

CONFERRING NATIONALITY UPON STATELESS  
CHILDREN: A CRITICAL ANALYSIS OF DENNY ZHAO  
V. THE NETHERLANDS

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I. INTRODUCTION

For the first time ever, the U.N. Human Rights Committee (the Committee) issued a decision in December 2020 on the right of a child to acquire nationality.<sup>1</sup> Denny Zhao (the petitioner) was born in the Netherlands (state party) in 2010, but since the country had classified his mother as an “illegal alien,” Dutch official records registered him as having “unknown nationality.”<sup>2</sup> Further, there were no legal avenues through which the petitioner could acquire Dutch nationality in the future.<sup>3</sup> The petitioner alleged that this violated his rights under Article 24, read along with Articles 2(2) and 2(3), of the International Covenant on Civil and Political Rights (ICCPR), to which the Netherlands is a state party.

This article first examines the judgment of the Committee in detail. By shedding light on the importance of nationality and statelessness within the framework of international human rights law, this paper then analyses how a state’s refusal to recognise these statuses severely affects an individual’s fundamental human rights. Finally, this article argues that states should consciously devise efficient procedures

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1. *Netherlands violates nationality rights: UN rights committee*, UN NEWS (Dec. 29, 2020), <https://news.un.org/en/story/2020/12/1081062>.

2. UN Human Rts. Comm., *Denny Zhao v. The Netherlands*, Comm’n No. 2918/2016, U.N. Doc. CCPR/C/130/D/2918/2016 (2020), ¶ 1 [hereinafter ‘*Denny Zhao v. The Netherlands*’].

3. *Id.*

to recognise nationality and statelessness in adherence with international human rights standards.

## II. FACTS OF THE CASE

The petitioner's mother was born in China, but her birth was not registered in Chinese civil records because her parents abandoned her at an early age and never completed her household registration.<sup>4</sup> The absence of her registration in the civil registry prevented her from establishing proof of Chinese citizenship.<sup>5</sup> At the age of fifteen, she was trafficked to the Netherlands.<sup>6</sup> While she managed to escape, Dutch authorities rejected her application for asylum and she was forced into prostitution for over a year.<sup>7</sup> After reporting yet again that she was a victim of human trafficking, the Dutch police commenced an investigation, which closed after nearly a year of unsuccessful attempts at identifying or locating her traffickers.<sup>8</sup> During this time, she received a "special temporary residence permit" that expired upon the cessation of the inquiry.<sup>9</sup> Thereafter, she became classified as an "illegal alien" within the country.<sup>10</sup>

The petitioner was born in Utrecht, Netherlands in 2010. Since his father never acknowledged his paternity and his mother provided no proof of his nationality, the Dutch Municipal Records listed his nationality as "unknown."<sup>11</sup> Having such a status prevented the petitioner from enjoying the basic international protections afforded to stateless children, including the right to acquire nationality based on place of birth.<sup>12</sup> In the Netherlands, a person must provide conclusive proof of nationality, or lack thereof, to change their "unknown" status

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4. *Id.* ¶ 2.1; 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.

5. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 2.2.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* ¶ 2.3; see also UNHCR, Mapping Statelessness in the Netherlands (2011), at ¶ 35, <http://www.refworld.org/docid/4eef65da2.html> ("Children born to asylum-seekers living in a reception centre are registered immediately upon birth.") [hereinafter 'UNHCR's Mapping Statelessness in the Netherlands'].

12. *Id.* ¶ 2.4.

of nationality in the civil records.<sup>13</sup> To this effect, the petitioner's mother made several attempts to obtain Chinese nationality for her son; she contacted Chinese authorities, the Chinese embassy in the Netherlands, and international organisations, including the International Organisation for Migration and the Red Cross, but all these efforts proved to be in vain because she did not have conclusive proof of her own nationality.<sup>14</sup>

