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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. Communication No. 2918/2016*,**,***

Communication submitted by:	Denny Zhao (represented by counsel, Mr. James A. Goldston of the Open Society Justice Initiative, and by his mother)
Alleged victim:	The author
State Party:	The Netherlands
Date of communication:	23 November 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 28 December 2016 (not issued in document form)
Date of adoption of views:	19 October 2020
Subject matter:	Right to acquire nationality
Procedural issues:	None
Substantive issues:	Right of a child to acquire nationality; right to an effective remedy;
Articles of the Covenant:	2 (2); 2 (3); and 24
Articles of the Optional Protocol:	3

1. The author of the communication is Mr. Denny Zhao, born on 18 February 2010 without a recognized nationality. He alleges that, by having his nationality registered as "unknown" by the State party authorities since his birth, and by leaving him with no prospect of acquiring a nationality, the State party has violated his rights under article 24, read alone

* Adopted by the Committee at its 130th session (12 October – 6 November 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Duncan Laki, Muhumuza, David Moore, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

*** The text of individual opinions by Committee members Yadh Ben Achour and Hélène Tigroudja (concurring) are annexed to the present Views

and in conjunction with articles 2 (2) and 2 (3) of the Covenant. The Optional Protocol entered into force for the State party on 11 March 1979. The author is represented by counsel and by his mother.

The facts as presented by the author

2.1 The author's mother was born in China in 1989, but her birth was not registered in the civil records in that country. Such registration is performed, and civil status is established, through an individual's inclusion in a household registry. Household registration (hukou) is a prerequisite for access to public services.[1] After her brother was born a few years later, her parents abandoned her.

2.2 As the author's mother was not registered in the civil registry in China she was unable to obtain proof of Chinese citizenship. She holds no documentation proving her identity. In 2004, at age 15, she was trafficked to the Netherlands but was able to escape upon her arrival at Schiphol airport in Amsterdam. She applied for asylum on 8 August 2004 but her application was rejected on 25 August 2004. This decision was upheld on appeal. In 2006, she was forced into prostitution. She eventually managed to escape and on 20 March 2008 she reported that she was a victim of human trafficking to the Dutch police. The investigation into her forced prostitution continued for over a year, but on 28 May 2009 the investigation was closed as the police could not identify or locate her traffickers. She had initially been granted a special temporary residence permit during the police investigation, but the permit was revoked when the investigation was terminated. All applications and appeals have been denied and she is currently classified as an "illegal alien", as is the author. The author's father is not in contact with him or with his mother and has not recognized paternity.

2.3 The author was born on 18 February 2010 in Utrecht and was registered in the Dutch Municipal Personal Records Database with the annotation "unknown nationality" as his mother had provided no proof of his nationality. The author's mother made several attempts to obtain or confirm Chinese nationality for her son, including requests to the Chinese authorities to confirm whether they considered the author a Chinese national, with the aim to satisfy the requirements by Dutch legislation that a person must provide conclusive proof of nationality, or of lack of nationality, in order to change his or her status of nationality from "unknown" in the civil registry. These efforts included various contacts with entities in China. In 2010, the author's mother wrote letters to her old primary school, the Chinese Family Planning Commission and the General Office; however she received no response from these entities. With the assistance of the Dutch Refugee Council she also tried to get documents from the Chinese authorities in the Netherlands. On the 10 April 2009 and the 11 January 2010, she visited the Chinese Embassy together with the Dutch Refugee Council. Yet, no response to her requests for clarification of her status was provided. On 29 June 2010, 21 November 2011 and 18 October 2012, she visited the Chinese Embassy together with staff members of the Red Cross. During her last visit to the embassy, on 18 October 2012, she also requested a statement about the author's nationality. The Chinese Embassy informed her it would only be possible to issue proof of Chinese nationality for the author if she herself was registered as a Chinese national, which she is not. On 19 January 2010 and 30 September 2010, the Dutch Refugee Council sought assistance from IOM; however, these efforts did not produce any material result. On the 19 January 2012, the Red Cross also tried to obtain documents through its Tracing Service. However, as the author's mother had no documentation of her own identity, the case did not meet the minimum criteria for tracing.

