

Family Names and gender equality in International Human Rights Law: a brief look at the WIGG

1. Introduction

In 2024, the ‘Wet Introductie Gecombineerde Geslachtsnaam’ (hereafter WIGG) expanded parental choice in naming children, responding to a longstanding call of human rights bodies. However, this has not solved the initial human rights concerns. This submission describes three main shortcomings. Firstly, that the current Dutch Family Name Law is not in compliance with the obligations to promote substantive gender equality among parents. Secondly, it does not protect mother’s human right to a name, and thirdly, it violates the right to a remedy by not providing a dispute resolution mechanism. It concludes with two concrete recommendations.

2. Equality concerns in light of the CEDAW

The 2024 WIGG was presented in Parliament as a measure promoting gender equality. This framing, however, rests on a conception of equality that international human rights law has long moved beyond. The law was designed, debated, and defended through the lens of ‘*gelijke behandeling*’: the formal question of whether men and women are treated identically within the procedure. What it leaves entirely unaddressed is whether the law, taken as a whole, promotes or entrenches the structural subordination of mothers in family decision-making. That is the real issue that States must address under international human rights law.

Under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), States parties are obligated not merely to avoid differential treatment on the basis of sex, but to take active measures to eliminate the gender stereotypes and social patterns that reproduce inequality within the family. Article 5 CEDAW requires States to modify social and cultural patterns of conduct based on the idea of the inferiority or superiority of either sex. Articles 15 and 16, read together, require that women and men have identical legal capacity in matters relating to marriage and family, including the equal right to choose a family name (art 16(1)(g)) and equal parental rights irrespective of marital status (art 16(1)(d)). The CEDAW Committee has consistently held that meeting these obligations requires *substantive and transformative equality*: not procedural equal treatment, but the structural dismantling of gendered hierarchies within the family.ⁱ Laws that are formally neutral but operate within, and reproduce, a patrilineal naming tradition fall short of this standard. Naming is not a neutral practice.

Dutch statistics make the structural problem visible. Not only the majority of children born in the Netherlands born within wedlock receive the father’s surname, women in a registered partnership tend to adopt the partner’s name.ⁱⁱ Far from challenging this pattern, WIGG accommodates it. The argument that the *vangnetnorm* produces an approximately equal distributional outcome because roughly half of children are born within and half outside marriageⁱⁱⁱ obscures the point entirely. The question is not whether the rules are symmetrical on paper, but whether the law actively dismantles the deeply entrenched social norm that a child’s lineage is, by default, paternal. WIGG makes possible that, both within and outside of wedlock, the name will ultimately be decided by the father.

The *vangnetnorm* of art 1:5 BW prior to 2024 (which established that in case of disagreement among parents as to the name of a child, the father had the ultimate decision) had been flagged by the CEDAW Committee as non-compliant with the Convention since 2001. In its Concluding Observations on the Netherlands, the Committee found that the *vangnetnorm* for married parents was inconsistent with the foundational equality principle underlying CEDAW and specifically with art 16(1)(g), which guarantees the same personal rights as husband and wife, including the right to choose a family name.^{iv} It returned to this finding in subsequent monitoring rounds,^v each time noting that the legislation had not been amended. Unfortunately, the WIGG, adopted in 2024, did not remedy this. The Netherlands remains in breach of a treaty obligation it has known about for over two decades.

The CEDAW Commentary on art 16(1)(g) is unambiguous: the right to choose a family name concerns not only spouses’ own names but equally the capacity of parents to transmit their family name to their children.^{vi} That capacity, constrained by a default rule privileging paternal lineage, expresses the continued legal precedence of the father’s authority in family matters, which art 16(1)(d) requires States to eliminate. The CEDAW Committee has increasingly addressed these issues under the heading of stereotypes and discriminatory practices (art 5 CEDAW), reflecting its understanding that what is at stake is a foundational pattern of gendered authority, not a technical naming rule.

The most recent CEDAW Concluding Observations on the Netherlands (2026) reinforce the structural concern. The Committee notes with concern that the Dutch legal definition of discrimination against women does not adequately cover structural discrimination and that proactive measures to prevent it remain insufficient.^{vii} It also flags that post-separation arrangements do not reflect structural gender inequalities in earning capacity and unpaid care work.^{viii} The naming dispute context maps precisely onto this finding: 88% of claimants in WIGG litigation are mothers, acting post-separation, seeking to correct a paternal default they had no judicial avenue to challenge at the time of their child's birth. Moreover, that domestic courts have in several WIGG cases dismissed CEDAW arguments in a single sentence, without substantive engagement,^{ix} is moreover precisely the structural judicial deficit that the most recent CEDAW Concluding Observations identify: the Committee specifically recommends strengthening the capacity of judges and lawyers to apply CEDAW and to interpret national legislation in its light.^x

3. The Right to a Name under the European Court of Human Rights

The European Court of Human Rights has established that issues concerning a person's surname fall within the scope of the right to private and family life under art 8 ECHR, as a name is both a means of personal identification and a link to family.^{xi} The right extends to a parent's capacity to transmit their family name to their children. The Court has held that the tradition of requiring married women to adopt their husband's surname is no longer compatible with the Convention,^{xii} and that references to tradition, general assumptions or prevailing social attitudes are insufficient justification for a sex-based difference in treatment.^{xiii}

The margin of appreciation argument, consistently invoked by Dutch courts and government to defend the *vangnetnorm* as aligned with social tradition, is significantly narrowed where sex-based discrimination is at stake. In *León Madrid v Spain*,^{xiv} the Court found a violation of art 14 read with art 8 where a rule automatically placed the father's surname first when parents disagreed, without any possibility for a court to take account of the particular circumstances of the case. The automatic and non-derogable character of the default was what rendered it excessively stringent and discriminatory towards women. The parallel with the Dutch *vangnetnorm* is direct. In *Cusan and Fazzo v Italy*,^{xv} the Court had earlier held that the impossibility of derogating from a paternal surname rule was excessively rigid and discriminatory towards women, even where the rule was not absolute on its face.

