

COMMENTARY

COMMENT ON THE *ZHAO* CASE: CAN A ‘VICTORY FOR HUMAN RIGHTS’ IN THE NETHERLANDS BENEFIT CHILDREN AT RISK OF STATELESSNESS IN THE MIDDLE EAST AND NORTH AFRICA?

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In *Zhao v the Netherlands*, the United Nations Human Rights Committee (‘HRC’) addressed situations where a party to the *International Covenant on Civil and Political Rights* (‘ICCPR’) failed to provide, in an expeditious manner, nationality determination for a child born on the territory.¹ The HRC found that, in this context, the state’s failure to make a timely determination of the child’s nationality (or statelessness) violated the child’s right to acquire a nationality under art 24(3)

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¹ United Nations Human Rights Committee, *Views Adopted by the Committee under Article 5(4) of the Optional Protocol, concerning Communication No 2918/2016*, UN Doc CCPR/C/130/D/2918/2016 (20 January 2021) (‘*Zhao v the Netherlands*’).

of the *ICCPR*.² Put differently, to protect the best interests of the child, states must ensure that the period during which a child's nationality is undetermined, and for which the child's other rights are suspended on the basis of undetermined nationality, does not exceed five years.³ We read this interpretation of art 24(3) as a welcome acknowledgement of the formative nature of childhood. Indeed, the *Zhao* decision has been qualified as a 'victory for human rights'.⁴ Still, the HRC's views in *Zhao* only begin to acknowledge the costs of being trapped in an administrative apparatus that operates without regard for the timescale of human life.⁵

The *Zhao* decision may be of immediate relevance to the 'more than 13,000 children in the Netherlands facing a similar legal position, more than 5,000 of whom have been classed as "unknown" nationality for more than five years'.⁶ But children living in the territories of other *ICCPR* state parties might also benefit from this operationalisation of art 24(3), even where the conditions that enabled *Zhao* in the Netherlands are not in place. Within this commentary, we thus approach the decision from the perspective of our research and advocacy work in the Middle East and North Africa ('MENA') and consider the potential impact of this decision on *ICCPR* state parties in the MENA, where domestic legal protections for stateless persons are scarce.

The constellation of factors that made the HRC's ruling in *Zhao* possible are largely absent in the MENA. First, the case concerned a party to the *Optional Protocol to the International Covenant on Civil and Political Rights* ('*Optional*

² This case concerns a child (Denny Zhao) born in the Netherlands in 2010 to a mother who was trafficked from China. Denny was registered as 'of unknown nationality' because his mother had never been registered in China, his father lacked parental rights and the Netherlands conveys nationality on the basis of descent. Further, proof of statelessness is required to register as 'stateless', but a procedure for determining statelessness did not exist. As a result, municipal authorities have often used the phrase 'of unknown nationality' when a newborn's parent cannot demonstrate the newborn's statelessness, but the parent's lack of nationality is also not proven. Denny's mother spent years attempting to obtain legal status for herself and child, and to document that neither of them was a Chinese national, eventually exhausting all legal remedies under Dutch law. The United Nations Human Rights Committee ('HRC') found that the Netherlands' inaction and protracted application of the category 'of unknown nationality' violated the child's rights under art 24(3) of the *International Covenant on Civil and Political Rights*, adopted on 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('*ICCPR*'). Given that, prior to the *Zhao* case, no HRC decision had dealt directly with states' duties under *ICCPR* art 24(3), the HRC relied on sources outside its own jurisprudence, including United Nations High Commissioner for Refugees ('UNHCR') guidance on statelessness determination that highlighted the deficiencies of the Dutch substantive and procedural protections of a child's right to access a nationality.

³ See *Zhao v Netherlands* (n 1) 7 [8.3]. The HRC relied on UNHCR's guidelines to suggest that a period of indeterminacy that exceeds five years violates a child's best interests: 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*, UN Doc HCR/GS/12/04 (21 December 2012) 6 [22].