After exhausting all avenues in pursuit of establishing Chinese nationality, the petitioner's mother turned to Dutch officials. She filed an official request before the municipality of Utrecht to change the petitioner's status in the civil registry from "unknown nationality" to "stateless."<sup>15</sup> The municipality denied this request on the grounds that there were no legal or official documents to establish that the petitioner was not a Chinese national.<sup>16</sup> Without such documentation, Dutch law presumed him to be a Chinese national and, hence, not stateless.<sup>17</sup> The petitioner and his mother lodged appeals before higher authorities, but all of them, including the Dutch Council of State—the highest court of appeals in the Netherlands—upheld the municipality's decision, stating that the burden of proof for establishing lack of nationality rested on the petitioner.<sup>18</sup> While the Council of State acknowledged that individuals otherwise entitled to protections, including children, suffer as a result of the lack of procedures for establishing statelessness in national and international law, it held that only the legislature could fill this gap.<sup>19</sup> Until the legislature took such steps, the petitioner could not seek statelessness protections under Dutch law. The petitioner faced a similar result in 2015 when he applied for recognition in the municipality of Katwijk.<sup>20</sup>

The petitioner's inability to acquire nationality exposed arbitrary flaws in the Dutch legal system. It was impossible for the petitioner to register as "stateless" due to rigid and cumbersome procedures. In fact, even if he were able to register as "stateless," he would still be ineligible

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13. See Wet Basisregistratie personen 3 juli 2013, Stb. 2013, (Law on the Population Register) of 2013, arts. 2.7, 2.15 (Neth.); see also Katja Swider, *Statelessness Determination in the Netherlands*, Amsterdam Law School Legal Studies Research Paper No. 2014-33, at 10, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2434573](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434573) [hereinafter "Swider"].

14. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 2.3.

15. *Id.* ¶ 2.5.

16. *Id.*

17. *Id.*

18. ABRvS Utrecht 21 mei 2014, AB 2014 (X.J. Zhao/Bestuurder van de gemeente Utrecht) (Neth.).

19. *Id.* ¶¶ 4.1-4.4 (emphasis added).

20. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 2.8.

for Dutch nationality as he did not hold a lawful residence permit for at least three years, a requirement under Dutch law.<sup>21</sup> This violated the Netherlands' obligations under the 1961 Convention on the Reduction of Statelessness, under which a state party can only impose habitual residence requirements,<sup>22</sup> a fact which the Netherlands itself acknowledged in the proceedings before the Committee.<sup>23</sup>

By virtue of having no nationality, the petitioner was forced to live in a restricted freedom centre for failed asylum seekers with young children.<sup>24</sup> This experience was damaging and traumatic for the petitioner, as he faced strict rules on his freedom of movement and lived under a constant fear of facing health issues, family problems, and social exclusion.<sup>25</sup> His chances of deportation remained high and his contact with Dutch society remained minimal.<sup>26</sup>

### III. THE PETITIONER'S COMPLAINT AND SUBMISSIONS BY THE STATE PARTY

On November 23, 2016, the petitioner submitted that the lack of clarity regarding his chances of acquiring nationality in the Netherlands violated his rights under Article 24(3) of the ICCPR, which specifically provides for the right to acquire nationality.<sup>27</sup> This right is inherently

21. Wet op het Nederlanderschap 13 april 2010, Stb. 2010, art. Dutch Nationality Act, Article 6(1)(b), available (in English) at: [https://www.legislationline.org/download/id/5937/file/Netherlands%20Nationality%20Act\\_2010\\_en.pdf](https://www.legislationline.org/download/id/5937/file/Netherlands%20Nationality%20Act_2010_en.pdf)  
[http://eudocitizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=NL%20Netherlands%20Nationality%20Act\\_consolidated%2025\\_11\\_13\\_ENGLISH.pdf](http://eudocitizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=NL%20Netherlands%20Nationality%20Act_consolidated%2025_11_13_ENGLISH.pdf).

22. U.N. Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175 [hereinafter '1961 Convention'].

23. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 2.7.

24. *Id.* ¶ 2.9.

25. 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).

26. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 2.9.

