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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. 2918/2016*, **, ***

Communication submitted by:	D.Z. (represented by counsel, James A. Goldston of the Open Society Justice Initiative, and by his mother)
Alleged victim:	The author
State party:	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) and (3) and 24
Article of the Optional Protocol:	3

1. The author of the communication is D.Z., born on 18 February 2010 without a recognized nationality. He claims that, by his nationality being registered by authorities of the State party as "unknown" 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 and in conjunction with article 2 (2) and (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.

* 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, Furuya Shuichi, Christof Heyns, Duncan Laki Muhumuza, David H. Moore, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

*** Individual opinions by Committee members Yadh Ben Achour (concurring) and Hélène Tigroudja (concurring) are annexed to the present Views.

Facts as submitted 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 the age of 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 to the Netherlands police that she was a victim of human trafficking. 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 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 of satisfying the requirements in the legislation of the Netherlands 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 Council for Refugees she also tried to get documents from the Chinese authorities in the Netherlands. On 10 April 2009 and 11 January 2010, she visited the Embassy of China together with representatives of the Dutch Council for Refugees. 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 Embassy of China 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 Embassy of China informed her that 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 was not. On 19 January 2010 and 30 September 2010, the Dutch Council for Refugees sought assistance from the International Organization for Migration, however these efforts did not produce any material result. On 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 mapping study by the Office of the United Nations High Commissioner for Refugees (UNHCR) found that there were 90,000 people described as having "unknown" nationality

[1] The author refers to Shuzhuo Li, Yexia Zhang and Marcus W. Feldman, "Birth registration in China: practices, problems and policies".

in the registry, including 13,000 children, many of whom had been born in the Netherlands.[2] As at September 2016, the total number of "unknown" nationality entries was 74,055, which included 13,169 children under 10 years of age.[3]

2.5 On 12 July 2012, the author's mother submitted a request to the civil registration department of the municipality of Utrecht for the author to be recorded in the registry as stateless rather than 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, that is, that he was not a Chinese national. It therefore presumed that the author was a Chinese national, based on its reading of Chinese law.

2.6 The author's mother lodged an administrative appeal against the municipality's decision. 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, in which it emphasized that 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 Council of State. On 21 May 2014, the Administrative Law Division of the Council of State, the highest appeal court in the country, 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 nor international law contained any rules regarding procedures for establishing statelessness that the State party's 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 of State concluded that it was for the legislature to provide a remedy, noting that "as 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 being registered 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 obligations of the Netherlands as a party to the 1961 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 to the municipality of Katwijk for recognition as a Dutch citizen, arguing that he should be allowed to access nationality despite his lack of registration as a stateless person and his 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 was stateless. Like the Council of State, the Mayor concluded that it went beyond his responsibilities as a mayor to make that determination. The appeals commission upheld the Mayor's decision on 15 September 2015, stating that there was no procedure to

[2] Office of the United Nations High Commissioner for Refugees (UNHCR), *Mapping Statelessness in the Netherlands*, November 2011, para. 46.

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

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

[5] 1961 Convention on the Reduction of Statelessness, art. 2 (b); and Katja Swider, "Statelessness determination in the Netherlands", Amsterdam Law School research paper No. 2014-33 (May 2014).

determine statelessness, but that it was not the task of the Mayor to correct this "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 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 submission of his communication to 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.

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, violate 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 submission of his communication to 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 prerequisite for such 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 to recognize 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 failure by the authorities of the State party to give effect to the rights enshrined in article 24 in the State party's legislation and administrative rules governing civil registration, nationality and immigration status. The author argues that domestic legal protections against statelessness are insufficient because: (a) the State party still lacks fair and balanced processes for determining statelessness, including statelessness at birth; and (b) 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 was acknowledged by the Council of State in 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: (a) change his record in the Municipal Personal Records Database from "unknown nationality" to "stateless"; (b) immediately grant him a regular permit of stay in the Netherlands, retroactive to his birth; (c)

[6] Working Group on Children in Asylum Seekers' Centres, "Onderzoek naar het welzijn en perspectief van kinderen en jongeren in gezinslocaties" (report on family locations), October 2014.

establish in law a statelessness determination procedure and access to rights such as residence, with structural and procedural safeguards to ensure accessibility, fairness and flexibility in its operation, especially in respect of children; and (d) 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 the merits