2.4 For this reason, and despite years of efforts, the author's mother has been unable to change the author's nationality entry in the civil registry to "stateless" so that he can enjoy the international protections afforded to stateless children, including the right to acquire the nationality of the state in which he was born, the Netherlands. It is impossible to correct the author's registration, due to the strict proof required under domestic rules applicable to the registration process, and the lack of an appropriate statelessness status determination procedure. The author notes that this is a significant problem in the State party. A 2011

[1] The author refers to Shuzhuo Li, Yexia Zhang, Marcus W. Feldman, 'Birth Registration in China: Practices, Problems and Policies', April 2009.

mapping study by the UNHCR found that there were 90,000 people described as having "unknown" nationality in the registry including 13,000 children, many of whom were born in the Netherlands.[2] As of September 2016, the total number of "unknown" nationality entries was 74,055, including 13,169 children under 10 years old.[3]

2.5 On 12 July 2012, the author's mother submitted a request to the municipality of Utrecht's civil registration department to register the author in the registry as stateless instead of "unknown nationality". On 17 September 2012, the municipality rejected the request on the ground that there was no proof that the author lacked a nationality. In the municipality's view it had to be established, with official legal or state-issued documents, that the author was stateless, i.e. that he was not a Chinese national. It therefore presumed that the author was a Chinese national based on a its reading of Chinese law.

2.6 The author's mother lodged an administrative appeal against the decision of the municipality. On 22 November 2012, the administrative appeal was rejected on the ground that there was no proof of the author's statelessness, such as official documents from Chinese authorities confirming that the author did not have Chinese citizenship. The author's mother appealed the negative decision to the district court of Midden-Nederland. The court denied the appeal in a decision dated 12 April 2013, which emphasized that at the burden of proof of lack of nationality rested on the author, with the municipality having no responsibility to investigate the matter. The author appealed this decision to the Dutch Council of State. On 21 May 2014, the Administrative Law Division of the Council of State, the highest court of appeal in the State party, ruled that the municipality was correct when it decided that the author had not adequately demonstrated that he was stateless. The Council of State concluded that neither national law nor international law contained any rules regarding procedures for establishing statelessness that the State party authorities were obliged to follow. It further found that it was not up to the authorities to conduct inquiries and determine statelessness status. The Council of State did, however, acknowledge that the lack of a status determination procedure meant that individuals entitled to protection, including children, were falling through a gap in legislation. However, the Council concluded that it was for the legislature to provide for a remedy, noting that "[a]s long as the statelessness of persons without nationality has not been determined, they cannot invoke protection based on the Statelessness Conventions and the Dutch legislation pursuant to those conventions. However, it goes beyond the law-making task of the judiciary to fill in this gap".

2.7 The author notes that without registration as stateless he cannot acquire Dutch nationality. Furthermore, even if he were to be successful in changing his registration from "unknown nationality" to stateless, he would still have no clear means of acquiring Dutch nationality, as the State party requires that children born stateless in the country hold a lawful residence permit for at least three years before they are eligible to apply for Dutch nationality.[4] He notes that this position contravenes the State party's obligations as a party to the 1961 UN Convention on the Reduction of Statelessness, under which States may only impose habitual residence requirements.[5] He notes that the State party has acknowledged that its law is not in line with the 1961 Convention.

2.8 On 26 March 2015, the author applied for recognition as a Dutch citizen to the municipality of Katwijk, arguing that he should be allowed to access a nationality despite his lack of registration as stateless and lack of a residence permit in the Netherlands. In rejecting the application, the Mayor of Katwijk acknowledged that the State party lacked a status determination procedure, without which it would be impossible for the author to establish that he is stateless. Like the Council of State, the Mayor concluded that it went "beyond [his] responsibilities as mayor to make this determination." The administrative Commission of Written Appeals upheld the Mayor's decision on 15 September 2015 stating that there is no procedure to determine statelessness, but that it is not the task of the Mayor to correct this

[2] UNHCR 'Mapping Statelessness in the Netherlands', 2011, para. 46.

[3] The author refers to the Dutch Central Bureau of Statistics (Centraal Bureau voor de Statistiek).

[4] Dutch Nationality Act, Article 6 (1) (b).

