

**██████████ v. The Netherlands**

**COMMUNICATION**

**To the United Nations Human Rights Committee**

23 November 2016

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## I. THE AUTHOR

**Name:** [REDACTED]  
**First name:** [REDACTED]  
**Nationality:** Stateless  
**Date and place of birth:** [REDACTED]  
**Address:** [REDACTED]

## II. LEGAL REPRESENTATIVES OF THE AUTHOR

1. This claim is submitted by the Open Society Justice Initiative and Mr. [REDACTED], who are appointed as legal representatives of [REDACTED] who is legally represented by his mother, [REDACTED]. The address for exchange of correspondence:

[REDACTED]

## III. STATE PARTY

2. This Communication is submitted against the Netherlands, which acceded to the International Covenant on Civil and Political Rights and the Optional Protocol on 11 December 1978.

## IV. SUMMARY OF CLAIM

3. This case calls attention to a significant gap in the implementation of international legal protections that guarantee the right of every child to a nationality, including Article 24(3) of the Covenant. Although his case is complicated, the problem is simple: six-year old [REDACTED] cannot acquire a nationality and the Netherlands denies that its international commitments to protect children and reduce statelessness mean that it is responsible to find a solution in [REDACTED] case.
4. [REDACTED] was born in the Netherlands and has never left, yet he is an illegal alien registered with an “unknown” nationality. Legally, the Netherlands has abandoned [REDACTED] and he lives in a restricted facility for failed asylum seekers with his mother with little or no contact with society. Despite years of well documented efforts, [REDACTED] mother, who was born in China but holds no documentation proving her own identity, has failed to obtain recognition of [REDACTED] as a national of China – the only country, other than the Netherlands, with which he has any connection. In spite of this evidence of his statelessness, [REDACTED] has not been able to meet the cumbersome standard of proof to be registered as stateless in the Netherlands.
5. Without registration as stateless [REDACTED] cannot acquire Dutch nationality. Furthermore, even if successful in changing his registration from “unknown” to stateless, [REDACTED] would still have no clear means of acquiring Dutch nationality, as he lacks a legal residence permit, a further requirement under Dutch law. At least one Dutch court has

permitted a registered stateless child to claim access to Dutch nationality relying directly on the 1961 Convention, Article 1, which obliges states to grant nationality to children born on their territory who would otherwise be stateless.<sup>1</sup> The decision contradicts current Dutch law, however, and thus offers no certainty that the same interpretation would apply in Denny’s case. A legislative proposal has been advanced that could, if adopted, correct this conflict, by allowing children born in the Netherlands who would otherwise be stateless to acquire Dutch nationality after a period of habitual (as opposed to legal) residence.<sup>2</sup> The potential amendment makes the recognition of [REDACTED] statelessness all the more imperative. At present, applying to change his registration to “stateless” is the first and only affirmative step [REDACTED] mother could take on his behalf in an attempt to remedy his situation.<sup>3</sup>

6. This bleak picture is in stark contrast to the promise of Article 24(3), which guarantees every child the right to acquire a nationality.

#### A. Factual Summary

7. [REDACTED] was born in the Netherlands on [REDACTED]
8. [REDACTED], was born in China in 1989, but was never registered there and is unable to obtain proof of Chinese citizenship. She claims to have been trafficked to the Netherlands from China at age 15. [REDACTED] father is not in contact with [REDACTED]. He has not recognized paternity.
9. The Dutch authorities registered [REDACTED] nationality as “unknown” at birth. In spite of years of efforts, [REDACTED] mother has been unable to change his nationality entry in the 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.
10. It is impossible to correct [REDACTED] registration, due to the strict proof required by current rules applicable in the registration process, and the lack of an appropriate statelessness status determination procedure.
11. This is a significant problem in the Netherlands. A 2011 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.<sup>4</sup> As of September 2016, the total number of “unknown” nationality entries was 74,055, including 13,169 children under 10 years old.<sup>5</sup> In 2014, the Council of Europe Human Rights Commissioner expressed concern over the 5,641 children – like [REDACTED] – who had been registered as “unknown nationality” for over five years.<sup>6</sup>

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<sup>1</sup> Zwolle-Lelystad, Case No. ECLI:NL:RBZLY:2010:BN63949, September 2010 (Awb 09/2212).

<sup>2</sup> See paras. 80-81, below.

<sup>3</sup> As discussed in more detail below (paras. 85-86), as an extraordinary measure, an application for Dutch nationality by option was lodged on Denny’s behalf, which was rejected due to the fact that he is not registered as stateless.

<sup>4</sup> UNHCR, Mapping Statelessness in the Netherlands (2011), para. 46, available at:

<http://www.refworld.org/docid/4ef65da2.html>.

<sup>5</sup> See Dutch Central Bureau of Statistics [Centraal Bureau voor de Statistiek], available at: <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=03743&LA=NL> (accessed 21 November 2016).

<sup>6</sup> Council of Europe: Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to The Netherlands from 20 to 22 May 2014*, 14 October 2014, CommDH(2014)18, at para. 138-39, available at:

<http://www.refworld.org/docid/54bd1d604.html>.

12. █████ lives with his mother in a restricted freedom center for failed asylum seekers and their young children. He has nearly no contact with Dutch society, lives in an atmosphere that is marked by the threat of deportation and surveillance, and his mother is not eligible for any social benefits besides a small weekly allowance. The eight restricted freedom centers throughout the Netherlands are intended to serve as temporary, sober facilities, designed to encourage efforts by residents to facilitate their deportation, but █████ and his family have been there for three years.
13. The Netherlands 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 (nationality “by option”).<sup>7</sup> This position contravenes the Netherlands’ obligations as a party to the 1961 UN Convention on the Reduction of Statelessness, under which States may only impose habitual residence requirements.<sup>8</sup> The Netherlands has acknowledged that its law is not in line with the 1961 Convention. Under Dutch law, █████ is classified as an illegal alien and he cannot legalize his stay in the country because he cannot sufficiently demonstrate that he is stateless since birth. Registration as stateless is a necessary step toward acquiring a nationality in █████ case, as it would at least offer a means upon which to base a claim to Dutch nationality.<sup>9</sup>

### **B. Admissibility**

14. The communication is admissible. All available and effective remedies in the Netherlands have been exhausted. The Administrative Division of the Dutch Council of State, the country’s highest administrative court, itself recognized that Dutch law denies █████ any effective remedy. The violations set out fall within the jurisdiction of the Committee and have not been submitted to any other mechanism of international investigation or settlement.

### **C. Violations of the ICCPR**

15. The treatment of Denny violates the Covenant.
  - *A. Every Child has the Right to Acquire a Nationality (Article 24(3)).* The lack of a reliable opportunity for Denny to acquire a nationality in his childhood and the years of limbo he has already suffered on account of the Netherlands’ approach to addressing statelessness and related rules pertaining to residency rights and acquisition of nationality, violates the right of every child to acquire a nationality protected by Article 24(3) ICCPR.
  - *B. There is a Positive Obligation to Introduce Safeguards against Childhood Statelessness.* In view of the special protection accorded to children under Article 24, in addition to the positive measures of protection required under Article 2(2) of the Covenant, the Netherlands is not meeting its obligation to ensure that every child – including stateless children and children born to parents in an irregular migratory status – enjoys *all* rights provided for in the Covenant. In order to do so, the Netherlands must effectively implement safeguards to end childhood statelessness.

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<sup>7</sup> See Dutch Nationality Act, Article 6(1)(b), available (in English) at: [http://eudo-citizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=NL%20Netherlands%20Nationality%20Act\\_consolidated%2025\\_11\\_13\\_ENGLISH.pdf](http://eudo-citizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=NL%20Netherlands%20Nationality%20Act_consolidated%2025_11_13_ENGLISH.pdf).

<sup>8</sup> See 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), available at: [www.aceg.uva.nl/publications](http://www.aceg.uva.nl/publications).

<sup>9</sup> Under proposed amendments to the Dutch Nationality Act, recognition of statelessness status is still a requirement in order for a child born stateless on the territory to acquire Dutch nationality.

- *C. Failure to Provide an Effective Remedy.* The Dutch Council of State pronounced itself incompetent to fill the gap in protection into which ██████, and children like him, are currently falling, meaning that there is no effective means by which ██████ can challenge the overall lack of protection he is facing in the Netherlands, in violation of Article 24 in conjunction with Article 2(3).

#### **D. Remedies**

16. In order to satisfy its obligations under the Covenant and redress the violations in ██████ case, the Committee should declare violations of Article 24, standing alone and in conjunction with Articles 2(2) and 2(3) of the International Covenant on Civil and Political Rights.
17. The Committee should furthermore recommend that the Netherlands:
  - a) Change ██████ record in the BRP from “unknown nationality” to “stateless.”
  - b) Grant ██████ immediately a regular permit of stay in the Netherlands, retroactive to his birth.
  - c) 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.
  - d) Amend Article 6(1)(b) of the Dutch Nationality Act so that Dutch nationality is accessible to stateless children – such as ██████ – born on the territory, but who do not hold a permit of stay.

### **V. FACTUAL BACKGROUND**

#### **A. Facts of the Claim**

18. ██████ is a six-year old child, born in the Netherlands on ██████ ██████. He currently resides with his mother in a freedom restricted family location for rejected asylum seekers and other non-citizens awaiting deportation.
19. ██████ has never been recognized as a national by any country. The only two countries with which ██████ has relevant links – the Netherlands and China – do not consider him to be a national. He is stateless.<sup>11</sup>

Background: ██████ mother and father

20. ██████ mother, ██████, who is now 26 years old, was born on the ██████ in the province of Guizhou, China. ██████ parents never registered her with the local authorities in China. Such registration is performed, and civil status is established, through an individual’s inclusion in a household registry.<sup>12</sup> Household

<sup>10</sup> See Exhibit 1: Extract from Dutch Municipal Personal Records Database.

<sup>11</sup> See para. 94, below. A stateless person is one who is not considered as a national by any state under the operation of its law. See 1954 Convention relating to the Status of Stateless Persons, Article 1(1).

<sup>12</sup> Civil status in China is managed through the household registration system which is administered by the police under the Ministry of Public Security. Registration is performed by local police stations. See Harro Von Senger, *Looking outwards: description of non-Western systems – China* (English trans.), at 2.

registration (*hukou*) is a prerequisite for access to public services.<sup>13</sup> When [REDACTED] brother was born a few years later, her parents abandoned her.

21. In 2004, at age 15, [REDACTED] states 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 and her application was rejected on 25 August 2004. All appeals failed. Now an illegal alien in the Netherlands with no documentation of her own identity, Ms. [REDACTED] was homeless and found shelter with other ethnic Chinese friends and acquaintances that she had met during her stay at an asylum shelter.
22. In 2006 – still homeless, undocumented, unaccompanied – [REDACTED] was forced into prostitution. She eventually managed to escape and on 20 March 2008 she reported to the Dutch police in 's-Hertogenbosch that she was a victim of human trafficking. The investigation into her forced prostitution continued for over a year, but on 28 May 2009 it was closed as the police could not identify or locate her traffickers.
23. She had initially been granted a special temporary residence permit during the police investigation into her forced prostitution, but this was revoked when the investigation was terminated. [REDACTED] petitioned for the extension of her temporary residence permit. All applications and appeals have been denied and she is currently an illegal alien under Dutch law, as is [REDACTED].<sup>14</sup>
24. [REDACTED] father has not recognized [REDACTED] as his child and holds no parental authority.<sup>15</sup> [REDACTED] registration in the Dutch municipal population registry as “unknown” nationality is a barrier to acquisition of a nationality
25. [REDACTED] in Utrecht and was registered in the Dutch Municipal Personal Records Database (Dutch acronym: BRP; formerly known as the GBA, until 2014) by the relevant municipal authorities with the annotation “unknown” nationality.<sup>16</sup>
26. The law requires that nationality status is entered into the municipal registration system.<sup>17</sup> At the time of [REDACTED], entries were governed by Article 43 of the GBA Act (which corresponds to Article 2 of the BRP, in effect since January 2014).<sup>18</sup> Since

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<sup>13</sup> Shuzhuo Li, Yexia Zhang, Marcus W. Feldman, *Birth Registration in China: Practices, Problems and Policies*, April 2009.

<sup>14</sup> See Ministry of Justice, Immigration and Naturalization Service, Decision, 22 December 2011 (with English trans.).