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

4.2 The State party informs the Committee that two bills are being prepared, which are aimed at providing a procedure for determining 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 €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: (a) there must be a clear and unequivocal acceptance both of all the violations and of the State party's responsibility for those violations, rather than a vague statement indicating that an unspecified violation has taken place; (b) the proposed individual remedy is insufficient as the State party is offering him €3,000 in compensation, and nothing more, with no guarantee that he will receive Dutch nationality, or even that he will be registered as stateless; and (c) 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 in order to effectively restore his rights in conformity with the principle of the best interests of the child: (a) 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; (b) removal from the restricted living facility, together with his family; (c) adequate monetary compensation, amounting to €25,000, which would appropriately reflect the scope of the harm he has suffered;[7] and (d) 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 €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 courts in the State party have found restricted freedom facilities to be especially damaging for children and have ordered compensation of €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 equate to compensation of €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: (a) 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] (b) children's access to statelessness determination and consideration of their claims should under no circumstance be conditioned upon their parents' migratory status;[9] (c) the procedure should be accessible to anyone regardless of the lawfulness of his or her stay in the State party;[10] (d) authorities responsible for making statelessness determinations should receive training and support, including specialized training on nationality law, international human rights law and statelessness;[11] (e) the procedure should adopt an approach to evidence that takes into account the challenges inherent in establishing whether someone is stateless;[12] (f) no child should be registered as being of unknown or undetermined nationality for longer than five years;[13] and (g) special measures of protection should be granted to persons of undetermined nationality, 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.

Additional submission from the State party

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.

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 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

[8] A/HRC/31/29, para. 9.

[9] Ibid., para. 8.

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

[11] UNHCR, *Mapping Statelessness in the Netherlands*, p. 60, recommendation 3 (f); and Katja Swider, "Statelessness determination in the Netherlands", pp. 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"), para. 22.

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

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 submitted to it by the parties, in accordance with 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 under article 24 (1).[16] The Committee recalls its general comment No. 17 (1989), in which it noted that while the purpose of article 24 (3) of the Covenant was to prevent a child from being afforded less protection by society and the State because he or she was stateless, this did not necessarily make it an obligation for States to give their nationality to every child born in their territory.[17] However, in the same general comment the Committee 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 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") – a Convention to which the Netherlands is a party – it is stated 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".[19] The Committee also notes that the above-mentioned 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.[20] The Committee further notes that as to the 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 articles 1 and 4 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."[21]

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

[15] Human Rights Committee, general comment No. 17 (1989), 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] See para. 8.

[18] Ibid.

[19] See para. 19. See also the 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.

[20] UNHCR Guidelines on Statelessness No. 4, para. 20.

[21] Ibid., para. 22.

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.[22] The Committee recommended that the State party review and amend its draft legislation with a view to ensuring that a person recognized as stateless was granted a residence permit so as to fully enjoy the rights enshrined in the Covenant, and to ensure that the stateless determination procedure was fully in line with international standards, was aimed at reducing statelessness and took into account the best interests of the child in cases involving children.[23] Furthermore, the Committee notes that the Committee on the Rights of the Child, in its concluding observations on the State party's fourth periodic report under the Convention 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 any conditions".[24]

8.5 Regarding the present communication, the Human Rights 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. The Committee also notes that after she visited the Embassy of China, 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. The Committee further notes 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 further 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 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 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 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 an obligation to take all steps necessary to avoid similar violations in the future,

[22] CCPR/C/NLD/CO/5, para. 22.
[23] Ibid., para. 23.
[24] CRC/C/NLD/CO/4, para. 33.

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 to have them widely disseminated in the official language of the State party.

Annex I

[*Original: French*]

Individual opinion of Committee member Yadh Ben Achour (concurring)

1. I fully agree with the Committee's finding of a violation by the State party of the author's rights under article 24 (3) of the Covenant.

2. However, I do not agree with paragraph 7.4 of the present Views, concerning admissibility. The author submits that the State party has violated its obligations under article 2 (2) of the Covenant, read in conjunction with article 24, since it has failed, for an excessively long period, to adopt such laws and administrative rules as may be necessary to give effect to the rights enshrined in article 24 of the Covenant. In response to this argument, the Committee recalls its long-standing jurisprudence that the provisions of article 2 (2) cannot be invoked 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 a distinct violation of the Covenant directly affecting the individual claiming to be a victim. The Committee states that it does not consider the 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. Consequently, and following on from its finding in *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), the Committee considers that the author's claims in this regard are inadmissible.

3. First of all, I wish to reaffirm that I disagree with the two general rules laid down by the Committee in its Views concerning *Poliakov v. Belarus*. The first rule states that the provisions of article 2 of the Covenant set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol. The second rule states that article 2 cannot be invoked in conjunction with other articles of the Covenant, unless it can be proven that the State party's failure to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the victim.

