

Denny Zhao v. The Netherlands
(Communication 2918/2016)

REPORT ON IMPLEMENTATION OF THE COMMITTEE'S DECISION

United Nations Human Rights Committee

5 July 2021

I. INTRODUCTION

1. In its decision of 28 December 2020, the Committee expressed its wish to receive information concerning the measures taken by the Netherlands to give effect to the Committee's Views within 180 days (para. 11). While the Committee directed its request specifically to the State party, the author wishes to convey such information as it may assist the Committee in monitoring implementation in light of article 2 of the Covenant and its observations on remedial measures that should be taken in order to provide redress for the violations disclosed in the author's application.
2. Specifically, the Committee found that the author's rights under article 24(3) (right to a nationality), alone and in conjunction with article 2(3) (effective remedy), were violated. In view of this finding and the Netherlands' obligations to provide an effective remedy constituting full reparation for the violations of Covenant rights, the Committee specifically articulated the following relief under article 2 of the Covenant:
 - Adequate compensation to the author;
 - Review of its decision on the author's application to be registered as stateless; as well as the author's application to be recognized as a Dutch citizen, taking into account the Committee's findings and views;
 - Review of the author's living circumstances and residence permit, taking into account the best interests of the child and the Committee's findings and views; and
 - In order to prevent similar violations in the future, to review its legislation in order to ensure: (a) that a procedure for determining statelessness is established; and (b) that its legislation and procedures on eligibility for citizenship are in compliance with article 24 of the Covenant.
3. *Individual measures.* With respect to the author's immediate situation – his legal status, residence, living conditions, and adequate compensation – all of these elements remain effectively unchanged since December 2020. To the author's knowledge, the State has undertaken no affirmative steps to provide compensation or rectify the author's legal and bureaucratic circumstances. In this sense, any efforts to provide reparation have been invisible, non-existent and in either case unsatisfactory. The author still lives in the Katwijk facility described in his communication (at paras. 46-49), pursues his education against significant odds, and persists in appealing the denial of his application to acquire a stable status through the option procedure (*Kinderpardon*), discussed in his communications and further below. The author provided extensive analysis and detail concerning adequate compensation and necessary steps that would need to be taken in order to provide direct, individualized reparation in his case; the State has not acted upon it.

4. *General measures.* In terms of remedies of non-repetition, although the Netherlands' Ministry of Foreign Affairs represented in its 28 June 2017 letter to the Committee concerning this matter that the adoption of curative legislation was imminent, the relevant bills continued to stall for more than three years. More importantly, the same flaws highlighted in the author's reply (see paras. 27-30) and his communication (see paras. 80-81) persist; in some cases the current version is worse than its 2016 predecessor. Thus, while proposed legislation that would establish a statelessness status determination procedure and provide for an option for minors born stateless to acquire a nationality was finally communicated to Parliament in December 2020 (just prior to the Committee's decision), the following aspects fall short of an adequate remedy to prevent future Covenant violations:
 - *Statelessness determination procedure.* As currently envisioned in the draft law, applicants found to be stateless as a result of the procedure would not acquire a permit to stay or a legal form of documentation of their status that would protect their rights and security, threatening their access to food, shelter and employment.. No pathway to Dutch nationality is envisioned or set out in the proposed law.
 - *Right to acquire a nationality.* The draft law also maintains the requirement of "stable residence" for applicants to acquire Dutch nationality by option. For residence to be considered "stable," a child and their parents must continuously and fully cooperate with immigration authorities, including in the context of immigration proceedings. This requirement is both discriminatory and hinges the child's rights on the actions of their parent(s), contrary to the Committee's decision and multiple international children's right obligations.
5. The author stresses that, in addition to legislative measures, practical or administrative and regulatory measures will be equally important to ensure non-repetition of the violations that occurred in his case. These remedial measures are outlined in the communication and in the author's reply to the response of the Ministry of Foreign Affairs.
6. Finally, the timing of the Committee's consideration of these implementing measures is significant. While this case painfully illustrates the delays that can happen in legislative processes, it is nevertheless likely that the bill currently before Parliament – with many problematic provisions outlined here – will move to debate and ultimately adoption within the year.

III. IMPLEMENTING MEASURES

7. In order to aid the Committee in its evaluation and monitoring of the Netherlands' implementation of its findings and views, the author provides the following information concerning his own status and living situation and addressing the legislation and procedures that ultimately control his access to adequate reparation for the violations of his Covenant rights. The latter legal and policy changes would equally serve to avoid the repetition of such violations in the future for similarly situated children.
 - A. **Individual Measures**
8. In brief, the author has few material changes to report to the Committee concerning his own situation in relation to any remedial measures outlined in the decision in his case.
9. As stated above, he and his family are still required to live in the family location facility in Katwijk. In a May 2021 report, UNICEF stated that such facilities have serious adverse effects on children.¹

¹ See UNICEF-Netherlands, *Monitor: leefomstandigheden van kinderen in de asielopvang*, May 2021, at 13 ("In family locations, children and youth experience fear and tension surrounding possible detention and deportation of

The author has continued his education and will attend high school (*Middelbare* in the Dutch system; at the level of HAVO/higher preparatory education),² achieving strong placement results in spite of all of the obstacles he has faced.