⁴ Laura Bingham and Jelle Klaas, 'A Victory for Human Rights in *Zhao v the Netherlands* (the "Denny Case"): Nationality from Birth, Without Exceptions', *European Network on Statelessness* (Blog Post, 14 January 2021) <<https://www.statelessness.eu/updates/blog/victory-human-rights-zhao-v-netherlands-denny-case-nationality-birth-without>>.

⁵ See, eg, Ahmad Benswait, 'Language and Statelessness: The Impact of Political Discourses on the Bidoon Community in Kuwait' in Tendayi Bloom and Lindsey Kingston (eds), *Statelessness, Governance and the Problem of Citizenship* (Manchester University Press 2021) 87.

⁶ 'Zhao v Netherlands', *Open Society Justice Initiative* (Web Page) <<https://www.justiceinitiative.org/litigation/zhao-v-netherlands>>.

Protocol') that permits individual communications.⁷ Second, Dutch law allows municipal registration as 'stateless'.⁸ Although statelessness does not constitute a protected status, registration as 'stateless', in combination with other conditions, has allowed individuals with access to a facilitated naturalisation process in the Netherlands. Third, nationality and a child's right to acquire one are justiciable matters in the Netherlands.⁹ Finally, the Dutch state acknowledged the gaps in its compliance with international human rights obligations and, on 31 May 2022, the House of Representatives passed two laws that partially addressed the deficiencies that were highlighted by *Zhao*.¹⁰

The crux of the ruling is that time is of the essence when children born on a state's territory are concerned. Because labels such as 'of undetermined nationality' often prevent children from accessing rights necessary to protect their best interests, the state must act to reach a nationality determination within a maximum of five years. At minimum, this decision provides a meaningful incentive for parties to the 1961 *Convention on the Reduction of Statelessness* ('1961 Convention') to implement their treaty obligations regarding children born on their territory without proof of nationality.¹¹ More broadly, the views expressed in *Zhao* have become part of the HRC's jurisprudence and should be brought up during reviews of states' *ICCPR* compliance with art 24(3). *Zhao*'s findings may be used to hold all *ICCPR* parties to the obligation to ensure that all children are guaranteed the right to acquire a nationality at birth, regardless of their parents' nationality (or lack thereof). Most immediately, the decision empowers stateless persons and advocates for children born stateless in the MENA region to invoke duties under art 24(3) of the *ICCPR* in the context of national and regional campaigns for reform.

⁷ See *Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1 ('*Optional Protocol*').

⁸ European Network on Statelessness, *Statelessness Index Survey 2020: Netherlands* (Report, 2020) 12.

⁹ For information detailing the exhaustion of domestic remedies, see Denny Zhao, Communication to the UN Human Rights Committee in *Zhao v The Netherlands*, 23 November 2016, 20–21 [83]–[88] <<https://pilpnjcm.nl/wp-content/uploads/2016/11/ECD-1507-Zhao-5-Communication-As-Sent-SB-11.23.16.pdf>>.

¹⁰ See European Network on Statelessness, 'Netherlands', *Statelessness Index* (Web Page) <<https://index.statelessness.eu/country/netherlands>>. The new laws fall short of effectively applying art 24(3) as they impose significant hurdles for children without lawful residence in the Netherlands and fail to extend protected status to stateless persons: 'Netherlands Adopts New Bills on Statelessness', *European Network on Statelessness* (News Update, 1 June 2022) <<https://www.statelessness.eu/updates/news/netherlands-adopts-new-bills-statelessness>>.

For the situation prior to these changes, and for further discussion of the gaps in the Netherlands' compliance with its international human rights obligations, see UNHCR *Mapping Statelessness in the Netherlands* (Report, November 2011) 15–16 [31]–[34].

¹¹ The HRC's analysis in individual communications is, by its nature, limited to the case at hand. It is unclear, in that sense, if the judgment in *Zhao* could be extended to communications coming from countries that are not parties to the 1961 *Convention on the Reduction of Statelessness*, adopted on 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975) ('1961 Convention'). For such countries, the concurring opinion of Hélène Tigroudja suggests other theories for defending the right to nationality for all people, through *ICCPR* art 16 (recognition of legal personality) and art 7 (humane treatment): *Zhao v the Netherlands* (n 1) annex II, 12 [3].