<sup>15</sup> See Exhibit 2: Extract from Dutch Custody Registry indicating father has no parental authority.

<sup>16</sup> See Exhibit 1: Extract from Dutch Municipal Personal Records Database; see also UNHCR, *Mapping Statelessness in the Netherlands* (2011), at para. 35, available at: <http://www.refworld.org/docid/4eef65da2.html> (“Children born to asylum-seekers living in a reception centre are registered immediately upon birth.”).

<sup>17</sup> See Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 10, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434573](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434573).

<sup>18</sup> The GBA Act was replaced by the Law on the Population Register (*Wet Basisregistratie personen*, BRP Act) of 2013. The GBA/BRP provisions apply in Denny’s case per the Dutch Administrative Procedural Law Reform Act. See Exhibit 13: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Court of Central Netherlands, Utrecht Branch, Case UTR 13/11, Judgment of the single-judge chamber of 12 April 2013 (English trans.), para. 1. The amendments of 2013 do not materially affect the Netherlands’ approach to registration of persons; the two systems of proof are for all relevant purposes identical. See ACVZ, “*Geen land te bekennen*” (No Country of One’s Own), December 2013, at 35 (“Article 1.7 of the BRP Act contains the same wording as Article 43 of the GBA Act. The system of proof employed to register foreign nationality can be found in identical wording in Article 2.15.”). Article 2.17 of the BRP Act does introduce a new form of proof that is not relevant the Denny’s

██████████ mother had no proof of his nationality, he was entered as “unknown.”<sup>19</sup> As described in the next section, she has spent years seeking to have ██████████ registration changed to “stateless.”

27. The “stateless” annotation is important because it is a condition precedent for obtaining Dutch citizenship through a facilitated procedure for stateless persons, known as citizenship “by option” or the “option” procedure. Under the Dutch Nationality Act (*Rijkswet op het Nederlanderschap*, hereafter: DNA), Article 6(1)(b), a child born stateless in the Netherlands can obtain Dutch citizenship through a facilitated procedure after three years of legal residency. The conditions are, thus:
- Birth in the Netherlands;
  - Continuous legal residency (with a residence permit) for three years; and
  - Stateless since birth.<sup>20</sup>
28. In practice, the final requirement entails registration in the GBA/BRP as “stateless.”
- Efforts to obtain proof of ██████████ nationality or lack thereof
29. ██████████ has made several attempts to obtain or confirm Chinese nationality for her son. These included attempts to obtain documentation for herself in the context of her own asylum and legal residency procedures, though she has no documents proving her origins. They also included requests to the Chinese authorities to confirm whether they do or do not consider ██████████ a Chinese national in an attempt to satisfy the requirements under Dutch legislation and implementing rules that a person must provide conclusive proof of nationality, or of lack of nationality, in order to change their status of nationality “unknown.”
30. These efforts include:
- *Various contacts and entities in China.* In 2010, ██████████ wrote letters to her old primary school, the Chinese Family Planning Commission and the General Office. No response was ever received.<sup>21</sup>
  - *Assistance from Dutch Refugee Council.* Beginning in 2009, with the assistance of the Dutch Refugee Council (*Vluchtelingenwerk Nederland*), ██████████ 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. No response to her requests for clarification of her status was provided.<sup>22</sup>

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application, which is that the registration authority may rely on findings of the Dutch immigration authority (the IND), “within the context of admission of the person concerned to the Netherlands.” *Ibid.* at 35; see also Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 16, available at:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434573](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434573) (clarifying that Article 2.17 “does not extend to the procedures of making changes to the existing registration.”).

<sup>19</sup> As discussed in more detail below, at paras. 100-103, while it may be appropriate to use an “unknown” or “undetermined” nationality designation at birth in certain limited circumstances, every effort should be made to resolve uncertainty as quickly as possible after birth.

<sup>20</sup> See DNA, Article 6(1)(b), available (in English) at: [http://eudo-citizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=NL%20Netherlands%20Nationality%20Act\\_consolidated%2025\\_11\\_13\\_ENGLISH.pdf](http://eudo-citizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=NL%20Netherlands%20Nationality%20Act_consolidated%2025_11_13_ENGLISH.pdf).

<sup>21</sup> Exhibit 3: 9 August 2010 letter in Chinese and English translation, requesting to be informed of her registration number or to be issued a registration number in order to apply for a Chinese passport.

<sup>22</sup> See Exhibit 4: Statements of Machteld Busz, coordinator of ex-AMA team Utrecht, Dutch Refugee Council, 10 April 2009 and 11 January 2010.



- *Assistance from Red Cross.* On 29 June 2010, 21 November 2011 and 18 October 2012, ██████ visited the Chinese Embassy together with staff members of the Red Cross. During the last visit, on 18 October 2012, a statement about the nationality of ██████ was also requested. The Chinese Embassy told them it would only be possible to issue proof of Chinese nationality for ██████ herself were registered as Chinese. As stated above, ██████ is unable to register as Chinese with Chinese authorities because she lacks any personal identification and was never registered by her own parents.
  - *Assistance from International Organization of Migration (IOM).* On 19 January 2010 and the 30 September 2010, the Dutch Refugee Council sought assistance from IOM; these efforts did not produce any material result.<sup>24</sup>
  - *Red Cross Tracing Service.* On the 19 January 2012, the Red Cross also tried to obtain documents through its Tracing Service.<sup>25</sup> They were told that because she has no documentation of her own identity, the case does not meet the minimum criteria for tracing.
31. Despite these efforts, ██████ has been unable to obtain an official document proving that ██████ is (or is not) a Chinese national.
- Efforts to change in ██████ registration from “unknown” nationality to “stateless”
32. ██████ has made considerable efforts to change her son’s registration so that he is regarded as “stateless”, through administrative challenges to the municipality followed by judicial challenges concluding at the Council of State.
- Administrative Challenges*
33. On 12 July 2012, ██████ submitted a request to the municipality of Utrecht’s civil registration department to register Denny in the GBA (now the BRP) as “stateless” instead of “unknown” nationality.<sup>26</sup>
34. By letter of 9 August 2012, the municipality informed ██████ that it intended to reject the request on the ground that there is no proof of lack of nationality.<sup>27</sup> In the municipality’s view on the basis of the GBA (now the BRP), ██████ must prove, with official legal or state-issued documents, that he is stateless – in this case that he has neither Chinese nor Dutch nationality.<sup>28</sup> However, as noted above, extensive efforts proved unsuccessful in obtaining such a document from the Chinese authorities, indicating whether ██████ is or is not a Chinese national. Therefore, according to the letter, it is presumed that ██████ possesses Chinese nationality based on a facial reading of Chinese law.<sup>29</sup>

<sup>23</sup> Exhibit 5: Statements of Sophie Bijloos, Red Cross Volunteer, 2 July 2010 and 21 November 2011.

<sup>24</sup> Exhibit 6: Statement of Dutch Refugee Council, dated 30 September 2010.

<sup>25</sup> Exhibit 7: Letter from Red Cross, dated 25 October 2012.

<sup>26</sup> Exhibit 8: Request to amend registration, dated 12 July 2012 (Dutch only).

<sup>27</sup> Exhibit 8: Letter from Municipality of Utrecht to Denny Zhao, 9 August 2012 (Dutch only).

<sup>28</sup> *Ibid.* See also Exhibit 13: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Court of Central Netherlands, Utrecht Branch, Case UTR 13/11, Judgment of the single-judge chamber of 12 April 2013 (English trans.), at para. 3.

<sup>29</sup> Exhibit 9: Letter from Municipality of Utrecht to Denny Zhao, 9 August 2012 (Dutch only). See also Exhibit 13: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Court of Central Netherlands, Utrecht Branch, Case UTR 13/11, Judgment of the single-judge chamber of 12 April 2013 (with English trans.), at para. 3.

35. The intention set out in this letter was formalized in a legal view, sent on 15 August 2012.<sup>30</sup> Based on that legal view, on 17 September 2012, ██████ request for entry of ██████ status into the civil register as “stateless” was denied on the same grounds as was set out in the letter of intent.<sup>31</sup>
36. On 14 October 2012, ██████, through counsel, lodged an administrative appeal against the written decision with the Municipality of Utrecht. She submitted, together with the objection, documentation of the above efforts to obtain Chinese citizenship for ██████
37. On 22 November 2012, the administrative appeal was rejected on the ground that there was no legal proof of ██████ statelessness, i.e. official documents of the Chinese authorities that deny Chinese citizenship, and the decision of 17 September 2012 was upheld.<sup>33</sup>

#### *Judicial Challenges*

38. ██████ then appealed to the courts, beginning with the district court of *Midden-Nederland* (Utrecht), on 19 December 2012.<sup>34</sup> That court denied the appeal in a decision dated 12 April 2013, which emphasized that the burden of proof of lack of nationality rests *entirely* on ██████ and the municipality has no responsibility to investigate the matter. The Utrecht Branch judgment also emphasizes that the Municipality “presumed,” based on its own research on Chinese nationality law, that ██████’s parents are Chinese citizens and that it is “suspected” that ██████ a Chinese national.<sup>35</sup> It is not clear that the reliance on foreign nationality laws in this way is in line with the current Handbook on Implementing Procedures (*Handleiding Uitvoeringsprocedures*), which states that:

“[T]he application of the relevant foreign nationality law is only possible if there is a starting point, . . . for example when the nationality of the parents *has been established*, and the relevant nationality law provides for the automatic acquisition by the child of his or her parents’ nationality.”<sup>36</sup>

39. On 23 April 2013, ██████ appealed this decision to the Dutch Council of State.<sup>37</sup>

<sup>30</sup> Exhibit 10: Letter from Municipality of Utrecht to Denny Zhao, 15 August 2012 (Dutch only). In Dutch administrative law, a written intention is followed by a legal view in reply (*zienswijze*) by the applicant, with regard to the intended rejection.

<sup>31</sup> Exhibit 11: Letter from Municipality of Utrecht to Denny Zhao, 17 September 2012 (Dutch only).

<sup>32</sup> See Exhibit 12: Utrecht Municipality, Head of Legal Matters Department, ref: b12.3062 letter nr. J12.621 146 (decision on administrative appeal), 22 November 2012 (with English trans.).

<sup>33</sup> *Ibid.*

<sup>34</sup> See Exhibit 13: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Court of Central Netherlands, Utrecht Branch, Case UTR 13/11, Judgment of the single-judge chamber of 12 April 2013 (with English trans.).

<sup>35</sup> Exhibit 13: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Court of Central Netherlands, Utrecht Branch, Case UTR 13/11, Judgment of the single-judge chamber of 12 April 2013 (with English trans.), at para. 3.

<sup>36</sup> *Handleiding Uitvoeringsprocedures* (Handbook Implementing Procedure), 7 February 2014. The Handbook is issued by the Ministry of Interior (*Ministerie Binnenlandse Zaken en Koninkrijksrelaties*) to guide the civil servants in the implementation of the Law on the BRP, para 3.32.2. See also Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 14, available at:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434573](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434573) (citing Handbook of 7 February 2014).

<sup>37</sup> See Exhibit 13: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Notice of Appeal to Council of State, Administrative Law Division (The Hague), 23 April 2013 (with English trans.).

40. On 21 May 2014, the Administrative Law Division of the Council of State, the highest court of appeal in the Netherlands, ruled that the Municipality was correct when it decided that ██████ had not adequately demonstrated that he was stateless.<sup>38</sup>
41. The Council of State concluded that neither national law nor international law (including the Covenant, the Convention on the Rights of the Child, the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness) contain any rules with regard to procedure to establish statelessness that the Dutch authorities were obliged to follow.<sup>39</sup> It continued that it was not up to the authorities to conduct inquiries and determine statelessness status.
42. 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 the cracks.

“The GBA Act provides a personal data registration system. As the Division has held previously (among others, in the judgment of November 28, 2012 in case no. 201200045/1/A3; [www.raadvanstate.nl](http://www.raadvanstate.nl)), it is paramount that the data in the GBA are reliable and clear. The users of the data must be able to trust that they are generally correct. (Parliamentary Papers II 1988/89, 21 123, no. 3, p. 13). In light of the foregoing, the executive can only register the nationality as “unknown” if no documents can be submitted from which one can conclude that the person involved is stateless. It follows from article 43 (3) of the GBA Act, contrary to what ██████ states, that it is not incumbent on the executive in cases of uncertainty regarding the nationality of the person involved to investigate whether the person involved is stateless and itself subsequently determine the statelessness. Nor does this obligation follow from articles 3 and 7 of the CRC, article 24 (3) of the ICCPR, and article 1 of the Statelessness Convention 1961, leaving aside whether they are binding on everyone, merely because they do not contain rules with respect to determining statelessness.

