

- Summary -

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Background

When a person has no nationality because no state acknowledges him or her as a citizen under its own law, this is called statelessness. The personal consequences of statelessness can be significant. Not having a nationality can have far-reaching consequences for claiming rights, such as obtaining identity papers and travel documents, the right to enter a territory and the right to vote.¹ In addition, statelessness can cause (social) marginalisation, insecurity and exclusion,² especially in the case of long-term statelessness or lack of acknowledgement thereof.³

Background for new Statelessness Determination Procedure Act

In 2013, the Advisory Commission on Immigration Affairs (ACVZ, now the Advisory Council on Migration) issued an advice on statelessness in the Netherlands, titled 'No country in sight'.⁴ The ACVZ found that the Netherlands did not have a proper procedure around the determination of statelessness, and therefore called for a procedure to determine statelessness and thereby offer stateless persons the protection they are entitled to under international treaties.⁵ By doing so, the Netherlands would comply with existing international law obligations.

New procedure and amended regulations

In response to the ACVZ report, in 2014 the then cabinet announced a bill for a legal basis for a statelessness determination procedure.⁶ On 1 October 2023, the new Statelessness Determination Procedure Act⁷ came into effect. The law should meet international law obligations. Through a petition procedure before the civil court in The Hague, stateless people who have no documents proving their statelessness can have it established by the court. This ensures that people who are stateless can in fact be granted this status. Additionally, people who are registered in the Personal Records Database (BRP) with the designation 'unknown nationality', but who in reality may be stateless, can also have their statelessness established through this procedure.

¹ Tweede Kamer der Staten-Generaal (2020). Wet vaststellingsprocedure staatloosheid: Memorie van toelichting. [vieg1mq79zx.pdf](https://www.tweedekamer.nl/pdf/2020/10/01/wet-vaststellingsprocedure-staatloosheid-memorie-van-toelichting-viezg1mq79zx.pdf) (eerstekamer.nl)

² E. Smits van Waesberghe, A. Hoogenbosch (2022). 'Bijzonder ingewikkeld om aan papieren te komen': Een verkennend onderzoek naar de nationaliteit en verblijfspositie van Roma in Nederland. Verwey-Jonker Instituut. <https://www.verwey-jonker.nl/wp-content/uploads/2022/10/Bijzonder-ingewikkeld-om-aan-papieren-te-komen.pdf>

³ Adviesraad Migratie/ACVZ (2013). *Geen land te bekennen. Een advies over de verdragsrechtelijke bescherming van staatlozen in Nederland*. https://www.adviesraadmigratie.nl/binaries/adviesraadmigratie/documenten/publicaties/2013/12/4/geen-land-te-bekennen/Geen_land_te_bekennen_ACVZ_beleidsadvies_20131204.pdf

⁴ Adviesraad Migratie/ACVZ (2013). *Geen land te bekennen. Een advies over de verdragsrechtelijke bescherming van staatlozen in Nederland*, p. 87. https://www.adviesraadmigratie.nl/binaries/adviesraadmigratie/documenten/publicaties/2013/12/4/geen-land-te-bekennen/Geen_land_te_bekennen_ACVZ_beleidsadvies_20131204.pdf

⁵ Convention relating to the status of stateless persons (Verdrag betreffende de status van staatlozen), 28 september 1954 (Trb. 1957, 22) (1954 Convention). <https://wetten.overheid.nl/BWBV0001003/>; Convention on the reduction of statelessness, 30 augustus 1961 (Trb. 1967, 124) (1961 Convention) <https://wetten.overheid.nl/BWBV0004351/>

⁶ Letter of the state secretary of Security and Justice (2014). Kamerstuk-19637-1889. <https://zoek.officielebekendmakingen.nl/kst-19637-1889.html>

⁷ Act of 7 June 2023, regarding regulations on determining statelessness (Wet vaststellingsprocedure staatloosheid) (Stb. 2023, 230). <https://wetten.overheid.nl/BWBR0048458/2023-10-01>

The Statelessness Determination Procedure Act⁸

The procedure does not involve opposition between two parties, making it essentially a regular petition procedure within the framework of the Dutch Code of Civil Procedure (Rv). The procedure differs from the Rv on a number of points:⁹

- In deviation from Rv, only one factual instance has been assigned (District Court of The Hague) with the possibility of cassation before the Supreme Court.
- Furthermore, in addition to Rv, it is stipulated that the State (the Immigration and Naturalisation Service (IND)) is heard by the court.
- In line with the articles of Rv on jurisdiction¹⁰ it is stipulated that the applicant¹¹ must be domiciled or ordinarily resident in the Netherlands at the time of filing the application.
- Finally, a decision period for the court is prescribed, as a result of which the court must in principle decide within six months after submission of the application, with the possibility of an extension of six months.

