



BORN IN EXILE –

Children of Syrian Refugees Exposed to Statelessness

Master Thesis

Kristína Melicharová (Anr: 494176)
Tilburg University
LLM International and European Law

Thesis Supervisor:
Dr Laura van Waas

Second Reader:
Dr Anna Meijknecht

Abstract

The phenomenon of statelessness affects all regions of the world. Children belong to those who are vulnerable the most. Among all different causes of statelessness, the nexus between statelessness and migration has lately become of particular importance. Since 2011, the Syrian civil war has caused that millions of Syrians were forced to flee their country. This situation has left a new generation of Syrian children at risk of statelessness. According to the Article 7 of the UN Convention on the Rights of the Child, all children have the right to nationality and birth registration without any discrimination. Nevertheless, in the context of Syrian refugees, not all children are profiting from the legal safeguards. This thesis aims to identify the causes and reasons which expose the children of Syrian refugees born in exile to statelessness. To address this burning issue, nationality laws of seven countries – Syria, Turkey, Lebanon, Jordan, Iraq, Sweden and Germany are analyzed and compared. Three essential aspects that are considered within the comparative study are (1) national legal safeguards relating to preclusion of childhood statelessness at birth, (2) the international standards adopted by country and (3) examples from real practice of the state towards Syrian refugee children. Based on the research some general recommendations are addressed at the end of the thesis.

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Abbreviations

1. ACHR = Arab Charter on Human Rights
2. CEDAW = United Nations Convention on the Elimination of All Forms of Discrimination against Women
3. CoE = Council of Europe
4. CRC = United Nations Convention on the Rights of the Child
5. CRCI = Covenant on the Rights of the Child in Islam
6. ECN = European Convention on Nationality
7. EUDO = European Union Observatory on Democracy
8. HRC = Human Rights Committee
9. ICCPR = United Nations International Covenant on Civil and Political Rights
10. ICERD = United Nations International Convention on the Elimination of All Forms of Racial Discrimination
11. PCIJ = Permanent Court of International Justice
12. UDHR = Universal Declaration of Human Rights
13. UNHCR = UN Refugee Agency

Introduction

*'Citizenship is man's basic right, for it is nothing less than the right to have rights'*¹
-Earl Warren-

According to the UNHCR's report, more than ten million people are stateless nowadays.² Thus, statelessness represents massive problem and challenge to the current human rights law. Statelessness may occur for a variety of the reasons such as conflict of nationality laws, administrative practices, discrimination based on gender, ethnic or religious grounds or arbitrary deprivation of nationality. Nevertheless, in the last few years, many armed conflicts or civil wars caused that millions of people had to flee their homes and seek refuge in other countries. Consequently, it has been noted that migration also contributes to the formation of statelessness. In particular, more than 11 million Syrians have fled their homes since the outbreak of civil war in March 2011. It is estimated that more than 7,5 million Syrians are currently internally displaced within state's territory, and more than 4 million have fled to neighbouring countries – Turkey, Lebanon, Jordan and Iraq.³ Furthermore, the number of Syrians arriving in Europe seeking international protection continues to increase. Conflict in Syria has affected vast masses of the state's population. Those individuals, who had left their home often had to leave all their belongings behind including their passports or other kinds of documentation. Consequently, this situation has often severe impact on those most vulnerable – children.

According to the Syrian nationality law, Syrian nationality can be transferred to children exclusively through their fathers. However, civil war has caused significant loss of life of many fathers, involved in the hostilities. Therefore, the acquisition of the Syrian nationality at birth is not possible in many cases. In addition, attribution of nationality at birth in the refugee context represents an even bigger challenge. As of October 2015, around 142,000 babies have been born in exile since 2011 in all countries of refuge.⁴ Many of these children are not being registered at birth which is the first drawback on the way to attribute nationality to a child and ensure decent

¹ *Perez v Brownell*, 356 U.S. 44, 64, 1958, dissenting opinion of Chief Justice Warren

² UN High Commissioner for Refugees (UNHCR), *Nationality and Statelessness: Handbook for Parliamentarians* UN N° 22, July 2014, available at <http://www.refworld.org/docid/53d0a0974.html> [accessed 9 November 2015], p. 3

³ UN High Commissioner for Refugees (UNHCR), *2015 UNHCR country operations profile - Syrian Arab Republic*, available at <http://www.unhcr.org/pages/49e486a76.html#>, [accessed 28 February 2016]

⁴ United Nations General Assembly, *Executive Committee of the Programme of the United Nations High Commissioner for Refugees*, Summary record of the 691st meeting, A/AC.96/SR.691, October 2015, p. 4

start to infant's life. Even though a lot of attention has been paid to the issues of the statelessness in recent years, the problem of children, born in exile has not been considered extensively in academic research so far. As the figure of migrants fleeing Syria is growing on the daily basis, the number of children that are at risk of statelessness is equally increasing. Therefore, I observe high importance to closely elaborate upon this challenge to the phenomenon of statelessness.

The present thesis is divided into three main chapters. The first chapter aims to introduce more general concepts in the matter of the nationality and statelessness. In the beginning, the main causes of statelessness are listed as well as the main paths to childhood statelessness are illustrated with the emphasis on the Syrian refugee situation. Subsequently, I try to explain the nexus between statelessness and migration.

In the thesis, I suggest that three elements are essential in order to preclude the childhood statelessness - (1) international and regional legal framework, (2) national legal framework, (3) effective implementation of legal standards into practice. Therefore, the second chapter is dedicated to the analysis of the legal framework on the international and regional level. In the first part, the international human rights instruments are carefully examined and the second part is devoted to regional legal standards. In particular, there are two regions of concern – the region of Arab States and Europe.

The third chapter deals with nationality laws and practices in the birth registration which are crucial in the fight against childhood statelessness. The case study of chapter three comprises the close analysis of seven countries – Syria, Turkey, Lebanon, Jordan, Iraq, Sweden, and Germany. In each study I focus specifically on three matters: a) the safeguard in nationality laws precluding childhood statelessness at birth, b) the practices in the birth registration and c) adoption of relevant international and regional standards. In the second part of the chapter three the comparative analysis is based on the main data, researched in the case studies.

The primary objective of this thesis is to examine causes and reasons which leave children of Syrian refugees at risk of statelessness. As the relevance of this topic is very high, the awareness should be raised on different levels in order to preclude the future stateless generation of Syrian children born all over the world.

Methodology

I. Research goals

The present thesis aims to reach following main tasks and goals:

- a) to introduce the general concepts of statelessness in the context of Syrian refugees
- b) to identify international and regional obligations of States relating to the right of a child to nationality and birth registration
- c) to analyse relevant provisions of the nationality laws of each country relating to safeguards precluding childhood statelessness
- d) to investigate procedural methods of the birth registration in each country
- e) to compare national regimes of each country and to identify gaps and discrepancies
- f) to formulate recommendations based on the case study

II. Research question

For addressing the problem of childhood statelessness in the context of Syrian refugees, the following question has been identified as the central to the present thesis:

When and why are children of Syrian refugees born in exile exposed to statelessness?

In order to reach defined goals, additional sub-questions have been determined for each chapter separately.

- a) Chapter 1:
 - *How may children acquire nationality?*
 - *What are general causes leading to statelessness and childhood statelessness?*
 - *What link can be found between statelessness and migration?*
- b) Chapter 2:
 - *Which relevant international and regional standards are related to the prevention of childhood statelessness?*
- c) Chapter 3:
 - *What are the legal safeguards on national level precluding childhood statelessness at birth?*

- Which relevant international and regional instruments were adopted by particular country?
- Are there any gaps or discrepancies between two bodies of law?
- How is legislative framework applied in practice?
- What are the main difficulties with the birth registration process?

III. Methods and data

This thesis engages in comparative and normative legal research in order to provide the answers to the research question and sub-questions. For the purpose of the study were analysed both primary and secondary sources. The relevant literature used in this thesis has been searched on the internet via both Google search engine, as well as academic databases. The database *Refworld*⁵ has become of particular importance and many primary and secondary sources has been found and used as a ground for the research.

The first chapter of the thesis is primarily based on the secondary sources. The work of the UNHCR in the field of statelessness is very broad, since this office has the official mandate to address the statelessness. Therefore, theoretical information benefit from the reports and handbooks of the UNHCR. Furthermore, the extensive academic research cannot be disregarded in this particular matter. Even though there are not many publications considering childhood statelessness in the context of Syrian refugees, the general concepts introduced in the first chapter are inspired by academic literature⁶.

The second chapter uses mainly primary sources in order to achieve the research objectives. The text of the human rights treaties as well as the comments of the relevant UN bodies stay in the centre of the second part of the thesis.

Lastly, the materials used for the comparative case study vary. Regarding primary sources, the nationality laws represent the baseline for the third chapter. Nevertheless, the reports of the NGOs or various agencies play significant role in present research. The data that are used in this section are taken from relevant portals and databases⁷.

⁵ available at <http://www.refworld.org/>

⁶ For example Laura van Waas, *Nationality Matters. Statelessness under International Law*, ISBN: 978-90-5095-854-7, Antwerp/Oxford/Portland, Intersentia, 2008, 504 p.; or L. van Waas, A. Edwards, *Nationality and Statelessness under International Law*, September 2014, ISBN: 9781107032446, 326 p.

⁷ UNHCR (available at <http://www.unhcr.org/>), European Network on Statelessness (available at <http://www.statelessness.eu/>), European Union Democracy Observatory on Citizenship (available at <http://eudo->

1. Theoretical Framework

The history of the states all over the world is characterized by state sovereignty. This full right and power of a state to govern itself is an integral part of each country regardless the form and type of governance. Therefore also, the matter of nationality laws falls under the jurisdiction of states.⁸ The principle of sovereignty gives power to a state to determine who is and is not a citizen or when and under which conditions a person may acquire the nationality. However, defining of national jurisdiction has to comply with standards of international law.⁹ As the Permanent Court of International Justice outlined in its advisory opinion:

*“The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations”*¹⁰

Thus, each state should be attentive to the context of the international legal framework during the codification process of its nationality law or its revision and improvement, respectively. Nevertheless, the phenomenon of statelessness is affecting millions of people throughout the world due to different reasons. As Syria has entered into the fifth year of civil war, an astounding number of Syrians has been forced to flee their home, which, directly or indirectly, exposed many people to statelessness. In addition, the Syrian conflict has affected future generation of Syrian children that are being born to refugees in exile. Before this problem is approached from a legal perspective, it is necessary to lay down the foundations of the leading causes of statelessness.

Therefore, in this chapter, I will closely look upon statelessness and in particular statelessness that affects children. Firstly, I will address causes of statelessness from a general viewpoint. Secondly, the importance of the acquisition of nationality at birth will be depicted and followed by an illustration of causes and reasons of childhood statelessness. Lastly, this chapter will examine the legal status children of refugees born in exile and the close link between

citizenship.eu/), Refworld (available at <http://www.refworld.org/>) and Syria Regional Refugee Response (available at <http://data.unhcr.org/syrianrefugees/regional.php>)

⁸ Supra note 6, p. 8

⁹ Ibid.

¹⁰ Permanent Court of International Justice (PCIJ), *Advisory Opinion No 4 on the Tunis and Morocco Nationality Decrees*, February 1923; see also at UNHCR handbook supra note 2, p. 8

statelessness and refugee law. As the context of children of Syrian refugees is in the centre of the interest, all general concepts will be addressed in the light of Syrian refugees.

1.1 What is Statelessness?

Even though the phenomenon of statelessness has occurred earlier in history, it has been recognized as a global challenge in the 20th century for the first time.¹¹ The international community had developed legal protection and started addressing the importance of resolution of the problem only in the past few decades.¹²

The legal definition of stateless person is encompassed in the 1954 Convention relating to the Status of Stateless Persons¹³ (hereinafter 1954 Convention). Article 1(1) of 1954 Convention reads as follows:

“For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.”¹⁴

Even though not every state has adopted the 1954 Convention¹⁵, the legal terminology of the Article 1(1) of 1954 Convention has become part of customary law, thus, it is accepted by the whole international community.¹⁶ Moreover, this provision belongs to *jus cogens* norms which mean that it has the status of a fundamental principle of international law.¹⁷ Although the legal meaning of the term ‘stateless person’ is globally accepted, the essential question that should be asked at this place is: how can a person become stateless? Statelessness may arise for a variety of

¹¹ Supra note 2, p. 5

¹² Ibid, p. 6

¹³ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, (hereinafter 1954 Convention)

¹⁴ Ibid, art. 1(1)

¹⁵ According to statistics of the UN, there are 86 State parties to the 1954 Convention. See United Nations Treaty Collection, available at: https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en [accessed 9 November]

¹⁶ The International Law Commission did so in 2006 in its Draft Articles on Diplomatic Protection With Commentaries. See at United Nations, *Draft Articles on Diplomatic Protection with commentaries*, 2006, available at <http://www.refworld.org/docid/525e7929d.html>, [accessed 10 November 2015], p. 48, 49 See also at UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at <http://www.refworld.org/docid/53b676aa4.html>, [accessed 9 November 2015], p. 9

¹⁷ Reservations to this provision are not permitted. See at UNHCR Handbook, supra note 16, p. 9

reasons. Different circumstances, national laws and policies may pose a risk to a large number of individuals.

