

# Child's Right to Identity in Netherlands

## Factsheet submitted to the UN Committee on the Rights of the Child

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### 1 Creation of identity

• Birth registration rate amounts to 100%<sup>1</sup> and is regulated by the Municipal Population Affairs Office. If the parents are unmarried, the father may choose to recognize the child. Some key following documents are not required, only recommended (valid proof of identification for the mother; a medical certificate from a doctor or midwife showing the date, time of birth, and the mother's name).<sup>2</sup> In the context of intercountry adoption (ICA), "it seems that (...) there is no legal obligation to show documents at the Municipal Population Affairs Office to prove that a newborn is the parent's child. Only proof of identity of the parent is required; a birth certificate is not mandatory."<sup>3 4</sup> This can lead to fraudulent registration of birth as well as situations where not all the elements regarding family relations are included.

• The main weakness of the current birth registration system concerns children who are born stateless, as identified by the National Human Rights Institute and civil society actors. These children cannot be registered and remain undocumented due to a lack of an official identity. This situation puts their education at stake and health insurance is not in place.<sup>5</sup> In December 2020, the parliament filed legislative proposals regarding the recording procedure for statelessness. In one of these proposals, the [Dutch Nationality Act](#) is amended so that children without legal residence can opt for Dutch citizenship if they have been in The Netherlands stateless since they were born. However, this is only possible after ten years, instead of three years for children who are stateless with a legal residence and on the condition that they have a "stable primary residence".<sup>6</sup> A recent case *Denny Zhao vs The Netherlands* concerned access to justice and remedy for Denny Zhao (D.Z), one of the Netherlands' 13 000 children registered as 'unknown' children (most of whom were born in The Netherlands). Despite many efforts at the domestic level, D.Z. remained 'unknown' and thus he and his mother looked to the international treaty bodies for a solution.<sup>7</sup>

• According to experts from Leiden University, this problem also affects children born stateless in the Caribbean part of the Kingdom, e.g., in Curacao, undocumented children of Venezuelan due to the Venezuelan Embassy being closed / its procedures being financially too burdensome to request for a passport for the children. The Kingdom Act on Nationality (Rijkswet op het Nederlanderschap) regulates in art 6 a provision for statelessness but requires 3 years legal residence which is unattainable for this group of children given the fact that their access to residence rights is severely restricted.

• According to experts from Leiden University, challenges do also exist for children whose nationality remains undetermined due to the status of their parents as "foreign fighters".

• Anonymous donation of gametes is no longer authorised in The Netherlands (Dutch Human Fertilisation Act of 2004). Children have the right to know the identity of their donors once they are 16 years old. Donors who donated prior to 2004 however were asked to consent to the release of information but were still given the choice to remain anonymous. This is supervised by the *Stichting Donorgegevens Kunstmatige Bevruchting*. However, according to the report of the Government Committee on the Reassessment of Parenthood, "on the basis of current legislation, registration of the details of donors by the Foundation is only possible and compulsory if use has been made of medically ART or IVF. The Committee advises to review the system of donor registration to ensure that the details about origins can also be included without it being necessary that medical assistance has been sought".<sup>8</sup> Additionally, Dutch intending parents continue to use the donor-anonymity possible in some other countries.<sup>9</sup>

• Commercial surrogacy is prohibited, however there are Dutch intending parents who resort to surrogacy in countries where this is permitted, leading to situations where children do not always know their biological parents, nor their origins.<sup>10</sup> In The Netherlands, promoting commercial surrogacy is prohibited by law (Arts. 151b and 151c, [Criminal Code](#)). Altruistic surrogacy is permitted under certain conditions. They are not allowed to publicly announce that they are looking for a surrogate mother. Such practice raises concerns in terms of the child's right to identity and the transparency in terms of their family origins<sup>11</sup>. According to the recommendations of the national commission which has assessed the need for Dutch legislation on surrogacy, rules on surrogacy should be laid down by law. Since birth, the law must provide legal certainty about a child's parents, nationality and name, and about parental authority. This would clarify the position and responsibilities of the surrogate mother and intending parents with regards to the child.<sup>12</sup> Whilst this may be positive, it may also be a risk if it is prioritized over other safeguards. If the arrangement allows for sale, which can occur in practice even in "altruistic" arrangements, then granting of parentage to the intending parents may not be in the child's best interests.