[5] 1961 Convention on the Reduction of Statelessness, Article 2(b); Katja Swider, 'Statelessness Determination in the Netherlands', Amsterdam Centre for European Law and Governance, Working Paper Series 2014-4, May 2014.

"omission in the law." The author appealed the decision to the Court of The Hague on 28 October 2015. On 3 March 2016, the Court rejected the appeal on the ground that he was not registered as stateless. The decision was upheld by the Council of State on 2 November 2016.

2.9 The author lives with his mother in a restricted freedom centre for failed asylum seekers with young children. He has nearly no contact with Dutch society and lives under a permanent threat of deportation. His mother is not eligible for any social benefits besides a small weekly allowance. The restricted freedom centres in the State party are intended to serve as temporary, sober facilities, but the author notes that at the time of his submission of the communication before the Committee, he and his mother had been living in the centre for three years. He notes that this system has been severely criticized by children's rights groups as especially damaging and traumatic for children.[6] Residents cannot leave the municipal area to which they are assigned and have strict daily reporting requirements on all days except Sundays, enforced by threat of criminal detention. Children experience constant fear, health problems, family tensions and social exclusion due to living under such restrictions in the centres.

The complaint

3.1 The author submits that the lack of a reliable opportunity for him to acquire a nationality in his childhood and the years of limbo he has already suffered on account of the State party's approach to addressing statelessness and related rules pertaining to residency rights and acquisition of nationality, violates his right to acquire a nationality under article 24 (3) of the Covenant. He notes that he has been registered as "nationality unknown" for, at the time of his submission of the communication before the Committee, over six years in the country of his birth and the only country he has ever lived in, with no prospect of acquiring a nationality, or even of formally establishing that he is stateless as a pre-requisite for such an acquisition. The author argues that in considering the general scope of article 24 (3), it is important to recognize the links between the right to acquire a nationality and an individual's enjoyment of juridical personality and respect for human dignity – and the responsibility to ensure a child's personal development in relation to these important facets of individual identity from birth.

3.2 The author further claims that the State party has not met its obligation to ensure that every child, including stateless children and children born to parents in an irregular migratory status, enjoys all the rights provided for in the Covenant, in violation of his rights under article 24 read alone, and in conjunction with article 2 (2) of the Covenant. He argues that the violation of his right to acquire a nationality is not the result of an isolated decision or specific to his case. Rather, it is the direct consequence of the State party authorities' failure to give effect to the rights enshrined in article 24 in its legislation and administrative rules governing civil registration, nationality and immigration status. The author argues that domestic legal protections against statelessness are insufficient because: (i) the State party still lacks fair and balanced processes for determining statelessness, including statelessness at birth; and (ii) the State party is not implementing other safeguards relevant to preventing and reducing childhood statelessness that would ensure that his best interests are taken into account and that all of his Covenant rights are respected on an equal footing with other children.

3.3 The author also claims that the State party has failed to provide him with an effective remedy in violation of his rights under article 24 read in conjunction with article 2 (3) of the Covenant and he argues that this failure has been acknowledged by the Dutch Council of State it its decision of 21 May 2014.

3.4 The author requests the Committee to find a violation of his rights under the aforementioned articles and to recommend that the State party: (i) Change his record in the Municipal Personal Records Database from "unknown nationality" to "stateless"; (ii) immediately grant him a regular permit of stay in the Netherlands, retroactive to his birth; (iii) establish in law a statelessness determination procedure and access to rights such as

[6] Working Group on Children in AZC, 'Onderzoek naar het welzijn en perspectief van kinderen en jongeren in gezinslocaties' (Report on Family Locations), October 2014.

residence, with structural and procedural safeguards to ensure accessibility, fairness and flexibility in its operation, especially in respect of children; and (iv) amend article 6 (1) (b) of the Nationality Act so that Dutch nationality is accessible to stateless children born in the territory, but who do not hold a permit of stay.

State party's observations on admissibility and merits

4.1 On 28 June 2017, the State party acknowledged that the author is currently unable to effectively enjoy his right as a minor to acquire a nationality.