“In this case ██████ did not submit any documents that evidence that her son ██████ has no nationality of a country and is therefore stateless. The court therefore justifiably ruled that the executive justifiably took the position that it was not established that ██████ is stateless, so that the executive justifiably rejected the petition to amend the nationality from “unknown” to “stateless.”

43. But the Council concluded that it is for the Dutch legislature to provide for a remedy:

“In response to the appeal, the Division holds that it has taken note of the various documents about the position of stateless persons in the Netherlands, including the opinion of the Advisory Committee on Migration Affairs, entitled “No Country of one’s own” [“*Geen land te bekennen*”], of December 2013. It has been established that at this moment there is no specific procedure to legally establish the statelessness of persons. *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 lawmaking task of the judiciary to fill in this gap.*”<sup>40</sup> [emphasis added]

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<sup>38</sup> See Exhibit 14: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Council of State (Administrative Law Division), Judgment of 21 May 2014 (with English trans.).

<sup>39</sup> See Exhibit 14: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Council of State (Administrative Law Division), Judgment of 21 May 2014 (with English trans.), at para. 4.2.

<sup>40</sup> Exhibit 14: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Council of State (Administrative Law Division), Judgment of 21 May 2014 (with English trans.), at paras. 4.1- 4.4 (emphasis added).

44. The last sentence of the Council of State’s decision – the same one cited by Council of Europe Human Rights Commissioner Muižnieks in his critical account of statelessness protections in the Netherlands – acknowledges that affirmative action must be taken in ██████’s case in order to give effect to the Statelessness Conventions. To date, his situation remains exactly the same, although in September 2016 a legislative proposal was introduced, which is currently in the consultation phase of the Dutch legislative process. The proposal is discussed in further detail below, at paras. 80-81.
45. ██████ applied for Dutch citizenship in March 2015, arguing that the nationality law requirement that he hold lawful residency should not be held against him in light of the 1961 Convention and that he should be allowed to access a nationality in spite of his lack of registration as “stateless” and lack of a residence permit in the Netherlands. His application and administrative appeal have been rejected as groundless.
- ██████ current status and living circumstances
46. Since October 2013, ██████ have lived in a freedom restricted family location for rejected asylum seekers (*Vrijheidsbeperkende locatie*, VBL, and specifically, *Gezinslocatie* (family housing), GL, which is a form of VBL). There are eight family locations throughout the Netherlands and the system has been severely criticized by children’s rights groups as especially damaging and traumatic for children.<sup>41</sup> Residents cannot leave the municipal area to which they are assigned and have strict daily reporting requirements (all days except Sunday), enforced by threat of criminal detention.<sup>42</sup> Children experience constant fear, health problems, family tensions and social exclusion.<sup>43</sup>
47. The Dutch Supreme Court ruled in a judgment of 21 September 2012 that freedom restricted centers for families are permitted to offer the bare minimum in services to residents, including children like ██████.<sup>44</sup>
48. In 2014, a district court in The Hague ruled that the prolonged stay in a family location harms child development, awarding €5,000 per child to a mother and her two (Dutch) children who were forced to stay at a family location for twenty months.<sup>45</sup> Specifically, the court found that the family location facility left the children feeling “trapped” due to the reporting requirements imposed on their mother; they experienced nightmares and did not get enough rest. For the Dutch children, in other words, the court recognized that the family locations were so harmful that they should be compensated for the time

<sup>41</sup> See Working Group on Children in AZC, *Onderzoek naar het welzijn en perspectief van kinderen en jongeren in gezinslocaties* (Report on Family Locations), October 2014, available in Dutch only at: [http://www.kind-in-azc.nl/docs/rapport\\_gezinslocaties.pdf](http://www.kind-in-azc.nl/docs/rapport_gezinslocaties.pdf). Summary of the publication: <http://www.kind-in-azc.nl/Gezinslocaties.aspx> (outlining the “traumatic” experiences of children living in family locations).

<sup>42</sup> See Asylum Information Database, Freedom of Movement: Netherlands, available at: <http://www.asylumineurope.org/reports/country/netherlands/freedom-movement>.

<sup>43</sup> Summary of the Working Group on Children in AZC publication: <http://www.kind-in-azc.nl/Gezinslocaties.aspx>.

<sup>44</sup> Hoge Raad (Dutch Supreme Court), 21-09-2012, ECLI:NL:HR:BW5328, at para. 3.7.2, available at: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2012:BW5328> (“The State has an obligation to safeguard the rights and interests of minors who are on its territory, even when it comes to minors without a valid residence permit, partly because they cannot be held responsible for the actions of their relatives. This is supported by the case law of the ECtHR, the underlying principles of the Reception Directive and the Return Directive and on the basis of the position taken by the European Committee on Social Rights and Committee of Ministers.”) (unofficial translation).

<sup>45</sup> Defence for Children, *Compensation for Children Who Stayed in Stocking Location*, 8 October 2014, available at: <http://www.defenceforchildren.nl/p/140/4093/mo233-m80/schadevergoeding-voor-kinderen-die-in-uitzetlocatie-verbleven>.

they were forced to spend there. The Netherlands has not changed its policy following the decision and ██████ remains in the location.

49. After losing her own temporary residence permit when the investigation into her forced prostitution claim was terminated, and having been unable to obtain a regular residence permit for herself or her son, ██████ also no longer receives any social benefits to support ██████. Appellate courts in the Netherlands have upheld the denial of childcare benefits to undocumented children, including stateless children who face the same barriers as ██████ in clarifying their statelessness status, an issue that is currently being challenged before this Committee.<sup>46</sup>

## **B. The National Context**

50. ██████ situation is the product of a national legal framework that fails to take into account important safeguards against childhood statelessness. In response to multiple calls for reform over several years, a legislative proposal was finally published in September 2016, but it does not offer a reliable solution for ██████.

### Domestic registration procedures: high frequency of “unknown” nationality annotation

51. As stated at paragraph 26, above, the law requires that nationality status is entered into the municipal registration system. Article 43 of the GBA (which corresponds to Article 2 of the BRP) required that the nationality entry was based on a decision of an institution or authority. However, these procedural rules make no provision for individuals without a nationality, who must somehow find a way to prove its absence.<sup>47</sup>
52. Given the evidentiary burden imposed by Article 43 of the GBA, registration authorities are sometimes unable to confirm the nationality of individuals entered into the database. In such cases, the marker “unknown” is used. “Unknown” nationality is, essentially, “a lump-category for all individuals who have trouble substantiating their nationality status” or indeed their statelessness.<sup>48</sup> “Stateless” is an option for this field, however, the official guidelines for municipal authorities do not specify on which basis such an entry should be made and states that statelessness “rarely ever occurs.”<sup>49</sup> The word “stateless” does not appear anywhere in the BRP, or the GBA before it.<sup>50</sup>
53. The annotation “unknown” for the nationality entry in the BRP (formerly GBA) is quite common in the Netherlands relative to the rest of Europe: according to the civil registry 83,008 were registered as such in 2010, of which 22,881 (approximately 28 percent) were children.<sup>51</sup> These numbers are by far the highest in Europe by all publicly

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<sup>46</sup> See, e.g., Human Rights Committee communications: *Abdoelleavna v. the Netherlands*, Comm. No. 2498/2014, *Hashemi v. the Netherlands*, Comm. No. 2489/2014, *Piqué v. the Netherlands*, Comm. No. 2673/2015, *Amza v. the Netherlands*, Comm. No. 2683/2015.

<sup>47</sup> Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 13, available at:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434573](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434573) (“This type of evidence is therefore unlikely to play an important role in the registration of statelessness for most people.”).

<sup>48</sup> UNHCR, *Mapping Statelessness in the Netherlands* (2011), at para. 66, available at:

<http://www.refworld.org/docid/4eef65da2.html>.

<sup>49</sup> UNHCR, *Mapping Statelessness in the Netherlands* (2011), at para. 37 (citing *Agentschap Basisadministratie Persoonsgegevens en Reisdocumenten*, “*Handleiding uitvoeringsprocedures*” at 75), available at: <http://www.refworld.org/docid/4eef65da2.html>.

<sup>50</sup> See UNHCR, *Mapping Statelessness in the Netherlands* (2011), at para. 37, available at:

<http://www.refworld.org/docid/4eef65da2.html>; Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at

<sup>51</sup> UNHCR, *Mapping Statelessness in the Netherlands* (2011), at para. 62 (citing T. Hammarberg, “Report by the Commissioner for Human Rights Thomas Hammarberg on his visit to the Netherlands,

available accounts.<sup>52</sup> In comparison, that same year, the year of ██████'s birth and registration, just 2,005 persons were registered as “stateless” in the GBA.<sup>53</sup> As the European Network on Statelessness has pointed out, “of those whose nationality is unknown and who were also born in the Netherlands, 5,641 children were still registered as being of unknown nationality more than five years later.”<sup>54</sup>

54. The high frequency of “unknown” nationality entries is attributable to the combination of rigid proof requirements described above, the fact that the burden of proof is placed solely upon applicants, and the lack of appropriate instructions and support to civil servants in how to recognize and record cases of statelessness.<sup>55</sup>
55. As noted above, under Article 43 of the GBA (now Article 2 of the BRP), the only evidence that the Dutch registration authorities could consider in order to change ██████'s registration status to “stateless” would be either a decision of an administrative or judicial body meant to serve as proof of nationality (a passport) or a written document attesting to nationality, though not meant to serve as an identity document.
56. These provisions have been consistently interpreted as exhaustive in terms of the forms of proof that may be considered in making entries in the registry. For example, in 2007, the Court of Roermond upheld the rejection of a request for change of entry from “unknown” to “stateless” by a Syrian Kurd in spite of the provision of an identity card with no recognized nationality and reports by the Dutch government on the situation of stateless Syrian Kurds.<sup>56</sup>
57. Dutch courts have also ruled that the burden of proof to provide the specific evidence required under the registration laws rests entirely on the applicant.<sup>57</sup>
58. Another reason for the high number of “unknown” nationality entries is the lack of any time limit for the duration of such annotation, with no duty placed on authorities to clarify the matter.<sup>58</sup> UNHCR has reported after a comprehensive mapping of statelessness in the country that “[a]lmost 60 per cent of all persons of unknown

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21-25 September 2008,” (2009), at 19), available at: <http://www.refworld.org/docid/4eef65da2.html>.

As of September 2016, there are 74,055 “unknown” nationality entries.

<sup>52</sup> *Ibid.*, para. 66 n.8; European Network on Statelessness, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014, at 14, available at:

<http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Preventing%20childhood%20statelessness%20in%20Europe%20-%20issues%2C%20gaps%20and%20good%20practices.pdf>.

<sup>53</sup> ACVZ, “*Geen land te bekennen*’ (No Country of One’s Own), December 2013, at 31, available at: <https://acvz.org/pubs/geen-land-te-bekennen/>.

<sup>54</sup> European Network on Statelessness, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014, at 14, available at:

<http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Preventing%20childhood%20statelessness%20in%20Europe%20-%20issues%2C%20gaps%20and%20good%20practices.pdf>.

<sup>55</sup> See Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 16-18, available at:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434573](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434573).

<sup>56</sup> See Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 16, available at:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434573](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434573).

<sup>57</sup> Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 16, available at:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434573](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434573).

<sup>58</sup> UNHCR, *Mapping Statelessness in the Netherlands* (2011), at para. 70, available at:

<http://www.refworld.org/docid/4eef65da2.html>.

nationality (49,568 individuals [as of 2010]) have been registered as such for more than three years.” About one quarter of this group is comprised of children.<sup>59</sup> Today, ██████ would be counted among this group as well, having been registered as holding “unknown” nationality for almost seven years. Thus, the category “unknown” does not imply, under Dutch law and jurisprudence, any obligation to find anything out.