Besides the civil route of the Statelessness Determination Procedure Act, it is also possible for administrative bodies to make a non-judicial determination in cases of evident statelessness. The Decree on evident statelessness, which contains more detailed rules regarding the determination of statelessness in evident cases, came into force at the same time as the Statelessness Determination Procedure Act.¹²

Finally, a bill amending the Netherlands Nationality Act (RWN), and the Dutch Passport Act (Paspoortwet) as well as repealing reservations to the 1954 Convention in connection with the determination of statelessness, was also enacted into law. With this, the amendment of the RWN that expands the right of option for children born stateless in the Kingdom has taken effect.¹³ This extension means that children born stateless in the Kingdom who have no residence permit can obtain Dutch citizenship by option until they are 21 years of age. However, this is subject to conditions, including the requirement of having had a stable main residence for an uninterrupted period of five years.¹⁴

Motion Ceder and this research

Member of the House of Representatives Ceder (ChristenUnie) submitted a motion during the discussion of the bill to establish statelessness. The motion describes that the efficacy of the adjustments should be evaluated and effects identified. The Ceder motion passed on 31 May 2022. In preparation for this evaluation, Regioplan was commissioned by the WODC to draw up an evaluation framework for the Statelessness Determination Procedure Act. The study should provide insight into how the law can be evaluated and what data are needed to do so. During this research we cooperated with dr. Caia Vlieks, LL.M.¹⁵ A supervisory committee was also set up for the study, see Appendix 1 for an overview of its members.

⁸ Act of 7 June 2023, regarding regulations on determining statelessness (Wet vaststellingsprocedure staatloosheid) (*Stb.* 2023, 230). <https://wetten.overheid.nl/BWBR0048458/2023-10-01>

⁹ Unless the Statelessness Determination Procedure Act specifies different rules, the process rules of the Rv apply (see article 261 Rv). In drafting the deviating rules, they were aligned with the procedure of article 12 of RWN (determination of Dutch citizenship), with the exception of the decision period. See Tweede Kamer der Staten-Generaal (2020). *Wet vaststellingsprocedure staatloosheid: Memorie van toelichting*, p. 6 e.v. [vlezg1mq79zx.pdf \(eerstekamer.nl\)](https://zoek.officielebekendmakingen.nl/eerstekamer.nl)

¹⁰ Book 1, Title 1, general provisions, Dutch Code of Civil Procedure (Rv), in particular art. 3 en 9.

¹¹ Or her. With regard to legibility we use the masculine form throughout this report.

¹² Decision of 10 July 2023, regarding further regulations on the determination of statelessness in evident cases (*Besluit evidente staatloosheid*) (*Stb.* 2023, 251). <https://zoek.officielebekendmakingen.nl/stb-2023-251.html>. This refers to cases where the statelessness of the person involved has already been determined by a foreign judge.

¹³ This concerns an expansion in relation to article 6, section 1, introduction and under b, RWN, which only applies to stateless children born in the Netherlands and in possession of a residence permit.

¹⁴ Article 6, section 1, introduction and under q, RWN. This is discussed further in chapter 2.

¹⁵ Assistant professor Constitutional Law at the University of Utrecht and affiliated with the Montaigne Centre for the Rule of Law and Justice.

Research questions

1. What are the goals of the Statelessness Determination Procedure Act as envisioned by the legislator?
 - a. Who are the intended target groups of the law, according to the legislator?
2. What is the intended course of the statelessness determination procedure?
 - a. What are the stages of the process?
 - b. Which parties are involved in each stage of the process?
 - c. Through what active mechanisms is the realisation of the goals of the law being pursued?
 - d. What contextual factors are important with regard to the extent to which the goals of the law can be achieved?
3. What indicators are important to evaluate the goals and functioning of the Statelessness Determination Procedure Act?
 - a. What is the nature (qualitative or quantitative) of these indicators?
 - b. To what extent is repeated measurement of the indicators feasible?
4. What data are needed to understand these indicators?
 - a. What data are already currently being collected and by whom?
 - b. What data are currently missing but could be collected? Which party or parties could/should collect it?
 - c. What missing data cannot be collected? Why not? Are there alternatives for this?
 - d. What methods and techniques are appropriate for data-based indicator mapping?
5. What is currently needed to ensure data availability at the time of the evaluation?
 - a. What focal points for the evaluation of the act can be formulated for researchers, the ministry and stakeholders?