4.2 The State party informs that two bills are being prepared that aim to provide a procedure for the determination of statelessness and an option for children born stateless in the Netherlands and who are not lawfully resident in the State party to acquire Dutch nationality, provided certain conditions are met. The State party also expresses its willingness to offer the author an amount of EUR 3,000 as compensation and to reimburse him for any costs and expenses incurred in relation to the procedures before the Committee, provided these are properly specified and reasonable.

Author's comments on the State party's observations

5.1 On 8 September 2017, the author submitted his comments on the State party's declaration. He reiterates his submission that the State party should take full responsibility for the violations he has suffered, recognize him as a Dutch national, compensate him appropriately for the harm he has suffered, and create a permanent procedure in law to recognize the statelessness of those in his position, and enable them to gain Dutch citizenship. The author argues that despite the State party's acknowledgement that his rights have been violated, the content of its response as an acceptance of responsibility falls short as: (i) there must be a clear and unequivocal acceptance both of all the violations and the State party's responsibility for those violations, rather than a vague statement indicating that an unspecified violation has taken place; (ii) the proposed individual remedy is insufficient as the State party is offering him EUR 3,000 in compensation, and nothing concretely more, with no guarantee that he will receive Dutch nationality, or even that he will be registered as stateless; and (iii) the State party's proposed general remedy provides no guarantee of non-repetition. The author argues that the Committee should therefore undertake a full examination of his complaint, especially in respect of the State party's positive obligations to provide safeguards against childhood statelessness under article 2 (2) of the Covenant, and to provide remedies for statelessness when it nevertheless occurs, as required by article 2 (3) of the Covenant.

5.2 The author submits that the following remedies are required to effectively restore his rights in conformity with the principle of the best interests of the child: (i) he should be recognized and treated as holding the status "otherwise stateless from birth" as this would entitle him to a retroactive permit of stay from the time of his birth and will permit him to apply for Dutch nationality immediately through an expedited application; (ii) removal from the restricted living facility, together with his family; (iii) adequate monetary compensation, amounting to EUR 25,000 which would appropriately reflect the scope of the harm he has suffered[7]; and (iv) general measures to resolve current and future violations of the right to nationality under the Covenant.

[7] The author notes that denial of nationality has profoundly and negatively shaped his entire childhood, sending him the message that he and his family do not belong anywhere. He has spent almost half of his childhood in statelessness, and legal and social exclusion from society, with many lost opportunities to live a normal life. He has been put in a situation of prolonged legal limbo and argues that the Committee should recommend at least EUR 13,000 in compensation for the prolonged legal limbo that he has suffered. The author further notes that his lack of nationality has caused him to be physically isolated from society, and has irreparably harmed his education and social development. He notes that State party courts have found restricted freedom facilities to be especially damaging for children and have ordered compensation of EUR 250 per month of stay in these facilities. He notes that he has lived in a restricted freedom facility for almost 48 months, at the time of the submission of his comments, which should amount to compensation of EUR 12,000.

5.3 The author argues that in order to fulfil its obligations under the Covenant, the State party should establish by law an accessible, efficient framework for determining statelessness status, which should contain the following features: (i) the best interests of the child should be taken into account as a primary consideration in all actions or decisions that concern them, particularly the implementation of safeguards for the prevention of statelessness[8]; (ii) children's access to statelessness determination and consideration of their claims should under no circumstance be conditioned upon their parents' migratory status[9]; (iii) the procedure should be accessible to anyone regardless of the lawfulness of his or her stay in the State party[10]; (iv) authorities responsible for making statelessness determination should receive training and support, including specialized training on nationality law, international human rights and statelessness[11]; (v) the procedure should adopt an approach to evidence which takes into account the challenges inherent in establishing whether someone is stateless[12]; (vi) no child should be registered as unknown or of undetermined nationality for longer than five years[13]; and (vii) special measures of protection should be granted to persons of undetermined nationality and children born in the territory should be treated as "stateless" until a nationality is determined and individuals awaiting statelessness determination should be granted an automatic permit of stay for the duration of proceedings.

State party's further submission

6. On 23 April 2018, the State party reiterated its position as outlined in its submission of 28 June 2017.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 The Committee notes the author's submission that the State party has violated its obligations under article 2 (2) of the Covenant, read in conjunction with article 24, since it failed to adopt such laws and administrative rules as may be necessary to give effect to the rights enshrined in article 24 of the Covenant. The Committee recalls its jurisprudence[14] that the provisions of article 2 (2) cannot be invoked as a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of

[8] UNHRC 'Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless' 16 December 2015, A/HRC/31/29, para 9.