I LEGAL AND POLICY BACKGROUND ON STATELESSNESS IN THE MENA

We believe that MENA statelessness advocates should take note of *Zhao*'s recognition that prolonged indeterminacy of status may amount to an act of impermissible administrative violence. As researchers and advocates focusing on statelessness in the MENA, we are keenly aware of the dearth of remedies available to stateless persons through national legal systems. In *Zhao*, we see a potential approach for, at least, exposing the reality of multi-generational statelessness in the region. The HRC's findings directly condemn one persistent feature of how MENA states restrict access to citizenship: through indefinite deferral of status determination that could span generations. A clear pronouncement against state inaction (or foot-dragging) provides a basis for confronting it as applied to children born without or of undetermined nationality. Whether advocacy opportunities can be realised ultimately depends on the strategic judgment of MENA civil society actors and the availability of more information concerning the phenomenon of statelessness in each state in the region.¹²

A *The Obstacles to Invoking Zhao in the MENA*

In most MENA states, no functioning pathway exists for stateless people to acquire nationality. Further, matters pertaining to nationality are largely at the discretion of the executive branch and generally outside the competence of the courts. Strategic litigation in the MENA region is, at best, a new, fledgling phenomenon.¹³ This would impede efforts to bring a case to an international adjudication mechanism.

Though most MENA states are parties to the *ICCPR*, the only states that have acceded to its *Optional Protocol*, which allows for the consideration of individual communications, are Algeria, Libya and Tunisia.¹⁴ These three are also the only MENA states (except Israel) that have signed on to one or both of the statelessness conventions. The *1961 Convention* crucially establishes an affirmative obligation to prevent statelessness by granting citizenship to children born on states' territories who would otherwise be stateless.¹⁵ The *1954 Convention relating to*

¹² In the context of the Open Society Justice Initiative's experience in the Dominican Republic, Laura Bingham and Liliana Gamboa illustrate the importance of local buy-in for the success of regional strategic litigation: Laura Bingham and Liliana Gamboa, 'Litigating Against Statelessness' in Laura van Waas and Melanie J Khanna (eds), *Solving Statelessness* (Wolf Legal Publishers 2017) 146–47.

¹³ Open Society Foundations, 'Strategic Litigation Impacts: Global Narratives About Social Change — A Conversation with Colin Gonsalves, Dmitri Holtzman and Sherrilyn Ifill' (Transcript of Recording, 26 October 2015) 29 <www.opensocietyfoundations.org/uploads/36efb5e5-e68a-4f96-945f-3aaa76d7c08c/strategic-litigation-impacts-global-narratives-about-social-change-20151026_1.pdf>. Recently, diaspora actors have made efforts to increase recognition of strategic litigation within the region, adding to Arabic language resources available about the issue: HuMENA for Human Rights and Civil Engagement, *MENA Diaspora Paving Road to Justice: What is Strategic Litigation and Why It Matters* (Report, 2022) <<https://humena.org/educational-tools/topic/259>>. For a discussion of the lack of effective regional courts in the MENA, see Diego Gebara Fallah, 'Assessing Strategic Litigation Impact on Human Rights' (2019) 10(1) *Revista Direito e Práxis* 759.

¹⁴ The *Optional Protocol* (n 7) gives the HRC the ability to deliver its views on communications concerning individuals who allege violations of the *ICCPR* by a state party to it.