10. The author has received no compensation for the Covenant violations he experienced, which continue to overshadow his young life. The State party received from the author detailed information concerning appropriate measures that have been awarded in comparable cases to provide monetary redress for violations of the right to nationality (see author's reply to the State's submission on the merits ("reply"), paras. 20-24). As the author's communication (see, e.g., paras. 103-104), and the concurring views of two Committee members,³ also stressed, these measures cover the full scope of impact suffered as a result of deprivation of nationality, including the prolonged lack of juridical personality, denial of recognition of personhood before the law and, ultimately, the denial of respect for inherent and equal human dignity.
11. To the author's knowledge, the Netherlands has not published the Committee's views or otherwise publicly disseminated the findings and conclusions of the case.
12. Instead, the author and his family, with assistance of Dutch immigration counsel, continue to pursue any legal or administrative efforts that might allow for a more secure legal status. To the author's knowledge, Dutch authorities acting in these matters have not once acknowledged the Committee's views and recommendations in this case.

B. General Measures

13. The Netherlands has taken more concrete steps to address the multiple public criticisms of its legislative and regulatory frameworks on statelessness, registration, and the right to acquire a nationality. Unfortunately, as the author's 2017 analysis warned, these steps may lead in the wrong direction, failing to provide a remedy that would prevent future violations of the rights of similarly situated children.

Background and timetable of the draft law before the Dutch Parliament

14. In 2016, the Dutch Ministry for Security and Justice compiled and published for Internet consultation a draft law to address criticisms about the operation of the option procedure for children's acquisition of Dutch nationality.⁴ The author has previously outlined the chief deficiencies in the draft bill in his reply to the Dutch response to his communication (paras. 24-30). These include the failure to provide for residency permits pending statelessness determination

themselves and friends.") and 41 ("A parent in a family location mentions the following: 'My kids are scared because she sees a lot of policemen coming to the camp. We get a lot of transfer and my kids don't have a social life because of that.'") (trans. by the author's representative), available at:

https://www.unicef.nl/files/Rapport%20Kind%20in%20azc_mei2021.pdf.

² The Dutch secondary education system has several levels, all giving access to different follow up tertiary education. There are five levels of "lower" and "middle" education (VMBO), giving access to vocational and practical tertiary education. VWO is the highest level, preparing for university. And HAVO is the second highest, giving access to applied sciences. See, e.g., "*The Structure of the Dutch School System*," available at: <https://www.iamexpat.nl/education/primary-secondary-education/dutch-school-system>.

³ See UN Human Rights Committee, Decision, *Zhao v. The Netherlands*, CCPR/C/130/D/2918/2016 (individual concurring opinions of Committee members Yadh Ben Achour and Hélène Tigroudja).

⁴ See internet consultation draft available at: <https://www.internetconsultatie.nl/staatloosheid/details>. See also ASKV Refugee Support and Institute on Statelessness and Inclusion, Joint Submission to the Committee on the Rights of the Child, 89th Pre-Sessional Working Group (7-11 June 2021): Netherlands, 1 May 2021, available at: https://www.askv.nl/wp-content/uploads/2021/05/CRC_89_pre-session_Netherlands.pdf (providing a comprehensive analysis of the bill from the perspective of the prevention of statelessness, the right to a nationality, and children's rights under the CRC and relevant international legal instruments including the Covenant).

application adjudication and as a result of a finding of statelessness as well as the requirement of a lengthy period of stable residence for eligibility to acquire Dutch nationality by option.

15. In December 2020, following more than three years without further action, a revised text was introduced to the Dutch Parliament. Subsequent political developments complicate the pathway to passage of the draft law. However, following national elections in March 2021, it has been established that the draft bill can move forward in the legislative process absent the formation of a government. At the time of writing, the draft law is pending full consideration in Parliament, including the possible introduction and debate of further amendments.
16. It is unlikely that the draft law will be debated before September, although quite possible that it may reach this stage at that point and even pass before the end of the year. Given the unsettled political environment, however, it is impossible to predict the precise timetable.

