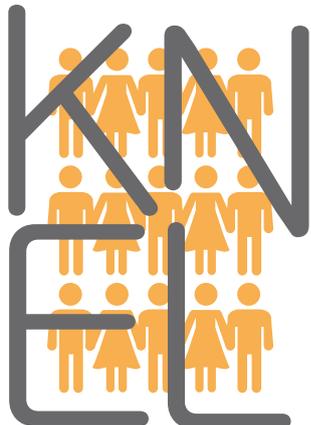


# NIEUWS BRIEF

## vluchtelingen IN DE KNEEL



## Stateless people: people who do not exist

**As a foundation, we work together with undocumented refugees on their sustainable future perspective. One of the most difficult situations we face is the position of stateless refugees. No country recognizes them as citizens. Lack of documentation sometimes undermines the credibility that the IND attaches to the asylum claim of refugees, due to which many stateless refugees get a negative response to their asylum application.**

Dutch government agencies assume that everyone can return back to the land they came from, if they wish. A refugee who does not receive a residence permit is expected to leave the Netherlands. If the refugee who has been rejected his residence permit fails to do so, he is excluded from all provisions: He is not allowed to work, study or work as a volunteer, he can not apply for benefits or allowances, can not take out health insurance and can not rent accommodation. A rejected refugee can be arrested and placed in alien detention. It can happen that someone who can not actually return, disappears for months in immigration detention. The crime? He cannot go back where he came from and he is not allowed to stay.

The mentality seems to be: If you exclude someone for a very long period of time from getting a permit and the associated rights, the person will eventually leave. This approach assumes that rejected refugees have shared incorrect personal data and that this is why they are not accepted by the countries where they come from. This completely ignores the existence of stateless persons. They have shared the right data from the beginning but can not support this with source documents. No matter how long you make life difficult for them, they will not be able to leave. How difficult this can be, you may read in the story of our client Mounir, a stateless Rohingya from Myanmar.

Since a few years the debate about stateless persons is gaining momentum. The UN refugee organization UNHCR,

NGOs - including Vluchtelingen in de Knel- and experts are working tirelessly to highlight the Kafkaesque situation in which stateless persons find themselves.

In 2016, the Netherlands announced a determination procedure for statelessness. As the first European country, the Netherlands has chosen not to link statelessness to the right of residence by the courts. This means that even if someone is recognized as stateless, this does not mean that the person will receive a Dutch residence permit. But why do you have the status 'stateless' if no rights are attached to it? Reference is made to the extrajudicial procedure as a solution. The name of this procedure says it all: It offers a right of residence if you can prove that you can not leave the Netherlands, not because of your fault. However, no explicit value is attached to statelessness in the 'no-fault procedure' - as a result of which it does not offer a conclusive solution. Is it already confusing you? That is not strange. Later in the newsletter we give more information about statelessness and the extrajudicial procedure.

In a situation of statelessness, it is pretty difficult to realize a sustainable future perspective. In this newsletter we provide an insight into the situation of stateless persons. As a foundation we remain committed to finding a sound solution for stateless persons. ■

## Fact

Roma are the largest and most discriminated group of stateless persons in Europe. A lack of documentation is often an obstacle to register the birth of their children. Despite many attempts made by the NGOs to improve their situation, they remain in a poor position in Europe with regard to education, health, employment, housing and political participation.

## What is statelessness?

Someone who is stateless has no nationality. Some people are officially recognized as stateless, which means that their statelessness is established and as such (in some countries) they enjoy certain protection of their rights. There is also a group of people who, in theory, could acquire a nationality but who in practice are ignored by their country of origin, for example by not processing or handling document requests.

Since 1948, the right to a nationality has been recognized as a human right. This was further developed in the UN Convention on the Status of Stateless Persons (1954), the UN Convention on the Restriction of Statelessness (1961) and the European Convention on Nationality (1997). For children the right to nationality belongs to the right to identity, protected in the International Convention on the Rights of the Child. Countries are obliged to determine who is stateless on their territory, to issue a proof of identity to them, and to grant a nationality to the children who are born in their country but who are stateless or are in danger of becoming stateless - regardless of the residence status of the child or his parents.

The UNHCR estimates that there are 10 million stateless people worldwide. In the Netherlands the number is estimated at ten to twelve thousand, with around 80,000 people registered at municipalities with 'nationality unknown'.