Dutch courts have overwhelmingly dismissed ECHR-based arguments in WIGG cases by relying on *Bijleveld v Netherlands*^{xvi} without further analysis. This is legally untenable. *Bijleveld* predates *Ünal Tekeli*, *León Madrid*, and the Court's consolidation of the anti-stereotyping principle. The ECHR is a living instrument; the current state of the law under art 8 on names is documented in the ECtHR Guide on Article 8 (para 312, updated 31 August 2025).

4. The absence of conflict resolution mechanism

The last concerning aspect relates to the impossibility to remedy such violations. WIGG contains no dispute resolution mechanism (*geschillenregeling*). When parents disagree on a child's name, there is no legal route to court. The legislature explicitly designed this exclusion on the reasoning that naming decisions involve emotional rather than justiciable arguments, and that allowing judicial resolution would undermine parental responsibility.^{xvii} This reasoning is constitutionally hollow. Article 6 of the European Convention of Human Rights (ECHR) guarantees access to a court for the determination of civil rights and obligations. The right to transmit one's family name to one's child is a civil right within the scope of art 8 ECHR. The aim of the blanket exclusion is based on assumptions about the relationship between parents rather than the personal importance attached to a name, and sees children's well-being as dependending primarily on protecting the status quo. The Convention on the Rights of the Child (CRC), including the best interests of the child (art 3), the child's right to identity (art 8), and the prohibition of discrimination, provide exactly the *toetsingskader* the legislature claimed did not exist.

Moreover, the exclusion operates in a structurally gendered manner. Given that those who need judicial access are mothers wanting to add their last name to the child's, the absence of a *geschillenregeling* is not a neutral procedural choice: it disproportionately denies women access to a remedy, in violation of art 13 ECHR read with art 8.^{xviii} In *León Madrid*, the European Court explicitly took into account that the inability to derogate from the automatic rule was discriminatory towards women precisely because it foreclosed any judicial consideration of individual circumstances. This situation is once more replicated in the Dutch exclusion of judicial review.

5. Suggested changes.

International human rights law points towards two concrete legislative steps. First, the *vangnetnorm* should be replaced by a default of the combined surname in alphabetical order when parents cannot agree, removing the paternal default and beginning to dismantle the structural pattern the law currently reinforces. A proposal to this effect was tabled during the WIGG's parliamentary passage but did not obtain a majority.^{xix} Second, a *geschillenregeling* should be introduced enabling judicial resolution of naming disputes by reference to the child's best interests and the equality rights of both parents, drawing on the framework already available in art 1:253a BW for parental authority disputes.

These are the minimum required by treaty obligations the Netherlands has ratified and repeatedly failed to implement across more than two decades of CEDAW monitoring. A law that formally expands choice while structurally entrenching a paternal default, and that forecloses judicial access for those who need it most, does not meet the standard of substantive and transformative equality that CEDAW, and also the ECHR, and the CRC demand.

ⁱCEDAW Committee, General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the Convention (2010) CEDAW/C/GC/28, para 22; General Recommendation No 25 on Article 4(1) on Temporary Special Measures (2004).

ⁱⁱ<https://www.rvig.nl/cijfers-naamskeuze>.

ⁱⁱⁱKamerstukken II 2021/22, 35990, nr 3, p 9.

^{iv}CEDAW Committee, Concluding Observations on the Netherlands, A/56/38 (2001) paras 223-224.

^vCEDAW Committee, Concluding Observations on the Netherlands, CEDAW/C/NLD/CO/4 (2007) paras 33-34; CEDAW/C/NLD/CO/5 (2010) para 10.

^{vi}Ruth Halperin-Kaddari and Marsha A Freeman, 'Article 16' in Patricia Schulz and others (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol: A Commentary* (2nd edn, OUP 2022) 607-610.

^{vii}CEDAW Committee, Concluding Observations on the Netherlands, CEDAW/C/NLD/CO/7 (2026) para 10.

^{viii}CEDAW/C/NLD/CO/7 (n 6) para 52(c).

^{ix}See eg Rechtbank Den Haag, ECLI:NL:RBDHA:2025:7978; Rechtbank Gelderland, ECLI:NL:RBGEL:2025:5685.

^xCEDAW/C/NLD/CO/7 (n 6) para 9.

^{xi}ECtHR, Guide on Article 8 of the Convention (updated 31 August 2025) para 310; *Burghartz v Switzerland* App no 16213/90 (ECtHR, 22 February 1994) para 24.

^{xii}*Ünal Tekeli v Turkey* App no 29865/96 (ECtHR, 16 November 2004) paras 67-68.

^{xiii}ECtHR Guide on Article 8 (n 8) para 62; *Konstantin Markin v Russia* App no 30078/06 (ECtHR GC, 22 March 2012) para 127.

^{xiv}*León Madrid v Spain* App no 30306/13 (ECtHR, 26 October 2021).

^{xv}*Cusan and Fazzo v Italy* App no 77/07 (ECtHR, 7 January 2014).

^{xvi}*Bijleveld v Netherlands* App no 42973/98 (ECtHR, 27 April 2000).

^{xvii}Handelingen II 2021/22, nr 105, item 3, p 14.

^{xviii}In addition to CEDAW's access to justice obligations as elaborated in General Recommendation No 33 (2015).

^{xix}Kamerstukken II 2021/22, 35990, nr 10, p 2; Handelingen II 2021/22, nr 107, item 12.