4. The first rule, which can be traced back to jurisprudence from the 1990s that long predates *Poliakov v. Belarus*, is based on the notion that the provisions of article 2 of the Covenant are of a secondary or "ancillary" nature and do not have a substantive impact on the individual rights that are enshrined in the Covenant. Since these rights are not set out until part III of the Covenant, the preamble and articles 1 to 5 cannot be directly invoked in a communication submitted under the Optional Protocol, according to the Committee's decision in *Lubicon Lake Band v. Canada* (CCPR/C/38/D/167/1984). This interpretation has been the subject of much debate. I will limit myself to saying that it seems questionable for a number of reasons, particularly because it contradicts the rules of interpretation established in article 31 of the Vienna Convention on the Law of Treaties and because it is hard to understand why such an obligation may be invoked, under the Covenant, in the Committee's concluding observations (which may of course be cited by individuals calling for the State party to respect their rights) but may not be invoked, under the same Covenant, in a communication submitted under the Optional Protocol. The Optional Protocol is, however, simply a procedural instrument for the implementation of the Covenant and it concerns the whole Covenant, not just part of it.

5. Moreover, the Committee has not refrained from taking this position in previous cases, such as *Rabbae et al. v. Netherlands* (CCPR/C/117/D/2124/2011, para. 9.7). While the respondent State claimed that article 20 of the Covenant was not cast in terms of a justiciable right, the Committee considered, on the contrary, that this article could be invoked by individuals who had been wronged and that it followed the logic of protection that underlies the entire Covenant. Article 20 (2) of the Covenant is similar to article 2 inasmuch as it concerns an undertaking by the State party to prohibit by law (to adopt laws, in article 2) any

advocacy of hatred. And if article 2, like article 20, indisputably forms part of the Covenant as a whole, why should it be treated differently from article 20? Slicing up the Covenant in this way is not acceptable.

6. As for the second rule established in the Committee's Views concerning *Poliakov v. Belarus*, supposing that it is based on sound legal principles, which in my view is not the case, the rule is perfectly applicable in precisely the present case. The lack of diligence on the part of the legislature of the Netherlands, which was also implicitly noted by the Committee in its concluding observations on the fifth periodic report of the Netherlands, was the direct and sole cause of the great harm suffered by the author. This harm is considerable, not only because of its impact on child rights but also because it has been exacerbated by the length of time involved.

7. The State party's behaviour in the present case is of such gravity as to fall within the scope of article 16 of the Covenant, for it amounts almost to denial of recognition as a person before the law. Despite years of effort, the author's mother has been unable to have his status changed from "unknown nationality" to "stateless" in order to enable him, as a child born in the Netherlands to a stateless mother, to enjoy the right to acquire a nationality. As for the author, he maintains that he has already spent years in legal limbo, isolated from society in the country of his birth, and in extremely harmful social conditions, on account of the State party's approach to statelessness, residency rights and acquisition of nationality.

8. Consequently, in the present case, the State party's failure to observe its obligations under article 2 (2) of the Covenant is the direct and proximate cause of a distinct violation of the Covenant. In my view, there is a significant difference between a claim made under article 2 (2), read in conjunction with article 24, and a claim made under article 24 alone. The first relates to the violation of article 24 but also emphasizes more specifically that the State party is directly culpable for the harm suffered by the author.

9. For these reasons, in my opinion, the claim made under article 2 (2) of the Covenant was admissible in the present case.

Annex II

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 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 (see 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) which are implicitly raised.

3. In paragraph 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 on Human and Peoples' Rights, "the right to nationality is a fundamental aspect of the dignity of the human person".[1] In the same vein, the jurisprudence of the Inter-American Court of Human Rights – whose persuasive authority in this field is recognized in the UNHCR Guidelines on Statelessness No. 5 adopted in May 2020 – affirms that nationality is "an inherent right of all human beings", as well as "the basic requirement for the exercise of political rights" and a key element for "the individual's legal capacity".[2] More critically, the Inter-American Court of Human Rights 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.[3] Stateless children are placed in a "legal limbo"[4] 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".[5]

[1] African Court on Human and Peoples' Rights, *Penessis v. United Republic of Tanzania*, application No. 013/2015, judgment of 28 November 2019, para. 87. See also African Commission on Human and Peoples' Rights, *Open Society Justice Initiative v. Côte d'Ivoire*, petition No. 318/06, decision of 18–28 February 2015.

[2] Inter-American Court of Human Rights, *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica,* Advisory Opinion OC-4/84 of 19 January 1984. Series A, No. 4, paras. 32–33.

[3] Inter-American Court of Human Rights, *Yean and Bosico Girls v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 8 September 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."

[4] Ibid., para. 180. See also Inter-American Court of Human Rights, *Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 August 2014. Series C, No. 282, para. 265 and f.

[5] Inter-American Court of Human Rights, *Yean and Bosico Girls v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 8 September 2005. Series C, No. 130, para. 178.

5. This is exactly the situation described by the author 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 (art. 24 (3) of the Covenant). It should also have been analysed by the majority as a violation of the right to be recognized by the law as a legal person (art. 16) and the right to be treated with humanity and dignity (art. 7).