Methodology

The study consisted of three phases:

1. Establishing the theory of change: document study and first phase interviews

In order to achieve an evaluation framework, a theory of change was drawn up in order to gain more insight into the intended functioning of the Statelessness Determination Procedure Act. A theory of change is 'the story' put together by policymakers that states how and with which target group and under which circumstances the policy is supposed to work. What is important here is to identify the mechanisms that produce the intended effect and the context within which these effects do or do not occur. A document study was conducted to establish the theory of change. This was supplemented by two group interviews with four policy officers of the Ministry of Justice and Security and two policy officers of the IND.

2. Sharpening indicators: second phase interviews

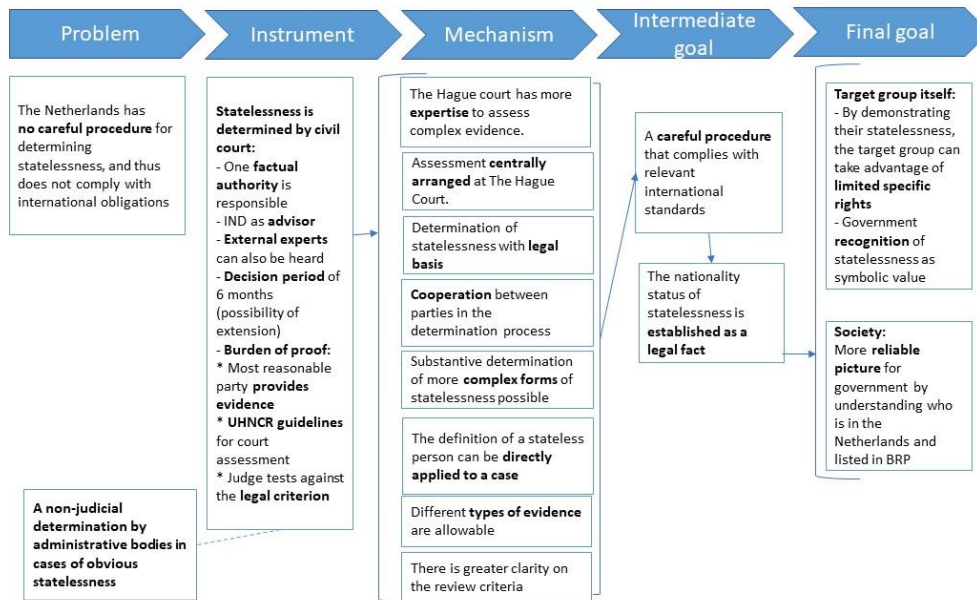
Based on the theory of change, an initial outline for evaluation questions and associated indicators was drawn up, which were then supplemented based on interviews in the second phase of the study. Among others, we spoke with the IND, The Hague District Court, a nationality lawyer and several civil society organisations (see Appendix 2 for a list of respondents).

3. Inventory of required data: third phase interviews

In this last phase, interviews were held to examine which data are needed to map the indicators and to determine the possibilities and impossibilities. In total six interviews were held with the District Court of The Hague, a lawyer, the IND, a municipality and social organisations (see Appendix 2 for an overview of the respondents).

Ultimately, the input from the three phases was brought together in an evaluation framework, see annex 3 of the report.

Theory of change



Goals

As part of this study, the goals of the law were identified. The ultimate goal of the Act is to be able to establish statelessness in case one does not have documents to prove it, so that stateless people can take advantage of the specific rights that exist for them and thus receive the protection to which they are entitled under the treaties.¹⁶ In addition, the Act may provide the government with a more reliable picture of who is listed in the BRP.

The Act's target group requires further exploration. The Act applies to all stateless persons in the Netherlands. This makes the procedure accessible to both stateless persons with and without a residence permit. This research shows the expectation that mainly stateless persons with a residence permit will use the procedure, due to the fact that there is no right of residence attached to the determination.

Instruments

The new Act provides two ways to determine statelessness, unlike previous procedures:

1. Statelessness can be determined by the civil court: the District Court of The Hague.
2. Within the framework of the new Act there is also a possibility for a non-judicial determination by administrative bodies in case of evident statelessness. This is further elaborated in the Decree on evident statelessness.