[9] Ibid para. 8.

[10] UNHCR, Handbook on Protection of Stateless Persons (2014), para. 69.

[11] UNHCR Mapping Statelessness in the Netherlands, 2011, p. 60, Recommendation 3 (f); Katja Swider, Statelessness Determination in the Netherlands, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 16-18.

[12] UNHCR, Mapping Statelessness in the Netherlands, p. 59, Recommendation 3(b).

[13] UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, para. 22.

[14] See *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.

a distinct violation of the Covenant directly affecting the individual claiming to be a victim. The Committee notes, however, that the author has already alleged a violation of his rights under article 24, resulting from the interpretation and application of the existing laws of the State party, and the Committee does not consider that examination of whether the State party also violated its general obligations under article 2 (2), of the Covenant, read in conjunction with article 24, to be distinct from examination of the violation of the author's rights under article 24 of the Covenant. The Committee therefore considers that the author's claims in this regard are incompatible with article 2 of the Covenant, and inadmissible under article 3 of the Optional Protocol.

7.5 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his claims under article 24 (3), read alone and in conjunction with article 2 (3), and therefore proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

8.2 The Committee recalls that, under article 24, every child has a right to special measures of protection because of her or his status as a minor.[15] It also recalls that the principle that the child's best interests shall be a primary consideration in all decisions affecting her or him forms an integral part of every child's right to measures of protection, as required by article 24 (1).[16] The Committee recalls its General Comment No. 17 (1989) on the Rights of the Child where it noted that while the purpose of article 24 (3) of the Covenant is to prevent a child from being afforded less protection by society and the State because he or she is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory.[17] The Committee, however, further notes that "States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents".[18]

8.3 The Committee notes that in the UNHCR Guidelines No. 4 'Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness' to which the State party is a party[19], it is noted that a "contracting state must accept that a person is not a national of a particular State if the authorities of that State refuse to recognize that person as a national. A State can refuse to recognize a person as a national either by explicitly stating that he or she is not a national or by failing to respond to inquiries to confirm an individual as a national".[20] The Committee further notes that the Guidelines further advise that because of the difficulties that often arise when determining whether an individual has acquired a nationality, the burden of proof must be shared between the claimant and the authorities of the contracting state to obtain evidence and to establish the facts as to whether an individual would otherwise be stateless.[21] The Committee also notes that as to use of "undetermined nationality" as a civil status the Guidelines advise that "States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child's status of undetermined nationality. For the application of Article 1 and 4

[15] See the Committee's general comment No. 17, para. 4, and *Mónaco de Gallicchio v. Argentina* (CCPR/C/53/D/400/1990), para. 10.5.

[16] *Bakhtiyari and Bakhtiyari v. Australia* (CCPR/C/79/D/1069/2002), para. 9.7.

[17] General Comment No. 17, para. 8.

[18] Ibid.

[19] The Netherlands is a party to the 1961 Convention.

[20] UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquires a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, para. 19. See also UNHCR Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness, paras. 86-90.

[21] Ibid. para. 20.

of the 1961 Convention, it is appropriate that such a period not exceed five years. While designated as being of undetermined nationality, these children are to enjoy human rights (such as health and education) on equal terms as children who are citizens."[22]

8.4 The Committee further recalls its concluding observations on the State party's fifth periodic report in which it expressed concern over reports that draft legislation establishing a statelessness determination procedure did not grant a residence permit to a person recognized as stateless and that the stateless determination procedure envisaged in the draft legislation, including the criteria for the acquisition of Dutch citizenship by children with stateless parents, was not in line with international standards.[23] The Committee recommended that the State party should review and amend its draft legislation with a view to ensuring that a person recognized as stateless is granted a residence permit so as to fully enjoy the rights enshrined in the Covenant and to ensure that the stateless determination procedure is fully in line with international standards, is aimed at reducing statelessness and takes into account the best interests of the child in cases involving children.[24] The Committee also notes that in its fourth periodic report on the State party under the Convention on the Rights of the Child, the Committee on the Rights of the Child recommended that the State party "ensure that all stateless children born in its territory, irrespective of residency status, have access to citizenship without conditions."[25]

