate to achieving a legitimate aim, or if it takes place without due process.²⁸ According to the European Court of Human Rights (ECtHR), “[i]n determining arbitrariness, the Court should examine whether the impugned measure was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly.”²⁹ The decision should also consider the consequences of citizenship stripping for the applicant.
19. Furthermore, “deprivation of nationality must be the least intrusive means and effective means of achieving the stated legitimate purpose”.³⁰ These are key principles of human rights law. In debates around the introduction of Article 14(4) DNA concerns were raised about its necessity and effectiveness. The Netherlands Institute for Human Rights also pointed out that “since withdrawal of Dutch citizenship is limited to persons who have dual or multiple nationality, the measure makes only a very limited contribution to enhancing national security”.³¹
20. The aforementioned comprehensive evaluations of Article 14(4) DNA by the CTIVD and WODC provided no evidence of the effectiveness of the measure. On the contrary, the CTIVD reiterates that it is “uncertain whether the measure will have the desired effect of preventing return of foreign fighters”.³² What these evaluations do show is that:
- The OM views deprivation of Dutch nationality as an encroachment on prosecution interests and raised objections in all cases in which there had not yet been a criminal conviction;
 - Deprivation of nationality does not guarantee that the person will not return: there are two cases in which a person whose nationality had been deprived was able to return to the Netherlands because Turkey unilaterally decided to remove them and deport them directly to the Netherlands.³³
- The measure of Article 14(4) DNA does not, therefore, constitute a proportionate and necessary means for achieving its purpose.

²⁷ *ibid*, Principle 6.2.

²⁸ UNHCR Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness (2020) HCR/GS/20/05, paras 91, 94.

²⁹ ECtHR 22 December 2020, *Usmanov v. Russia*, Application no. 43936/18, para 63.

³⁰ Communication by UN Mandate Holders and Experts to the Netherlands on the case of Fatima Habitat (8 December 2021) Ref UA NLD 4/2021, p. 7, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26814>.

See also *ibid*, Principles 7.5.2 & 7.5.3; CCPR General Comment No. 27: Article 12 ICCPR (Freedom of Movement) (1999) CCPR/C/21/Rev.1/Add.9, para 14; UNHCR Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness (2020) HCR/GS/20/05, paras 91, 94.

³¹ College voor de Rechten van de Mens, ‘Advies conceptwetsvoorstel intrekken Nederlanderschap’ (2015), <https://mensenrechten.nl/nl/publicatie/35355>.

³² CTIVD, ‘Toezichtsrapport. Over het handelen van de AIVD in het kader van intrekking van het Nederlanderschap in het belang van de nationale veiligheid’ (2020).

³³ See also ISI, ‘Deprivation of nationality as a national security measure in the Netherlands’ (2021), https://files.institutesi.org/Deprivation_of_Nationality_the_Netherlands.pdf.

Issue III The prohibition against torture and the prevention of childhood statelessness

21. At present, it is reported that tens of thousands of women and children with links to territories formerly controlled by the Islamic State of Iraq and the Levant ('ISIL') are detained in detention camps in Northeast Syria under conditions that amount to cruel, inhuman and degrading treatment.³⁴ About 120 Dutch alleged 'foreign fighters' are still in Syria, Iraq or Turkey. About a third of them reside in Syrian-Kurdish camps al-Roj or al-Hawl (women) or in various detention centres in Northeast Syria (men). In addition, almost 200 minors with a link to the Netherlands reside in the region.³⁵
22. Article 2(2) CAT emphasises that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification of torture". The Committee against Torture identifies threats of terrorist acts or violent crime to be among these exceptional circumstances that cannot constitute justification of torture.³⁶ By depriving persons of their nationality, States risk violating the absolute and customary prohibition of torture, cruel, inhuman or degrading treatment or punishment. In and of itself, deprivation of nationality may cause severe mental suffering, as the identity of the person concerned has been taken away and that person is left in a state of uncertainty. Deprivation of nationality is likely to constitute cruel, inhuman or degrading treatment or punishment, particularly where it results in statelessness.³⁷
23. Attempted expulsion consequent to deprivation of nationality is also likely to meet the threshold of cruel, inhuman or degrading treatment or punishment when this leads to arbitrary detention, a violation of the principle of non-refoulement, or the forcible separation of families.³⁸ The prohibition of *refoulement* is absolute and extends to situations where there is a risk of ill-treatment from non-State actors and situations in which the national has been deemed a threat to national security. It includes the extradition of a national to a country where they face a real risk of being subjected to ill-treatment, and can also include violations relating to prison conditions,³⁹ solitary confinement and incommunicado detention, including depriving an individual of contact with their family. Refusing to repatriate and/or blocking the right to (re)admission through deprivation of nationality leaves persons trapped in the aforementioned detention conditions. States' failure to repatriate nationals exposes them to treatment which constitutes a serious violation of international human rights law, and implicates States' responsibilities under international law. They have a "duty to act with due diligence to ensure that the lives of their nationals are protected from irreparable harm".⁴⁰ Indeed, human rights experts have concluded that "the urgent return and

³⁴ Rights and Security International, 'Europe's Guantanamo: The indefinite detention of European women and children in North East Syria' (2021), https://www.rightsandsecurity.org/assets/downloads/Europes-guantanamo-THE_REPORT.pdf.

³⁵ Numbers according to the Dutch General Intelligence and Security Service (AIVD), last updated 1 March 2022, <https://www.aivd.nl/onderwerpen/terrorisme/dreiging/uitreizigers-en-terugkeerders>.

³⁶ Committee against Torture, General Comment No. 2: Implementation of article 2 by State parties (2008) CAT/C/GC/2, para 5.

³⁷ Principles on Deprivation of Nationality as a National Security Measure (2020), Principle 9.3.2.