The commission further recommended that “regulation could also safeguard that the origin story of the child can be accessed in the future (...). It should ultimately be possible for the child to ascertain whose gametes have been used in his or her conception, as well as who the surrogate mother was.”<sup>13</sup>

#### *Potential consideration(s)*

- *What does the government foresee to avoid fraud and ensure that the identity information initially recorded on the child's birth certificate is accurate and complete (i.e., system of verification)?*
- *Would it possible to have an update on the government's draft law regarding the recording procedure for statelessness and the rights to identity of undocumented children?*
- *Would it possible to have an update on the government's plans to draft a law on surrogacy which would allow to preserve child's identity by registering on his or her birth certificate the name of the surrogate mother, as well as ensure that the sale of the child including his or her identity has not occurred?*

parents is Dutch citizen; the adoption has been done in accordance with the 1993 Hague Convention on adoption and the ties with the birth family are fully broken.<sup>18</sup>

- The Ministry of Foreign Affairs will help trace the parents of unaccompanied minor asylum seekers to facilitate family reunification and assist them in forming an asylum application. However, such process faces obstacles in the practice as shown by the decisions of the ECtHR against The Netherlands in this area.<sup>19</sup> Additionally, this tracing process also applies to siblings however it must be noted that in such case an administrative fee is charged.<sup>20</sup>

#### *Potential consideration(s)*

- *What is the government planning to improve the system of collection, access and diffusion of information on the identity (including life story) of children in alternative care with due respect to their privacy (e.g., EU GDPR, so that article 15(4) is not applied contrary to the interests of the children)?*
- *Does the government envisage to better prevent parental alienation due to divorce which deprives the children of their identity in terms of family relations?*

## 2

### Modification of identity

- Challenges in the way information on children in alternative care – regulated by the [Child and Youth Act \(2015\)](#) - is collected and made accessible have been raised by the young people themselves. They explain that Youth Care employers have access to all sensitive information, while they themselves do not know who uses this information. Furthermore, they have nothing to say in the way their file is kept, and this becomes painfully clear when mistakes are made in a file which can obstruct access to employment for instance. Young people should be able to have access to their file which is not the case today.<sup>14</sup> According to experts from Leiden University, in the media there has been attention for this problem, that irregulating false assumptions in the file become truths, sometimes damaging parent/child relationships.
- According to the Dutch NGO Coalition for Children's Rights, unnecessary escalation of parental fighting in the context of a contested divorce can easily result in loss of contact between the child(ren) and one or both parent(s). Today thousands of children have lost all contact with one or both parents as a result.<sup>15</sup> “Parental alienation” deprives the children of part of their identity in terms of family relations. According to the findings presented in a recent report<sup>16</sup>, judges are not always best placed to make a balanced decision (sometimes biased towards the fathers).
- Adopted children have two birth certificates (original birth certificate and amended birth certificate) and their name can be changed by adoptive parents.<sup>17</sup>
- In ICA, The Netherlands allows automatic granting of nationality and ensures that the child obtains a form of citizenship however under certain conditions: one of the

## 3

### Falsification of identity

- According to the Country Profile under the 1993 Hague Convention, any illicit practice will be reported to the public prosecutor. In such cases, sanctions may apply consisting in monetary fines and imprisonment.<sup>21</sup> However, as mentioned in the report of Children's rights in the Netherlands, “a general prohibition on the sale of children, also for the purpose of adoption, is missing in the Criminal Code, which means that, for example, intermediaries or parents earning money from the adoption process, cannot be tackled.”<sup>22</sup>
- In February 2021, the report of the Commission “Research Intercountry Adoption” to the minister for legal protection concluded to malpractices in ICA and asked for recognition of difficulties that adoptees are facing to access their origins and the inadequate response of the government in this field. It also asked for specialized psychological support for adoptees as well as support in searching their origins by making archives accessible, DNA-searches available and searching for biological family easier. Following this report intercountry adoptions have been temporarily suspended in The Netherlands.<sup>23</sup>
- The same report pleads for learning from these lessons in other situations of family creation, such as surrogacy.