¹⁵ *1961 Convention* (n 11) art 1(1).

the Status of Stateless Persons lays out the duties owed to stateless persons, among them, to facilitate their naturalisation.¹⁶

While many non-parties to the *1961 Convention* in the MENA have safeguards against statelessness at birth in their nationality laws, their efficacy is limited.¹⁷ These provisions allow access to nationality in a narrower set of circumstances than the *1961 Convention*, requiring that one or both parents be stateless or of unknown nationality for a child to receive the nationality of the country of the child's birth. Some states that maintain gender unequal nationality transmission provide legislative safeguards to protect children who are born to a citizen mother against statelessness in cases where the father's identity or whereabouts is unknown. In practice, however, these safeguards are rarely implemented.¹⁸

Limited data on statelessness in the region is another barrier to strategic litigation around nationality rights.¹⁹ Where a state does not recognise the need to collect data on a particular category within its population, civil society and IGOs can sometimes cover the gap, but in the MENA, such actors often face challenges. The challenges are in part due to the absence of a codified definition of statelessness alongside the political sensitivity of researching the issue in contexts with sizable minority groups without nationality.²⁰

Zhao's representatives and the HRC could draw on a 'mapping study on statelessness in the Netherlands, a years-long effort ... and careful documentation of statelessness in the Netherlands and regionally by the European Network on Statelessness and its members'.²¹ Given that no such in-depth mapping study has been carried out in the MENA states, and that a regional network — the MENA Statelessness Network (Hawiati) — was only established in mid-2020, the architecture to support strategic litigation in the MENA region is relatively limited.²² The absence of data highlights a crucial regional distinction in the role of the United Nations High Commissioner for Refugees ('UNHCR') in the MENA region. While in Europe UNHCR has carried out or commissioned numerous 'Mapping Statelessness' studies,²³ to date only one such exercise has been carried

¹⁶ *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960) art 32 ('*1954 Convention*').

¹⁷ For a discussion on how Arab states' nationality codes protect against statelessness for children born on their territory, see Gianluca Parolin, *Citizenship in the Arab World: Kin, Religion and Nation-State* (Amsterdam University Press 2009) 99–100.

¹⁸ Laura van Waas, 'A Comparative Analysis of Nationality Laws in the MENA Region' (Research Paper, Tilburg University Statelessness Programme, September 2014) 31–32, 38–39; Betsy L Fisher, 'Gender Discrimination and Statelessness in the Gulf Cooperation Council States' (2016) 23(2) *Michigan Journal of Gender and Law* 269, 284.

¹⁹ Zahra Albarazi and Thomas McGee, 'Introducing "Hawiati": A Network for Stateless Solidarity in the Middle East and North Africa (MENA)', *European Network on Statelessness* (Web Page, 21 January 2021) <<https://www.statelessness.eu/updates/blog/introducing-hawiati-network-stateless-solidarity-middle-east-and-north-africa-mena>> ('Introducing "Hawiati"').

²⁰ Laura van Waas and Zahra Albarazi (eds), *Nationality and Cases of Statelessness in the Middle East and North Africa* (The Legal Agenda 2016) 10–11, 208–213.

²¹ Bingham and Klaas (n 4).

²² 'Introducing "Hawiati"' (n 19).

²³ These include: the Netherlands (2011), United Kingdom (2011), Belgium (2012), Malta (2014), Norway (2015), Estonia (2016), Lithuania (2016), Sweden (2016), Austria (2017), Albania (2018), Portugal (2018), Denmark (2019), Poland (2019) and Czech Republic (2020).

out in the MENA, and this focuses on only one governorate of Lebanon.²⁴ Although the Syrian crisis has presented an opportunity for increased UNHCR birth registration work in the Levant, other interventions on identification, prevention and resolution of statelessness have been limited.