There have been recognized various causes of statelessness:

a) Discrimination

One of the biggest problems that affects thousands of people in the world is linked to discriminatory practices. The area of nationality laws is no exception. Individuals in many cases are either deprived of their nationality or not able to acquire particular nationality due to discrimination on racial, religious or gender grounds. For example, an amendment¹⁸ of the nationality law of Myanmar (Burma), successfully adopted in 1982, has exposed hundreds of thousand members of the Rohingya minority group to statelessness.¹⁹

Another very common type of discrimination which often results in statelessness is gender discrimination. Many legal systems do not allow women to pass their nationality to children. Therefore, in cases when the father is unknown or stateless himself children become automatically stateless since their mother is not allowed to transfer her citizenship. Countries of the Middle East, including Syria, are also known for their discriminatory nationality laws. Although we can observe a growing commitment and willingness of governments to changing of domestic legislation and granting women equal rights²⁰, there are still more than 20 states which have not done so yet.²¹

b) Conflict of nationality laws

As it was already mentioned above state sovereignty goes hand in hand with the determination of nationality laws. Consequently, implementation of two systems together may cause problems resulting in the statelessness even though both systems are drafted correctly.²² Particularly, when State A grants citizenship by implementing *jus sanguinis* principle, and State B by *jus soli*

¹⁸ Burma Citizenship Law, 15 October 1982, available at <http://www.refworld.org/docid/3ae6b4f71b.html> [accessed 10 November 2015]

¹⁹ Burma's discriminatory Citizenship Act still affects more than 800 000 people nowadays. See at UNHCR, 2015 UNHCR country operations profile – Myanmar, available at: <http://www.unhcr.org/pages/49e4877d6.html>, [accessed 19 November 2015], see also Human Rights Watch, *All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, 22 April 2013, ISBN: 978-1-62313-0053, p. 109 - 111

²⁰ For example Egypt, Senegal, Yemen, Indonesia and others have already removed discriminatory elements from their nationality laws.

²¹ UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness* 2014, 7 March 2014, p. 1,2

²² UN High Commissioner for Refugees (UNHCR), *Nationality and Statelessness: A Handbook for Parliamentarians*, Inter-Parliamentary Union, 2005, ISBN 92-9142-262-2, available at: <http://www.refworld.org/docid/436608b24.html>, [accessed 20 November 2015], p. 27

principle, then the child of nationals of State B which was born in State A is considered to be stateless unless states implement certain safeguards into their nationality laws.²³

c) Arbitrary deprivation of nationality

Individuals or even large groups may be deprived of their nationality due to several reasons which may lead to statelessness. Usually, denationalization is linked to discrimination of particular groups.

d) State succession

When a given state dissolves into new states or secedes and becomes independent, many people may inevitably fall into legal limbo.

e) Administrative practices

In many cases, excessive administrative and procedural barriers do not allow a person to obtain a nationality even though this person is eligible for the acquisition of nationality.

Further, the lack of birth registration of children is one particular problem which many countries face due to different administrative barriers or also discriminatory factors. However, I will closely address the issue of lack of birth registration later in this chapter in connection with child statelessness.

f) Statelessness as a result of migration²⁴

Different circumstances in today's world force people to flee their homes, which heighten the risk of statelessness. As the main case study of this thesis will show, millions of Syrian refugees had to leave behind their belongings, often including passports and other forms of documentation. Without any documents, it is very difficult to prove nationality and person are more vulnerable to become stateless.

As we can see, there are many reasons how an individual becomes stateless. Of course, the list provided is not exhaustive but rather includes the main causes. These causes are mutually interconnected which means that one reason which leads to statelessness may induce the other and affect more people. Nationality acquired at birth is not a lifetime guarantee. Therefore, this

²³ Ibid.

²⁴ See for example Laura van Waas, Supra note 6, p. 163 -192; Laura van Waas, *The Children of Irregular Migrants: A Stateless Generation?*, 2007, Netherlands Quarterly of Human Rights 25/3, 437-458; Sophie Nonnenmacher and Ryszard Cholewinski, *The nexus between statelessness and migration*, see at L. van Waas, A. Edwards, Nationality and Statelessness under International Law, September 2014, ISBN: 9781107032446, p. 247 - 263

problem may cause harm to anyone in any region in the world at any stage of person's life. A person can lose nationality or be stripped of it during life. On the other hand, in many cases, statelessness afflicts individuals since they are born. Indeed, those are children who are vulnerable the most as their voice can hardly be heard. Thus, in the next sub-chapters, I will focus on statelessness that particularly affects children.

1.2 Stateless Children

1.2.1 How Children May Acquire Nationality

In order to better understand why and how children are born to statelessness, it is important to look at the ways that entitle them to acquire a nationality.

As the International Court of Justice interpreted in the landmark decision of *Nottebohm Case*:

*“... nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”*²⁵

Hence, nationality represents the *genuine link*²⁶ between state and individual and it is the crucial entry card for claiming other rights. Attribution of nationality signifies that a person obtains the *right to have rights*²⁷.

Different factors play a significant role in the attribution of nationality from the very first moments after child's birth. Nevertheless, two main doctrines are recognized when it comes to the acquisition of nationality at birth – *jus soli* and *jus sanguinis*. The genuine link in the *jus soli* principle embodies the land bond between the state and the newborn baby. In other words, this 'law of the soil' grants nationality to children who are born on the state's territory.²⁸ In the context of refugee's children, born in exile, application of this practice seems like a plausible solution to the problem. However, the most common approach to the attribution of nationality is

²⁵ International Court of Justice (ICJ), *Nottebohm Case (Liechtenstein v. Guatemala)*, Second Phase, 6 April 1955, p. 23

²⁶ Laura van Waas *Nationality Matters*, Supra note 6, p. 32

²⁷ Hannah Arendt, *The Origins of Totalitarianism*, Meridian Books, The World Publishing Company, Cleveland, 1958, p. 296

²⁸ Ibid.

the doctrine of *jus sanguinis*, also known as ‘law of the blood’. It is the family bond which is taken into account in order to transfer nationality to the child. The *Jus sanguinis* doctrine is a wide-spread practice both in Europe and in the states of the Middle East²⁹. In many of the countries of these regions, there are no safeguards based on the *jus soli* principle. Consequently, when parents are stateless or face other difficulties with transferring nationality, their child become stateless.

As I will address later in this thesis (see chapter 3), Syrian nationality law and also other countries of the Middle East, where Syrian refugees seek protection, operate primarily under the doctrine of *jus sanguinis*.³⁰ Restrictive policies do not help neither reduce nor prevent childhood statelessness. Hence, when a baby is born outside Syrian territory, the risk of becoming stateless is enormous.

Trends in Europe show that the law of the blood prevails in the majority of nationality laws.³¹ However, in several countries application of both principles is possible under different conditions. Therefore, when a child fails to qualify for any nationality according to *jus sanguinis*, the law of the soil may serve as a safeguard.³² However, we will see in the comparative case study of chapter 3 that the children of Syrian refugees are still likely to be at risk of statelessness.

The right of every child to nationality is protected by many legal instruments on international, regional and even national level. Nevertheless, reality reveals problems and significant discrepancy between legislative frameworks and (un-)willingness of states to implement them in practice.

1.2.2 Path to childhood statelessness

Nationality does not guarantee good life to the individual, however, to begin life without having the protection of any state in the world may pose severe consequences to the child’s life.³³ Moreover, a stateless status of the infants largely deepens their vulnerability. Although theory

²⁹ UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2014*, 7 March 2014, p. 3-4

³⁰ Zahra Albarazi, Tilburg University - Statelessness Programme, *The Stateless Syrians*, May 2013, available at <http://www.refworld.org/docid/52a983124.html>, [accessed 21 November 2015], p. 7

³¹ Council of Europe ‘*Study for the feasibility of a legal instrument in the field of nationality law and families*’, 11 February 2012, CDCJ (2012) 11 Fin, p. 67

³² Ibid. p. 67, 68

³³ Jacqueline Bhabha, *From Citizen to Migrant: The Scope of Child Statelessness in the Twenty-First Century*, in Jacqueline Bhabha (ed) *Children without a State: A Global Human Rights Challenge*, The MIT Press, 2011, ISBN-13: 9780262015271 p. 1

bestows fundamental human rights to everyone, in reality stateless children often do not have access to many forms of child benefits. Therefore, causes of statelessness, which have been addressed at the beginning of this chapter, constantly jeopardize newborn babies. The risk of being born without any legal identity is very common, particularly in the migratory context. Thus, how children of Syrian refugees become stateless at birth being born outside of Syria?

Firstly, statelessness is an unfortunate inheritance from child's parents. Syria, as a diverse country with many ethnic minorities,³⁴ has possessed a large group of the stateless population long before the civil war burst out in the country. One of the biggest minorities in the country are Syrian Kurds who faced severe persecution and a process of denationalization after 1962 Census had taken place.³⁵ Furthermore, since 2011, the number of stateless people, mainly children, has dramatically increased. Individuals who seek protection outside of Syrian territory are in many cases stateless themselves. Consequently, stateless refugees cannot grant nor transfer nationality to their newborn children regardless the state territory they are born.³⁶

Secondly, Syrian nationality law encompasses a provision which is based on discriminatory grounds towards women and their inability to pass their nationality to a child.³⁷ Therefore, to get a birth certificate with Syrian nationality is possible only for the child who is accompanied by his or her father. This starts to be problematic particularly in the Syrian context as many of the Syrian fathers are unknown, stateless themselves, serve in military service or died due to the conflict. According to Article 3(B) of Syrian nationality law, there is only one exception to the restriction of transferring of nationality by Syrian mothers. However, this obscure provision needs to meet two requirements: (1) child has to be born on Syrian territory and (2) no legal relationship to child's father can be established.³⁸ Consequently, as reported many mothers who have found shelter in neighbouring countries, try to smuggle their children back to Syria to ensure the acquisition of nationality for their descents.³⁹

³⁴ Supra note 30, p. 13

³⁵ Ibid., p. 14-17

³⁶ Ibid.; see also Norwegian Refugee Council, Tilburg University, *Statelessness and Displacement*, Available at <http://www.nrc.no/arch/img/9197390.pdf> [accessed 25 November 2015], p. 13

³⁷ Article 3(A) of the Nationality Law reads that "*Anyone born inside or outside the country to a Syrian Arab father*" shall obtain Syrian nationality. See at Syrian Arab Republic, *Legislative Decree 276 - Nationality Law*, 24 November 1969 (hereinafter Syrian Nationality Law)

³⁸ Ibid, art. 3(B)

³⁹ Amit Sen, Charlie Dunmore, Ana Pollard, *Born in exile, Syrian children face threat of statelessness*, Amman, Jordan, 4 November 2014, available at <http://www.unhcr.org/54589fb16.html> [accessed 26 November 2015]

Furthermore, another difficulty that can leave children stateless is the lack of birth registration. This administrative process records basic facts about person's identity particularly the date and place of birth, information about parents and nationality. It is important to emphasize that neither birth registration nor birth certificate can ensure that the child is entitled to acquire the nationality. In addition, when parents fail to register their child at birth, it does not automatically leave the child stateless. Nevertheless, birth registration is a first and crucial step in establishing a legal identity of a person, and it is very challenging for an individual to claim the nationality in later life without any documentation. The lack of birth registration of newborn Syrians is linked to different barriers that constitute the roadblock to access other rights.⁴⁰ One of the barriers is the lack of documentation of parents, such as identity papers or marriage certificate. Prerequisites needed for identification during the registration process differ among states of refuge.⁴¹ Another barrier correlates with the lack of general information that is provided to the refugees and extensive administrative procedures.⁴² In addition, a general understanding of the importance of birth registration is repeatedly missing, and proliferation of misinformation is often at stake.⁴³ There is no doubt that birth registration is a crucial element in the prevention of childhood statelessness. Nevertheless, nowadays it delineates one of the critical paths that may render children stateless.

It is estimated that tens of thousands Syrian babies, born in countries such as Lebanon, Jordan, Turkey, Iraq or countries on the European continent, face several difficulties in acquisition of nationality. These gaps and obstacles are mostly interconnected and, therefore, it is needed to apply and propose complex solutions to this problem. In particular, raising awareness about the importance of birth registration among refugees will not be effective, if the country imposes extensive requirements in the administrative process. Moreover, granting birth certificates is not the only step how to preclude child statelessness. As we will see later, Syrian refugees have to

⁴⁰ UN High Commissioner for Refugees (UNHCR), *The Future of Syria: Refugee Children in Crisis*, November 2013, available at <http://www.refworld.org/docid/529c3b4d4.html>, [accessed 27 November 2015], p. 56, 57

⁴¹ Ibid. p. 56; These prerequisites will be closely addressed in the third chapter of this thesis while looking specifically into nationality laws of a particular country.

⁴² Norwegian Refugee Council (NRC), *Birth Registration Update, The Challenges of Birth Registration in Lebanon for Refugees from Syria*, Lebanon, January 2015, p. 22; see also UNHCR report, supra note 40, p. 56

⁴³ For example, parents are not aware of any difference between the birth certificate and the document from the hospital. See at Norwegian Refugee Council report, Supra note 42, p. 27

face many problems emerging from the gaps and discrepancies between international and national legal systems.