Active elements: mechanisms that ensure effectivity

To properly identify how the instruments contribute to achieving the goals, the Act's active mechanisms were identified. A distinction was made between mechanisms related to the procedure itself and to substantive determination.

Procedure

Procedurally effective mechanisms should ensure that a clear procedure is carried out in which a judicial review is conducted to finally arrive at the substantive determination. This relates, for example, to the fact that the Hague District Court, as the competent authority, has more **expertise** than, for instance, a municipal official to assess complex evidence. Also, by appointing one judge responsible for determining

¹⁶ Convention relating to the status of stateless persons (Verdrag betreffende de status van staatlozen) of 1954 (1954 Convention) and the Convention on the reduction of statelessness of 1961 (Verdrag tot beperking der staatloosheid) (1961 Convention).

statelessness, **the assessment is centrally regulated** and there are likely to be fewer discrepancies in assessment.

Substantive determination

Effective elements focused on substantive determination ensure that it is possible to have enough evidence to establish statelessness through the civil procedure. Also, the **determination of more complex forms** of statelessness is now possible, and different **types of evidence** are admissible. In addition, there is **greater clarity on the test criteria** for establishing statelessness. These active mechanisms should lead to a careful procedure that meets relevant international standards, with one permanent body responsible for determining statelessness. Ultimately, this should lead to achieving the Act's goals.

Context and coherence other procedures

Given the expected effect and nature of the Statelessness Determination Procedures Act, it cannot be (completely) separated from four other procedures. First, it is expected that many stateless persons without a residence permit are looking for a residence status, possibly through **the asylum procedure**. An application for determination of statelessness can only be submitted after the decision on an asylum application has become irrevocable (so the order is: first asylum, then statelessness procedure). It is expected that aliens will prefer the asylum status, because this status possibly results in a right of residence, and the determination of statelessness is not linked to a right of residence. Second, it is expected that in some cases the **no-fault procedure** will be used as a result of determination. Because stateless persons may not be able to return to a country of previous residence as easily as persons with a nationality, a consequence of increases in determinations could be that stateless persons use the no-fault procedure. Third, it is important in the context of this Act to examine the extent to which the relaxed **naturalisation** rules for recognised stateless persons are being used. Finally, persons up to 21 years of age without right of residence who were born stateless in the Kingdom of the Netherlands can use an (expanded) **option procedure**. Therefore, insight into the use of this procedure is important to identify the consequences of this Act.

Key criticism

In discussions with the various stakeholders, as well as in previous reports and publications on the Act, the Act has been criticised. The criticism mainly focuses on the expected functioning of the Act. The points of criticism were also included as indicators in the evaluation framework, in order to be able to identify during the final evaluation whether the bottlenecks actually occurred in practice.

- **No right of residence or suspensive effect departure obligation:** not linking a residence status to the determination of statelessness is one of the main criticisms of the determination procedure. There is also no protection during the procedure in the form of a temporary right of residence.
- **Possible barriers in (perceived) accessibility:** concerns are expressed about the accessibility of the procedure for certain groups. Possible thresholds that have been mentioned are:
 - unfamiliarity with the procedure;
 - distrust toward the government;
 - the costs involved in the procedure;
 - language barriers.
- **The IND is wearing two hats:** civil society organisations have the impression that the IND carries out investigations and gives advice, and at the same time represents the State that has to decide on the right of residence in related proceedings, such as the asylum and no-fault procedures.
- **Challenges in burden of proof position:** the expectation is that it will be difficult for applicants to meet the burden of proof.
- **Utility of identity badge:** stateless persons without a residence permit can obtain an identity document¹⁷ with which they can prove that their statelessness has been determined. However, this is not an

¹⁷ See section 1.3., box 'Specific rights for recognised stateless persons'.

identity document in the sense of the Compulsory Identification Act¹⁸; the expectation is that the meaning of this identity card will be limited for the target group.

- *Points of criticism regarding option right*: the option right for stateless children born in the Kingdom has been broadened: for children without a residence permit it is now possible to obtain Dutch citizenship through option. However, this is subject to a number of conditions.¹⁹ This has been widely criticised in connection with obligations arising from the Convention on the Rights of the Child²⁰ and the 1961 Convention.