Further, the MENA region is rich in cases of protracted and politically sensitive large-scale statelessness. The question of statelessness is particularly charged in countries with large numbers of Palestinian refugees (Lebanon, Jordan and Syria), where naturalisation has been perceived as jeopardising the Palestinians' legitimate 'right to return' to their historic homeland and their self-determination as a people.²⁵ Groups such as the Bidoon in Kuwait and the United Arab Emirates ('UAE') have a particularly liminal status because these governments have moved beyond designations such as 'unknown nationality' to record individuals as unlawfully present foreigners. In Kuwait, the authorities label the Bidoon as 'illegal residents' and the UAE administratively offloaded its stateless people by arranging passports of convenience for them, from the Union of the Comoros.²⁶

The fact that, in many parts of the MENA region, statelessness is a widespread, multi-generational phenomenon cemented by discriminatory nationality laws has meant that incremental progress has been difficult to achieve. Although Zhao's precedential interpretation of art 24(3) clearly applies to situations in the Arabian Gulf, where thousands of stateless Bidoon children are born and live with unknown nationality, the size of the population alone may limit the extent to which advocates can benefit from attempts to apply Zhao.²⁷ Thus, the central challenge is how to extend the norm against childhood statelessness beyond contexts where statelessness is a relatively 'episodic' occurrence (rather than a systemic issue of large proportion).

Another barrier is the existence of legal regimes of labour migration and capture of the legal system, which lead to difficulties in accessing meaningful legal aid. One example of a category of stateless persons who are overlooked due to the latter reason are the children of domestic workers. The experience of Denny Zhao and his mother in the Netherlands in part parallels that of children born to migrant domestic workers in MENA states. Such mothers can struggle to register the birth of the child, deterred by perceived risks of detention and deportation resulting from interactions with the authorities.²⁸ However, the specific governmental framework covering migrant domestic work in these countries — known as the *kafala* (sponsorship) system — denies migrant domestic workers the basic protections that enable access to legal aid and potential judicial remedies. The

²⁴ Siren Associates and UNHCR, *Mapping and Understanding Statelessness in Akkar* (Report, September 2021) <<https://sirenassociates.com/wp-content/uploads/2021/12/Mapping-and-understanding-statelessness-in-Akkar-2021.pdf>>. It should be noted that this study builds on the earlier mapping study undertaken by civil society actors, which resulted in the first MENA mapping report and focused on a single city: MARCH and SIREN, *The Plight of the Rightless: Mapping and Understanding Statelessness in Tripoli* (Report, March 2019) <https://sirenassociates.com/wp-content/uploads/2020/09/Stateless-Report_Final-Draft-March-10-1.pdf>.

²⁵ Francesca Albanese and Lex Takkenberg, *Palestinian Refugees in International Law* (Oxford University Press 2020) 245–69.

²⁶ Zahra Albarazi and Yoana Kuzmova, 'Trafficking in (Non)-Citizenship in Kuwait and the UAE' in Roel Meijer, James N Sater and Zahra R Babar (eds), *Routledge Handbook of Citizenship in the Middle East and North Africa* (Routledge 2020) 349.

²⁷ See, eg, Statelessness Journeys, *Statelessness in Kuwait* (Country Position Paper, May 2019) 6.

²⁸ See in the Lebanese context: Bina Fernandez, Thomas McGee, Zahra Albarazi, Deirdre Brennan and Karen Block, 'At Risk of Statelessness: Children Born in Lebanon to Migrant Domestic Workers' (forthcoming).

realities of living in the employer's home, or being undocumented after leaving it, coupled with prevalent racism, language barriers, fear of reprisal and unfair power differentials, mean that migrant domestic workers are rarely well-positioned to take up claims against the state. This is a space where the right to nationality at birth must be emphasised through future advocacy.

Finally, even beyond the MENA context, identifying statelessness is often accompanied by the risk of entrenching the status without providing protected status for stateless people. Thus, 'stateless' could become just another term for Bidoon or 'undetermined/unknown nationality', rather than a pathway to rights.²⁹

B *Opportunities for Strategic Advocacy and Litigation*

Despite the absence of large-scale mapping studies in the MENA, research on statelessness in the region is growing. The International Human Rights Clinic at Boston University, the American University of Beirut and other partners have launched a platform for statelessness research and advocacy in the MENA that hosts country-specific reports.³⁰ The Global Citizenship Observatory (GLOBALCIT), which works on citizenship laws and policy around the world, has recently added reports by country experts on a number of MENA states.³¹