³⁸ *ibid*, Principle 9.3.3.

³⁹ HRC, 'General Comment No. 9: Article 10 (humane treatment of persons deprived of liberty)' (1982) HRI/GEN/1/Rev.9. Vol I, p. 180, para 1.

⁴⁰ Submission by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the UN Special Rapporteur on arbitrary, summary and extra-judicial executions in the case of H.F. and M.F. v. France (Application no. 24384/19) before the European Court of Human Rights (2020), p. 6.

repatriation of foreign fighters and their families from conflict zones is the only international law-compliant response to the increasingly complex and precarious human rights, humanitarian and security situation faced by those women, men and children who are detained in inhumane conditions”.⁴¹

24. The thousands of children associated with alleged ‘foreign fighters’ who are currently detained in Syria and Iraq live in dire conditions and are unable to access basic rights and services, which impacts on their right to a nationality, legal identity, and immediate birth registration.⁴² Research has found that there is a risk of statelessness among children associated with alleged ‘foreign fighters’, particularly related with three key factors: the lack of documentation or lack of recognition of documents issued by non-State actors, barriers to establishing nationality through family links, and derivative deprivation of nationality – all of which have been noted in cases concerning children that have a link to the Netherlands.⁴³ These risks are exacerbated by the fact that children’s right to a nationality, the primacy of the best interests of the child, and the principle of non-discrimination are not adequately considered in States’ policies and practices of citizenship stripping in relation to children associated with alleged ‘foreign fighters’.
25. Under international law, States are required to introduce legal safeguards to ensure that deprivation of nationality does not impact on family members or dependents. States must also ensure that deprivation of nationality does not lead to statelessness, and should therefore conduct a full determination of whether deprivation would result in statelessness prior to depriving a person of their nationality.⁴⁴ In this assessment, States should also take into consideration the impact on the individual’s right to respect for private and family life and the best interests of their children.⁴⁵ Any children born subsequent to a deprivation order against their parents taking effect may therefore be at risk of statelessness.⁴⁶

⁴¹ Position of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Consultation meeting with Experts on the return of “Foreign Fighters” and their families to Europe organised by the Council of Europe Commissioner for Human Rights (2019), p. 2.

⁴² UN Office of the High Commissioner for Human Rights, ‘Syria: UN experts urge 57 States to repatriate women and children from squalid camps’ (8 February 2021), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26730>

⁴³ Dr Rachel Pougnet (University of Bristol) and the European Network on Statelessness, ‘Risks of childhood statelessness for the children associated with alleged ‘foreign fighters’ detained in Syria and Iraq (2021)’, http://www.bristol.ac.uk/media-library/sites/policybristol/briefings-and-reports-pdfs/2021/PolicyBristol_Report67_Pougnet_childhood-statelessness-risks.pdf. See also Professor René DeGroot (Professor emeritus, Maastricht University), Philomène Franssen (Independent consultant), Alison Harvey (Barrister at No5 Chambers) and Dr Rachel Pougnet (University of Bristol), ‘Expert opinion: How the Netherlands, France and the UK are leaving children stranded at risk of statelessness in Iraq and Syria’ (2021), <https://www.statelessness.eu/updates/blog/expert-opinion-how-netherlands-france-and-uk-are-leaving-children-stranded-risk>.

⁴⁴ Principles on Deprivation of Nationality as a National Security Measure (2020), Principle 5.

⁴⁵ *ibid*, Principles 9.6 & 9.7.

⁴⁶ Dr Rachel Pougnet (University of Bristol) and the European Network on Statelessness, ‘Risks of childhood statelessness for the children associated with alleged ‘foreign fighters’ detained in Syria and Iraq (2021)’, http://www.bristol.ac.uk/media-library/sites/policybristol/briefings-and-reports-pdfs/2021/PolicyBristol_Report67_Pougnet_childhood-statelessness-risks.pdf. See also Professor René DeGroot (Professor emeritus, Maastricht University), Philomène Franssen (Independent consultant), Alison Harvey (Barrister at No5 Chambers) and Dr Rachel Pougnet (University of Bristol), ‘Expert opinion: How the Netherlands, France and the UK are leaving children stranded at risk of statelessness in Iraq and Syria’ (2021), <https://www.statelessness.eu/updates/blog/expert-opinion-how-netherlands-france-and-uk-are-leaving-children-stranded-risk>.

Recommendations

26. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to the Netherlands:

- I. **Amend the nationality law as soon as possible to ensure compliance with both the principle of avoidance of statelessness as well as the prohibition of discrimination.**
- II. **Continuously evaluate its nationality law, and Article 14(4) DNA especially, for its necessity and effectiveness, with a view to avoiding violation of the prohibition of arbitrary deprivation of nationality.**
- III. **Review the nationality law to comply with the prohibition of *refoulement* and the prohibition against torture and cruel, inhuman or degrading treatment or punishment. The Government needs to take immediate measures or action to ensure that all Dutch nationals detained abroad in Northwest Syria, Northeast Syria, government-controlled Syria and Iraq, and particularly women and children, are protected from torture and cruel, inhuman or degrading treatment or punishment.**
- IV. **Refrain from depriving persons of nationality in any case where the effect would be discriminatory, could render the person stateless or at risk of statelessness, could result in *refoulement*, encroaches on prosecution interests, or when a less intrusive means is available.**
- V. **Establish prompt, effective, and accessible mechanisms to confirm and document the identity and nationality of all children in conflict (and post-conflict) affected areas, and take steps to facilitate the recognition of parentage of all children of their nationals born abroad to prevent statelessness.**
- VI. **Take steps to ensure that children are not arbitrarily deprived of their nationality, and respect private and family life and the best interests of children in decisions to deprive individuals of their nationality.**