#### Criticism of Dutch law and practice in addressing childhood statelessness

59. It is suspected that many people, including many children, registered as holding “unknown” nationality are actually stateless, but it is not possible to confirm this given the lack of a dedicated statelessness status determination procedure in the Netherlands.<sup>60</sup> Following his visit to the Netherlands in May 2014, then Council of Europe Commissioner of Human Rights Nils Muižnieks criticized the Netherlands for not living up to its international commitments to prevent and reduce childhood statelessness, highlighting the several interrelated obstacles preventing the effective operation of these protections:

“Worryingly, in 2012, 5,641 children born in the Netherlands who were five years old or older were still registered as being of unknown nationality. One of the main negative consequences of the absence of clear rules on statelessness identification and determination is that an undetermined number of persons who could be stateless are considered as immigrants living irregularly on Dutch territory. They are thus confronted with the daily risks of detention, difficulties in accessing basic social rights and in particular healthcare, and the situation of legal limbo []. Another concern is that, under Dutch law, the granting of Dutch nationality to a child who would otherwise be stateless only applies to children who have been *lawfully* resident in the Netherlands for three years, contrary to the 1961 UN Convention on the Reduction of Statelessness which only requires *habitual* residence.”<sup>61</sup>

60. Commissioner ██████ specifically cited to ██████ case and the Dutch Council of State’s decision to deny him registration as a stateless person in framing the above analysis.<sup>62</sup> As noted above (paras. 25-28), without recognition of his statelessness status, ██████ acquire Dutch nationality.
61. UNHCR, the UN agency with a mandate to address statelessness globally, has also called the lack of a statelessness status determination procedure with binding, protection-oriented outcomes “clearly one of the most apparent omissions in the Dutch

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<sup>59</sup> UNHCR, Mapping Statelessness in the Netherlands (2011), at para. 64, available at: <http://www.refworld.org/docid/4eef65da2.html>.

<sup>60</sup> UNHCR, Mapping Statelessness in the Netherlands (2011), at para. 6, available at: <http://www.refworld.org/docid/4eef65da2.html>.

<sup>61</sup> Council of Europe: Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to The Netherlands from 20 to 22 May 2014*, 14 October 2014, CommDH(2014)18, at para. 138-39, available at: <http://www.refworld.org/docid/54bd1d604.html>. See also Council of Europe: Commissioner for Human Rights, Response of the Netherlands government on the report from the Council of Europe Commissioner for Human Rights, Nils Muižnieks, following his visit to the Netherlands (20 - 22 May 2014) , 14 October 2014, CommDH/GovRep(2014)13, available at: <http://www.refworld.org/docid/54bd31194.html> (describing intention to introduce reforms, although none have materialized to date).

<sup>62</sup> Council of Europe: Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to The Netherlands from 20 to 22 May 2014*, 14 October 2014, CommDH(2014)18, at para. 134, available at: <http://www.refworld.org/docid/54bd1d604.html>.

approach to statelessness.”<sup>63</sup> In its general guidance on the application of the 1961 Convention on the Reduction of Statelessness, to which the Netherlands is a party, UNHCR advised the following on the use of “undetermined nationality” as a civil status:

“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 of the 1961 Convention [which provide for acquisition of citizenship to otherwise stateless children], 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.”<sup>64</sup>

62. The UNHCR guidance explains that five years ought to be the cut-off for a period of undetermined nationality as this is also the maximum period of residence permissible under Article 1(2)(b) of the 1961 Convention where states opt to require a period of habitual residence before granting nationality to otherwise stateless children.
63. In a recent report, the Human Rights Council called attention to the negative impact that prolonged registration as “nationality unknown” can have on a child’s wellbeing, identity and personal development:

“This can place a child in a state of legal limbo, which may last for years, even into adulthood. This is liable to have negative repercussions on the definition of the child’s personal identity, and is not in accordance with the best interests of the child.”<sup>65</sup>

64. In its most recent consideration of the Netherlands’ state practice under the Convention on the Rights of the Child, the UN Committee on the Rights of the Child called attention to the lack of an adequate statelessness status determination procedure in the Netherlands, recommending that the Netherlands “ensure that all stateless children born in its territory, irrespective of residency status, have access to citizenship without conditions.”<sup>66</sup> As discussed in the following section (paras. 80-81), a legislative proposal that would amend the Dutch Nationality Act was introduced for public comment in September 2016. The proposal, if adopted as drafted, offers the possibility for children born stateless in the Netherlands who do not have residency status to acquire Dutch nationality, but with conditions that cast doubt on whether the amendments could be implemented in line with international standards and guidance.

### **C. Calls for Reform**

65. The legal context set out above remains in effect today, raising two chief obstacles to acquisition of a nationality in ██████ case: (a) he lacks sufficient proof of his statelessness to be able to apply for nationality by right of option available to children

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<sup>63</sup> UNHCR, Mapping Statelessness in the Netherlands (2011), at para. 6, available at: <http://www.refworld.org/docid/4eef65da2.html>.

<sup>64</sup> 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. 22 (emphasis added).

<sup>65</sup> UN Human Rights Council, *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, at para. 9, available at: A/HRC/31/29, available at: <http://www.refworld.org/docid/56c42b514.html>.

<sup>66</sup> 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, at para. 33. available at: <http://www.refworld.org/docid/566fc5a04.html>.



born stateless, which is linked to the problem of insufficient statelessness status determination procedures in general; and (b) even if he is able to prove his statelessness, ██████████ not have a legal residence permit, and would not obtain one even if the Dutch authorities recognize him as stateless, so he does not qualify for nationality by right of option pursuant to Article 6(1)(b) of the Dutch nationality law.

66. In recent years, domestic and international calls for reform of the Dutch approach to statelessness and the protection of stateless persons have focused on both issues relevant to ██████████ case, proposing possible solutions. Those reforms would, ideally, create a statelessness determination mechanism accessible to those who need it, among them stateless undocumented and under-documented individuals, and those who lack legal residency in the country.

Recognition of the need for a statelessness status determination procedure

67. The problem of statelessness and identification of stateless persons in particular is certainly not unique to the Netherlands, but two critical studies of the Dutch approach to addressing statelessness focused attention on the lack of an adequate status determination procedure as a major protection failure. Both reports – *Mapping Statelessness in the Netherlands* (UNHCR, 2011) and *No Country of One's Own* (Dutch Advisory Committee on Migration Affairs, or ACVZ, 2014) – identify as the primary recommendation to the Dutch government that it establish an “accessible and efficient” determination procedure.<sup>67</sup>
68. On 2 June 2014, the Dutch government responded to the ACVZ report, acknowledging the gap in protection of stateless persons and the importance of status determination, expressing an intention to explore the possibility of establishing a procedure.<sup>68</sup>
69. In a 10 September 2014 letter to the President of the Lower House of Representatives, the State Secretary of Justice and Security at the time, Fred Teeven, stated the intention to explore the establishment of a determination procedure.<sup>69</sup>
70. However, concerns were raised about whether the procedure under consideration, as set out in the letter, would be an effective remedy, including for children in the same situation as ██████████. The procedure (a) may only be accessible to those with preexisting legal residency, and (b) would not entail residence rights for those declared stateless.<sup>70</sup>
71. On 19 January 2015, the Dutch State Secretary of Security and Justice requested advice from the ACVZ on the structure of a status determination procedure.
72. On 9 July 2015, in response to the Secretary’s request, the ACVZ released a discussion report based on two expert meetings held earlier in 2015 (“expert report”).<sup>71</sup> The report

<sup>67</sup> See UNHCR, *Mapping Statelessness in the Netherlands* (2011), at 3 (“key recommendation” (i)), available at: <http://www.refworld.org/docid/4eef65da2.html>; see also ACVZ, “*Geen land te bekennen*” (No Country of One’s Own), December 2013, at 10 (Recommendation (1): “Establish a statelessness determination procedure backed by guarantees” including “a shared burden of proof”), available at: <https://acvz.org/pubs/geen-land-te-bekennen/>.

<sup>68</sup> See ACVZ, *Presentation of discussion report regarding the procedure for determining statelessness status*, ACVZ/ADV/2015/007, 9 July 2015, at 2.

<sup>69</sup> See Ministry of Justice and Security, Letter by State Secretary Fred Teeven to President of Lower House of Representatives, 10 September 2014, available at: <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2014/09/11/eerste-reactie-van-het-kabinet-op-het-advies-van-de-acvz-inzake-staatloosheid/lp-v-j-0000006349.pdf>.

<sup>70</sup> See Katja Swider, “Change is in the air: an update on efforts to tackle statelessness in the Netherlands,” 6 March 2015, available at: <http://www.statelessness.eu/blog/change-air-update-efforts-tackle-statelessness-netherlands>.

<sup>71</sup> ACVZ, *Presentation of discussion report regarding the procedure for determining statelessness status*, ACVZ/ADV/2015/007, 9 July 2015.

relies heavily on the UNHCR Handbook on Protection of Stateless Persons (“Handbook”), stating that because of the UNHCR’s mandate under the international protection framework, the Handbook “is regarded as authoritative.”

73. The expert report addresses a range of issues related to the structure of a possible status determination procedure. Particularly relevant, however, are the recommendations for a shared burden of proof and the interplay between residency rights and status determination (at point of access, during pendency of procedures, and linked to a determination of statelessness). With respect to a right of residence linked to determination of statelessness status, the issue did not fall within the mandate of the expert group as the government’s position is that no residency rights should attach following recognition of statelessness.

Requirements for children born stateless in the Netherlands to acquire Dutch nationality

74. Article 6(1)(b) of the Dutch Nationality Act currently requires children born stateless in the Netherlands to demonstrate three years’ legal residence in the country in order to acquire Dutch nationality.
75. Also referenced above is the October 2014 report of ██████████, Commissioner for Human Rights of the Council of Europe, following his visit to the Netherlands from 20 to 22 May 2014, in which he also called on the country to establish a determination procedure.<sup>72</sup>
76. The Dutch government issued a response to the Commissioner’s report, stating that
- “[T]he government is currently examining the scope for expanding the right of stateless children born in the Netherlands to opt for Dutch nationality to include those who ‘habitually’ reside here and not only those with ‘legal’ residence status. The government takes a positive view of this idea in principle, and is working to formulate the conditions. Since nationality can only be registered in the Personal Records Database on the basis of valid documents, the children of parents who do not hold such documents must be registered as ‘nationality unknown’. Obtaining either valid documents or Dutch nationality could put an end to this situation. The determination procedure could provide a solution for children who are currently registered as ‘nationality unknown’ but who are in fact stateless.”<sup>73</sup>
77. While a welcome recognition of the problem and expression of a “positive view of the idea in principle,” the government’s response was silent on how a child in ██████████ situation might benefit from a status determination procedure: how would authorities decide that ██████████ is “in fact stateless,” based on what evidentiary rules and standard of proof?
78. On 12 November 2014, ██████████ issued another letter specifically addressing the requirement of legal residence for stateless children born in the Netherlands to opt for Dutch nationality, and the need to make Dutch citizenship more accessible for stateless children born in the country without a legal residence permit. The letter states,
- “I intend to make this recommendation as follows to fill in the Law on Dutch citizenship (RWN) ... under Article 6, paragraph b, where to stateless children born

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<sup>72</sup> See Council of Europe: Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to The Netherlands from 20 to 22 May 2014*, 14 October 2014, CommDH(2014)18, available at: <http://www.refworld.org/docid/54bd1d604.html>.