One MENA state with potential for strategic application of the *Zhao* case is Tunisia, which has acceded to the *Refugee* and *Statelessness Conventions* and boasts a favourable nationality regime.³² Its court system has set the regional standard for independence and progressive engagement. These factors, coupled with an active civil society, may allow stateless persons and advocates to exert additional pressure for legislative and institutional reform through strategic engagement in the UN system.³³ Like in the Netherlands, Tunisia's existing obligations under the *Statelessness Conventions* have never been transposed into its national laws. Tunisia claims to have effective statelessness safeguards in

²⁹ This risk has been observed across contexts where strategic litigation has been used to legally 'solve' statelessness. See, eg, Bingham and Gamboa (n 12) 155–58.

³⁰ The platform can be found at: *MENA Statelessness Platform* (Website) <www.statelessnessmena.com>. So far, country studies have been completed on Lebanon, Jordan, Iraq and Egypt.

³¹ The reports focus on the history of citizenship in each country, modes of acquisition and loss and current debates and reform plans regarding citizenship policy. Individual country profiles have, so far, been published for Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Lebanon, Libya, Morocco and Syria: see 'Country Profiles', *Global Citizenship Observatory* (Web Page) <<https://globalcit.eu/country-profiles/>>.

³² Tunisia has been party to the 1951 *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) since 1957, and its 1967 *Protocol relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967) since 1968; the 1954 *Convention* (n 16) since 1969; the 1961 *Convention* (n 11) since 2000; and the 1969 *OUA Convention Governing the Specific Aspects of Refugee Problems in Africa*, opened for signature 10 September 1969, 1001 UNTS 45 (entered into force 20 June 1974) since 1989. In *Zhao*, the HRC implies that accession to the 1961 *Convention* is a condition precedent to finding a violation of art 24(3) in these circumstances but it does not explicitly state this.

³³ Coincidentally, Yadh Ben Achour, a Tunisian member of the HRC, authored a concurring opinion in *Zhao* arguing that the Netherlands' actions in withholding protected status amounted to a violation of the right of recognition as a person before the law, under art 16 of the ICCPR: *Zhao v the Netherlands* (n 1) annex I, 10. This presents an additional legal theory that advocates can explore in pursuing the right to nationality through the HRC.

place,³⁴ yet their application in practice remains in question. The situation is further complicated by the fact that despite being a party to the 1951 *Convention relating to the Status of Refugees*, Tunisia has not implemented its obligations. For example, UNHCR still conducts Refugee Status Determination in Tunisia in the absence of a national refugee law.

Recently, the Arab Institute for Human Rights ('AIHR') proposed a national action plan that outlines the deficiencies in the present framework and the measures required to protect stateless persons in Tunisia.³⁵ The report signals the need to eliminate childhood statelessness in Tunisia by revising the existing art 8 of the *Nationality Code*, which provides a statelessness safeguard for those children born in Tunisia to stateless parents who have resided in Tunisia for over five years. The AIHR proposes eliminating the residency requirement and legislating for the automatic attribution of Tunisian nationality for children born in this situation. Tunisia's international legal obligations further require granting Tunisian nationality to any child born in Tunisia who is unable to acquire another nationality, regardless of the parents' status.³⁶ The AIHR study underscores the readiness of Tunisian advocates and civil society to engage with the state to ensure that Tunisia protects stateless children per its international obligations, which is ultimately how strategic litigation achieves its ends.

One profile of cases to which *Zhao* could be applied is children born to stateless asylum seekers from Libya, who have been arriving in Tunisia since the fall of the Ghaddafi regime in late 2011. These individuals — largely from the Tuwareg community — fled conflict and marginalisation in Libya and have encountered a perplexing legal and registration landscape in Tunisia.³⁷ Individuals in this category who were interviewed by the authors of this commentary have applied for asylum in Tunisia. Given the absence of a domestic law on international protection for refugees or stateless persons, there is little prospect of a durable solution in Tunisia. While their lawful presence is documented by renewable refugee residence permits and UNHCR ID cards, some of these informants are being considered for resettlement. Some reported unexplained modifications in how UNHCR designates their nationality. Having been recorded as 'stateless (non-refugee)' for several years, they later saw their status change to 'asylum seekers' of 'unknown citizenship' in 2021, upon the renewal of their UNHCR identification cards.³⁸ Children born to parents in this situation in Tunisia have been registered as of 'unknown' nationality by Tunisian authorities, despite the