#### *Consideration(s):*

- *Following the report on illicit practices in ICA, which measures the government is planning to adopt to prevent such practices in the future?*
- *How is the government planning to face irregular practices regarding surrogacy and anonymous donation, including abroad and prevent the violation of the right to identity of the children concerned?*
- *Does the government consider including a general prohibition on the sale of children, also for the purpose of adoption and surrogacy, in the Dutch Criminal Code?*

# 4

## Preservation of identity and access to origins

- According to the Country Profile under the 1993 Hague Convention, The Netherlands State's accredited body is responsible for preserving the information concerning the child's origins. Such archives are held for at least 30 years, in practice the accredited bodies archive the files for a longer period.<sup>24</sup>
- The preservation of information on donors is ensured through the central government register for information and a separate DNA databank/support system (currently run by FIOM/ISS). The two systems are linked and work together to achieve information release and support for all people that make an inquiry. Support is provided to donors and donors conceived during the process of access to information.<sup>25</sup> Challenges remain for the donations that occurred previous to the 2004 Law.

### *Potential consideration(s)*

- *Is the government planning to set up a system of public records for adoption files currently only under the hands of private bodies raising risks of loss or of other kind?*
- *Is the government planning to extend the period of preservation of the adoption files indefinitely?*

# 5

## Restoration of identity

- Based on the 2019 report and recommendations of the Commission De Winter which investigated violence in youth care after 1945, health minister Hugo de Jonge apologised in 2020 to the victims announcing financial compensation for the victims. The report highlights several situations of severe abuse including children taken away from their parents because they were 'antisocial'.<sup>26</sup> The report however did not investigate whether there are instances of violence potentially currently present in Dutch youth care (see IDFA documentary Jason<sup>27</sup> in which a boy recounts of his mental suffering in care institution).
- Regarding illicit practices in the field of ICA, on 24 November 2021, the District Court of The Hague substantially awarded the claim of the illegally adopted Patrick Noordoven against the State of The Netherlands and ruled that the State is responsible for the damage<sup>28</sup>. State ordered for the first time to pay damages to illegally adopted person<sup>29</sup>. This judgement is an important step forward in the recognition of State's responsibility in illegal adoptions and reparation of the damages suffered by adoptees, including the falsification of their identity. As part of the remedies, the State should also establish mechanisms to restore as far as possible the identity of the victims providing them with the adequate support them in the search for their origins.
- The DNA database set up by FIOM is focused on relevant persons dating back to before 2004, when anonymous donations were allowed.<sup>30</sup>

### *Potential consideration(s)*

- *Is the government planning to investigate the situation of children in care and prevent any potential abuse affecting the identity of the child?*
- *Which remedies the government is planning to develop to restore the identity of the adoptee's victims of illicit practices in terms of access to their origins and other forms of support?*