<sup>73</sup> Council of Europe: Commissioner for Human Rights, *Response of the Netherlands government on the report from the Council of Europe Commissioner for Human Rights, Nils Muižnieks, following his visit to the Netherlands (20 - 22 May 2014)*, 14 October 2014, CommDH/GovRep(2014)13, available at: <http://www.refworld.org/docid/54bd31194.html>.

in the Netherlands an [alternative] option is given, provided that the following conditions are met: (1) 5 years of stable residence; (2) the parents have done everything in their power to obtain a different nationality for their children; and (3) the parents have not resisted any immigration rules, regulations and deportations attempts.”<sup>74</sup>

79. This proposal was criticized by UNHCR<sup>75</sup> and the UN Committee on the Rights of the Child in its most recent examination of the Netherlands, as noted above, on the ground that a child’s right to acquire a nationality, particularly born on the territory who would otherwise be stateless, should not be contingent on their parents’ immigration status or cooperation with state authorities.<sup>76</sup>

#### 2016 legislative proposal

80. On 28 September 2016, two years after it first indicated an intention to create a statelessness status determination procedure, the Dutch government published a package of proposed legal amendments to the DNA.<sup>77</sup> The proposal provides no certainty that ██████ could acquire a nationality under its auspices if adopted. It is unclear what evidence will be considered for the establishment of statelessness status and whether the evaluation of evidence will be in line with relevant UNHCR guidelines. There is no mention as to how the burden of proof will be divided between the applicant and the state, for example. There is no right of residence pending the outcome. ██████ would therefore need to wait for a few years until the procedure is in place, apply for it, hope not to be deported before or during the procedure, and be recognized as stateless despite the lack of clarity surrounding the issues of proof. If ██████ succeeds in securing recognition as a stateless person, he would need to apply for Dutch citizenship with a municipal authority, and hope not to get deported while that procedure is running. A mayor of the municipality where ██████ is registered would need to consider the application for Dutch nationality under the new procedure. Even though it is no longer required that applicants have the right of residence under the new procedure, the Explanatory Memorandum to the proposed procedure suggests that children whose parents do not have a history of perfect compliance with Dutch immigration authorities would not qualify as having a “stable” residence (one of the requirements for accessing citizenship), and would thus also not qualify for the Dutch nationality. This is not in line with, for example, the CRC’s requirement that children are not discriminated against on the basis of their parent’s actions (art. 2(2)), and might violate ██████ right to acquire a nationality depending on how his mother’s behavior

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<sup>74</sup> Ministry of Security and Justice, Letter of State Secretary Teeven to Parliament providing the additional response of the government to the ACVZ advice regarding statelessness, 12 November 2014, available at:

<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2014/11/13/tk-brief-aan-vz-tk-inzake-reactie-kabinet-op-het-acvz-advies-inzake-staatloosheid/lp-v-j-0000006830.pdf>. See also European Network on Statelessness, *Change is in the air: An update on efforts to tackle statelessness in the Netherlands*, 6 March 2015, available at:

<http://www.statelessness.eu/blog/change-air-update-efforts-tackle-statelessness-netherlands>.

<sup>75</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR's legal observations regarding the Proposal to amend the Nationality Act - Conditions to grant stateless children born in the Netherlands the right to apply for Dutch nationality*, 30 January 2015, available at: <http://www.refworld.org/docid/5617c2c74.html>

<sup>76</sup> 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, at para. 33. available at:

<http://www.refworld.org/docid/566fc5a04.html>.

<sup>77</sup> See Legislative proposal regarding the determination of statelessness, opened for public consultation 28 September 2016 through 28 November 2016, available at:

<https://www.internetconsultatie.nl/staatloosheid>.

during her own immigration proceedings is assessed. The new law also requires applicants for citizenship under the new option procedure to “not be able to resolve statelessness otherwise” with no clarity as to how exactly this inability will be assessed, in particular in ██████’s case.

81. There are therefore too many unknowns for ██████ in the current legislative climate in the Netherlands. If one is to wait for the outcomes of such hypothetical future lengthy and uncertain procedures, ██████ might well reach into his teenage years without citizenship, or worse be deported out of the Netherlands to another country he has no connections with in the meanwhile, without necessarily a prospect for obtaining a citizenship.

## VI. ADMISSIBILITY OF THE COMPLAINT

82. This communication should be declared admissible. ██████ has exhausted all available domestic remedies, resulting in his appeal being rejected by the Administrative Division of the Dutch Council of State, which recognized the deficiencies in the law, which denied him any effective remedy. The violations set out fall within the jurisdiction of the Committee and have not been submitted to any other mechanism of international investigation or settlement.

### A. Domestic remedies exhausted

83. ██████ has exhausted all available domestic remedies to seek protection against childhood statelessness and to acquire a nationality in the Netherlands. His mother’s requests to extend her residency permit were denied in 2010 and upheld on all appeals, and Dutch authorities and the courts refused to change ██████ entry in the Dutch population register from “unknown” nationality to “stateless” – a prerequisite to acquiring Dutch nationality. ██████ has no further legal avenues of redress in the Netherlands.
84. The Administrative Division of the Dutch Council of State is the highest court in the Netherlands to which ██████ could appeal the denial of his request to change his registration entry in the BRP (formerly the GBA). That court, in its decision of 21 May 2014, rejected ██████ final appeal. The court plainly stated that the only solution to ██████ registration as “unknown” was a legislative one:
- “It has been established that at this moment there is no specific procedure to legally establish the statelessness of persons. 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 lawmaking task of the judiciary to fill in this gap.”<sup>78</sup>
85. On 26 March 2015, ██████ applied to the municipality of Katwijk to be recognized as a Dutch citizen by option, the avenue available to children born statelessness in the Netherlands. In rejecting the application, the Mayor of Katwijk acknowledged that the Netherlands lacks a status determination procedure, without which it will be impossible for ██████ to establish that he is stateless. Like the Council of State, the Mayor concluded that it “goes beyond [his] responsibilities as mayor to make this determination.”<sup>79</sup> The administrative Commission of Written Appeals upheld the

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<sup>78</sup> See Exhibit 14: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Council of State (Administrative Law Division), Judgment of 21 May 2014 [English trans.], at para. 4.4.

<sup>79</sup> Exhibit 15: Municipality of Katwijk Kongen Julianalaan 3 2224 EW Katwijk, *Confirmation of option statement denied*, 29 May 2015 (with English trans.).

Mayor's decision in a 15 September 2015 written decision stating that there is no procedure to determine statelessness, but that it is not the task of the Mayor to correct this "omission in the law."<sup>80</sup> ██████ "has a right to a nationality," according to the Commission, but "persons without a nationality, as long as their statelessness is not determined, cannot claim protections on the basis of the statelessness conventions," nor does the ICCPR oblige states to take such a step in order to secure ██████ right to a nationality.<sup>81</sup> ██████ appealed the decision to the Court of The Hague on 28 October 2015.<sup>82</sup> On 3 March 2016, the Court rejected ██████ appeal on the ground that he is not registered as stateless.<sup>83</sup> ██████ appealed this verdict to the Council of State on 30 March 2016.

86. On 2 November 2016, the Council of State declared the appeal unfounded on the ground that ██████ is not registered as stateless.<sup>84</sup> The citizenship application was an extraordinary step, with minimal chance of success, but serves to confirm that ██████ cannot access a nationality in the Netherlands and has no foreseeable prospect of doing so.

87. ██████ mother has spent nearly seven years seeking to regularize her son's status in the Netherlands – his place of birth and the only country he has ever lived in. The African Committee of Experts on the Rights and Welfare of the Child has stated in an important case on children's right to nationality that "one year in the life of a child is almost six percent of his or her childhood," before holding that a six year delay in consideration of cases on behalf of children experiencing statelessness is unduly prolonged. The Committee went on to say:

"The implementation and realization of children's right in Africa is not a matter to be relegated for tomorrow, but an issue that is in need of proactive immediate action and attention."<sup>85</sup>

88. Not only are all available domestic remedies exhausted in ██████ case, but the length and complexity of these proceedings should be taken into account in examining both admissibility and the merits of ██████ claims before the Committee.

#### **B. Other grounds of admissibility**

89. All other requirements set by the Committee in determining admissibility of applications have been met in ██████ case.

90. This Committee has temporal (*ratione temporis*)<sup>86</sup> and substantive (*ratione materiae*) jurisdiction over ██████ claims, which arise under several articles of the Covenant as further discussed in the legal arguments below. ██████ claims are substantiated with evidentiary support as set forth in the factual background and analyzed below. This matter has not been submitted to any other international or regional body or tribunal.

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<sup>80</sup> Exhibit 16: Municipality of Katwijk, Commission of Written Appeals, *Opinion from the Commission of Written Appeals to the Mayor of the Municipality of Katwijk*, 15 September 2015 (with English trans.).

<sup>81</sup> *Ibid.* at 2.

<sup>82</sup> Exhibit 17: *D. Zhao v. Municipality of Katwijk*, Written Appeal, 28 October 2015 (with English trans.).

<sup>83</sup> Exhibit 18: *D. Zhao v. Municipality of Katwijk*, Regional Court of The Hague, 3 March 2016, SGR 15/7710.

<sup>84</sup> Exhibit 19: *D. Zhao v. Municipality of Katwijk*, Council of State, 2 November 2016, 201602238/1/V6 (only have Dutch version).

<sup>85</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *Nubian Minors v. Kenya*, Decision of 22 March 2011, at para. 33, available at: <http://www.refworld.org/docid/4f5f04492.html>.

<sup>86</sup> The Netherlands ratified the CCPR on 11 December 1978.

91. The complaint should be declared admissible and considered on the merits.

## VII. VIOLATIONS OF THE ICCPR

92. The defining protection at stake in this case is Article 24(3), which safeguards ██████ right to acquire a nationality. The violations of his rights under the Covenant fall under three separate but closely related claims:
- *A. Every Child has the Right to Acquire a Nationality (Article 24(3)).* The lack of a reliable opportunity for ██████ to acquire a nationality in his childhood and the years of limbo he has already suffered on account of the Netherlands' approach to addressing statelessness and related rules pertaining to residency rights and acquisition of nationality, violate the right of every child to acquire a nationality protected by Article 24(3) ICCPR.
  - *B. There is a Positive Obligation to Introduce Safeguards against Childhood Statelessness.* In view of the special protection accorded to children under Article 24, in addition to the positive measures of protection required under Article 2(2) of the Covenant, the Netherlands is not meeting its obligation to ensure that every child – including stateless children and children born to parents in an irregular migratory status – enjoys all rights provided for in the Covenant. In order to do so, the Netherlands must effectively implement safeguards to end childhood statelessness.
  - *C. Failure to Provide an Effective Remedy.* The Dutch Council of State pronounced itself incompetent to fill the gap in protection into which ██████, and children like him, are currently falling, meaning that there is no effective means by which ██████ can challenge the overall lack of protection he is facing in the Netherlands, in violation of Article 24 in conjunction with Article 2(3).

### A. Every Child has the Right to Acquire a Nationality

93. By leaving ██████ registered as nationality “unknown” for over six years, 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 Netherlands has violated his right to acquire a nationality under Article 24(3). Article 24 recognizes the particular needs and vulnerability of children and provides for specific protections to all children, and Article 24(3) acknowledges the critical practical importance that a nationality has in ensuring all children's rights are respected. Leaving ██████ without a recognized nationality status in the country of his birth and the only country he has ever lived in violates these obligations. That ██████ has endured the state of uncertainty for his entire young life is wholly incompatible with the purpose of this provision: to provide a nationality to all children when they are born.<sup>87</sup>
94. Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention), to which the Netherlands is a party (ratification on 12 April 1962), defines a stateless person as someone who is “not considered as a national by any state under the operation of its law.” Because the Netherlands currently lacks a mechanism to establish their statelessness at birth, ██████ and thousands of similarly situated children have no access to the protections the 1954 Convention and the 1961 Convention on the Reduction of Statelessness (1961 Convention) are intended to provide, including the right of children who would otherwise be stateless to acquire the nationality of the state where they were born (Article 1, 1961 Convention). This omission is a major

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<sup>87</sup> UN Human Rights Committee, General Comment 17 on the Rights of the Child (Article 24), 7 April 1989, at para. 8.

contributing factor to the violations claimed in this communication, as described below. For the same reason, for the purposes of this communication, the author is described as stateless although no such determination has yet been made at the national level.

#### Relevant legal standards

95. *Right to acquire a nationality begins at birth.* Article 24(3) of the Covenant provides that “every child has the right to acquire a nationality.” In its General Comment No. 17, the Committee elaborated on the meaning of Article 24(3) in the context of children’s rights under the Covenant:
- “Special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality [...]. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, 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.”<sup>88</sup>
96. Children’s right to acquire a nationality is protected in many international and regional instruments ratified by the Netherlands alongside the Covenant,<sup>89</sup> including the Convention on the Rights of the Child (CRC, Articles 7 and 8),<sup>90</sup> the 1961 Convention on the Reduction of Statelessness (1961 Convention, Articles 1-4),<sup>91</sup> and the European Convention on Nationality (ECN, Article 6).<sup>92</sup>
97. As the dedicated international instrument on children’s human rights, the CRC and its interpretation by the CRC Committee are of particular relevance to understanding and applying the protections of Article 24 of the Covenant. The CRC is the most widely ratified of all the major UN human rights treaties. Under the CRC, a paramount general interpretive principle is to advance the best interests of the child, assessed from the child’s perspective (as opposed to the perspective of the state, society or the parents).<sup>93</sup>
98. The Human Rights Committee has emphasized in its own interpretation of Article 24 that the best interests of the child principle is a “primary consideration” and an “integral part of every child’s right to such measures of protection as required by his or her status as a minor, on the part of his or her family, society and the State, as required by article 24, paragraph 1, of the Covenant.”<sup>94</sup> In *X.H.L. v. The Netherlands*, the Committee examined the specific question of child protection in the context of children without

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<sup>88</sup> UN Human Rights Committee, General Comment 17 on the Rights of the Child (Article 24), 7 April 1989, at para. 8 [emphasis added]. See also UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html> at paras. 96-99 (burden of proof and cooperation between states in establishing statelessness are essential to implementation of protection).