1.3 Close link between statelessness and migration

It has been observed by several experts that the matter of statelessness and migration are closely interconnected.⁴⁴ There are two possible situations how the two areas may correlate. Firstly, statelessness can be a trigger for international migration or secondly, a person may be exposed to statelessness due to the migration.⁴⁵ Since for the most Syrian refugees the main reason for fleeing their country is the ongoing conflict, we may observe that statelessness, in this context, occurs as a consequence of the international migration. Nevertheless, it would be wrong to assume that all Syrian refugees are stateless just because they fled the country. As it was explained above, migration is only one of the causes that jeopardy individuals to become stateless.

The UNHCR agency differentiates in its databases between stateless persons and refugee persons. To keep data in separate databases is of high importance when it comes to the establishment of the protection under the particular international legal standard. When a stateless person also falls under refugee status, he or she is entitled to protection under the 1951 Convention Relating to the Status of Refugees (hereinafter 1951 Convention) and its 1967 Protocol.⁴⁶ The Article 1(A) defines the refugee as any person “*who holds the well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, ... who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*”⁴⁷. Therefore, individuals who do not possess legal bond with any country in the world may be equally granted the refugee status and protection under the provisions of 1951 Convention. However, the measures of the 1951 Convention are rather protective and do not prevent persons from being stateless. None of the articles facilitate the nationality to those who are at risk of

⁴⁴ For example, see at Sophie Nonnenmacher and Ryszard Cholewinski, *The nexus between statelessness and migration*, see at L. van Waas, A. Edwards, Nationality and Statelessness under International Law, September 2014, ISBN: 9781107032446, p. 247

⁴⁵ Ibid.

⁴⁶ Supra note 2, p. 10

⁴⁷ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 1(A)(2)

statelessness. Furthermore, not all migrants are granted refugee status since not all countries have adopted the 1951 Convention.⁴⁸ In many countries without an asylum law, persons who seek refuge are treated as irregular migrants unless they are tolerated on humanitarian grounds⁴⁹ alternatively, the country grants special status to a particular group of refugees. Nevertheless, states have particular obligations towards all migrants that find themselves in the territory. The principle of *non-refoulement* has become the part of the customary international law, which means that no person shall be returned to a country where his or her life is endangered.⁵⁰

Regarding the context of Syrian refugees, several neighbouring countries, where Syrians sought refuge, had not accessed to 1951 Convention yet. As a result, Syrians, mainly those who crossed borders through unofficial way, are treated as irregular migrants. Some countries, such as Turkey or Lebanon, regularise their status upon the official registration by the competent authorities.⁵¹ In addition, the UNHCR observed good practice in Jordan, where government refers to Syrians as refugees despite Jordan is not the state party to the 1951 Convention.⁵²

The situations that Syrian migrants have to face are often increasing their vulnerability. In addition, children of Syrian migrants that are born in destination countries are particularly exposed to exploitation and denying several human rights including the right to nationality and the birth registration. The legal status of the children born to migrants in exile is unclear. These children often inherit the status of their parents as irregular migrants or refugees despite the fact that they never crossed the borders between the states.⁵³

Detail analysis of the nexus between statelessness and migration goes beyond the scope of the present thesis. The general aim of the paper is to examine when and why are children of Syrian migrants born in exile exposed to statelessness. Therefore, for the purpose of this thesis, I will refer to all Syrian migrants as Syrian refugees and to children of Syrian migrants as children of Syrian refugees, even though some countries have not adopted the refugee convention.

⁴⁸ According to the UN statistics, the 1951 Convention has to date 145 state parties. See at United Nations Treaty Collection, available at https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en, [accessed 28 November 2015]

⁴⁹ Laura van Waas *Nationality Matters*, Supra note 6, p. 178

⁵⁰ Supra note 47, art. 33

⁵¹ Reliefweb, *Legal Status of Individuals Fleeing Syria*, Syria Needs Analysis Project, June 2013, available at <http://reliefweb.int/report/syrian-arab-republic/legal-status-individuals-fleeing-syria-syria-needs-analysis-project-june>, [accessed 3 December 2015], p. 1

⁵² UN High Commissioner for Refugees (UNHCR), *2015 UNHCR country operations profile- Jordan*, available at <http://www.unhcr.org/pages/49e486566.html>, [accessed 3 December 2015]

⁵³ Laura van Waas, *The Children of Irregular Migrants: A Stateless Generation?*, 2007, *Netherlands Quarterly of Human Rights* 25/3, p. 446

1.4 Concluding remarks

In the present chapter, I have drawn the basic theoretical framework related to the phenomenon of statelessness, such as the basic concepts of acquisition of the nationality at birth or causes that may leave the children stateless. The more general concepts relating to the statelessness have been placed into the context of Syrian refugees. It has been pointed out that the main principle of obtaining the nationality at birth, recognized by the most countries in the world, is based on the doctrine of *jus sanguinis*. Furthermore, I have illustrated some difficulties faced by the children on their way to obtain a nationality such as administrative barriers, discriminatory practices or the lack of birth registration. Subsequently, the nexus between statelessness and migration has been examined as a relevant current issue that is affecting international community nowadays.

The refugee crisis, which has struck all regions all over the world, deserves utmost possible attention not only on the academic level but primarily on the governmental, diplomatic and political level. It should be at the center of the interest of the international community to tackle the refugee problems at the roots. Why is it important to pay closer attention to the link between children born to Syrian refugees in exile and childhood statelessness? One may assume that there are other needs and rights of the children which are more alarming, concerning the refugee situation, such as the right to food, education or adequate housing. Even though nationality cannot grant that all basic needs of a child will be met, it is the extremely important entry ticket to other rights in the later stage of person's life.

To ensure the right to nationality is granted to every child, it is important to develop the safeguards on the three different levels – (1) international and regional legal framework, (2) national legal framework, (3) effective implementation of legal standards into practice. Each element of this '*Three Pillar System*' will be closely illustrated in the following chapters.

2. The Legal Framework

Why is it important to address nationality as an ultimate issue? It is because nationality embeds the person in a position to be human, and let an individual exercise his or her fundamental human rights. Nevertheless, children are threatened and deprived of their rights when the state fails to ensure their attribution to a certain nationality. In particular, the infants are exposed to the lack of proper medical care, adequate standard of living, human trafficking, denial of appropriate education and other severe conditions. Consequently, the international community has been concerned with the protection of children's rights for several decades. Various legal instruments have been laid down in order to protect child's best interests and ensure their adequate development and their appropriate inclusion to the society.

One of the most vital elements that aim to tackle the problem of statelessness is development in laws and policies on the international level. The scope of the international conventions, covenants and agreements of various nature may have a far-reaching effect, and they intend to cover the rights of a vast number of people that are exposed to statelessness.⁵⁴

Firstly, it is necessary to mention that none of the international or regional legal instruments explicitly covers the situation of children born to refugees in exile. Nevertheless, existing laws encompass the right of a child to nationality and prevention of statelessness. This right is addressed by provisions of legal instruments that cover children's rights either directly or indirectly⁵⁵. The latter type of legal provisions primarily intends to cover the rights of targeted group other than children; however, the outcome also has a tangible impact on child's rights development.

In the present chapter, I will carefully examine the legal framework on the international and regional level. The most relevant provisions will be highlighted and put into the context of child statelessness (for the original text of all relevant articles, see Annex). It is important to draw the outline of the international legal framework for laying the foundations of safeguards against statelessness demanded by the international community. These structures should be applied in

⁵⁴ UN High Commissioner for Refugees (UNHCR), *Global Appeal 2014-2015, Addressing Statelessness*, available at <http://www.unhcr.org/528a0a1316.html>, [accessed 15 December 2015]

⁵⁵ As an example of the provision that directly intends to include the right of the child to birth registration is, for instance, the Art. 7(1) of the Convention on the Rights of the Child (See the Annex). On the other hand, the Convention on the Elimination of All Forms of Discrimination Against Women directs its provisions to the women's rights primarily. However, some articles such as Art. 9(2) (see the Annex) take into account the impact of the rights of women also on the children.

domestic nationality laws and contribute to the purpose of prevention of the statelessness, and to the people on the ground in each state. Nevertheless, the matter of nationality laws will be discussed in the third chapter, which will come as a sequel to the present one, and it will show how individual states meet their international commitments traced in the following sub-chapters.

2.1 International Legal Instruments

Looking back into the history, the first attempt to encourage protection of the right to nationality is as old as the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws⁵⁶ (hereinafter 1930 Hague Convention). The chapter IV⁵⁷ of the 1930 Hague Convention is specifically dedicated to the nationality of children.⁵⁸ Moreover, the international community set out in the 1930 Hague Convention that state, in its municipal law, decides whether a person possesses the nationality of this country.⁵⁹ This provision reiterated seven years older advisory opinion⁶⁰ of the PCIJ on the Tunis and Morocco Nationality Decrees.⁶¹ However in the wording of Article 1, the League of Nations ensured that *“how a state exercises its right to determine its citizens should conform to the relevant provisions in international law”*.⁶²

The events of WWII noted serious infringements of human rights of various nature and one of those violations was closely connected to the right to the nationality.⁶³ Consequently, newly formed drafting commission decided that right of everyone to nationality will be included in the text of the UDHR. Thus, Article 15 of the UDHR declares that:

*“Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”*⁶⁴

Even though the UDHR does not have legally binding character, nowadays it belongs to one of the most respected bills in the international law. Moreover, articles of the UDHR served as the

⁵⁶ League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 12 April 1930, The Hague, Treaty Series, vol. 179, No. 4137,

⁵⁷ See the Annex

⁵⁸ Supra note 2, p. 8; See also: The European Network on Statelessness, *No Child Should be Stateless*, 2015, p. 7

⁵⁹ Laura van Waas *Nationality Matters*, Supra note 6, p. 38

⁶⁰ See the note 10

⁶¹ Supra note 2, p. 8

⁶² Ibid.

⁶³ Hundreds of Germans, mostly Jews, were stripped of their nationality during WWII by strict Nazi regime and the new Citizenship laws, which left the vast number of people stateless.

⁶⁴ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Art. 15

basis for adoption of the binding international treaties and national legislation. Several of them also encompass the nationality as a fundamental right that has to be granted to everyone without discrimination of any kind. Since several legal instruments might have an impact on the right to nationality and prevention of statelessness, I will address those that are relevant the most for the scope of the present thesis.

2.1.1 The UN Human Rights Instruments

International law evolved certain mechanisms for protection of all stateless people, adults and children alike. Nevertheless, special attention has been brought to children and their rights. One of the most significant legal instruments, which operates on the international level, is the Convention on the Rights of the Child (hereinafter CRC).

The definition of a child has been included in the CRC, and reads as follow:

“For the purposes of the present Convention a child means every human being below the age of eighteen years unless under the law applicable the child, majority is attained earlier.”⁶⁵

Article 7 of the CRC⁶⁶ is the essential provision of this convention concerning the prevention of childhood statelessness. In particular, under this section, states are obliged to undertake affirmative steps to ensure that children born in the territory under their jurisdiction are registered at birth and acquire a particular nationality.⁶⁷ The second paragraph of the Article 7 of the CRC⁶⁸ requires states to comply with the implementation of these rights, especially when the child would be otherwise stateless.⁶⁹ Subsequently, states are obliged, under the Article 8, to respect the child's right to *“his or her identity, including nationality”*⁷⁰.

⁶⁵ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, UNGA Res 44/25, Art. 1

⁶⁶ For the exact wording of the article, see Annex

⁶⁷ Supra note 65, Art. 7(1)

⁶⁸ See the Annex

⁶⁹ Supra note 65, Art.7(2)

⁷⁰ Ibid., Art. 8(1)

All articles of the CRC, including the one related to the right to nationality and birth registration, must be considered alongside, so called, *Guiding Principles*⁷¹. Even though all four principles have an influence on the problem of the childhood statelessness, the principles of non-discrimination and the best interest of the child are notably relevant for the interpretation and realization of Articles 7 and 8.⁷²

In particular, the principle of non-discrimination emphasizes that the right to nationality and the right to birth registration alike, apply to all children without discrimination of any kind. Moreover, this requires equal treatment “*irrespective of the status of the child or that of his or her parent(s) or legal guardian(s)*”⁷³. Therefore, in order to preclude childhood statelessness it is necessary that states shall apply the scope of the Article 7 in relation to all children also born to refugee parents. As the Committee on the Rights of the Child (hereinafter CRC Committee) clarified in its General Comment No. 14, under the principle of non-discrimination one shall understand positive (proactive) obligation rather than passive one.⁷⁴ Consequently, all state parties to the CRC have to take into consideration the groups of people that are the most disadvantaged and marginalized, such as refugee populations and take measures to protect them and their children that might be born outside of the state territory of parent's nationality.

Attribution of nationality and birth registration of the child go hand-in-hand with the principle of the best interest of the child, which is defined in the Article 3 of the CRC. This policy represents the idea that interests of children have to be placed in the centre of all decision-making methods that may have an impact on child's rights. Furthermore, the standard of the child's best interest endeavours to promote *full and effective enjoyment*⁷⁵ of all children's rights and the *holistic*

⁷¹ These principles can also be found in the CRC in Articles 2 (principle of non-discrimination), 3 (the best interest of the child), 6 (survival and development of the child) and 12 (the child's opinion).