27. *International Covenant on Civil and Political Rights* art. 24(3), Dec. 16, 1966, 999 U.N.T.S. 171 (every child has the right to acquire nationality) [hereinafter 'ICCPR']; *Denny Zhao v. Netherlands*, Communication to the United Nations Human Rights Committee (November 23, 2016), <https://www.justiceinitiative.org/uploads/540dda1b-c8fc-4704-8743-82f61b6873c0/zhao-v-netherlands-complaint-to-unhrc-11232016.pdf> [hereinafter 'The Petitioner's Submission before the Committee'].

tied to an individual's sense of human dignity,<sup>28</sup> which states should strive to promote since birth. Further, the petitioner asserted that the state party had violated his rights under Article 24 of the ICCPR, read in conjunction with Article 2(2), by failing to create appropriate national procedures for determining statelessness under irregular circumstances and subsequently using this legislative gap to deny his application for nationality.<sup>29</sup> Because of this, the Netherlands also failed to provide him with an effective remedy, thus violating his rights under Article 24 read in conjunction with Article 2(3).<sup>30</sup> Hence, the petitioner requested that the Committee:

[F]ind a violation of his rights under the aforementioned articles and to recommend that the State party: (i) change his record in the Municipal Personal Records Database from “unknown nationality” to “stateless”; (ii) immediately grant him a regular permit of stay in the Netherlands, retroactive to his birth; (iii) establish in law a statelessness determination procedure and access to rights such as residence, with structural and procedural safeguards to ensure accessibility, fairness and flexibility in its operation, especially in respect of children; and (d) amend article 6 (1) (b) of the Nationality Act so that Dutch nationality is accessible to stateless children born in the territory, but who do not hold a permit of stay.<sup>31</sup>

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28. Robert John Penness v. Tanzania, No. 013/2015, Decision, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], ¶ 87 (Nov. 28, 2019), <https://africanlii.org/afu/judgment/african-court/2019/8>.

29. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 3.2; ICCPR, *supra* note 27, art. 2(2) (“[S]tate parties shall adopt necessary laws and measures to give effect to rights recognised in the present Covenant”), art. 24 (“[E]very child shall have, without any discrimination as to birth and other things, the 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. Additionally, every child shall be registered immediately after birth and shall have a name and every child has the right to acquire a nationality.”).

30. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 3.3; ICCPR, *supra* note 27, art. 2(3) (“[S]tate parties shall provide effective remedies to persons whose rights are violated, that such remedy shall be determined by competent judicial, administrative or legislative authorities and such authorities shall enforce such remedies when granted.”), art. 24 (“[E]very child shall have, without any discrimination as to birth and other things, the 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. Additionally, every child shall be registered immediately after birth and shall have a name and every child has the right to acquire a nationality.”).

31. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 3.4.

The state party acknowledged the petitioner's inability to exercise the right to acquire a nationality, and informed the Committee about the then-underway drafting of two bills, which sought to create a procedure for determining the statelessness of children and to allow them to acquire Dutch nationality, subject to certain conditions.<sup>32</sup> In light of the petitioner's situation, the state party offered to pay him 3000 euros as compensation.<sup>33</sup> However, they did not offer him any sort of status.<sup>34</sup>

In response, the petitioner insisted that the Netherlands accept "clear and unequivocal" responsibility for the violations, going beyond mere acknowledgement.<sup>35</sup> The proposed compensation of 3,000 euros did not suffice as there was still "no guarantee that he will receive Dutch nationality, or even that he will be registered as stateless."<sup>36</sup> The petitioner also wanted the state party to provide a "guarantee of non-repetition,"<sup>37</sup> thereby honouring its positive obligations under Articles 2(2) and 2(3) of the ICCPR.<sup>38</sup>

Ultimately, the petitioner asserted that:

[T]he following remedies are required to effectively restore his rights in conformity with the principle of the best interests of the child: (i) he should be recognized and treated as holding the status "otherwise stateless from birth" as this would entitle him to a retroactive permit of stay from the time of his birth and will permit him to apply for Dutch nationality immediately through an expedited application; (ii) removal from the restricted living facility, together with his family; (iii) adequate monetary compensation, amounting to EUR 25,000 which would appropriately reflect the scope of the harm he has suffered; and (iv) general measures to resolve current and future violations of the right to nationality under the Covenant.<sup>39</sup>

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32. The Petitioner's Submission before the Committee, *supra* note 27, ¶¶ 80-81.

33. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 4.2.

34. *Id.*

35. *Id.* ¶ 5.1.

36. *Id.*

37. *Id.*

38. ICCPR, *supra* note 27, art. 2(2) ("[S]tate parties shall adopt necessary laws and measures to give effect to rights recognised in the present Covenant."), art. 2(3) ("[S]tate parties shall provide effective remedies to persons whose rights are violated, that such remedy shall be determined by competent judicial, administrative or legislative authorities and such authorities shall enforce such remedies when granted.").

39. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 5.2.

The petitioner also reiterated that it is essential for the state party to establish an efficient legal framework for determining statelessness status in order to comply with its international obligations under the ICCPR.<sup>40</sup>

#### IV. THE DECISION OF THE COMMITTEE

The consideration of the child's best interests is fundamental in affording all available protections to the child by a State party.<sup>41</sup> As per General Comment No. 17 on the Rights of the Child, every state is obliged to ensure that a child has a nationality when they are born, and, in fulfilling this obligation, states may not discriminate based on the child's legitimacy or whether the child is born to parents who are stateless or who have a particular nationality.<sup>42</sup> The Committee noted that, according to the UNHCR's Guidelines on Statelessness No. 4, states have a duty to not prolong the status of "undetermined nationality" of a child in cases where the child would otherwise be stateless, within a period not exceeding five years.<sup>43</sup> Even during this period, the child remains entitled to the same human rights available to other children who are citizens of that country, including rights relating to education and health.<sup>44</sup> Therefore, the Committee determined that the Dutch procedures for determining the statelessness of children and allowing them to acquire Dutch nationality were inconsistent with international standards.<sup>45</sup>

In this case, the petitioner's mother exhausted all possible means of establishing her Chinese nationality and Dutch authorities failed to grant nationality status to the petitioner. These same authorities

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40. *Id.* ¶ 5.3.

41. UN Hum. Rts. Comm., Comm'n no. 1069/2002 on Its Seventy-Ninth Session, U.N. Doc. CCPR/C/79/D/1069/2002 (2003), ¶ 9.7.

42. UN Hum. Rts. Comm., Gen. Comment no. 17, Art. 24, Rts. Of the Child, U.N. Doc. CCPR/C/GC/17 (1989), ¶ 8.

43. 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, U.N. Doc. HCR/GS/12/04 (2012), ¶ 22; *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 8.3 (citing UNHCR's Guidelines on Statelessness No. 4).

44. *Id.*

45. *See* UN Human Rights Committee, Concluding observations on the fifth periodic report of the Netherlands, U.N. Doc. CCPR/C/NLD/CO/5 (2019), ¶ 22 ("[T]he draft legislation establishing a statelessness determination procedure did not grant a residence permit to a person recognized as stateless."); *See also* UN Comm. on the Rts. of the Child, Concluding observations on the fourth periodic report of the Netherlands, U.N. Doc. CRC/C/NLD/CO/4 (2015), ¶ 33 ("[T]he state party should ensure that all stateless children born in its territory, irrespective of residency status, have access to citizenship without conditions.").

acknowledged that the lack of a procedure for determining statelessness was affecting the rights of children, among them the petitioner, who was unable to enjoy his right to acquire nationality. Hence, the Netherlands violated its obligations under Article 24(3) of the ICCPR.<sup>46</sup> Further, by failing to provide any effective remedy, the state party also violated the petitioner's rights under Article 24(3) of the ICCPR, read in conjunction with Article 2(3).<sup>47</sup>

Therefore, the Committee ordered the Netherlands to provide adequate compensation and make full reparations to the petitioner.<sup>48</sup> This included (i) reviewing the decision on the petitioner's application to obtain "stateless" status, (ii) reviewing the decision on the petitioner's application to obtain Dutch citizenship, and (iii) considering the petitioner's living circumstances and other when acting in the best interests of the child.<sup>49</sup> Further, the state party now has the obligation to take all measures to avoid similar situations in the future and establish laws relating to the determination of statelessness and the acquisition of citizenship on the basis of stateless status.<sup>50</sup>

#### V. A CRITICAL ANALYSIS

Nationality is a concept which generally comes under the purview of a state's domestic jurisdiction, but it has important international legal consequences because it determines the rights granted to and obligations imposed upon an individual by the state.<sup>51</sup> The substantive aspects of nationality include, among other things, diplomatic protection and residence.<sup>52</sup> Possessing the nationality of a particular state allows a person to enjoy basic as well as specific civil, political, and economic rights, granted exclusively only to nationals of those states. Some of the most common ways of acquiring the nationality of a country are through the criteria of *jus soli* (nationality determined by place of birth), *jus sanguinis* (nationality determined on the basis of parents' nationality), and *jus domicile* (nationality acquired in a place

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46. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 8.5.