But how is it possible that someone becomes stateless?

It's like this: Nationality can be canceled or withdrawn. Usually, statelessness is accompanied by discrimination based on ethnicity, origin, religion, gender, language and / or appearance. For example, large groups of people can become stateless if a country falls apart and different regions become independent without any rules being made on the new nationality of residents. This was the case, for example, with Yugoslavia and the Soviet Union.

Also members of nomadic communities who move in border areas between countries are often stateless. Or displaced persons who have lived in the neighboring countries for generations, with or without a residence permit, are rarely recognized as citizens by the neighboring country. This is the case, for example, with the Palestinians.

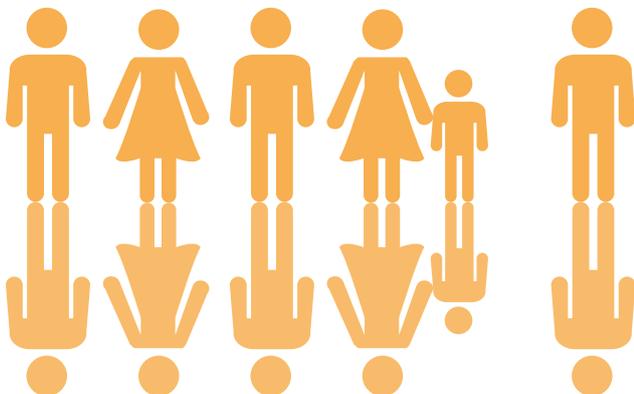
A completely different cause is the statelessness of those children who born in countries where only fathers can provide their nationality, but where the father is not known, or is deceased or does not recognize the child (there are still 25 such countries in 2018!) . Bureaucratic



barriers and practical circumstances can also lead to statelessness.

Statelessness has a big impact. Stateless persons are discriminated against and can not exercise their civil rights. They are not allowed to go to school or to the doctor, can not marry and recognize their children and are not allowed to buy or rent a house.

In the Netherlands, the nationality of someone is registered in the Basic Registration Persons (BRP) register. Stateless persons must comply with a strict set of evidence and substantiate their statelessness with documents. That is why very often in the BRP register "nationality unknown" is written down, also where stateless people are concerned. As mentioned earlier, there is unfortunately no uniform way to establish and register a person's nationality or statelessness. ■



### Good News

Three fathers have received a Chavez permit to stay with their Dutch children.

### Fact

Urdu-speaking Islamic Biharis in Bangladesh only got the opportunity to obtain the Bengali nationality after a judgment of the highest court in 2008, after years of being denied after the independence from Pakistan in 1971.

### Fact

Registration to Syrian Kurds was refused during the large population screening in 1962.

### Fact

Dominicans who originated in Haiti, but who have lived and worked in the Dominican Republic for generations, suddenly became stateless when their Dominican nationality was taken away as a result of the ruling of the Dominican Supreme Court in 2013.



# The stateless Rohingya Mounir

Mounir is a stateless Rohingya, born in 1991 in Myanmar. The Rohingya is an ethnic group that mainly lives in Myanmar, where they are debarred from state citizenship. The government of Myanmar sees Rohingya as unwanted foreigners. The Rohingya became stateless after the introduction of a nationality law in 1982. Since the 1990s there has been a large group of Rohingya refugees in Bangladesh, but even there it is impossible for them to obtain the Bangladeshi nationality. This makes the Rohingya one of the most persecuted minorities in the world.

Mounir has never been in possession of an identity document. His birth was not registered, as with many in Myanmar: There were more than 1.6 million unregistered children in 2014. Mounir's father died before his birth. When Mounir was one year old, his mother fled to Bangladesh with him. There they lived together with about 300,000 undocumented Rohingya refugees in the refugee camps and slums of Dhaka.

In an attempt to prevent being discriminated against and to have access to basic services, Mounir's mother - to hide their Rohingya background - started using a different surname. Mounir did not have any education, except for a number of lessons in a street school. He went to work on the streets at the age of ten. In 2009 his mother also died.

Mounir has no source documents. In 2012 he applied for asylum in the Netherlands. Despite the fact that he speaks the language and can draw the slums of Dhaka in detail, the IND doubted his Rohingya lineage. His application was rejected. Since the rejection, Mounir has been hard at work trying to prove his nationality so as to be able to return. He is still young and sees no future in the Netherlands without access to education and work.