The Committee on the Rights of the Child refers to the general principles in its General Comment No. 5. See at UN Committee on the Rights of the Child (CRC), *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, p. 3

⁷² 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 of the Child*, Draft Policy Paper, September 2015, available at http://www.institutesi.org/CRC_nationality_paper.pdf [accessed 26 November 2015], p.6

⁷³ Miller, M., *Birth Registration: statelessness and other repercussions for unregistered children*, European Conference on Nationality of the Council of Europe, Council of Europe, Strasbourg, 2004, p. 5

See also CRC, Supra note 65, Art. 2(2)

⁷⁴ UN Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC /C/GC/14, p. 11

⁷⁵ Ibid., p.3

*development*⁷⁶ of the children. Taking into account children of refugees, one shall find close coherence between the acquisition of nationality, prevention of childhood statelessness and the principle of the child's best interest.

The CRC, as the most widely ratified human rights instrument,⁷⁷ has brought in many areas significant protection of child's rights, including the field of nationality and statelessness. However, numbers of thousands of babies that are exposed to statelessness indicate that situation is still far from ideal. It is worth to mention that despite the actual effort of the CRC Committee to connect all four *Guiding Principles*⁷⁸ with all articles of the CRC, closer interpretation⁷⁹ of the Articles 7 and 8 would certainly bring better clarification to the state's obligation towards prevention of childhood statelessness.⁸⁰ As the right of children to nationality is in itself clear, the implementation of the obligation of state is less evident.⁸¹ Thus, it shall be a matter of future work of the CRC Committee that might make Articles 7 and 8 even more powerful instrument in the fight against childhood statelessness.

Besides the CRC, international human rights law has developed other instruments that encompass the issue of granting the right to nationality and birth registration and thus, contribute to the prevention of childhood statelessness. In particular, the 1966 International Covenant on Civil and Political Rights (hereinafter ICCPR) in the Article 24 grants the right to be registered immediately after birth⁸² and acquire nationality⁸³ to every child. In relation to Article 24(2), the

⁷⁶ Ibid., The concept of the holistic development of the child has been interpreted by the experts of the CRC Committee in the General Comment No. 5 as a “*concept, embracing the child's physical, mental, spiritual, moral, psychological and social development*”. See at *General Comment No. 5*, Supra note 71, p. 4

⁷⁷ All states ratified the CRC to date but one – USA.

⁷⁸ See *General Comment No 5*, Supra note 71

⁷⁹ For instance by form of General Comment

⁸⁰ The CRC Committee has explicitly linked the guiding principles with right to nationality only in its recommendations towards particular state. However, closer attention is missing. Good example has been laid down by regional body - The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in its General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, where the ACERWC explicitly connected prevention of childhood statelessness with the best interest of the child.

See at 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)

⁸¹ Open Society Foundations, *Open Society Justice Initiative - Children's Right to Nationality*, available at <https://www.opensocietyfoundations.org/sites/default/files/children-right-nationality-20110202.pdf>, [accessed 3 December 2015]

⁸² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Art. 24(2)

⁸³ Ibid., Art. 24(3)

Human Rights Committee (hereinafter HRC) expressed its opinion that “*this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child’s legal personality*”⁸⁴. Therefore, these *special measures* have to be adopted by each state party in the territory that falls under its jurisdiction, and consequently immediate birth registration shall be applied to all children born within the borders of this state. Furthermore, the HRC drew attention to the fact that the aim of the state to prevent a child from being stateless does not constitute an obligation for the state to attribute its nationality to every child born in the territory.⁸⁵ However, the HRC stressed the importance of the adoption of *special measures* in connection to Article 24(3) *to ensure that every child has a nationality when he is born*⁸⁶. Hence, the state has the power to dictate what steps will be taken in order to eradicate childhood statelessness from its own territory. Furthermore, the ICCPR includes also a non-discrimination clause⁸⁷, which involves both children and their parents, and, therefore, birth registration and/or acquisition of nationality by a child does not depend on the status of the child or the status of the child’s parents/ legal guardians.⁸⁸

The principle of non-discrimination is also a particularly cross-cutting provision in the two following international human rights instruments – Convention on the Elimination of All Forms of Discrimination against Women (hereinafter CEDAW) and International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter ICERD). Both these conventions are highly relevant instruments in terms of the prevention of statelessness. Based on the Article 9 of CEDAW all women shall have equal rights with men regarding transferring nationality to their children.⁸⁹ In many countries, this women's right is denied and causes serious a problem in defining the nationality of the newborn babies. Discrimination based on gender inequality can also be seen in nationality law of Syria. It affects thousands of Syrian children either on Syrian territory or in other countries where Syrians decided to seek refuge. As we will see in the next

⁸⁴ UN Human Rights Committee (HRC), *CCPR General Comment No. 17: Article 24 (Rights of the Child)*, 7 April 1989, p.3

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Supra note 82, Art. 26

⁸⁸ Supra note 84, p.3

⁸⁹ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, Art. 9(1)(2)

chapter, this enormous gap in Syrian nationality law is one of the main causes that jeopardize Syrian refugees concerning claiming nationality.

Analysing Articles of ICERD, the importance of the right to nationality is expressed in the Article 5(d)(iii).⁹⁰ Furthermore, the Committee on the Elimination of Racial Discrimination (hereinafter CERD Committee) linked the general principle of non-discrimination with reduction of statelessness, in particular, childhood statelessness.⁹¹ Even though the ICERD in its article 1(2) allows applying the distinction between citizens and non-citizens in domestic laws, this distinction cannot be implemented in a way which would detract people from their rights and freedoms, granted in international law.⁹²

2.1.2. Statelessness Conventions

The UN has adopted to date, two most comprehensive instruments within the context of statelessness. Firstly, it is, earlier mentioned, 1954 Convention which is comprised of provisions that have protective character rather than preventive. 1954 Convention was designed to establish minimum standards⁹³ and rights for stateless people in order to meet their basic needs. Even though the definition of stateless person was an innovative element of 1954 Convention, no further reference to the prevention of childhood statelessness can be found there. On the contrary, the second statelessness convention, 1961 Convention on the Reduction of Statelessness (hereinafter 1961 Convention), entails different articles related to the avoidance of statelessness among children. In particular, Articles 1- 4 regulate the acquisition of nationality by children. Article 1 imposes the obligation on state *“to grant nationality to a person born in its state territory who would otherwise be stateless”*⁹⁴ either at birth by the operation of law or upon

⁹⁰ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

⁹¹ CERD Committee recommended in its General Recommendation XXX to *“[r]educe statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children”*. See at UN Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation XXX on Discrimination Against Non Citizens*, 1 October 2002, p.4

⁹² UN Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation XXX on Discrimination Against Non Citizens*, 1 October 2002, p.1

⁹³ For example, 1954 Convention guarantees, among others, right to employment (Chapter III of Convention), education (Article 22), identity papers (Article 27).

⁹⁴ UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, Art. 1(1)

application.⁹⁵ Contrarily, Article 4 grants nationality to a child, not born in the territory of a contracting state, if this child would be left stateless, and if parents possess the nationality of a state party.⁹⁶ The UNHCR in its Guidelines on Statelessness stressed close connection to the provisions of the CRC, CEDAW, and ICCPR that should serve as a tool for interpretation of the Articles 1-4 of 1961 Convention.⁹⁷ Therefore, the principle of the best interest of the child and gender equality must be taken into account.⁹⁸

In relation to the children of refugees, the Article 1 shall apply if the child would otherwise be stateless. The process of getting proof of child's nationality is often linked to the official registration of parents and their newborn child in consulate. However, as the Guidelines on Statelessness emphasize *“this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities”*⁹⁹. Needless to say, not every child born to refugee parents is automatically stateless. As it was explained in the first chapter, nationality is attached to a child automatically. However, it is hard to claim one's attachment to nationality without official proof of particular state authority. Consequently, children who cannot prove their nationality often fall into the category of *de facto* stateless persons. Nevertheless, *“the Final Act of the 1961 Convention contains a non-binding recommendation that de facto stateless persons should as far as possible be treated as stateless persons”*¹⁰⁰. Thus, state parties are advised to give the possibility to a child of refugees and his or her parents to choose the nationality of the state of birth and so preserve the best interest of the child.¹⁰¹ Both statelessness conventions have brought significant and innovative safeguards to the field of statelessness and the domain of international human rights law. However, many states¹⁰² are still hesitant to ratify and implement the Statelessness Conventions. The UNHCR set out in

⁹⁵ Ibid., Art. 1(1)(a),(b)

⁹⁶ Ibid., Art. 4(1)

⁹⁷ 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*, 2012, HCR/GS/12/04, p. 3

⁹⁸ Ibid., p. 3-4

⁹⁹ Ibid., p. 7

¹⁰⁰ Ibid., See also *Convention on the reduction of statelessness (with Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness held at Geneva from 24 March to 18 April 1959, and Resolutions I, II, III and IV of the Conference)*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 40

¹⁰¹ Guidelines on Statelessness No. 4, Supra note 97

¹⁰² To date, 1954 Convention has 86 State Parties and 1961 Convention only 65 State Parties, See at UN Treaties Collection Database, available at https://treaties.un.org/Pages/DB.aspx?path=DB/MTDSG/page1_en.xml

its *Action 9* of the Global Action Plan, to increase the number of state parties to the both Statelessness Conventions in order to end statelessness by 2024.¹⁰³

2.2 Regional Legal Framework

In the following sub-sections, I will try to draw an outline of the legal instruments that have been adopted on the regional level. As the issue of the statelessness affects all countries and continents, the matter of nationality and protection of this right could not have been ignored by regional (intergovernmental) organizations or regional unions. Because for the comparative case study, which will be addressed in the third chapter, I have chosen countries of the Middle East and two European countries, the selection of the regional legal framework has to be adjusted accordingly. Therefore, attention will be paid to relevant law instruments adopted by the League of Arab States, Organization of Islamic Cooperation, the Council of Europe and the European Union. The right to nationality, right to be registered at birth and prevention of statelessness had been discussed within the agenda of regional institutions, and they were incorporated in several core legal outcome documents. Indeed, every effort at the regional level to support prevention of statelessness, in particular, statelessness among children, reinforces legal safeguards in this matter.

2.2.1. Legal protection in the region of Arab States

The region of Arab States has for many years belonged to those, where the right to nationality is being denied, stripped of, or not easy to acquire by individuals or, sometimes, even the whole group of people. Therefore, adoption of the Arab Charter on Human Rights (hereinafter ACHR), adopted by the League of Arab States, represents step forward in recognizing the importance of the right to a nationality. The ACHR, in its Article 29, rules that every person has a right to nationality, and no one can be deprived of his or her nationality unlawfully.¹⁰⁴ Furthermore, the second paragraph of the Article 29 tries to encourage gender equality regarding the transfer of nationality from mother to a child and so, preventing childhood statelessness.¹⁰⁵ International human rights law is reinforced by the ACHR particularly in those provisions that recall

¹⁰³ UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness*, 4 November 2014, p. 23-24

¹⁰⁴ League of Arab States, *Arab Charter on Human Rights*, May 22, 2004, Art. 29(1)

¹⁰⁵ Ibid., Art.29(2)

principles of UDHR, ICCPR, and other international instruments protecting rights and freedoms, including women's and children's rights.¹⁰⁶

The Organization of Islamic Cooperation¹⁰⁷ has adopted the Covenant on the Rights of the Child in Islam (hereinafter CRCI) which constitutes an important document of childhood protection in the region of Arab states. Three subparagraphs of Article 7 of the CRCI encompass essential protection against childhood statelessness. Firstly, Article 7 recognizes the right of a child to nationality, including foundlings, and the right to be registered at birth.¹⁰⁸ Secondly, the CRCI explicitly obliges states to adopt adequate measures and “*make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory*”¹⁰⁹. An inclusion of the provision of preventing statelessness hints that this problem and its resolution started to be of great relevance to the region. In particular, as an example can be mentioned the intergovernmental debate between the representatives of Arab States during the *Fourth Arab High-Level Conference on the Rights of the Child*¹¹⁰, and its outcome document is known as Marrakech Declaration. States have agreed, among other issues of child protection, to make an effort “*to register every child at birth to preserve his right to an identity, a name, a nationality and to enforce laws and regulations to this effect*”¹¹¹.

2.2.2. The European Legal Framework

The European Continent has been facing an influx of refugee population for several years and so it is not a new phenomenon. Nevertheless, during the last several months numbers of people approaching Europe either by land or sea dramatically increased, which means that the risk of new generation of stateless children is at stake. The childhood statelessness is present on this continent even though Europe has developed its legal framework dedicated to right to nationality and the number of stateless children is lower comparing to other regions. On the European level,

¹⁰⁶ Ibid., Art. 43; See also the preamble of the ACHR

¹⁰⁷ Formerly was known as the Organization of the Islamic Conference

¹⁰⁸ Organization of the Islamic Conference (OIC), *Covenant on the Rights of the Child in Islam*, June 2005, OIC/9-IGGE/HRI/2004/Rep. Final, available at <http://www.refworld.org/docid/44eaf0e4a.html> [accessed 3 December 2015], Art. 7(1),(3)

¹⁰⁹ Ibid., Art. 7(2)

¹¹⁰ This conference was held in Marrakech on 19 – 21 December 2010

¹¹¹ Fourth Arab High-Level Conference on the Rights of the Child, *Marrakech Declaration*, 19-21 December 2010, p.8

it is primarily the work of Council of Europe (hereinafter CoE) which echoes the standards of international law in the matter of nationality and statelessness. Nevertheless, the framework of the European Union will be briefly mentioned in the second part of this sub-section as well.

a) The legal framework of the CoE

It is well known that the European Convention on Human Rights lies at the heart of the protection of human rights within the context of the CoE¹¹². However, it is rather disappointing that drafters of this convention did not incorporate the right to nationality into the document.¹¹³ It took more than 40 years after the adoption of European Convention on Human Rights to develop the more comprehensive framework for prevention of childhood statelessness. Nevertheless, the European Convention on Nationality (hereinafter ECN) together with 2006 Convention on the Avoidance of Statelessness in relation to State Succession are leading regional instruments in fighting against discriminatory nationality laws as well as statelessness among children.