- <sup>1</sup> UNICEF Statistics, [https://www.unicef.org/french/infobycountry/switzerland\\_statistics.html](https://www.unicef.org/french/infobycountry/switzerland_statistics.html)
- <sup>2</sup> City of Amsterdam, <https://www.amsterdam.nl/en/civil-affairs/registration-birth/>
- <sup>3</sup> See Child Identity Protection, <https://www.child-identity.org/en/news/external-news/298-october-2021-netherlands-preventing-illegal-adoptions-through-stricter-civil-registry-cooperation-and-communication-3.html>
- <sup>4</sup> *Supra* 2
- <sup>5</sup> Antillean Federation for Youth Care (2021). 4th NGO report on the implementation of the CRC in curaçao -kingdom of the Netherlands, [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT\\_CRC\\_NGO\\_NLD\\_44998\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT_CRC_NGO_NLD_44998_E.pdf)
- <sup>6</sup> National law on the determination procedure for statelessness, [www.internetconsultatie.nl/staatloosheid/details](http://www.internetconsultatie.nl/staatloosheid/details)
- <sup>7</sup> UN Human Rights Committee: Denny Zhao v. The Netherlands, Case Note 2021/8, <https://childrensrightsobservatory.nl/case-notes/casenote2021-8>
- <sup>8</sup> Government Committee on the Reassessment of Parenthood. *Child and parents in the 21st Century*, <https://www.government.nl/documents/reports/2016/12/07/child-and-parent-in-the-21ste-century>
- <sup>9</sup> Kinderrechten Collectief, Children's Rights in the Netherlands, [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT\\_CRC\\_NGO\\_NLD\\_44999\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT_CRC_NGO_NLD_44999_E.pdf)
- <sup>10</sup> *Ibid*
- <sup>11</sup> Government of Netherlands, <https://www.government.nl/topics/surrogate-mothers/surrogacy-legal-aspects>
- <sup>12</sup> Government of Netherlands, <https://www.government.nl/topics/surrogate-mothers/national-commission-on-parenthood>
- <sup>13</sup> *Supra* 10
- <sup>14</sup> Dutch National Youth Council, There to talk -Dare to listen, [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT\\_CRC\\_NGO\\_NLD\\_35898\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT_CRC_NGO_NLD_35898_E.pdf)
- <sup>15</sup> Partnership of Dutch Organizations of Parents with Youth Care. Children's Rights in The Netherlands, [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT\\_CRC\\_NGO\\_NLD\\_35901\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT_CRC_NGO_NLD_35901_E.pdf)
- <sup>16</sup> Bijlage 1 - Adviesrapport-Expertteam Ouderverstoting-Complexe omgangsproblematiek (January 2021), <https://www.rijksoverheid.nl/documenten/rapporten/2021/02/04/bijlage-1-adviesrapport-expertteam-ouderverstoting-complexe-omgangsproblematiek-januari-2021>
- <sup>17</sup> Considering adoption. <https://consideringadoption.com/pregnant/open-adoption/name-baby-given-up-for-adoption/>
- <sup>18</sup> Immigration and Naturalisation Service, <https://ind.nl/en/family/Pages/Adopted-or-related-foster-child.aspx>
- <sup>19</sup> Council of Europe (2020). *Family reunification for refugee and migrant children*, <https://rm.coe.int/family-reunification-for-refugee-and-migrant-children-standards-and-pr/16809e8320>
- <sup>20</sup> *Idem*
- <sup>21</sup> Hague Country Profile (2020), <https://assets.hcch.net/docs/Oaf24c61-6f32-44ef-961a-da7166bc6e90.pdf>
- <sup>22</sup> *Supra* 8
- <sup>23</sup> Adoptievoorzieningen, <https://adoptie.nl/english/>
- <sup>24</sup> *Supra* 18
- <sup>25</sup> Health Law Central, <https://www.healthlawcentral.com/donorconception/international-laws-access-donor-information/>
- <sup>26</sup> *Supra* 13; DutchNews.nl (2020, February 21), *Abused children in post WWII care will now get compensation: NOS*, <https://www.dutchnews.nl/news/2020/02/abused-children-in-post-wwii-care-will-now-get-compensation-nos/>
- <sup>27</sup> See <https://businessdoceurope.com/idfa-interview-jason-by-maasja-ooms/>
- <sup>28</sup> Judgment of The Hague District Court, 24 November 2021, <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:12780>
- <sup>29</sup> Prakken d'Olivera Human Rights Lawyers (2021), *State ordered for the first time to pay damages to illegally adopted person*, <https://www.prakkendoliveira.nl/en/news/news-2021/state-ordered-for-the-first-time-to-pay-damages-to-illegally-adopted-person>.
- <sup>30</sup> FIOM, <https://fiom.nl/>