<sup>89</sup> See also American Convention on Human Rights (Article 20(2)); African Charter on the Rights and Welfare of the Child (Article 6).

<sup>90</sup> The Netherlands acceded to the CRC on 6 February 1995.

<sup>91</sup> The Netherlands ratified the 1961 Convention on 13 May 1985.

<sup>92</sup> The Netherlands ratified the European Convention on Nationality on 21 March 2001.

<sup>93</sup> CRC Article 3; see also Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (3d ed. 2013), at 702.

<sup>94</sup> UN Human Rights Committee, *Bakhtiyari v. Australia*, Communication No. 1069/2002, U.N. Doc. CCPR/C/79/D/1069/2002 (2003), at para. 9.7.

documentation of their identity. The Committee considering that the Netherlands placed unreasonable demands on an unaccompanied 12-year-old asylum applicant from China in expecting him to understand and follow administrative obligations required to obtain such documentation – namely registration in the *hukou* or household book. The Committee rejected the implication that enjoyment of Convention rights should hinge on a minor’s ability to comply with burdensome administrative requirements.<sup>95</sup>

99. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) relied on the best interests of the child principle as articulated in the CRC in concluding in the case of *Nubian Minors v. Kenya*, holding that “it cannot be in these children’s best interest to leave them in a legal limbo for such a long period of time.”<sup>96</sup> The ACERWC took a similar approach to this Committee, set out in General Comment No. 17, above, to the question of when a child must have the right to a nationality: it applied a “purposive reading” to Article 6(3) of the African Charter on the Rights and Welfare of the Child, stating that “children should have a nationality beginning from birth.”<sup>97</sup> The ACERWC also declared that: “being stateless as a child is generally antithesis to the best interests of children.”<sup>98</sup>
100. “*Unknown*” nationality is to be avoided. With respect to the particular difficulties presented by states’ use of categories like “unknown” nationality, especially in the case of children, the Council of Europe Committee of Ministers advised in its Recommendation 13/2009 that member states should register children as “unknown” for “as short a period as possible” as a means of reducing statelessness among children.<sup>99</sup>
101. UNHCR has recommended that states should not register children as holding “unknown” or “undetermined” nationality for a period exceeding five years, stressing that:

“When this occurs, 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.”<sup>100</sup>

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<sup>95</sup> *X.H.L. v. Netherlands*, Human Rights Committee, Views on Communication No. 1564/07, CCPR/C102/D/1564/2007, adopted 22 July 2011 (finding the Netherlands’ decision to deport an unregistered minor to China to face economic and social exclusion to be degrading treatment and contrary to the protection of children required by Articles 7 and 24 of the Covenant), available at: [http://www.bayefsky.com/pdf/netherlands\\_t5\\_ccpr\\_1564\\_2007.pdf](http://www.bayefsky.com/pdf/netherlands_t5_ccpr_1564_2007.pdf) [PDF file]. While the Netherlands’ treatment of Ms. Zhao in her own asylum proceedings, brought when she was an unaccompanied minor like the author in *X.H.L.*, are not before the Committee in this case, the negative treatment she experienced is not in accordance with the Committee’s views in *X.H.L.* and contributes significantly to the situation Denny now faces in the Netherlands.

<sup>96</sup> African Committee of Experts on the Rights and Welfare of the Child, *Nubian Minors v. Kenya*, Decision of 22 March 2011, at para. 29.

<sup>97</sup> *Ibid.*, at para. 42 (emphasis added).

<sup>98</sup> *Ibid.*, at para. 46.

<sup>99</sup> Council of Europe: Committee of Ministers, *Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children*, 9 May 2009, CM/Rec(2009)13, at para. 8, available at: <http://www.refworld.org/docid/4dc7b1c2.html>.

<sup>100</sup> UN High Commissioner for Refugees (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, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>. Beginning in February 2012, UNHCR issued a set of authoritative guidelines. These guidelines result from a series of expert consultations in 2010-11 and are “intended to provide interpretive legal guidance for governments, NGOs, legal practitioners, decision-makers and the judiciary.” They were consolidated into the UNHCR Handbook on Protection



102. International and regional standards also call for children’s ability to acquire a nationality independent of their parents’ migratory or residency status. As applied in the context of every child’s right to acquire a nationality, the CRC Committee has made clear in its review of state reports that children must enjoy this right and the protections that flow from it irrespective of their parents’ legal status in the territory.<sup>101</sup> In its General Comment No. 7 (early childhood implementation) the CRC Committee further affirmed that “even the very youngest children must be respected as persons in their own right.” This imperative should operate to protect children who would otherwise suffer on account of enforcement policies targeting their parents. These conclusions which, among other benefits, can help prevent the intergenerational transfer of statelessness have been echoed by regional human rights protection mechanisms, including the European Court of Human Rights,<sup>102</sup> the African Committee of Experts on the Rights and Welfare of the Child<sup>103</sup> and the Inter-American Court of Human Rights.<sup>104</sup>
103. *Nationality is a core component of human identity and personal development.* Finally, there is widespread recognition by international and regional human rights bodies that nationality is a critical, formative, component of a child’s legal and social identity. This Committee, in considering the general scope and present application of Article 24(3), should recognize the important 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.<sup>105</sup> The European Court of Human Rights recognized in *Genovese v. Malta* that citizenship is an aspect of an individual’s “social identity”, which is a component of their private and family life protected by Article 8 of the European Convention on Human Rights.<sup>106</sup> The decision is part of a line of cases acknowledging that denial of nationality, creation (and perpetuation) of statelessness and denial of access to a secure legal status can, in certain circumstances, amount to an

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of Stateless Persons, 2014, available at <http://www.refworld.org/docid/53b676aa4.html> See also UNHCR, *Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, 20 February 2012, U.N. Doc. HCR/GS/12/01, at p. 1.

<sup>101</sup> See, e.g., CRC Committee Concluding Observations in respect of Turkmenistan (CRC/C/TKM/CO/2-4) and Switzerland (CRC/C/CHE/CO/2-4), cited in Institute on Statelessness and Inclusion, *Realising the right of every child to acquire a nationality: An analysis of the work of the Committee on the Rights and Welfare of the Child*, Draft Policy Paper, September 2015, at 15, available at: [http://www.institutesi.org/CRC\\_nationality\\_paper.pdf](http://www.institutesi.org/CRC_nationality_paper.pdf).

<sup>102</sup> European Court of Human Rights (ECtHR), *Mennesson v. France*, App. No. 65192/11, Judgment of 26 June 2014, at para. 97.

<sup>103</sup> African Committee of Experts on the Rights and Welfare of the Child, *Nubian Minors v. Kenya*, Decision of 22 March 2011, at para. 46 (statelessness is “always no fault of” children who are born with or fall into it); African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *General Comment No. 2 on Article 6 of the ACRWC: “The Right to a Name, Registration at Birth, and to Acquire a Nationality”*, 16 April 2014, ACERWC/GC/02 (2014), at para. 94, available at: <http://www.refworld.org/docid/54db21734.html>.

<sup>104</sup> *Case of the Yean and Bosico Children v. The Dominican Republic*, Inter-American Court of Human Rights (IACtHR), 8 September 2005, at para. 156, available at: <http://www.refworld.org/docid/44e497d94.html>.

<sup>105</sup> *Ibid.*, See also UN Human Rights Committee (HRC), *Consideration of reports submitted by States parties under article 40 of the Covenant: International Covenant on Civil and Political Rights: concluding observations of the Human Rights Committee : Ireland*, 30 July 2008, CCPR/C/IRL/CO/3, at para. 8, available at: <http://www.refworld.org/docid/48c4ff452.html> (expressing concern over the lack of recognition of change of gender in issuance of birth certificates).

<sup>106</sup> *Genovese v. Malta*, ECtHR, Judgment of 11 October 2011, at para. 33.

interference with the right to private life.<sup>107</sup> The connections between identity, legal personality and dignity inform these opinions:

“[T]he right to legal personality is a normal, natural and logical consequence of human personality and inherent human dignity; it is a natural and inherent part of every human being and his or her personality.”<sup>108</sup>

104. In *Mennesson v. France*, the European Court of Human Rights also found a violation of the European Convention, Article 8, in light of “uncertainty as to the possibility of obtaining recognition of French nationality” which might inflict “negative repercussions on the definition of [the applicant children’s] personal identity.”<sup>109</sup>

██████ faces multiple obstacles to acquiring a nationality

105. ██████ is denied a nationality as a result of the an overly formalistic approach by the Dutch authorities to the registration of children as stateless, which is an extension of the Netherlands’ overall disregard for the child’s best interests in the operation of its nationality law.<sup>110</sup> Thus, while registration is not the only obstacle to acquisition of Dutch nationality in ██████ case, it is a primary one and illustrative of the state’s fundamental failure to give effect to ██████ Article 24 rights.
106. ██████ has gone to great lengths to have her son registered as stateless, as detailed above. As both UNHCR and the Netherlands Advisory Committee on Migration Affairs (ACVZ) have reported following in-depth studies of the situation of stateless persons and persons at risk of statelessness in the Netherlands, the process for making entries in the national population register is *not a status determination procedure*.<sup>111</sup> It is “inherently a registration system” and “not equipped with appropriate resources to consider a wide variety of evidence and assess often poorly documented personal circumstances of applicants for a statelessness status.”<sup>112</sup> This is obvious from some of the clearly problematic statements made by registration authorities in the context of administrative proceedings challenging ██████ registration as unknown. The Dutch administrative courts upheld decisions by these municipal authorities not to change ██████ registration because of a stated presumption that he must be Chinese.<sup>113</sup> Such a presumption has no basis in Dutch law or rules governing registration and is clearly not in the best interests of the child seeking to prove his statelessness in order to enjoy the right to acquire a nationality.
107. The entry as “stateless” within the registration system is not binding on other authorities in the Netherlands; it does not give rise to rights or a protected status in and of itself.<sup>114</sup>

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<sup>107</sup> *Ibid.*, at para. 30; *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, at para. 356.

<sup>108</sup> *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, Partly Concurring, Partly Dissenting Opinion of Judge Vučinić.

<sup>109</sup> ECtHR, *Mennesson v. France*, App. No. 65192/11, Judgment of 26 June 2014, at para. 97.

<sup>110</sup> *See, e.g.*, Convention on the Rights of the Child, Article 3 (“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”).

<sup>111</sup> ACVZ, “*Geen land te bekennen*” (No Country of One’s Own), December 2013, at 71-72.

<sup>112</sup> Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 12, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434573](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434573).

<sup>113</sup> *See X.J. Zhao v. Executive of the Municipality of Utrecht*, Court of Central Netherlands, Utrecht Branch, Case UTR 13/11, Judgment of the single-judge chamber of 12 April 2013 (English trans.), at para. 3.