First of all, the ECN rules that everyone is entitled to the right of nationality, and that statelessness shall be avoided.¹¹⁴ As the CoE stated in its explanatory note, the obligation to avoid statelessness has become part of the customary international law.¹¹⁵ Therefore, this provision aims “*to protect the right to a nationality by preventing the stateless status from arising*”.¹¹⁶ The child's right to nationality is specifically covered by the Article 6. Under its paragraph 1, the ECN provides safeguards for children born to the parents that are nationals of the state party and also to the foundling who would be otherwise stateless.¹¹⁷ Subsequently, Article 6(2) states that child that was born in the territory of the state party may acquire the nationality of this state if he or she does not acquire the nationality of other states.¹¹⁸ There are two possible ways how the nationality may be granted to the child – at birth *ex lege*¹¹⁹ or by the application¹²⁰. In other words, when nationality is not acquired by the operation of the law at

¹¹² The European Network on Statelessness, *No Child Should be Stateless*, 2015, p.8

¹¹³ Laura van Waas, *Fighting Statelessness and Discriminatory Nationality Laws in Europe*, 2012, European Journal of Migration and Law 14, 243-260, p. 245

¹¹⁴ Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS No 166, art. 4(a),(b)

¹¹⁵ Council of Europe, *Explanatory Report to the European Convention on Nationality*, 6 November 1997, ETS No 166, p.7

¹¹⁶ Ibid.

¹¹⁷ Supra note 114, art. 6(1)(a),(b)

¹¹⁸ Ibid., 6(2)

¹¹⁹ Ibid., Art. 6(2)(a)

¹²⁰ Ibid., Art. 6(2)(b)

birth then the child may submit an application according to the procedure defined in domestic law.¹²¹ Both the ECN and 1961 Convention encompass this safeguard that prevents the childhood statelessness and grants nationality to a child born in the territory who would otherwise be stateless. Moreover, the CoE recalls in its Explanatory Report the importance of the provision of the CRC concerning the Article 6(2).¹²² As it was already mentioned above the ECN is considered to be the foremost instrument for avoiding childhood statelessness among all regional legislations. Nevertheless, its low acceptance among the state parties of the CoE is a challenging issue faced by the ECN. To date, only 20 countries have ratified this convention which hints that states are still hesitant to contribute to the effectiveness of the regional legal framework related to the prevention of statelessness. Thus, promotion of ratification of relevant legal instruments remains one of the biggest challenges in the area of statelessness.¹²³

b) The legal framework of the EU

In contrast to the normative guidance provided by the CoE, the issue of statelessness has not been much considered within the EU framework. Gábor Gyulai, in his article, attributed disregard of EU to the lack of awareness and to the fact that stateless people have still hidden voice and live on the margins of society.¹²⁴ Substantive rules regarding the right to nationality, birth registration and statelessness remained rather under the adjustment of nationality laws of the EU member states and recalling international standards relating to the statelessness.

The EU law does not provide any special definition of stateless persons neither includes the matter of the nationality and statelessness into its core human rights document - EU Charter of Fundamental Rights.¹²⁵ The Treaty of Lisbon stipulates that “*stateless persons shall be treated as third-country nationals*”¹²⁶, which is first explicit reference in the primary EU law and may

¹²¹ Supra note 115, p.9

It is important to point out that “[s]uch an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application”. See at ECN, Supra note 114, art. 6(2)(b)

¹²² Supra note 115, p.9

¹²³ Laura Van Waas, *Statelessness: A 21st century challenge to Europe*, 2009, Security and Human Rights 2, p. 138

¹²⁴ Gábor Gyulai, *Statelessness in the EU Framework for International Protection*, European Journal of Migration and Law 14, 2012, 279–295, p. 280

¹²⁵ Ibid., p. 284; see also Laura van Waas, *ADDRESSING THE HUMAN RIGHTS IMPACT OF STATELESSNESS IN THE EU’S EXTERNAL ACTION*, Directorate-General for External Policies of the Union, Policy Department, 12 November 2014, Belgium, ISBN: 978-92-823-6198-6, p. 20

¹²⁶ European Union, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/C 306/01, Art. 67(2)

constitute base for further elaboration of the issue of statelessness in the EU law.¹²⁷ Since the stateless persons fall into the category of non-citizens, the protection of their rights is often subsumed under the sphere of the migration law. The EU policy and legislation in the context of asylum and migration law are very comprehensive and extensive.¹²⁸ Nevertheless, references to stateless persons are rather rare. Therefore, in 2007, the European Parliament organized *Seminar on Prevention of Statelessness within EU*, to raise awareness about problem of statelessness in the EU countries. Consequently, Parliament adopted resolution on the situation of fundamental rights in the EU¹²⁹, with reference to the statelessness¹³⁰. Resolution addressed recommendations to EU member states to adopt both Statelessness Conventions and also effective measures into domestic laws to deal with the rights of stateless people.¹³¹ Hence, there is still ample room for addressing the area of statelessness, particularly statelessness among children, within the context of EU policy system.

2.3 Concluding remarks

The present chapter aims to analyse the first pillar of the *three pillar system*, introduced in the first chapter. The interest of the international community, to secure the right to nationality, increased in the first half of the 20th century. Since then, the development of the international, as well as regional, protection went through significant changes. Nowadays, the right to nationality and the right to birth registration are encompassed in several human rights documents. In the previous sub-chapters, I have examined relevant articles of the UDHR, CRC, ICCPR, CEDAW and ICERD. The specific attention has been brought to the Statelessness Conventions and their protective and preventive measures. It has been pointed out that despite the Statelessness

¹²⁷ Tamás Molnár, *Stateless Persons under International Law and EU Law: a Comparative Analysis Concerning their Legal Status, with Particular Attention to the Added Value of the EU Legal Order*, 51 Acta Juridica Hungarica, 2010, 293–304, p. 304

¹²⁸ See for example Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection; Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection or Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

¹²⁹ European Parliament, *Resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008 (2007/2145(INI))*

¹³⁰ Ibid., para. 50

¹³¹ Supra note 127, p. 303-304

Conventions are leading documents in the area of the prevention of the statelessness, their adoption by states is less satisfactory. Furthermore, it has been observed that also regional organizations have tried to raise awareness relating to the matter of the nationality and statelessness. In the region of the Arab states two important documents – ACHR and CRCI – laid down the legislative base for prevention of the childhood statelessness. Regarding the European level, it has been examined that the CoE has adopted the more comprehensive framework in order to prevent the statelessness among children than the EU. Nevertheless, the ECN faces the similar problem of limited acceptance by states, as the Statelessness Conventions.

As it was noted in the first chapter, the link between the migration and statelessness is very close. Since the refugee crisis belongs to one of the most burning issues in today's world, the demand for the comprehensive legal framework is very high. Nevertheless, legal instruments on the international and regional level generate only one part of the system required. Therefore, in the next chapter, I will try to analyse the national legislative protection closely as well as some examples from the real practice of the selected countries.

3. Comparative Case Study

Many factors need to be fulfilled in order to avoid statelessness. All these factors and safeguards should be subsumed under the *three pillar system*¹³² as it was illustrated at the beginning of the thesis. Therefore, the third Chapter is dedicated to the second and third pillar, which is related to the implementation of international and regional legal standards into nationality laws as well as the examples from real practice.

The turmoil in Syria has caused that the number of people fleeing their homes and crossing borders is dramatically increasing. According to the data assessed by the UNHCR, the total figure was estimated at 15 million refugees worldwide in mid-2015.¹³³ The civil war in Syria certainly falls under the main contributing factors in the overall statistics. With estimated more than 4,5 million¹³⁴ of Syrian refugees, this crisis belongs to one of the most globally challenging situations regarding humanitarian and development help. Linking Syrian refugee crisis with prevention of childhood statelessness is particularly of great relevance for further research because without implementation of adequate safeguards we risk the formation of new stateless generation among Syrian population. Therefore, these safeguards in the nationality laws of selected countries will be closely inspected. In relation to the national legislation, two major components will be analysed. In particular, the safeguards precluding childhood statelessness of children born in the territory to foreign nationals, as well as practices in birth registration of newborns. Alongside the nationality laws, I will also illustrate the international and regional legal standards that have been ratified by particular states. Subsequently, I will draw out to what extent state authorities fulfil their international commitments or create a gap between international and domestic legislation.

Criteria for the country selection can be divided into following three categories. First of all, selected countries pursue certain geographic pattern. Syria, as the Middle East country, is surrounded by five neighbouring countries, four of which are selected for the present case study.

¹³² Three pillars that create ideal protection for stateless people are (1) comprehensive international and regional framework regarding matter of nationality and statelessness, (2) effective implementation of international and regional instruments into national legislation and (3) effective use of legislative instruments in practice and willingness of state authorities to avoid statelessness.

¹³³ UN High Commissioner for Refugees (UNHCR), *Mid-Year Trends 2015*, June 2015, See annex tables 1 & 2 on pages 16 - 24

¹³⁴ The number was estimated by Syria Regional Refugee Response portal in mid-January 2016, available at http://data.unhcr.org/syrianrefugees/regional.php#_ga=1.136853240.991641679.1444425656 [accessed 20 January 2016]

As the Syrian refugees are increasingly approaching European continent either by land or sea, two European countries have become part of the research for getting a broader view in this issue. Since Turkey is part of the CoE but not the member state of the EU, we will see three countries that fall under the regional legal framework of the CoE and two countries of the EU legislation. The countries of the Middle East and European countries share distinctive features concerning the history, culture, or religious traditions. Therefore, we can observe whether these differences also influenced codification of nationality laws and adoption of safeguards related to prevention of childhood statelessness.

Secondly, the level of Syrian refugee population represents another important criterion for country selection. Estimated numbers show that the majority of the Syrian refugee population resides in the neighbouring countries (Turkey, Lebanon, Jordan and Iraq). Therefore, the numbers of newborn babies born to Syrian parents are certainly the highest in this region. Nevertheless, also the European countries (Germany and Sweden) have welcomed significant amount of Syrian refugees in their territory and so examination of legal protection in this matter is equally notable. Thirdly, ratification of relevant international and regional legal instruments in seven countries is the additional criterion of selected countries. As it was estimated in the last chapter, a number of states that ratified the Statelessness Conventions is not very high, and all countries of the Middle East belong to that group, but one¹³⁵. On the other hand, the European countries that have been selected acceded to both Statelessness Conventions and thus committed themselves to a broader international protection. Consequently, I will try to compare the differences between countries that ratified more comprehensive legal framework, on one hand and those with less protection on the other.

The data that will be used in this chapter are taken from primary sources¹³⁶ of particular countries and also from relevant portals¹³⁷ that deal with the issues related to children of Syrian refugees and childhood statelessness. At first, each country will be approached separately, and then results will be compared and discussed in the summary.

¹³⁵ Turkey has recently ratified 1954 Convention.

¹³⁶ Nationality laws have been accessed at portal Refworld and European Union Democracy Observatory on Citizenship

¹³⁷ These portals are namely: UNHCR (available at <http://www.unhcr.org/>), European Network on Statelessness (available at <http://www.statelessness.eu/>), European Union Democracy Observatory on Citizenship (available at <http://eudo-citizenship.eu/>) , Refworld (available at <http://www.refworld.org/>) and Syria Regional Refugee Response (available at <http://data.unhcr.org/syrianrefugees/regional.php>)

In order to set the structure for the research, I will particularly focus on the following areas:

- i. Nationality law - What are the legal safeguards precluding childhood statelessness at birth? Are there any discriminatory practices? Are there some special safeguards related to children of refugees?
- ii. International law – Which international and regional legal instruments have been adopted by particular country? How does the accession of international and/or regional instruments shape nationality laws? Are there any gaps between these two bodies of law?
- iii. Real practice – How is the legislative framework applied in practice? What are the estimated numbers of children of refugees born in exile? How many of them have access to birth registration and confirmation of their nationality? What are good practices within states in relation to Syrian refugee populations and particularly newborn babies?

Even though the main focus will be on the countries where Syrians seek the refuge, it is essential to start this case study with analysing Syrian nationality law. Also, I will try to answer the question whether there are any safeguards, within Syrian nationality law, towards children born outside Syrian territory that would preclude a child from being stateless.