In the past five years we have supported Mounir with shelter and have provided him guidance to return. He has sent innumerable letters to the authorities of

Myanmar and Bangladesh (embassies, Ministry of Population, Ministry of Foreign Affairs, consulates). All his attempts have ended without any official or written rejection. He personally went to the representatives several times, with and without the help of the Repatriation and Departure Service (DT&V). For example, Mounir was presented by the DT&V to the authorities of Myanmar, where, despite having an appointment and guidance from DT&V, he was sent away by the embassy staff.

In 2013 Mounir asked DT&V for mediation in returning to the country where he had stayed since the first year of his life: Bangladesh. In 2014 he was presented in vain at the Embassy of Bangladesh. The embassy of Bangladesh later even asked him to stop contacting them. Vluchtelingen in de Knel have had field research done to search for evidence of Mounir's existence in Dhaka. That is nowhere to be found. The details of his statements have, however, been confirmed: For example, the descriptions and drawings of the slums and his living conditions. Eventually, the DT&V closed its file because they could not help him with voluntary return to his land nor with forceful expelling.

Mounir's steps towards return, however, were not limited to embassies in Europe, but he also contacted UNHCR, Cordaid, the International Red Cross, Amnesty International, the Statelessness Institute Netherlands, schools and organizations in the slums, the municipality of Mounir's birth, the Ministry of Population of Myanmar, the Ministry of Foreign Affairs of Bangladesh, Bangla United, Maatwerk bij Terugkeer, Bridge to Better, and many more organizations.

At the end of 2017, Mounir, in cooperation with Vluchtelingen in de Knel, submitted an application for a 'no-fault' residence permit after four years of hard work to return back to his land. Mounir has failed to obtain identifying documents all this time. Neither for himself nor the ones of his parents. Those cannot be found in the registers of the various camps in Dhaka, nor in the archives of schools or in personnel archives. Discrimination and problematic birth and nationality registration of the Rohingya make it impossible to

confirm his identity with documents.

That application was rejected by the IND twice. Mounir is now waiting for the judge's ruling. He has received no substantial 'advice' (a kind of recommendation) from the DT&V that his return is not possible. The reason for this is that DT&V can issue such advice only at the request of the IND. The IND surprisingly sees no reason to request advice from DT&V on the basis of the aforementioned story. They write: '(...) different from what you state, you have not shown that your efforts to realize your departure are sufficient. Therefore, it can not be concluded that you can not leave the Netherlands without your fault. (...) no circumstances are known that make it unreasonably hard for you to return to your country of origin to apply for an mvv [visa].'

No one explains which actions are still needed to demonstrate that Mounir is stateless. Mounir is sent from the pillar to post: The DT&V sees another 'opening' for return, the IND sees no 'special' or 'humanitarian' reasons for granting a permit. Guidance by the International Organization for Migration (IOM) was terminated and rejected because Mounir does not have source documents and can not avail that. Getting a shelter in the Freedom-limiting Location (VBL, an AZC where people stay awaiting return) was terminated in 2013 after a number of weeks; he would only receive shelter again with a birth certificate or an excerpt from the birth register. How many years, how many letters, how many conversations and how much misery does this boy have to endure until there is a way out of this situation? ■



### Good News

Multiple clients have again been granted the right to receive government care and stay in an AZC while awaiting their interview.

### Good News

One client has returned to his country of origin. He has a Dutch wife and now is preparing for the civic integration exam in the Ghanaian embassy to return to the Netherlands with an Authorization for Temporary Stay (MVV).

# What do you do if you can not leave not because of your own fault?

**Those people who can not leave the Netherlands not because of their own fault, can apply for a 'no-fault procedure' in the Netherlands. According to research, 70, 70, 60 and 30 permits were issued in the years between 2008 to 2011 respectively. According to a WOB request by a lawyer in 2017, a total of 33 permits were issued between 2014 and 2016.**

There are a number of conditions that must be met cumulatively. In practice, the 'effort obligation' condition appears to be the most important. The foreign national must do everything that can reasonably be asked of him, to realize his return independently or with the help of the Repatriation and Departure Service. This includes sharing full and accurate data with the diplomatic representatives of the country of origin to obtain travel documents.