<sup>114</sup> *See* UNHCR, *Mapping Statelessness in the Netherlands* (2011), at para. 37 (“[A]ccording to Dutch law statelessness in itself is not a ground on which one can acquire a residence permit. Moreover,

The “stateless” entry is also only one condition precedent to acquisition of Dutch nationality for █████ – the other being three years’ lawful residence according to Article 6(1) of the DNA. Although the requirement of legal residency has been successfully challenged at the district court level and is contrary to the 1961 Convention to which the Netherlands is a party,<sup>115</sup> it remains in effect as an additional hurdle for someone in █████ situation before he can benefit from the right of option. For █████ the most immediate obstacle is his inability to obtain recognition in the Netherlands that he is in fact stateless and to have that fact registered in the municipal population register as required.<sup>116</sup> Without registration as “stateless” █████ cannot acquire Dutch nationality.<sup>117</sup>

The situation of prolonged legal limbo in █████ case contravenes Article 24(3)

108. Through no fault of his own, █████ has spent the first six years of his life segregated from society in the country where he was born, classified as an illegal alien and subjected to a series of legal obstacles to the realization of his right to a nationality that are, in reality, designed to provide every possible avenue to his deportation. Article 24(3) requires special protections in the field of children’s right to acquire a nationality; instead, the Netherlands’ legal framework is simply unforgiving for children in █████ situation, falling far short of promoting access to all rights under the Covenant, which is a key function of Article 24 as a whole.
109. Through no fault of his own or his mother’s, █████ cannot prove that he is *not* Chinese under the stringent evidentiary burdens imposed by the GBA/BRP Act, in order to be registered as “stateless” instead of “unknown” nationality. The Council of State concluded that it is not incumbent on executive authorities to “investigate” whether █████ is stateless,<sup>118</sup> but in fact █████ only requested that the authorities consider the significant evidence already demonstrating that he is not considered to be a national by any state with which he has a relevant link.
110. He also lacks a residence permit and the Netherlands makes access to a nationality contingent on legal residency in contravention of the 1961 Convention on the Reduction of Statelessness to which it is also a party. A legislative proposal may fix this, but it will not come into effect for some time, if adopted at all and, for reasons outlined above (para. 80-81), it is unclear that █████ would satisfy the requirements of “stable” residence status and proof that he cannot otherwise resolve his statelessness.

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although data from the GBA are indicative for all other governmental institutions, e.g. the IND [Dutch migration authority], they are not binding.”)

<sup>115</sup> Case No. ECLI:NL:RBZLY:2010:BN6394; See Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Centre for European Law and Governance, Working Paper Series 2014-4 (May 2014), available at: [www.aceg.uva.nl/publications](http://www.aceg.uva.nl/publications) (“Firstly, both UN Statelessness Conventions have a legally binding force within the national Dutch legal systems, by virtue of Arts. 93, 94 of the Dutch Constitution (Grondwet voor het Koninkrijk der Nederlanden 2008), and some of the Convention’s provisions have been found to be directly applicable in the Netherlands (see Judgment of the Court Zwolle of 9 September 2010). Secondly, the Dutch migration and nationality laws contain rights specifically addressed to stateless persons, such as the right to travel documents and simplified access to Dutch nationality (See *Vreemdelingencirculaire* (Circular on Foreigners) of 2000, art. B/17; and *Rijkswet op het Nederlanderschap* (Law on Nationality) of 1984, art. 6(1b) and Art. 8 (4)).”)

<sup>116</sup> See judgment of *Centrale Raad van Beroep* (Administrative High Court), of 13-01-2004.

<sup>117</sup> See Exhibit 15: Municipality of Katwijk Kongen Julianalaan 3 2224 EW Katwijk, *Confirmation of option statement denied*, 29 May 2015 (with English trans.) (noting that the district court decision “applies to people with the nationality ‘stateless’. Since [Denny Zhao] does not have the nationality ‘stateless’, there can be no talk of a comparable situation and no claim can be made based on this decision”).

<sup>118</sup> See para. 42, above.

111. The cumulative impact of these impediments is straightforward: ██████ is trapped. His mother undertook immense and ultimately unsuccessful efforts on her son’s behalf even to change his registration to “stateless,” something that would overcome just one hurdle toward a real solution.
112. He has already spent six years of his childhood in limbo. This prolonged uncertainty alone is a clear violation of ██████ right to acquire a nationality. But the implications of limbo are more material in this case because in the meantime the Netherlands treats ██████ as a removable foreigner rather than a stateless child in desperate need of protection. While not in detention, the family location center where he is forced to live with his mother entails serious restrictions on his psychological and social development according to at least one domestic court and Dutch refugee and migrants rights groups.
113. The European Network on Statelessness (ENS) has made clear that the Netherlands is simply not living up to its obligations in cases like ██████ :
- “The scale and duration of this practice [prolonged categorization as nationality “unknown”] in the Netherlands and other countries suggests that, in fact, not enough is being done to (subsequently) verify and resolve a child’s nationality status.”<sup>119</sup>
114. In another report ENS describes this practice as “one of the most troubling problems” in relation to implementing safeguards against childhood statelessness, precisely where such a designation functions as an alternative to what the Netherlands should be doing in ██████ case: identifying him as stateless and facilitating access to a nationality.
115. The Netherlands is violating its obligations under Article 24(3) to ensure that every child has a nationality from birth, read in line with the international protection and human rights frameworks designed to combat childhood statelessness.

**B. There is a Positive Obligation to Introduce Safeguards against Childhood Statelessness**

116. The Netherlands’ obligation to ensure that every child enjoys the right to acquire a nationality should be considered in the light of the positive measures of protection required within the Covenant, in general and in the special case of children’s rights.
117. The violation of ██████ right to acquire a nationality is not the result of an isolated decision or specific to the facts of his case. Rather, it is the direct consequence of the Dutch government’s failure to give positive effect to the rights in Article 24, and in particular Article 24(3), in its legislation and administrative rules governing civil registration, nationality and immigration status. The domestic legal protections against statelessness are insufficient because (1) the Netherlands still lacks fair, balanced processes for determining statelessness, including statelessness at birth, a deficiency that has been recognized by the Council of State, the Advisory Committee on Migration, and key members of the Dutch government; and (2) the Netherlands is not implementing other safeguards relevant to preventing and reducing childhood statelessness, particularly in cases of “undetermined” nationality and where children do not have legal residence in the country, that would ensure ██████ best interests and all of his Covenant rights are respected on an equal footing with other children.

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<sup>119</sup> European Network on Statelessness, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014, at 14, available at: <http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Preventing%20childhood%20statelessness%20in%20Europe%20-%20issues%2C%20gaps%20and%20good%20practices.pdf>.

118. No steps have yet been taken to comply with the government’s obligations, in violation of Article 24 read in conjunction with Article 2(2).

Relevant legal standards

119. In addition to the specific protection under Article 24(3), discussed above, Article 24(1) of the Covenant states that every child shall have:

“[T]he right to such measures of protection as are required by his status as a minor on the part of his family, society and the State.”

120. Article 2(2) of the Covenant also states:

“Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”

121. The most important protection devised by the international community to help resolve cases of statelessness among children is the obligation to grant nationality to children born on the territory of a state who would otherwise be stateless.<sup>120</sup> This protection mechanism flows from the obligation to avoid statelessness. The European Convention on Nationality Explanatory Report states that avoidance of statelessness forms part of customary international law,<sup>121</sup> finding expression in provisions like CRC Article 7, Article 1 of the 1961 Convention and Article 24(3) of the Covenant.

(1) There should be Protection-oriented Procedures for Determining Statelessness

122. The Netherlands should institute a statelessness status determination procedure that would provide a solution for children like ██████████

123. In order to give effect to the key safeguard that children who would otherwise be stateless acquire the nationality of the state where they are born, states must have reliable, accessible and well-functioning procedures for determining when children are “otherwise stateless.”<sup>122</sup> With respect to determination of statelessness status for the purposes of applying the 1954 Convention relating to the Status of Stateless Persons, UNHCR has emphasized that “it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment to comply with their Convention commitments.”<sup>123</sup> The same principle should apply when it comes to implementation of the 1961 Convention, given the instruments’ shared aims of addressing statelessness and the centrality of identifying

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<sup>120</sup> See 1961 Convention (Article 1); ECN (Article 6(2)); American Convention on Human Rights (Article 20); African Charter on the Rights and Welfare of the Child (Article 6).

<sup>121</sup> The International Law Commission has also made this determination, see Draft Articles on Diplomatic Protection with commentaries (2006), at p. 49, available at: [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_8\\_2006.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf).

<sup>122</sup> See, e.g., European Network on Statelessness, *No Child Should Be Stateless* (2015), at p. 1 (encouraging adoption of “special measures to actively facilitate access to nationality where statelessness arises, including the enhanced identification of relevant cases, in order to avoid such scenarios as where a child is labelled as being of ‘unknown nationality’ for a prolonged period of time.”), available at:

[http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_NoChildStateless\\_final.pdf](http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf).

<sup>123</sup> UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html> at para 8.

stateless persons to that effort.<sup>124</sup> The two Conventions use the same definition of a “stateless person,” contained in the 1954 Convention Article 1(1),<sup>125</sup> the uniform application of which across the variety of circumstances in which statelessness can arise is likewise facilitated through well-designed status determination procedures at the national level.

124. As noted above, the CRC Committee has clarified through its monitoring of state practice that protection to otherwise stateless children must be accorded regardless of parents’ legal status, including residence status.<sup>126</sup> This is in line with Article 2(1) of the Covenant, which requires states to accord rights and protection without distinction of any kind.<sup>127</sup> It also follows the same reasoning adopted by the European Court of Human Rights in ██████████ v. *France*, where the Court rejected the restriction of a child’s right to recognition of his or her identity as a means of regulating parents’ behavior.<sup>128</sup>
125. UNHCR guidance also confirms that states cannot avoid obligations by facial analysis of another country’s laws: that statelessness is a mixed question of law and fact and must be determined not only on the basis of legal provisions but also the practice of competent state authorities.<sup>129</sup>
126. It is important to note that any such procedure could have as an appropriate outcome a finding that an individual is in fact not stateless but holds another nationality.<sup>130</sup> What is absolutely critical is that the burden of proof be distributed rationally between the individual applicant and the state and that authorities operating the procedure are trained and comfortable in making the often complicated determinations required. The standard of proof must not be unreasonably high; UNHCR, for example, recommends a “reasonable degree” standard, noting that a higher standard of proof might defeat the object and purpose of the 1961 Convention.<sup>131</sup> Decisions must be subject to administrative and judicial review. And recognition of status must allow for a right to stay.
127. ██████████ case poignantly illustrates how difficult it is to secure children’s right to nationality without well-designed, protection-oriented statelessness status determination procedures. Yet, in decision after decision, the Dutch courts have denied that their

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<sup>124</sup> See, e.g., UNHCR, *Global Action Plan to End Statelessness* (November 2014), at 10 (in order to implement the 1961 Convention’s Article 1 safeguard, “States need to take steps to ascertain whether a child born in the territory whose nationality is unclear, has acquired the nationality of another State.”).

<sup>125</sup> See 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, at para. 16.

<sup>126</sup> See Institute on Statelessness and Inclusion, *Realising the right of every child to acquire a nationality: An analysis of the work of the Committee on the Rights and Welfare of the Child*, Draft Policy Paper, September 2015, at 15, available at: [http://www.institutesi.org/CRC\\_nationality\\_paper.pdf](http://www.institutesi.org/CRC_nationality_paper.pdf).

<sup>127</sup> See Human Rights Committee, *General Comment No. 31: the Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2004, at para. 10.

<sup>128</sup> European Court of Human Rights, *Mennesson v. France*, Judgment of 26 June 2014, at para. 99.

<sup>129</sup> See UNHCR, *Handbook on Protection of Stateless Persons* (2014), at para. 23.

<sup>130</sup> See ACVZ, “*Geen land te bekennen*” (No Country of One’s Own), December 2013, at 71, Recommendation 1 (“[T]he possible outcome that a person is not recognized as stateless, offers the Netherlands clarity about the legal status of the alien concerned.”).

<sup>131</sup> See 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, at para. 21.

obligations under the Covenant and other international human rights instruments require any further steps to resolve ██████ situation.<sup>132</sup>

(2) The Netherlands should implement additional safeguards in cases of children with “undetermined” nationality and children who do not have legal residence in the country

128. While in some cases it may be necessary to find that a child is of “undetermined” nationality, the robust protections required for children in such a vulnerable situation demand an affirmative, protection-oriented response. The opposite has been true in ██████ case.
129. First, the Netherlands’ failure to resolve the uncertainty in ██████ case cannot, in light of the positive protections required under Articles 24 and 2(2), serve as an excuse for continuing to deny him access to a nationality after nearly seven years. UNHCR recommends that no child should be considered as holding “unknown” or “undetermined” nationality for longer than five years.<sup>133</sup> Because of the length of time that has already passed and ██████ well documented inability to obtain recognition or denial that ██████ is a Chinese national, the Netherlands should have taken positive action to ensure that he was not left in a state of indefinite limbo.
130. Second, as UNHCR’s guidance on this issue suggests, any child of “undetermined nationality” should enjoy all human rights “on equal terms as children who are citizens.”<sup>134</sup> This has not been ██████ experience: as described above, he has no contact with children who are citizens, and lives in a restricted family center for failed asylum seekers.<sup>135</sup>
131. Third, even if they can prove they are stateless, Dutch law requires children born stateless in the country to have “legal residence” for three years if they want to acquire citizenship, rather than apply the “habitual residence” requirement under the 1961 Convention.<sup>136</sup> At present, in spite of positive individual decisions to the contrary, this remains the law in the Netherlands.<sup>137</sup> Children born stateless who cannot legitimize their status cannot get on the path to nationality as required by the Covenant, Article 24(3) and the Convention on the Rights of the Child, Article 7.
132. The Covenant and relevant international human rights law protections against childhood statelessness command the opposite approach in ██████ case: he should be immediately and retroactively recognized as stateless since birth and acquire Dutch nationality as a child born stateless in the Netherlands. This obligation properly arises

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<sup>132</sup> See, e.g., para. 60, above, citing Exhibit 14: *X.J. Zhao v. Executive of the Municipality of Utrecht*, Council of State (Administrative Law Division), Judgment of 21 May 2014.