3.1 Syria

Syrian civil war caused that Syria continues to be the largest source country of refugees.¹³⁸ Nationality law of Syria has been adopted in November 1969 by Legislative Decree 276 and is still valid till nowadays. The Article 3 of the nationality law lists persons who are, *ipso facto*, entitled to Syrian nationality. For attribution of nationality at birth, Syria recognizes primarily the doctrine of *jus sanguinis*, law of blood. *Jus soli* principle serves only as a safeguard for foundlings or for those who at birth are not entitled to other foreign nationality.¹³⁹ Regarding the child born outside the Syrian territory, possibility to transfer the Syrian nationality is given only

¹³⁸ UN High Commissioner for Refugees (UNHCR), *Mid-Year Trends 2015*, June 2015, p. 4

¹³⁹ Syrian Arab Republic, *Legislative Decree 276 - Nationality Law*, 24 November 1969, available at <http://www.refworld.org/docid/4d81e7b12.html>, [accessed 15 January 2016], Art. 3(C),(D)

Nevertheless, the latter provision of Article 3(D), which says that “*anyone born in the country and was not, at time of his birth, entitled to acquire a foreign nationality*” is considered as Syrian Arab, shows inefficiency of the application of this provision in practice. For example, children born to Kurdish or Palestinian parents are being left stateless even though nationality law entitles them to obtain nationality. See at Zahra Albarazi, *Supra* note 30, p.7

to Syrian father.¹⁴⁰ Thus, the Syrian nationality of the mother has no legal effect on the attribution of nationality to a child born outside Syria. Women are allowed to pass their nationality to the children only under two conditions that have to be fulfilled cumulatively – (1) a child has to be born on the Syrian territory and (2) no legal relationship can be established between the child and the father.¹⁴¹

Gender inequality belongs to one of the main causes of statelessness and affects not only Syrian women but often their children as well. New Syrian Constitution, amended in February 2012, delineates gender equality in its Article 33(3), in which rights and duties are granted to all citizens without any discrimination “*on grounds of sex, origin, language, religion or creed*”¹⁴². The Constitution also reinforces women's rights by saying that women are entitled to the full and effective contribution to the political, economic, social and cultural life.¹⁴³ Moreover, the state has a positive obligation towards “*removing the restrictions that prevent their [women's] development and participation in building society*”¹⁴⁴. Despite these constitutional rights, discrimination against Syrian women in the matter of nationality is causing serious problems to the new generation of Syrian children. On the international level, the most comprehensive instrument that aims to ensure gender equality and bring gender discrimination to an end is the CEDAW. Syria acceded to this convention in 2003. Nevertheless, reservation¹⁴⁵ to the Article 9 of the CEDAW causes that legal effect of this provision has been modified.

The negative trend in Syrian nationality law certainly infringes other international obligations. In particular, Syria has ratified instruments such as the CRC, the ICCPR and the ICERD. All of these legal instruments have the common provision which precludes discrimination of any kind.¹⁴⁶ Syria has not adopted any of the Statelessness Conventions thus effort to fight against childhood statelessness is not covered by the most comprehensive international instruments. Nevertheless, state authorities have failed to meet their international commitments by not implementing Article 7 of the CRC that grants the right to nationality to every child and

¹⁴⁰ Syrian nationality law, Supra note 139, Art. 3(A)

¹⁴¹ Ibid., Art. 3(B)

¹⁴² Syrian Arab Republic, *Constitution 2012*, 26 February 2012, <http://www.refworld.org/docid/5100f02a2.html> [accessed 15 January 2016], Art. 33(3)

¹⁴³ Ibid., Art. 23

¹⁴⁴ Ibid.

¹⁴⁵ See at UN Treaty Collection, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en [accessed 15 January 2016]

¹⁴⁶ See, for example, Article 26 of the ICCPR, Article 2(1) of the CRC

precludes statelessness among children. Concerning regional legal instruments, Syria has signed up both documents relevant for the region of the Middle East – the ACHR and the CRCI.

This huge discrepancy between international and regional legislation, on one hand and the nationality law and practice on the other, hints that Syrian authorities are reluctant to bring effectiveness to their commitments. Consequently, discriminatory practices jeopardize children even before they are born and regardless of place of birth. Nevertheless, it is certainly true that circumstances in which refugees find themselves are even more aggravated. Childhood statelessness may occur in different situations that obstruct the child to acquire the nationality. For example, a child cannot obtain Syrian nationality when his or her father is unknown, fighting in the civil war or died. Furthermore, the child automatically inherits statelessness when the father is stateless himself. In 1962, due to the discriminatory practices, the Syrian government had rendered hundreds of thousands Syrian Kurds stateless which enormously endangered future Kurdish generations.¹⁴⁷

To conclude, Syrian nationality law does not provide the appropriate legislative standard for precluding the childhood statelessness, especially in the migratory context. Therefore, without safeguards provided by foreign states, where the Syrian babies are born, these children are at high risk to become stateless. Changes in Syrian nationality law are inevitable step towards childhood protection not only for the children that are being born in Syria but also for those born in foreign countries. However, because of the current unstable situation, it is very unlikely that it will happen soon.

3.2 Turkey

The domestic law that currently regulates the acquisition of Turkish citizenship was adopted in May 2009. New citizenship law has brought new safeguards in relation to the prevention of statelessness. Changes that try to diminish inconsistencies in Turkish nationality law were welcomed in the times of international migration and globalization.¹⁴⁸ The Country Report on Turkey cited Besir Atalay, former Turkish Minister of Interior, who said that *“the main goal of the new law is to eliminate the inconsistencies of the previous law and to respond to the current*

¹⁴⁷ Zahra Albarazi, Supra note 30, p. 14-17

¹⁴⁸ EUDO Citizenship Observatory, *Country Report: Turkey*, November 2012, available at <http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=Turkey.pdf> [accessed 17 January 2016], p. 1

circumstances”¹⁴⁹. There are two possible ways how a child may obtain Turkish nationality at birth. Article 6 reads as follows:

“*Turkish citizenship by birth shall be automatically acquired on the basis of descent or place of birth.*”¹⁵⁰

Children born in the territory to parents who are not Turkish nationals and who do not acquire any other nationality are entitled to a Turkish nationality from the moment of their birth.¹⁵¹ Moreover, *jus soli* principle shall be applied in case the child is found in the Turkish territory.¹⁵² Furthermore, Turkish Government has adopted a new *Law on Foreigners and International Protection*¹⁵³, in which Turkey shall grant Stateless Person Identification Document to persons that are recognized as stateless by the official authorities. The Identification Document shall substitute a residence permit and shall be renewed every two years without charging any administration fee.¹⁵⁴ All legislative safeguards in Turkish law seem to be valid and relevant for their application in the context of Syrian children. Nevertheless, according to the Refugees International, Turkish nationality law has been applied rather exceptionally as it is very difficult to prove that the child has not acquired Syrian nationality.¹⁵⁵ With respect to the international law adopted by Turkey, the safeguards that are provided in Turkish nationality law are consistent with those prescribed by the international norms. Turkey has accessed to the many international human rights treaties¹⁵⁶ that help to preclude childhood statelessness. Further, in March 2015, Turkey has adopted 1954 Convention and to date, it is the only neighbouring country of Syria¹⁵⁷ who has accessed one of the Statelessness Conventions. The base for legal protection of Syrian children in Turkey is broad on both international and domestic level. However, since the status of the Syrian children cannot be easily determined, they are not automatically accredited with the Turkish nationality. Consequently, as the research team from Refugees International clarified:

¹⁴⁹ Minister of Interior, Besir Atalay, Parliamentary minutes, 28 May 2009, See at EUDO, Country Report on Turkey, Supra note 148, p. 1

¹⁵⁰ Turkey, *Turkish Citizenship Law*, Law No. 5901, 29 May 2009, available at <http://www.refworld.org/docid/4a9d204d2.html>, [accessed 17 January 2016], Art. 6

¹⁵¹ Ibid., Art. 8(1)

¹⁵² Ibid., Art. 8(2)

¹⁵³ Turkey, *Law No. 6458 on 2013 of Foreigners and International Protection*, 4 April 2013, available at: <http://www.refworld.org/docid/5167fbb20.html> [accessed 17 January 2016], art. 50-51

¹⁵⁴ Ibid., Art. 50(2)

¹⁵⁵ Refugees International, *Birth Registration in Turkey: Protecting the Future for Syrian Children*, April 2015, p. 10

¹⁵⁶ Turkey is bound by following international documents: ICCPR, CRC, CEDAW, ICERD, 1951 Convention and 1954 Convention. Even though Turkey is the member of the CoE, the European Convention on Nationality has never been adopted.

¹⁵⁷ Except Israel who has rather bad diplomatic relations with Syria.

“...children in Turkey could grow up with a theoretical claim to citizenship in Syria, be treated as foreigners, but ultimately be found to be stateless and eligible for Turkish citizenship at a much later date”¹⁵⁸.

Therefore, it is inevitable for the state authorities to take all measures to record legally the child's birth to prevent the child from becoming stateless, on the highest possible level. Indeed, the birth certificate is the only official document which proves the nationality of the child and facilitates the entry to the other children's rights. Nevertheless, the process of the birth registration poses difficulties that may be a trigger for leaving child stateless. Firstly, the Syrian birth certificate may be issued only by Syrian consulate in Istanbul. This is highly problematic for Syrian refugees since they either don't have possibilities to travel to Istanbul or they may perceive the visit of the consulate as a danger to be identified as the opponents to the Syrian regime.¹⁵⁹ Secondly, Syrian refugees may request the Turkish birth certificate for their children. Registration is done by the Population Departments in Turkey, that provides international birth certificates for children regardless their parents have documents themselves or not.¹⁶⁰ In a positive development, the office of UNHCR issued information brochures that encompass all essential information for parents, how to register their child within Turkish authorities.¹⁶¹ However, Syrian parents have to request the birth certificate within 30 days following the date of birth to avoid the registration fees.¹⁶² This limitation constitutes constrain Syrian refugees as they are often not aware of the registration procedures and consequently, after missing 30 days deadline, they may face financial difficulties. Furthermore, the lack of uniform information leads often to misinterpretations not only among Syrian refugees but also among UN agencies and the Turkish government.¹⁶³

¹⁵⁸ Refugees International, Supra note 155, p. 10

¹⁵⁹ Ibid., p. 8

¹⁶⁰ Ibid., p. 9, See also UN High Commissioner for Refugees (UNHCR), Birth registration in Turkey, available at: [http://www.unhcr.org/turkey/uploads/root/birth_registration-revisedfin\(1\).pdf](http://www.unhcr.org/turkey/uploads/root/birth_registration-revisedfin(1).pdf), [accessed 30 January 2016]

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

As of 31 December 2015, Turkey hosted more than 2.5 million Syrian refugees.¹⁶⁴ According to statistics, this figure grew by almost 1 million during the year of 2015.¹⁶⁵ Further, as estimated, more than 60,000 babies were born to Syrian refugees in exile and yet not all of them were registered at birth by local authorities.¹⁶⁶ Even though birth registration will not grant Turkish citizenship to the children, without the certificate, it is more likely for them to be exposed to statelessness. Thus, raising awareness among the refugee population is an essential step forward for Turkish government in relation to prevention of the childhood statelessness.

3.3 Lebanon

According to estimated numbers, Lebanon has hosted the second highest number of the Syrian refugees so far. Therefore, a vast number of refugee children born in the Lebanese territory face difficulties in relation to the acquisition of nationality at birth and birth registration. The right to nationality is not explicitly incorporated in the Lebanese Constitution. On the other hand, in the Preamble to the Constitution, Lebanese government committed the country to the adherence of the international and regional legal norms.¹⁶⁷ Therefore, legislative protection of the right to nationality, on the national level, is encompassed in the Lebanese nationality law, adopted in January 1925 by the Decree No. 15. Since 1925, the nationality law has been amended only a few times and with limited progress.¹⁶⁸ Analogous to the Syrian nationality law, the prevalent doctrine granting Lebanese nationality at birth is paternal *jus sanguinis*, where the child obtains nationality after his or her Lebanese father. Nevertheless, Article 1(2) of the nationality law states that “*every person born in the Greater Lebanon territory and did not acquire a foreign nationality upon birth, by affiliation*”¹⁶⁹ is considered to be Lebanese national. Therefore, the safeguard based on *jus soli* ground, *de jure*, entitles children of Syrian refugees, who do not acquire Syrian nationality, to be considered as Lebanese nationals. Nevertheless, strict conditions

¹⁶⁴ Syria Regional Refugee Response, available at <http://data.unhcr.org/syrianrefugees/country.php?id=224> [accessed 30 January 2016]

¹⁶⁵ Refugees International, *Supra note 155*, p. 4

¹⁶⁶ *Ibid.*, p. 2, 9

¹⁶⁷ Lebanon, *Constitution*, 21 September 1990, available at: <http://www.refworld.org/docid/44a24a674.html> [accessed 20 January 2016], Preamble subsection b

¹⁶⁸ Except the amendment of 1946 which issued significant development in the conditions of restitution of Lebanese nationality for the individuals of the Lebanese origin. See at EUDO Citizenship Observatory, *Country report: Lebanon*, September 2012, available at <http://eudo-citizenship.eu/docs/CountryReports/Lebanon.pdf> [accessed 20 January 2016], p. 5

¹⁶⁹ Lebanon, *Decree No. 15 on Lebanese Nationality*, 19 January 1925, Art. 1(2)

cause that *jus soli* principle is used only exceptionally. Due to the many obstacles, Syrian refugees cannot ensure that their children will be officially registered by competent authorities and that later on children will be able to proof their legal identity.