47. *Id.*

48. *See* ICCPR, *supra* note 27, art. 2(3)(a) ("[S]tate party shall 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.").

49. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 10.

50. *Id.*

51. *Nottebohm (Liech. v. Guat.)*, Judgment, 1955 I.C.J. Rep. 4, at 20 (Apr. 6).

52. ALICE EDWARDS & LAURA VAN WAAS, INTRODUCTION TO NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW 29-42 (Alice Edwards & Laura Van Waas eds., 2014).

where a person resides for a long period of time).<sup>53</sup> Most European countries recognise nationality on the basis of *jus sanguinis*.<sup>54</sup>

A stateless person is one who is not a recognised national of any state.<sup>55</sup> Statelessness can occur as a result of conflicting laws, administrative practices, discrimination, lack of birth registration, or denationalisation, among other means.<sup>56</sup> It is imperative that states recognise stateless persons through an appropriate procedure so as to guarantee them basic human rights and allow them to lead a dignified life until they acquire formal nationality.<sup>57</sup> Generally, states like the Netherlands consider statelessness as a prerequisite to acquiring nationality. Acquiring nationality affords full domestic protections and privileges to stateless persons in the country where they reside, including enjoyment of those rights which are exclusively possessed by nationals of those states. Hence, recognising stateless people as citizens helps them to transition into a stable environment, which in turn, promotes their overall development.<sup>58</sup> Especially for stateless children, the benefits of such a transition can be highly advantageous.

States should relax the *jus sanguinis* criteria in favour of *jus soli* under difficult circumstances and should revise national policies to ensure the effective integration of stateless persons within mainstream society. In the petitioner's case, his mother was an alleged victim of human trafficking.<sup>59</sup> Additionally, she never formally registered as a Chinese national, having been abandoned by her parents at a young age, and was unable to obtain official documentation, despite repeated

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53. *Id.* at 11, 16-20.

54. *Rules of Jus Soli Citizenship in EU-28*, EUR. PARLIAMENTARY RSCH. SERV. BLOG (July 11, 2018), <https://epthinktank.eu/2018/07/11/acquisition-and-loss-of-citizenship-in-eu-member-states-key-trends-and-issues/figure-1-rules-of-jus-soli-citizenship-in-eu-28/>.

55. *See* U.N. High Comm'r for Refugees, *Convention relating to the Status of Stateless Persons*, Geneva (1954), [https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf); PAUL WEIS, *NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW* 161 (2nd ed. 1994).

56. *See* U.N. High Comm'r for Refugees, *Nationality and Statelessness: A Handbook for Parliamentarians*, Geneva (2005), <https://www.un.org/ruleoflaw/files/Nationality%20and%20Statelessness.pdf> [hereinafter 'UNHCR's Nationality and Statelessness Handbook for Parliamentarians'].

57. *See* U.N. High Comm'r for Refugees, *Statelessness determination procedures*, Geneva (2014), <https://www.refworld.org/pdfid/5412a7be4.pdf> [hereinafter 'UNHCR Statelessness determination procedures'].

58. UNHCR's *Nationality and Statelessness Handbook for Parliamentarians*, *supra* note 56, at 3.

59. *Denny Zhao v. The Netherlands*, *supra* note 2, ¶ 2.2.

attempts to contact the Chinese authorities.<sup>60</sup> Even though the petitioner's father failed to acknowledge paternity, his mother had already been living in the Netherlands for six years since the time of the petitioner's birth.<sup>61</sup> Considering the circumstances in this case, the Dutch authorities should have made an attempt to grant the petitioner Dutch nationality at birth itself.<sup>62</sup>

Another pertinent point in this case was the petitioner's insistence on changing his status from "unknown nationality" to "stateless" in Dutch official records and the state party's refusal to do so.<sup>63</sup> "Stateless" individuals are entitled to certain basic human rights under international human rights law, including the right to acquire the nationality of the state in which they currently reside.<sup>64</sup> Not only did the Netherlands deny the petitioner Dutch nationality, but by refusing to recognize him as stateless in the first place, it also closed off any avenues for him to acquire nationality in the near future. This response by the Dutch authorities was not only inadequate, but also irresponsible and unjustifiable.