<sup>133</sup> 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. See also Principle 8 of the Council of Europe, *Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children*, 9 December 2009 (“Register children as being of unknown or undetermined nationality, or classify children’s nationality as being ‘under investigation’ only for as short a period as possible.”).

<sup>134</sup> 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, at para. 22.

<sup>135</sup> See para 46, above.

<sup>136</sup> See 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, at para. 41 (“The 1961 Convention does not permit Contracting States to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon *lawful* residence.”).

<sup>137</sup> As noted above, para. 5, at least one court has granted nationality in such cases relying directly on the 1961 Convention, but such a result is exceptional and contradicts the Nationality Act.

as a correlative protection to the right to acquire a nationality in Article 24(3), and is required by the overall protective character of Article 24 and in light of the positive obligations that states parties to the Covenant must fulfil pursuant to Article 2(2).

### **C. Failure to Provide an Effective Remedy**

133. The Netherlands has failed to accord ██████ an effective remedy to redress the violation of his rights under Article 24 in conjunction with Article 2(3).
134. Article 2(3) of the Covenant requires that each State Party undertakes:
- “(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”
135. The Committee has addressed the contours of Article 2(3) in General Comment 31, stating:
- “[R]emedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children.”<sup>138</sup>
- ...it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State Party’s laws or practices.”<sup>139</sup>
136. The right to an effective remedy is of central importance in ██████ case because the violation of his rights stems from a systemic failure in the Netherlands’ approach to children who are at risk of statelessness and in need of the protections guaranteed by Article 24. As noted, ██████ is one of over 5,000 children born in the Netherlands and registered as holding an “unknown” nationality for longer than 5 years.
137. The Dutch Council of State acknowledged that the Netherlands lacks an effective remedy to resolve ██████ protracted situation of uncertainty: “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 lawmaking task of the judiciary to fill in this gap.”<sup>140</sup>
138. The Netherlands is on notice that it is leaving many children in an untenable situation of uncertainty year after year. The “gap” is identified; the recommendations and guidelines are clear from numerous reports on childhood statelessness in the country. The Netherlands must now be compelled to act – to do more for its thousands of “unknown” children like ██████.

## **VIII. REMEDIES**

139. States Parties are required to make reparation to individuals whose Covenant rights have been violated. This requirement is an extension of the central obligation to provide an effective remedy in Article 2(3). The Committee has clarified that remedies may be of individual and general nature, encompassing the duty to ensure non-repetition of Convention violations:

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<sup>138</sup> Human Rights Committee, *General Comment 31*, para. 15.

<sup>139</sup> *Ibid.*

<sup>140</sup> See Exhibit 14: *X. X.J. Zhao v. Executive of the Municipality of Utrecht*, Council of State (Administrative Law Division), Judgment of 21 May 2014 (with English trans.), at para. 4.4.



“In general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State Party’s laws or practices.”<sup>141</sup>

140. Both individual and general reparations are required in this case, in light of the structural nature of the harm suffered by ██████ in respect of his right to acquire a nationality.
141. In light of the facts and submissions above the Author respectfully requests that the Committee declare violations of Article 24, standing alone and in conjunction with Articles 2(2) and 2(3) of the International Covenant on Civil and Political Rights.
142. In addition, the Committee should also recommend that the Netherlands make individual and general reparations so as to put an end to violations of this type.
  - a) *BRP Record*. The authorities should change ██████ record in the BRP from “unknown nationality” to “stateless.”
  - b) *Permit of Stay*. The authorities should grant ██████ immediately a regular permit of stay in the Netherlands, retroactive to his birth.
  - c) *Statelessness Determination*. In order to fulfil their obligations under the Covenant, the Netherlands should establish in law an accessible, efficient framework for determining statelessness status, which may include one or more specific procedural mechanisms, with safeguards to ensure respect for human rights obligations.<sup>142</sup> Any such procedure should contain the following features:
    - i) *Best interests of the child*. All decisions taken in respect of children should hold paramount the child’s best interests.<sup>143</sup> Article 3 of the Convention on the Rights of the Child entitles all children to the right to have their best interests assessed and 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.<sup>144</sup>
    - ii) *No discrimination of any kind*. The principle of non-discrimination is central to all international human rights instruments. Accordingly, the Netherlands must ensure that children’s access to statelessness determination and consideration of their claims is under no circumstance conditioned upon their parents’ migratory status. As the Human Rights Council has emphasized, Article 2(2) of

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<sup>141</sup> Human Rights Committee, *General Comment 31*, para. 17.

<sup>142</sup> The Committee is generally referred to the conclusions and recommendations of UNHCR, *Mapping Statelessness in the Netherlands* (2011) and ACVZ, “*Geen land te bekennen*’ (No Country of One’s Own), December 2013.

<sup>143</sup> See 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, at paras. 9-12.

<sup>144</sup> 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.

the Convention on the Rights of the Child protects children against all forms of discrimination or punishment on the basis of the status of their parents.<sup>145</sup>

- iii) *Accessibility*. The procedure should be accessible to anyone regardless of the lawfulness of their stay in the Netherlands. As UNHCR has clarified, limiting access to those with legal residence “is particularly inequitable given that lack of nationality denies many stateless persons the very documentation that is necessary to enter or reside in any State lawfully.”<sup>146</sup>
- iv) *Training*. Authorities responsible for making statelessness determination should receive training and support, including specialized training on nationality law, international human rights and statelessness.<sup>147</sup>
- v) *Standard and burden of proof*. As recommended by UNHCR in its mapping study of statelessness in the Netherlands, “the procedure should adopt an approach to evidence which takes into account the challenges inherent in establishing whether someone is stateless.”<sup>148</sup> The procedure should employ a flexible, shared burden of proof between the individual and determination authorities with respect to foreign nationality or lack thereof.<sup>149</sup> The standard of proof should not be so high as to undermine the protective purpose of the procedure itself.
- vi) *Time limits*. As stated above, the high number of “unknown” nationality entries is attributable in part to the lack of any time limit for the duration of such annotation.<sup>150</sup> No child should be registered as unknown or undetermined nationality for longer than five years.<sup>151</sup> For ██████ it has been almost seven years, in spite of all of his mother’s attempts to obtain a nationality for him and without any solution being offered.
- vii) *Temporary protection and residence permits*. Special measures of protection should be granted to persons of undetermined nationality, those in the process of statelessness determination, and stateless persons: (a) children born in the territory of “unknown” or “undetermined” nationality should be treated as “otherwise stateless” until a nationality is determined and should enjoy human rights equally with children who are citizens; (b) individuals awaiting statelessness determination should be granted an automatic permit of stay for the duration of proceedings; and (c) determination of statelessness should result issuance of a residence permit.

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<sup>145</sup> 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*, (2015) para 8.

<sup>146</sup> UNHCR, *Handbook on Protection of Stateless Persons* (2014), at para. 69.

<sup>147</sup> UNHCR Mapping Statelessness in the Netherlands (2011), at 60, Recommendation 3(f). *See also* Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 16-18, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434573](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434573).

<sup>148</sup> UNHCR, Mapping Statelessness in the Netherlands (2011), at p. 59, Recommendation 3(b).

<sup>149</sup> *Ibid.* Recommendation 3(c).

<sup>150</sup> UNHCR, Mapping Statelessness in the Netherlands (2011), at para. 70.

<sup>151</sup> *See* 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, at para. 22.

- d) *Prevention of statelessness.* The Author further respectfully requests that the Committee urge the State to amend Article 6(1)(b) of the Dutch Nationality Act so that Dutch nationality is accessible to stateless children – such as ██████ – born on the territory, but who do not hold a permit of stay. A habitual residence requirement may be substituted for “legal stay”<sup>152</sup> though not for a period exceeding five years, which is the approach taken in a draft law advanced in October 2016. At least one district court in the Netherlands has already concluded that a lawful stay requirement violates the 1961 Convention, as has the Dutch Advisory Committee on Migration Affairs in its report on statelessness in the Netherlands.<sup>153</sup> UNHCR takes the same position in its Mapping Statelessness in the Netherlands report and general guidance on the implementation of the 1961 Convention.<sup>154</sup>



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Executive Director  
Open Society Justice Initiative



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[www.fischergroep.nl](http://www.fischergroep.nl)  
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<sup>152</sup> See, e.g. UNHCR, Mapping Statelessness in the Netherlands (2011), at 63, Recommendation 21.

<sup>153</sup> ACVZ, “Geen land te bekennen’ (No Country of One’s Own), December 2013, at 74.

<sup>154</sup> See *ibid.*, see also 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, at para. 41.

## ANNEX 1: LIST OF SUPPORTING DOCUMENTS

### Registration and Personal Information

- Exhibit 1 [REDACTED] birth record (extract from Extract from Dutch Municipal Personal Records Database [GBA/BRP])
- Exhibit 2 Extract of custody registry (indicating father has no parental authority)

### Efforts to Obtain Proof of [REDACTED] Nationality or Lack Thereof

- Exhibit 3 9 August 2010 letter from [REDACTED] copied to various state authorities requesting to be informed of her registration number or to be issued a registration number in order to apply for a Chinese passport (Chinese, with English trans.)
- Exhibit 4 Statements of [REDACTED], coordinator of ex-AMA team Utrecht, Dutch Refugee Council, 10 April 2009 and 11 January 2010 (with English trans.)
- Exhibit 5 Statements of [REDACTED], Red Cross Volunteer, 2 July 2010 and 21 November 2011 (with English trans.)
- Exhibit 6 Statement of Dutch Refugee Council, dated 30 September 2010 (with English trans.)
- Exhibit 7 Letter from Red Cross, dated 25 October 2012 (with English trans.)

### Domestic Proceedings

#### *Request to Change [REDACTED] Civil Registry Record*

- Exhibit 8 Original request to amend registration, dated 12 July 2012 (Dutch only)
- Exhibit 9 Letter from Municipality of Utrecht to [REDACTED], 9 August 2012 (Dutch only)
- Exhibit 10 Letter from Municipality of Utrecht to [REDACTED], 15 August 2012 (Dutch only)
- Exhibit 11 Letter from Municipality of Utrecht to [REDACTED], 17 September 2012 (Dutch only)
- Exhibit 12 Municipality of Utrecht, Head of Legal Matters Department, ref: b12.3062 letter nr. J12.621 146 (decision on administrative appeal), 22 November 2012 (with English trans.)
- Exhibit 13 [REDACTED] v. *Executive of the Municipality of Utrecht*, Court of Central Netherlands, Utrecht Branch, Case UTR 13/11, Judgment of the single-judge chamber of 12 April 2013 (English trans.)
- Exhibit 14 [REDACTED] v. *Executive of the Municipality of Utrecht*, Council of State (Administrative Law Division), Judgment of 21 May 2014 (with English trans.)

#### *[REDACTED] Dutch Citizenship Application*

- Exhibit 15 Municipality of Katwijk [REDACTED] Confirmation of option statement denied, 29 May 2015 (with English trans.).

- Exhibit 16 Municipality of Katwijk, Commission of Written Appeals, Opinion from the Commission of Written Appeals to the Mayor of the Municipality of Katwijk, 15 September 2015 (with English trans.).
- Exhibit 17 ██████ v. *Municipality of Katwijk*, Written Appeal, 28 October 2015 (with English trans.)
- Exhibit 18 ██████ v. *Municipality of Katwijk*, Regional Court of The Hague, 3 March 2016, SGR 15/7710 (Dutch only)
- Exhibit 19 ██████ v. *Municipality of Katwijk*, Council of State, Judgment of 2 November 2016 (Dutch only)