8.5 In the present communication the Committee notes that the author's mother has contacted Chinese authorities several times to confirm whether they consider the author a Chinese national, without success. It further notes that, after visiting the Chinese Embassy, she was informed that it would only be possible to issue proof of Chinese nationality for the author if she herself was registered as a Chinese national and her information that she was not registered as a Chinese national at birth, or at any later stage. The Committee notes that the application by the author's mother to register the author as stateless in the civil registry of the State party was rejected by the domestic authorities on the ground that she had not submitted any proof of the author's statelessness, such as official documents from Chinese authorities confirming that the author did not have Chinese citizenship. It also notes that in their decisions the domestic authorities did not outline any further steps that the author's mother could have taken to obtain official documents from Chinese authorities, concerning the author's nationality status, after her repeated attempts to obtain such documentation had proven futile. The Committee also notes that the domestic authorities made no inquiries of their own in order to attempt to confirm the author's nationality status, or lack thereof. It also notes that the Council of State, in its decision of 21 May 2014, acknowledged that the lack of a status determination procedure in the State party meant that individuals entitled to protection, including children, were falling through a gap in legislation. The Committee further notes the State party's declaration that having examined the author's complaint, it has concluded and acknowledged that the author is currently unable to effectively enjoy his right as a minor to acquire a nationality. Accordingly, the Committee concludes that the facts before it disclose a violation of the author's rights under article 24 (3) of the Covenant. The Committee also considers that the failure to provide the author with an effective remedy amounts to a violation of the author's rights under article 24 (3) read in conjunction with article 2 (3) of the Covenant.

9. The Committee, acting under article 5 (4), of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of the author's rights under article 24 (3), read alone and in conjunction with article 2 (3) of the Covenant.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide the author with adequate compensation. The State

[22] Ibid, para. 22.

[23] Concluding observations on the fifth periodic report of the Netherlands, 18 July 2019, CCPR/C/NLD/CO/5, para. 22.

[24] Ibid. para. 23.

[25] UN Committee on the Rights of the Child (CRC), Concluding observations on the fourth periodic report of the Netherlands, 8 June 2015, CRC/C/NDL/CO/4, para. 33.

party is also required to review its decision on the author's application to be registered as stateless in the civil registry of the State party, as well as its decision on the author's application to be recognized as a Dutch citizen, taking into account the Committee's findings in the present views; the State party is also requested to review the author's living circumstances and residence permit, taking into account the principle of the best interests of the child and the Committee's findings in the present views. Additionally, the State party is under the obligation to take all steps necessary to avoid similar violations in the future, including by reviewing its legislation in accordance with its obligation under article 2 (2) of the Covenant to ensure that a procedure for determining statelessness status is established, as well as reviewing its legislation on eligibility to apply for citizenship, in order to ensure that its legislation and procedures are in compliance with article 24 of the Covenant.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them broadly in the official language of the State party.

Annex 1

Individual opinion of Committee member Yadh Ben Achour (concurring).

1. Je suis pleinement d'accord avec le Comité sur la constatation de violation par l'État partie des droits que l'auteur tient du paragraphe 3 de l'article 24.

2. Cependant, j'exprime mon désaccord sur le paraphe 7.3 des constations relatif à la recevabilité. L'auteur affirme que dans la mesure où l'État partie n'a pas adopté, sur un laps de temps excessivement long, les lois et règlements administratifs nécessaires pour donner effet aux droits qu'il tient de l'article 24 du Pacte, l'État a, en conséquence, violé les obligations qui lui incombent au titre du paragraphe 2 de l'article 2, lu conjointement avec l'article 24. A cet argument, le Comité oppose sa jurisprudence traditionnelle d'après laquelle « les dispositions du paragraphe 2 de l'article 2 ne sauraient être invoquées conjointement avec d'autres dispositions du Pacte, ...sauf lorsque le manquement de l'État partie aux obligations que lui impose l'article 2 est la cause immédiate d'une violation distincte du Pacte qui affecte directement la personne qui se dit lésée ». Le Comité précise qu'il ne pense pas « que l'examen de la question de savoir si l'État partie n'a pas non plus respecté les obligations générales que lui impose le paragraphe 2 de l'article 2 du Pacte, lu conjointement avec l'article 24, serait différent de l'examen d'une violation des droits de l'auteur au titre de l'article 24 ». En conséquence, et dans le sillage de la jurisprudence Poliakov, le Comité considère que ces griefs sont irrecevables.