If obtaining the documents through the embassy fails, the refugee is expected to try to obtain documents in other ways, for example by writing to his family for documents, or arranging for a birth certificate, driver's license, school diplomas, employer's statements or other local documents via someone. There must also be no sign of resistance. That is to say: There must be nothing that prevents the person from returning, such as false data, missed appointments with DT&V or withholding documents. Unfortunately, it turns out that expressing anxiety, fear or doubt about return is also counted as resistance.

The 'no-fault procedure' has no criteria on the basis of which it can be established that someone has fulfilled his best efforts and obligation to return. It is nowhere mentioned how many letters you have to send to the same address without an answer, how many months you have to wait for an appointment or answer, at how many embassies you have to try. This while the Advisory Committee on Immigration (ACVZ) already published the results of an investigation in 2013 in which they did not encounter any case where someone came to documents via third parties.

Usually the embassies do not issue a rejection letter

or appointment confirmation and do not respond to requests. This makes it impossible for stateless persons to prove in the 'no-fault procedure' that they have tried everything but that the embassy has refused to cooperate. The ACVZ writes about conditions that are "not always applied in an unambiguous and consistent manner" (ACVZ report "Where there is a will, but no way", 2013). Two recent applications also show that there is no similar opinion between the DT&V and the IND about who should apply for the advice: The officer responsible for taking decisions at the IND or the DT & V officially or at the request of the foreign national.

The 'no fault procedure' must be improved, with clear and reasonable effort and obligation criteria. The Dutch authorities must give the consequences of non-cooperating representatives much more recognition, take a more active stance and facilitate them more effectively in case of voluntary return. A reasonable deadline must be determined, after which de facto stateless persons are also protected in their rights. The extrajudicial procedure, as it is now applied, does not provide effective protection for stateless refugees. ■

## Good News

Five clients were granted postponement of departure on medical grounds and one client who was granted deferment of departure on medical grounds last year has now received a medical residence permit for one year.



### Fact

Bedouin in Kuwait are descendants of Arab nomads who lived in the area before independence in 1961. It was not until the 1980s that they were registered as 'illegal immigrants' as an ethnic minority and were deprived of all rights.

### Fact

The Karana migrated from West India and Pakistan to Madagascar in the 19th century, but were denied nationality after the independence from France in 1960. Their statelessness is hereditary by law that only grants nationality to children with at least one parent with the nationality of Madagascar.

### Fact

Recently, steps have been taken in Kenya to grant the Kenyan nationality to the Pemba (originating from the Tanzanian island of Pemba) and the Makonde (recruited by the British colonialists from Mozambique to work). However, many can not prove that they or their parents and grandparents have lived in Kenya since independence.

# What should the Netherlands do to help stateless people?

**The bill that was published by the government in 2016 states that stateless people can request in the court in The Hague to officially recognize them as stateless persons. In this way they could gain access to various forms of protection, such as obtaining a (Dutch) nationality under more flexible conditions.**

There are, however, a number of strong criticisms on the bill. For example, the definition of statelessness differs from that in the aforementioned treaties and laws. Children with a residence permit are also treated differently than children without a residence permit (or with parents who are undocumented/without papers). There is also an unilateral and strict evidence to be produced on the part of the applicants to show that they are stateless.

Even more remarkable is the choice of the Netherlands as the first EU country as not to grant residence status in the case of established statelessness. This choice implies that the government continues to expect that the stateless persons can get travel documents and be taken in by another country. While this precisely is the whole point of statelessness.

- Luke Korlaar of UNCHR Netherlands says: "UNHCR believes that residence rights must be linked to the granting of statelessness. A stateless person remains otherwise in a hopeless situation, without any rights. "The ACVZ agrees and states that stateless persons are condemned to a

marginal existence if the procedure to determine statelessness is carried out in this set-up. The mere determination of statelessness does not provide practical protection for the rights of stateless persons.

According to the current concept, a solution is to be found under the extrajudicial procedure/ 'No- fault procedure'. As we see in the situation of Mounir and what we hear from fellow NGOs accompanying other stateless refugees, statelessness is not taken into account in the extrajudicial/ 'No fault' proceedings. The current application imposes a high, strict burden to prove their statelessness as a refugee and implies that departure from the Netherlands is always possible. Vluchtelingen in de Knel argues that determination of statelessness and the acquisition of residence rights should take place within the same procedure. ■

## Good News

Three clients still received an asylum permit. This involved two men one from Iran and the other one from Afghanistan.



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