Dutch law treated "statelessness" as a necessary link for the petitioner to be eligible to apply for Dutch nationality.<sup>65</sup> Even assuming, *arguendo*, that requiring such status is permissible given the domestic jurisdiction and sovereignty of a state, states should not enforce such criteria so rigidly that they negatively impact the rights of an individual, especially those of a child. In order to adhere to its commitments under international human rights law, the Netherlands had a duty to act in the "best interests" of the petitioner, a child, by facilitating his acquisition of Dutch nationality.<sup>66</sup> Considering the facts of the petitioner's case, there was a clear presumption that the petitioner and his mother were stateless, if not legally, at least as a logical conclusion to the situation.

Moreover, even if "stateless" status was absolutely essential to the acquisition of Dutch nationality, the Netherlands had a positive obligation to create a domestic framework for determining

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60. *Id.* ¶ 2.3.

61. *Id.* ¶¶ 2.2-2.3.

62. *See* 1961 Convention, *supra* note 22, art. 1(1) ("[A] contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless at birth, by operation of law.").

63. *Denny Zbao v. The Netherlands*, *supra* note 2, ¶¶ 2.5-2.8.

64. *See* 1961 Convention, *supra* note 22, art. 1.

65. *See* Swider, *supra* note 13.

66. U.N. Convention on the Rts. of the Child, Sept. 2, 1990, 1577 U.N.T.S. 3.

statelessness.<sup>67</sup> One of the considerations in creating such a framework should be aiding the applicant in obtaining all possible evidence of their previous nationality, if any exists.<sup>68</sup> After the petitioner's mother exhausted all attempts to obtain proof of her Chinese nationality, the Netherlands should have recognised the petitioner's statelessness status, particularly since it was their own gap in legislation that prevented him and his mother from identifying alternative ways to legally prove his statelessness.<sup>69</sup> Prolonging the petitioner's uncertainty regarding his nationality or stateless status was erroneous and in contravention of Netherlands' obligations under international human rights law.

## VI. CONCLUSION

"Unknown nationality" is an unacceptable status, and while "stateless" status may offer a temporary solution, it should only be one step in ensuring that all individuals, including children, ultimately receive nationality. When it comes to making legal decisions related to a child, states must factor in requirements that work in the child's best interests. No child benefits from living under the status of "unknown nationality" or even "statelessness," as neither provide him/her with the human rights protections to which he/she is legally and morally entitled. Facilitating access to nationality and citizenship in a particular state is paramount to ensuring the overall development of the child and, hence, states should strive to provide the same.<sup>70</sup>

Ultimately, this requires states to relax their domestic laws and procedures when faced with unfamiliar circumstances implicating statelessness. Furthermore, states should collaborate with each other and with international organisations to determine the most appropriate way to tackle issues of statelessness and the acquisition of nationality. This need becomes even more pronounced when the uncertainty surrounding these questions threatens vulnerable populations like

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67. See U.N. High Comm'r for Refugees, Handbook on Protection of Stateless Persons, at 25-42, Geneva (2014), [https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR\\_Handbook-on-Protection-of-Stateless-Persons.pdf](https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf).

68. UNHCR Statelessness determination procedures, *supra* note 57, at 5.

69. See UNHCR's Mapping Statelessness in the Netherlands, *supra* note 11; see also Dutch Central Bureau of Statistics (Centraal Bureau voor de Statistiek), <https://www.cbs.nl/>, ("[A]s of September 2016, the total number of "unknown" nationality entries was 74,055, including 13,169 children under 10 years old.")

70. See Jacqueline Bhabha, *The importance of nationality for children*, WORLD STATELESS CHILD., <http://children.worldstateless.org/random-pages/the-importance-of-nationality-for-children.html>.

children.<sup>71</sup> Taking these steps will ensure the protection of the essential human rights and dignity of all individuals living within a state's territory, especially those of children.

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71. See *Case of the Yean and Bosico Children v. The Dominican Republic*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H. R. (ser. C) No. 130, ¶¶ 134, 178 and 180 (Sept. 8, 2005) (“[W]hile persons without nationality are in a situation of extreme vulnerability, children are in an even more vulnerable situation. Stateless children are placed in a “legal limbo” in the sense that “[they] do not have a recognized juridical personality, because [they have] not established a juridical and political relationship with any State.”).