The complex procedure of the birth registration is the first roadblock on the way towards claiming nationality. Syrian refugees have to fulfil three essential steps in order to complete the birth registration process. Firstly, they need to obtain a Birth Notification, which is provided by the hospital where the child was born or by the birth attendant.¹⁷⁰ Already the first condition might be problematic in situations when women give birth at places that are uncertified and, therefore, cannot receive the Birth Notification.¹⁷¹ Secondly, Parents need to bring the Birth Notification, their identification documents (including marriage certificate) and administrative fee to the local leader – *Mukhtar* – who issues a Birth Certificate.¹⁷² This step is challenged by various obstacles such as the lack of documentation of the Syrian refugees, bad financial situation or the lack of awareness and general information about the registration procedure. The third step of the birth registration includes two parts:

- (1) The visit of the local government registry office – *Nofous* – within one year following the date of birth. *Nofous* will allocate document number and the stamp to the Birth Certificate.¹⁷³
- (2) The visit of the *Foreigners' Register at the Personal Status Department of the relevant Governorate*¹⁷⁴, where registration is finalised.

When parents miss the one-year time limit, they are obliged to bring their case to the court where the birth registration may be finished and the claim of the acquisition of the nationality resolved.¹⁷⁵ Nevertheless, the option of finalising the whole procedure through the court proceeding is even more inaccessible to Syrian parents. Consequently, if the child is not registered within the first year of his or her life, it is less likely that it will happen at the later stage. Furthermore, the lack of valid residency visa is one of the main causes of not completing

¹⁷⁰ Norwegian Refugee Council, Supra note 42, p. 13

¹⁷¹ Ibid., p. 21

¹⁷² Ibid., p. 13

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid., See also Frontiers Ruwad Association, *Statelessness in Lebanon – Submission in View of Lebanon's Second Periodic Review by the Human Rights Council*, March 2015, p. 6

the birth registration.¹⁷⁶ In addition to the many problems of the birth registration, the whole procedure is not computerized but done on paper, which makes it even more non-transparent.¹⁷⁷ According to the UNHCR, more than 42,000 of the refugee children have been born since the beginning of the conflict, out of which 70 per cent has not obtained birth certificates so far.¹⁷⁸ These practices are certainly contradictory to the international commitments that were adopted by Lebanon. Even though none of the Statelessness Convention has been accessed, the obligations covered by the CRC, ICCPR and the ACHR should prevail over the domestic law in case there is the contradiction between them.¹⁷⁹ As explained above, the birth registration process lists many conditions that trace barriers for Syrian parents for registration at birth, which certainly breaches the principle of the best interest of the child. Hence, Lebanese nationality law lacks the efficiency in practice and shows discrepancy with the international commitments. The old nationality decree calls for a new amendment that would implement more clarity, effectiveness and consistency to the prevention of the childhood statelessness.

3.4 Jordan

Another country with the high rate of Syrian refugees is the Hashemite Kingdom of Jordan. This Middle East country has received to date more than 635,000 Syrians, out of which 16,3 per cent are children between the age 0-4.¹⁸⁰

Jordanian constitution encompasses the note of nationality only in Article 5, which says that “*Jordanian nationality shall be defined by law*”¹⁸¹. Nevertheless, the right to nationality as such is not included in the constitutive act. Many gaps can be found in Jordanian nationality law as to

¹⁷⁶ Lebanon has not adopted 1951 Convention, thus, the legal status and the protection of Syrian refugees in Lebanon is limited.

¹⁷⁷ Frontiers Ruwad Association, Supra note 175, p. 8

¹⁷⁸ This figure has been estimated in March 2015. Therefore, it is certain that the number grew during the last year. See at UN High Commissioner for Refugees (UNHCR), *Lebanon-born Syrian refugees risk stateless issue*, at Refugees Daily, March 2015, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&id=54f404062>, [accessed 20 January 2016]

¹⁷⁹ This rule is incorporated in the Lebanese Code of Civil Procedures in its Article 2. See at also Frontiers Ruwad Association, Supra note 175, see the footnote 4

¹⁸⁰ Not all of these children have been born in Jordanian territory. The exact figure of the children born in Jordan is unknown. Nevertheless, in 2014, the UNHCR estimated that 18,590 children were born in Jordan among all refugee populations. Since the Syrian refugee population is the biggest in Jordan the most of the births, registered with UNHCR, were likely Syrians.

See at Syria Regional Refugee Response, available at <http://data.unhcr.org/syrianrefugees/country.php?id=107> [accessed 30 January 2016], See also Norwegian Refugee Council (NRC), *Registering rights - Syrian refugees and the documentation of births, marriages, and deaths in Jordan*, October 2015, p. 10, footnote 38

¹⁸¹ Jordan, *Constitution of The Hashemite Kingdom of Jordan*, 1952, Art. 5

the prevention of the childhood statelessness. There is no provision protecting children born to non-nationals in the Jordanian territory that would be otherwise stateless. In the refugee context, the only possibility for children to acquire Jordanian nationality at birth is by being born in mixed families, where the father is Jordanian national.¹⁸² Jordanian mother can confer nationality upon children only in case the father is unknown or stateless himself.¹⁸³ The fact that there are no safeguards in nationality law that would preclude childhood statelessness breaches all adopted international and regional commitments.

The right to be registered at birth is covered by Lebanese Civil Status Law. The positive element of the birth registration in Jordan is that Syrian refugee parents do not have to travel to register their newborn in Syrian consulate, but they fall under the Jordanian process of civil registration. However, refugees often cannot fulfil all requirements needed for birth registration because of their special situation and status. The administrative procedure falls under the competences of the Ministry of Interior, more specifically under the Civil Status Department. The first prerequisite for birth registration is the birth notification, issued by the hospital of licenced midwife.¹⁸⁴ Once the birth notification is collected, parents have to bring it to the Civil Status Department along with the identity documents of the person registering the child and marriage certificate of parents.¹⁸⁵ Subsequently, the competent authorities will register the child and issue the birth certificate. The registration has to be completed within 30 days after the birth of the child if parents want to avoid paying a fine.¹⁸⁶ The completion of the registration within the Civil Status Department is possible within the first year following the birth. After one year parents need to file a lawsuit to Magistrate Court, which may rule either positive or negative judgment in relation to the birth registration.¹⁸⁷ As we may observe, impose the same obligations on Syrian refugees and Jordanian residents alike, make birth registration for Syrian parents challenging and often unattainable. The lack of identity documents, onerous costs, the lack of awareness and even inconsistency in the Civil Status Department hinder the registration of Syrian children within

¹⁸² Jordan, *Law No. 6 of 1954 on Nationality (last amended 1987)*, 1 January 1954, available at: <http://www.refworld.org/docid/3ae6b4ea13.html> [accessed 20 January 2016], Art.3(3)

¹⁸³ Ibid., Art. 3(4)

¹⁸⁴ Norwegian Refugee Council, *Supra* note 180, p. 14

¹⁸⁵ Ibid.

¹⁸⁶ If the child is registered within 30 days, parents pay only administration fee for the birth certificate. See at Norwegian Refugee Council, *Supra* note 180, p. 14

¹⁸⁷ Ibid.

Jordanian authorities.¹⁸⁸ Consequently, without any official document children may not obtain proper medical treatment, and they are often exposed to exploitation or statelessness. In relation to the childhood statelessness, the CRC Committee has issued, in its observation report, recommendation for Jordanian government to adopt 1961 Convention to bring childhood statelessness to an end.¹⁸⁹ Despite the possibility for Syrian refugees to register their children with the Jordanian authorities, the obstacles that the parents have to face, often stop them before the completion of the registration.

3.5 Iraq

The last neighbouring country of Syria, with the high density of Syrian refugees, is the Republic of Iraq. As the nationality law reveals, the protection of the right to nationality of the children born on the Iraq territory is problematic. Nationality as a fundamental human right is also confirmed in the Iraqi Constitution. Nevertheless, Article 18 of the Constitution grants citizenship based on Iraqi nationality only through the doctrine of *jus sanguinis*.¹⁹⁰ The nationality law of Iraq follows the same approach of attributing the nationality at birth. The doctrine of *jus soli* is applied rather in exceptional situations to the foundlings¹⁹¹ and the children born to a non-Iraqi father who was born in Iraq as well¹⁹². No further provision provides the protection to the children born on the territory to non-Iraqi parents that would be otherwise stateless. Thus, we can observe the similar pattern in the national legal protection as was described in previous sub-sections. Even though the nationality law does not facilitate Iraqi nationality to avoid statelessness, the birth registration is still essential element for establishing the child's legal identity. The Human Rights Council observed the positive practice when the Iraqi authorities in cooperation with the UNHCR agency had distributed the pamphlets and informative video with information about the registration process of refugees.¹⁹³ The birth

¹⁸⁸ Ibid., p. 15-17

¹⁸⁹ UN Committee on the Rights of the Child, *Concluding observations on the combined fourth and fifth periodic reports of Jordan*, CRC/C/JOR/CO/4-5, July 2014, p. 6

¹⁹⁰ Iraq, *Constitution of the Republic of Iraq*, 15 October 2005, available at: <http://www.refworld.org/docid/454f50804.html> [accessed 23 January 2016], art. 18

¹⁹¹ Iraq, *Iraqi Nationality Law*, Law No. 26, 7 March 2006, available at: <http://www.refworld.org/docid/4b1e364c2.html> [accessed 23 January 2016], art. 3(b)

¹⁹² Ibid., art. 5

¹⁹³ UN Human Rights Council, *Birth registration and the right of everyone to recognition everywhere as a person before the law*, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/27/22, June 2014, p. 16

registration procedure comprises of three essential steps.¹⁹⁴ Firstly, parents have to obtain the birth certificate from the hospital or the licensed midwife. Before the birth certificate is issued, parents have to present required documentation – identification cards, civil marriage certificate and asylum's seeker certificate. When the documents are in order, the hospital shall issue the birth certificate for certain administration fee. On the other hand, if some of the documents are missing or the child is born on the place without any license, the birth certificate will not be issued. In relation to that, the CRC Committee has observed the gap in the birth registration process in Iraq and addressed the recommendation to the Iraqi government to issue the identification to all children without reference to parents' marriage certificate.¹⁹⁵ The child may be registered within the UNHCR database and obtain the care and protection within its mandate, however, this registration does not have any further effect on child's nationality. The second step requires the registration at the Birth and Death Directorate, where the document from the hospital is validated. Lastly, parents have to visit the Directorate of health, where the final version of the birth certificate is issued.

Even though Iraqi recent nationality law achieved gender equality in *jus sanguinis* attribution of nationality to a child, the insufficient protection of the children born in the territory goes certainly against the prescribed international and regional legislation. The Iraqi Constitution obliges the country to respect its international commitments.¹⁹⁶ Therefore, the provisions regarding prevention of childhood statelessness require effective implementation into a domestic legal system and practice alike.

As estimated, 15 per cent out of 245 thousands of registered Syrian refugees are children as young as 0-4 years.¹⁹⁷

3.6 Sweden

Together with Germany, Sweden has received so far 56 per cent out of all Syrian asylum applications submitted in the EU countries.¹⁹⁸ In 2013, Sweden was the first European country

¹⁹⁴ Since the accurate information of the policies related to the birth registration is hardly covered by the literature or any report, all important facts have been abstracted from the information video issued by the UNHCR office for the Syrian refugees. This video is available at <http://youtu.be/ZvtSIAMXx9U>, [accessed 23 January 2016]

¹⁹⁵ UN Committee on the rights of the Child, *Concluding observations on the combined second to fourth periodic reports of Iraq*, CRC/C/IRQ/CO/2-4, March 2015, p. 8

¹⁹⁶ Supra note, 190, art. 8

¹⁹⁷ Syria Regional Refugee Response, available at <http://data.unhcr.org/syrianrefugees/asylum.php> [accessed 30 January 2016]

that granted permanent residency status to all Syrian asylum seekers.¹⁹⁹ Therefore, the Nordic country has become one of the main destinations of refuge for Syrian refugees. As of December 2015, more than 105,000 Syrians applied for asylum in Sweden since the beginning of the Syrian conflict.

Sweden has adopted all of the relevant international and regional treaties that preclude childhood statelessness, including both Statelessness Conventions. In 2001, Sweden passed new nationality law in order to modernize it and put it in line with the international legal standards.²⁰⁰ *Jus soli* principle serves as the complement to the *jus sanguinis* doctrine, which is the major mode of acquisition of the nationality at birth in Sweden. The Section 6 of the citizenship act aims to preclude childhood statelessness at birth. It reads as follows:

*“A child that was born in Sweden and has been stateless since birth acquires Swedish citizenship on notification by the guardian or guardians of the child if the child holds a permanent residence permit and is domiciled in Sweden. Notification must be made before the child reaches the age of five.”*²⁰¹

Furthermore, children between 5 and 18 years of age shall acquire Swedish nationality if they possess residence permit and reside in the country for five years or if the child is stateless for three years.²⁰² Thus, all the safeguards precluding childhood statelessness are limited to those children who hold a permanent residence permit. Nevertheless, under 1961 Convention, it is permissible to require *habitual residence*,²⁰³ rather than legal residence permit.²⁰⁴ Therefore, the prerequisite of the residence permit is not in line with the provisions set by international law.