³⁴ Her Excellency Hasna Ben Slimane, Minister of Justice for the Republic of Tunisia highlighted this point at the League of Arab States regional workshop 'Towards a Regional Action Plan on Belonging and Legal Identity', 25 May 2021.

³⁵ Hafidha Chekir, 'Statelessness in Tunisia: A Legal Study' (Research Paper, Arab Institute for Human Rights and UNHCR, 2020).

³⁶ League of Arab States, *Regional Toolkit on Nationality Legislation* (Model Legislation and Commentary, May 2021) 6, 20.

³⁷ For background on the situation in Tunisia, see Boston University International Human Rights Clinic, 'Confronting Uncertainty: Understanding Statelessness in Tunisia', *Medium* (Blog Post, 29 March 2022) <<https://buslahr.medium.com/confronting-uncertainty-understanding-statelessness-in-tunisia-6792b2b46134>>. For more information on the Tuwareg (also commonly spelled as 'Tuareg', 'Twareg' or 'Touareg'), see Minority Rights Group International, 'Tuareg', *World Directory of Minorities and Indigenous Peoples* (Web Page) <<https://minorityrights.org/minorities/tuareg>>.

³⁸ According to our informants, these changes occurred in conjunction with refugee status determination interviews, following their requests for consideration to be given to their asylum claims. Some protested this change and insisted on having the word 'stateless' reinserted on UNHCR cards to accurately reflect their nationality status.

Nationality Code's safeguards against statelessness.³⁹ In some such cases, UNHCR also changed the children's status in its registration and on the cards issued to the families from 'stateless (non-refugee)' to 'asylum seeker', with the nationality no longer recorded as 'None/stateless' but as 'Unknown'.

For the Tunisia-born children of asylum seekers without nationality, these shifts are an arbitrary status change that takes them a step further from accessing Tunisian nationality through the safeguard against statelessness in art 8 of the *Nationality Code*.⁴⁰ This context, combined with the strong protections for children's right to a nationality in Tunisia's domestic law,⁴¹ provide a foundation on which further advocacy can build.⁴²

II CONCLUSION

Zhao establishes a significant precedent, but it remains to be seen how easily the outcome can be translated into victories elsewhere. In practical terms, the universal application of the decision may be hampered by the limitations of the legal and institutional landscape in the MENA. This issue needs to be pushed to challenge violations of the same right: a nationality for all children, at birth, everywhere in the world.

³⁹ *Code de la Nationalité Tunisienne 2018*, arts 8–9 (Tunisia). A child born in Tunisia to stateless parents who have resided in Tunisia for five or more years is a Tunisian citizen; a child born to unknown parents is also considered Tunisian by operation of law.

⁴⁰ Article 8 reads: 'Est tunisien, l'enfant né en Tunisie de parents apatrides résidant en Tunisie depuis cinq ans au moins'.

⁴¹ *Law No 95–92 on the Protection of Children 1995*, art 5 (Tunisia): '[e]very child has the right to an identity from birth. Identity consists of first name, surname, date of birth and nationality'.

⁴² Another avenue for strategic advocacy, although beyond the scope of this commentary, would be through an individual petition to the Committee on the Rights of the Child. This is available because Tunisia, unlike the Netherlands, is a party to the *Optional Protocol* (n 7) allowing individual communications: see Ann Skelton, 'UN Human Rights Committee: Denny Zhao v The Netherlands' (Case Note 2021/8, Leiden Children's Rights Observatory, 6 October 2021) <<https://childrensrightsobservatory.nl/case-notes/casenote2021-8>>.