3. Je voudrais tout d'abord réaffirmer ici que je désapprouve les deux règles générales posées par les constatations Vasily Poliakov du 17 juillet 2014 (n°2030/2011). La première, d'après laquelle les dispositions de l'article 2 du Pacte, qui énoncent une obligation générale à l'intention des États parties, ne peuvent pas être invoquées isolément dans une communication présentée en vertu du Protocole facultatif . La deuxième, est que l'article 2 ne peut être invoqué conjointement avec d'autres articles du Pacte, à moins de prouver que le manquement de l'État partie est la cause immédiate d'une violation distincte du Pacte qui affecte directement la victime.

4. La première règle qui remonte à une jurisprudence bien antérieure à l'affaire Poliakov, puisqu'elle date des années 1990, repose sur le caractère second ou « accessoire » des dispositions de l'article 2 qui n'a pas d'effet substantiel sur les droits subjectifs qu'une personne pourrait tirer du Pacte. L'énoncé de ces droits ne commençant qu'à partir de la troisième partie du Pacte, le résultat final est que le préambule et les articles 1 à 5 ne peuvent pas être invoqués directement dans une communication présentée sur la base du Protocole facultatif, comme l'a décidé le Comité dans l'affaire Lubicon Lake . Cette interprétation soulève un immense débat. Je me contenterai d'affirmer qu'elle me semble contestable à plusieurs points de vue, notamment parce qu'elle est tout d'abord contraire aux règles d'interprétation posées par l'article 31 de la Convention de Vienne, mais, en outre, parce qu'il est difficile de comprendre pourquoi une telle obligation peut être opposable à l'Etat, en vertu du Pacte, dans les observations finales du Comité (qui pourraient parfaitement servir de titre aux particuliers pour réclamer le respect de leurs droits par l'État), et ne puisse pas l'être, en vertu du même Pacte, dans le cadre du Protocole facultatif. Ce dernier ne constitue pourtant qu'un instrument procédural de mise en application du Pacte et non point d'une partie du Pacte.

5. D'ailleurs, le Comité ne se prive pas de juger dans ce sens, comme il l'a fait dans l'affaire Rabbae (2124/2011, 14 juillet 2016). Alors que l'Etat défendeur prétendait que l'article 20 « n'est pas formulé en terme de droit opposable en justice », le Comité a estimé au contraire que cet article est bien opposable à l'Etat « par les particuliers lésés et s'inscrit dans la logique de protection qui sous-tend l'ensemble du Pacte » (Rabbae § 9.7). Or l'article 20 § 2 est de la même veine que l'article 2, puisqu'il s'agit en vérité d'un engagement de l'Etat d'interdire « par la loi » (« mesures d'ordre législatif » dans le vocabulaire de l'article 2) tout appel à la haine. Et si l'article 2 incontestablement, autant que l'article 20, fait partie de « l'ensemble du Pacte », pourquoi alors le traiter autrement que l'article 20 § 2 ? Cette méthode de tronçonnage du Pacte ne peut être accepté.

6. La deuxième règle des constatations Poliakov, même en la supposant acceptable sur le plan des principes juridiques, ce qui n'est pas le cas à mon avis, trouve précisément une parfaite application dans le présent cas. En effet, le manque de diligence du législateur hollandais qui a d'ailleurs été implicitement relevé dans les observations finales du Comité sur le cinquième rapport périodique des Pays Bas, a été la cause directe et unique de l'énorme préjudice subi par l'auteur de la communication. Ce préjudice est considérable, non seulement par sa teneur intrinsèque à l'égard des droits de l'enfant, mais également parce qu'il se trouve aggravé par son étalement sur le temps.