The evaluation framework

First, the indicators of the evaluation framework are based on the Act's goals and mechanisms, and should provide sufficient information to indicate whether the Act's goals have been achieved. But in addition to effects that are purely focused on the operation of the Act, other effects may also occur, as outlined in the criticisms of the Act. It is therefore important for the evaluation to gain insight into these broader effects. For example, some expectations about the Act's operation (the overlap between procedures) and potential bottlenecks lead to a number of indicators. This would make it possible to evaluate in five years whether the concerns about the Act's functioning are justified.

Table S.1 Overview of evaluation themes with sample indicators, distinguishing between qualitative and quantitative indicators

Theme	Type of indicator	Examples
Target group	Quantitative	Target group characteristics; outcomes determinations
Process	Quantitative	Number of sessions; type of evidence provided
Roles and responsibilities of organisations involved	Qualitative	Experiences and cooperation involved parties with the procedure
Experiences involved	Qualitative	Accessibility procedure
Consistency with other procedures	Quantitative	Impact on other procedures

Appendix 3 contains a schematic representation of the evaluation framework that can be used for the final evaluation. This evaluation framework indicates per theme and per evaluation question which indicators are most suitable to answer the respective evaluation questions.

Required data

The study identified the possibilities of keeping track of the required data:

- Quantitative and structural indicators are mainly registered by the IND and the District Court of The Hague. For the time being, no problems are anticipated with regard to the data collected by the court. With regard to the indicators registered by the IND, it has not yet been investigated how the applications for determination of statelessness are registered by the IND. Therefore, it is still unclear to what extent the required indicators can be linked to the target group of the evaluation (applicants of the statelessness determination procedure).
- The points of attention regarding qualitative indicators lie mainly in the vulnerability and inaccessibility of the target group. It is recommended that when the evaluation research is started, the target group is approached with the help of various civil society organisations and lawyers who are in contact with stateless persons. In addition, we identify a number of practical tools from practice for engaging with the target group, such as the importance of emphasising anonymity, of a proper introduction, and of using experienced interviewers and interpreters when necessary.

¹⁸ For more information, see: Tweede Kamer der Staten-Generaal (2020). Wet vaststellingsprocedure staatloosheid: Memorie van toelichting, p.27-29. See also: Wet op de identificatieplicht, <https://wetten.overheid.nl/BWBR0006297/>

¹⁹ Article 6, section 1, introduction and under q, RWN.

²⁰ Convention on the Rights of the Child (Verdrag inzake de rechten van het kind) (*Trb.* 1990, 46). <https://wetten.overheid.nl/BWBV0002508/>

Conclusion: evaluation concerns and solution directions

Three areas emerge from this study that require attention regarding obtaining the necessary data for the evaluation five years from now.

1. This study shows that while the IND has at its disposal several necessary indicators that relate to the background characteristics of persons applying to the IND, it is currently not known how applications for determination of statelessness are registered at the IND. As a result, it is currently also not known whether all indicators related to the background characteristics of the target group of the evaluation (applicants of the statelessness determination procedure) can be provided. This also applies to other procedures initiated by this group of aliens. Prior to the evaluation, timely consultations between the IND and the Ministry of Justice and Security, responsible for this law, should be held so that the parties can find out whether the necessary data can be made available and under what conditions.
2. Currently it is almost impossible to distinguish between stateless people who become stateless through the civil procedure and those who become stateless through the non-judicial procedure. It currently appears that evident statelessness can only be registered if municipalities themselves keep track of the way in which the determination procedure has been used to recognise as stateless the people who are henceforth registered as such in the BRP. This means that while registering statelessness, the municipality should also register whether people have been determined stateless via the civil or the non-judicial procedure. This poses a challenge because of the variety of ways in which stateless people can start this non-judicial procedure. Because of this, it may be necessary for the Ministry of Justice and Security and municipalities to discuss how this information can still be registered. The proposal to adjust the registration of the BRP may be a possible solution.
3. It is important to include the perspective of the target group in the final evaluation. This topic concerns a vulnerable target group, which is often also suspicious of government agencies. Interviewing the target group therefore places special demands on approaching respondents and conducting the interviews. In this study, tools are offered to be able to recruit the target group in a timely manner, and to conduct the interviews in a sensitive manner.

Finally, the usefulness of conducting a process evaluation of the statelessness determination procedure also emerges during this study. Rather than focusing on the outcomes of the Act, a process evaluation focuses on the course of the procedure and can identify important gaps in implementation. In addition, a process evaluation provides the opportunity to revise the evaluation framework when it appears that certain indicators cannot be mapped out. This mid-term evaluation could be conducted internally by the legislator.



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