Statelessness status determination procedure

17. The Netherlands has not adopted legislative or administrative measures in line with the Committee's findings and views with respect to the lack of a statelessness determination procedure. The author therefore provides further information on the draft law presented to Parliament in December 2020 concerning statelessness determination, while noting that the draft law may not be adopted or may significantly change in the course of its consideration.
18. The draft law, if passed, would establish a statelessness determination procedure for the first time. However, contrary to authoritative guidance and a basic understanding of the vulnerability of most stateless people, the draft law forecloses any protective residency permit associated with the procedure. That is: neither the submission of an application nor the establishment of statelessness would provide for a right of residence in The Netherlands. As discussed in the author's previous submissions (see communication, paras. 80-81; reply, paras. 27-28), the ability to acquire a nationality depends on lawful residence, both today and in the draft law (see below). Accordingly, from the perspective of The Netherlands' obligations under the Covenant and many other instruments that safeguard and promote the right to a nationality and the rights of stateless persons, the draft law fails to address the most fundamental gap in the current Dutch legal framework: a pathway to legal security and a nationality for stateless people, including stateless children.
19. Importantly, the draft law also does not directly tackle the issue of registration practices that were central to the author's communication and leave thousands of children and adults with a protracted registration as "unknown" nationality. The Committee's findings and views reflect its consideration of the extensive legal implications of this registration entry under Dutch law, as well as the bureaucratic labyrinth that currently exists for those seeking to clarify or rectify their registration (paras. 2.1-5.3).
20. In its articulation of remedial measures required to bring The Netherlands into compliance with its Covenant obligations, the Committee specifically emphasized that both legislation *and procedural steps* should be taken. Relying on in-depth studies and authoritative guidance from the United Nations High Commissioner for Refugees (UNHCR), the author has previously indicated key recommendations drawn from his experience with the procedures and practices currently in place responsible for the violations of his rights. These are set out in full in paragraph 29 of his reply, and include a flexible standard and burden of proof, the delegation of nationality determinations to competent authorities receiving specialized training, enumerated and accountable time limits on "unknown" nationality registration, and temporary protection and residence permits.

Option procedure for acquisition of Dutch nationality by children born stateless in the Netherlands

21. As the Committee recognized in its consideration of the author's situation, in addition to the lack of a statelessness determination procedure, infirmities in the Dutch legal framework for acquisition of

nationality compound the article 24 violation (paras. 8.5-11). The only affirmative step taken by the State party to ameliorate the author's condition, in the form of a draft bill on statelessness and nationality by option, falls far short of compliance with The Netherlands' obligations to grant nationality to children born stateless. As currently conceived, the bill might even further harm the author and similarly situated children.

22. Just as the 2020 bill denies lawful residence for stateless persons without another form of permission to stay, it also forecloses acquisition of nationality by option for children who are unable to prove "stable residence" in The Netherlands for a period of ten years. "Stable" residence is defined in a draft Explanatory Memorandum to the bill as continuous cooperation with immigration authorities by both the child and his or her parents.⁵ It may be argued that this approach is an improvement on the current provision of the Dutch Nationality Act (DNA), which requires a three-year period of uninterrupted "admission and principal residence" for eligibility and has been interpreted to require legal residence. However, the provision would exclude many of the most vulnerable children, including the author, from eligibility on a discriminatory basis.
23. The draft law's residence requirement directly conflicts, for example, with the express recommendations made by the Committee on the Rights of the Child in its last periodic review of The Netherlands' compliance with the CRC. There, the Committee specifically calls on The Netherlands to "ensure that all stateless children born in the territory, *irrespective of residency status*, have access to citizenship without any conditions ... [and that] [t]he State party *not adopt the proposed requirement of parents' cooperation* with authorities."
24. In one important way, the 2020 draft is even more restrictive than its 2016 version. The duration of the residence period – ten years – doubles the requirement proposed in the 2016 draft. Considering how difficult it would be for the author to establish stable residence under the proposed standard, he would not benefit from the option procedure. Moreover, because of the stigmatizing linkage of "stable" residence to parents' cooperation with immigration enforcement authorities, including in deportation proceedings, the provisions are more than likely to do further harm to children in the author's situation.
25. Finally, available information concerning the operation of the existing procedure provide some insight into how little impact these restrictive provisions have on addressing the situation of stateless children in the country. The same Explanatory Memorandum accompanying the draft law states that over the past five years an average of just 15 stateless children acquired Dutch nationality under the current DNA option procedure (article 6(1)(b)). By contrast, 2019 data show that 6,303 children under age 14 were registered as "unknown nationality" and 1,440 were registered as "stateless."⁶ The provisions discussed above restrict and curtail protections to such an extreme that many of these children, as well as adults, and particularly those in the most vulnerable situations, will not benefit.

IV. CONCLUSION

26. In light of the foregoing information, the author urges the Committee to impress upon the State party the inadequacy of the measures taken to date as reparation for the violations of his Covenant rights. He further requests that the Committee make use of every available means of engaging the Dutch State concerning the worrying shortcomings of the pending legislation on statelessness and

⁵ See *Voorstel voor een Rijkswet vaststellingsprocedure staatloosheid*, Explanatory Memorandum, at p. 24, available at: <https://www.internetconsultatie.nl/staatloosheid/document/2493> (in Dutch, trans. by author's representative).

⁶ ASKV Refugee Support and Institute on Statelessness and Inclusion, Joint Submission to the Committee on the Rights of the Child, 89th Pre-Sessional Working Group (7-11 June 2021): Netherlands, 1 May 2021, available at: https://www.askv.nl/wp-content/uploads/2021/05/CRC_89_pre-session_Netherlands.pdf.

citizenship acquisition. These measures, if adopted, would not provide material relief, and are, on the contrary, likely to further stigmatize and complicate the author's legal situation and undermine his security and personal development.