7. Le comportement de l'État dans le présent cas atteint le degré de gravité prévue par l'article 16 du Pacte, puisqu'il s'agit quasiment d'un déni de personnalité juridique. Malgré des années de démarches, la mère de l'auteur n'a pas réussi à faire changer en « apatride » la mention « nationalité inconnue », de façon que cet enfant né sur le sol hollandais d'une mère apatride puisse bénéficier du droit d'acquérir la nationalité. Quant à l'auteur, il affirme « qu'il a déjà passé des années dans des limbes juridiques », exilé dans sa propre société, souffrant de conditions sociales extrêmement préjudiciables, à cause de cette manière dont l'État traite l'apatridie, le séjour et l'acquisition de la nationalité.

8. Par conséquent, dans le présent cas, le manquement de l'État partie aux obligations que lui impose le paragraphe 2 de l'article 2 est la cause directe et immédiate d'une violation distincte du Pacte. Et il existe à mon avis une différence importante entre déclarer une violation de l'article 2 paragraphe 2, lu conjointement avec l'article 24 et une simple violation de l'article 24. La première attitude, en sus de la violation de l'article 24, met l'accent d'une manière plus spécifique sur la responsabilité fautive et directe de l'État pour le préjudice subi par l'auteur.

9. Pour ces raisons, le grief tiré d'une violation du paragraphe 2 de l'article 2 était, à mon avis, recevable dans la présente espèce.

Annex 2

Individual opinion of Committee member Hélène Tigroudja (concurring)

1. I fully share the conclusion reached by the majority of the Committee with regard to the violation of Article 24-3 of the Covenant by the State Party. This decision is undoubtedly an important contribution to the protection against statelessness, especially when children are concerned as in the present communication.

2. However, as rightly highlighted by my colleague Yadh Ben Achour in his concurring opinion (para. 7), I regret that the majority did not elaborate on the other breaches of the Covenant caused by the situation of the author, and more precisely on article 16 (Recognition of legal personality) and on article 7 (Humane Treatment) implicitly raised.

3. In para. 3.1 of the communication, the author claimed for a recognition of "the links between the right to acquire a nationality and an individual's enjoyment of juridical personality and respect for human dignity." Although the author has not formally based his claim on articles 7 and 16, this should have been thoroughly and carefully considered by the majority of the Committee.

4. Indeed, as recently affirmed by the African Court of Human and Peoples' Rights, "the right to nationality is a fundamental aspect of the dignity of the human person".[26] In the same vein, the Inter-American Court's jurisprudence - whose persuasive authority in this field is recognized by the UN HCR's *Guidelines on Statelessness No 5* adopted in May 2020 - affirms that nationality is an "inherent right of all human being", as well as "the basic requirement for the exercise of political rights", and a key element for the "individual's legal capacity."[27] More critically, the Inter-American Court pointed out in the *Yean and Bosico Girls* case that while persons without nationality are in a situation of extreme vulnerability, children are in an even more vulnerable situation.[28] Stateless children are placed in a "legal limbo"[29] in the sense that "[they] do not have a recognized juridical personality, because [they have] not established a juridical and political relationship with any State."[30]

5. This is exactly the situation described by M. Zhao in para. 3.1 of his communication before the Committee. Therefore, his situation of statelessness does not only constitute a violation of his right to a nationality (article 24-3 of the Covenant). It should also have been analyzed by the majority as a violation of the right to be recognized by the law as a legal person (article 16) and the right to be treated with humanity and dignity (article 7).

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[26] *Afr. Court H.P.R. Robert John Penessis v. Tanzania*. Judgment of November 28, 2019. Application No 013/2015, para. 87. See also (Commission) *Afr. Comm. H.P.R. Open Society Justice Initiative v. Ivory Coast*, decision February 18-28, 2015, petition No. 318/06.

[27] *IACrtHR. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paras. 32-33.

[28] *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 134: "This Court has stated that the cases in which the victims of human rights violations are children are particularly serious. The prevalence of the child's superior interest should be understood as the need to satisfy all the rights of the child, and this obliges the State and affects the interpretation of the other rights established in the Convention when the case refers to children. Moreover, the State must pay special attention to the needs and the rights of the alleged victims owing to their condition as girl children, who belong to a vulnerable group."

[29] *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 180. See also *Case of expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, paras. 265 and f.

[30] *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 178.