On the other hand, the good practice can be observed in relation to the application for Swedish citizenship. Once parents find they child eligible for the acquisition of the Swedish nationality,

¹⁹⁸ Ibid.

¹⁹⁹ UN High Commissioner for Refugees (UNHCR), *Sweden offers residency to all Syrian refugees*, at *Refugees Daily*, September 2013, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&id=5226c5dc5>, [accessed 23 January 2016]

²⁰⁰ EUDO Citizenship Observatory, *Country Report: Sweden*, October 2012, available at <http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=Sweden.pdf>, [accessed 23 January 2016], p.8

²⁰¹ Sweden, *The Swedish Citizenship Act*, SFS 2001:82, March 2001, available at <http://eudo-citizenship.eu/country-profiles/?country=Sweden#currentLaw>, [accessed 23 January 2016], Section 6

²⁰² Ibid., Section 7

²⁰³ 1961 Convention, Supra note 94, Art. 2(b)

²⁰⁴ Sebastian Kohn, *Statelessness in Sweden – changes ahead?*, European Network on Statelessness, September 2012, available at <http://www.statelessness.eu/blog/statelessness-sweden-changes-ahead>, [accessed 24 January 2016]

they may send the online notification.²⁰⁵ Furthermore, those persons who are stateless or have been granted refugee status are not obliged to pay any administration fee.²⁰⁶

As to the birth registration, the hospital, where the child is born, or assisting midwife shall report the birth to the Tax Agency, which will allocate a personal identity number to a child and register him or her within the database of the population register.²⁰⁷ Once the child is registered, the Migration Agency receives the information about this child being born in the country.²⁰⁸ Subsequently, the Migration Agency will send the notification to parents who must apply for the residence permit of their child.²⁰⁹ As the Syrian refugees are entitled to obtain the permanent residence permit, their children will most likely get the same permit as that of the parents.²¹⁰ Consequently, upon the notification issued by the parents, the child is entitled to Swedish nationality if he or she is otherwise stateless.

Sweden, as one of the leading immigrant countries in Europe, developed the more liberal approach towards nationality laws than some countries of the present study.

3.7 Germany

The generous policy for the refugees, issued by the Germany, caused that the number of the Syrian population significantly increased over the last year. According to the Syria Regional Refugee Response agency, the overall figure of asylum applications, submitted by Syrians, reached the number 218,186 at the end of 2015.²¹¹ The highly positive approach towards resolving refugee crisis in the European continent indicates that Germany is willing to guarantee the protection of the rights the refugees and their inclusion in the society. Nevertheless, when it comes to the right to nationality and avoidance of statelessness, one may find a discrepancy between the nationality law and international legal framework. Germany has adopted all

²⁰⁵ All the essential information are provided by Swedish portal Migrationsverket available at <http://www.migrationsverket.se/English/Private-individuals.html>, [accessed 24 January 2016]

²⁰⁶ Ibid.

²⁰⁷ Swedish Tax Agency

²⁰⁸ See the portal Migrationsverket available at <http://www.migrationsverket.se/English/Private-individuals.html>, [accessed 24 January 2016]

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Syria Regional Refugee Response, available at <http://data.unhcr.org/syrianrefugees/asylum.php> [accessed 30 January 2016]

necessary legislation related to the matter of nationality and statelessness thus not all provisions fulfil Germany's international commitments.

Nationality law is covered by the Nationality Act 1913 and has been amended several times since its adoption. The acquisition of German nationality at birth is adjusted in Section 4 of the Nationality Act. Likewise other countries of the present study, Germany recognizes *jus sanguinis* as the main principle for the acquisition of nationality. Nevertheless, the nationality law reform of 1999/2000 has brought safeguard to children born in the German territory to foreign nationals.²¹² Nevertheless, German nationality is not attributed to a child unconditionally, even though the child is left stateless. *Jus soli* principle is customized as follows:

“A child of foreign parents shall acquire German citizenship by birth in Germany if one parent

1. has been legally ordinarily resident in Germany for eight years and

2. has been granted a permanent right of residence...”²¹³

Therefore, Syrian parents who have found refuge in Germany just recently, will not fall under the condition of 8 years of lawful residency in the country. Consequently, in the case of the Syrian children whose paternity has not been established the risk of becoming stateless is very high.

As to the birth registration, once the mother gives birth in Germany, the baby has to be registered, by the German authorities, within seven days following the date of birth.²¹⁴ The notification of the child's birth has to be sent either by hospital, midwife, or parents in case the birth was given at home. The process of registration is very prompt. The parents shall obtain the birth certificate within 14 days.²¹⁵ Good practice shows that birth registration in Germany is not problematic, and almost all children born in the territory are granted the German birth certificate.²¹⁶

²¹² EUDO Citizenship Observatory, Country report on Citizenship Law: Germany, January 2015, available at http://cadmus.eui.eu/bitstream/handle/1814/34478/EUDO_CIT_2015_02-Germany.pdf?sequence=1, [accessed 30 January 2016], p. 16

²¹³ Germany, *German Nationality Law 1913 (as amended by Act of 1 June 2012)*, available at <http://eudo-citizenship.eu/country-profiles/?country=Germany#currentLaw>, [accessed 30 January 2016], Section 4(3)

²¹⁴ Register your Baby's Birth & Applying for Birth Certificate in Germany, October 2013, Available at <http://www.berlinforallthefamily.com/bureaucracy/how-birth-registration-in-germany-works>, [Accessed 30 January 2016]

²¹⁵ Ibid.

²¹⁶ See at UNICEF database, available at <http://data.unicef.org/child-protection/birth-registration.html>, [accessed 2 February 2016] See also European Network on Statelessness, *Childhood statelessness in Europe: Issues, Gaps and Good Practices*, April 2014 p. 21

The standards of protection for refugees in Germany is very high, yet, it is still likely that children born in the territory will end up as stateless.

3.8 Comparative analysis

The investigation of nationality laws of the countries of the Middle East and Europe alike showed that the right to nationality of children born in exile to Syrian refugee parents is endangered by several factors. In the present section, I will try to compare the standards, safeguards, and practices that have been observed in the nationality laws. The analysis will be divided into three sections comprised of (1) national legal safeguards related to preclusion of childhood statelessness at birth, (2) the international standards adopted by country and (3) some examples from real practice of the state towards Syrian refugee children.

3.8.1 The national legal safeguards related to preclusion of childhood statelessness at birth

The first area of comparative analysis is related to nationality laws of the countries and preventive measures precluding childhood statelessness at birth. As it was illustrated, Syrian nationality law constitutes the initial risk for Syrian children to start their life without the legal claim to any nationality. Discriminatory practices which do not allow women to pass their nationality to their children are the first roadblock on the way to obtain nationality at birth. This risk becomes, even more, alarming in the migratory context. It has been pointed out that not all children born to Syrian refugee parents outside Syria are automatically stateless. Vice versa, we may say that not all children born in exile are eligible to Syrian nationality since their birth. This situation occurs when no paternity is established, due to the various causes, or when the father is stateless himself. Consequently, children are not entitled to Syrian nationality, and they are left stateless unless nationality law of the country of birth provides sufficient safeguard. Nationality laws of six countries have been analysed particularly in relation to the relevant provisions based on *jus soli* attribution of nationality to children born in the territory. The following table summarizes provisions in nationality laws which grants nationality on *jus soli* principle.

Illustration 1: Safeguards in nationality laws based on jus soli principle²¹⁷

Country	Safeguards for children born in the country	
	Article in nationality law	Conditions
Turkey	Article 8(1)	Parents are foreign nationals, and child does not acquire other nationality
Lebanon	Article 1(2)	Person does not acquire foreign nationality upon birth by affiliation
Jordan	No provision	X
Iraq	Article 5	Father is non-national, who was born in Iraq, had come of age and had been habitually residing in Iraq at the time of child's birth. Application must be considered by the Minister of Interior.
Sweden	Article 6	Child, who is stateless since birth, holds permanent residence permit and is domiciled in Sweden. Notification must be made before child reaches age of five
Germany	Article 4(3)	Parents are foreign nationals, and, at least one of them has legally resided in Germany for 8 years and possess permanent residence permit

The common feature of the countries of the present study has been observed concerning the attribution of nationality. In particular, all countries primarily operates under the doctrine of *jus sanguinis*. Only two countries have incorporated the unconditional *jus soli* principle into their national legislation. Turkey and Lebanon attribute *de jure* nationality to children who would otherwise be stateless. Contrarily, the weakest protection has been observed in nationality law of Jordan which does not provide its nationality to children unless one of the parents is Jordanian national. Iraq recognizes conditional *jus soli* principle, however, it is very unlikely that children of Syrian refugees will meet all preconditions set by the law. Furthermore, two European countries also declared *jus soli* doctrine in their nationality laws. Sweden has limited the safeguard precluding statelessness to those children who are granted the permanent residence permit. On the other hand, Germany bestows two prerequisites on parents of the child which have to be fulfilled cumulatively. Permanent residence permit and period of eight years of legal

²¹⁷ Information used in the illustration have been collected from particular nationality laws of the countries

residence of parents are *sine qua non* of granting German nationality to children born in the territory.

Despite legal safeguards provided, implementation of the provisions in practice is rather exceptional, mainly in the context of the Middle East countries. It was confirmed by several researchers that none of the neighbouring countries will grant its nationality to Syrian refugee children born on their territory even though they would end up as stateless.²¹⁸ This denotes the discrepancy particularly between Turkish and Lebanese national legislation and effective implementation into practice.

Therefore, we may observe that the number of children at risk of statelessness is dramatically increasing in migratory context. Moreover, even those children who have legal claim to Syrian nationality at birth may lose it at late stage due to the insufficient birth registration. Children of Syrian refugees are in constant jeopardy of being denied the nationality, which certainly contradicts with the international standards prescribed by the international law.

3.8.2 The international and regional standards adopted by countries

As it was outlined in the second chapter of this thesis, international law has developed extensive protection of the child's rights in relation to the issue of nationality and statelessness. Adoption of these standards differs in each country. The following table shows which international legal norms have been accessed by particular country.

²¹⁸ See at Refugees International, Supra note 155, p. 2, 10, See also Norwegian Refugee Council, Tilburg University, Supra note 36, p. 23

Illustration 2: Ratification/Accession of International Legal Instruments²¹⁹

Legal Instruments/ Countries	Syria	Iraq	Jordan	Lebanon	Turkey	Sweden	Germany
CRC	Ratification 1993	Accession 1994	Ratification 1991	Ratification 1991	Ratification 1995	Ratification 1990	Ratification 1992
ICCPR Entry into Force 1976	Accession 1969	Ratification 1971	Ratification 1971	Accession 1972	Ratification 2003	Ratification 1971	Ratification 1973
CEDAW	Accession 2003	Accession 1986	Ratification 1992	Accession 1976	Accession 1985	Ratification 1980	Ratification 1985
ICERD	Accession 1969	Ratification 1970	Accession 1974	Accession 1971	Ratification 2002	Ratification 1971	Ratification 1969
1951 Convention	X	X	X	X	Ratification 1962	Ratification 1954	Ratification 1953
1954 Convention	X	X	X	X	Accession 2015	Ratification 1954	Ratification 1976
1961 Convention	X	X	X	X	X	Accession 1969	Accession 1977

Several patterns may be drawn from this illustration. Firstly, all countries have adopted the core documents of international law including the CRC, ICCPR, CEDAW, and ICERD. Therefore, consent to be bound, as the basic principle of international law, obliges states to grant all children the right to nationality and right to be registered at birth. In addition to that, countries

²¹⁹ All information used in the illustration have been collected from UN High Commissioner for Refugees (UNHCR) *Status of Ratification Interactive Dashboard*, available at <http://indicators.ohchr.org/>, [accessed 1 February 2016]

shall preserve the principle of the best interests of the child while considering the attribution of the nationality to a child. The second pattern that can be observed is related to the adoption of 1951 Convention and the Statelessness Conventions. All Middle East countries of the present study but one, lack the accession to the refugee and Statelessness Conventions. Turkey has shown positive practice when accessed to the 1954 Convention in 2015. The other Middle East countries are not willing to follow the example of Turkey despite the CRC Committee has addressed several recommendations on this particular matter.²²⁰ On the other hand, European countries showed the highest possible standard of adoption of the international law instruments. In addition, both Germany and Sweden adopted all relevant regional documents issued either by the CoE or the EU. Contrarily, Turkey in its regional bonds has not committed itself to accede to neither of the regional regulations. Syria, Lebanon, Jordan and Iraq are obliged to grant nationality to children without discrimination and prevent childhood statelessness under the relevant provisions of the ACHR and the CRCI.²²¹

The gaps between two bodies of law – international and/or regional law on one hand and nationality law on the other – can be observed in several cases. Syria has failed to comply with the basic standards of gender equality which create severe consequences on transferring Syrian nationality to newborn Syrian children. Germany, Sweden, and Iraq grant nationality under *jus soli* principle only under certain conditions which neither meet their international commitments. The way Turkey and Lebanon have adjusted the safeguard of *jus soli* for children that would otherwise be stateless can be assessed in a positive manner. However, while the nationality laws are in line with prescribed international law, the practice shows opposite, as it was mentioned above.

Even though the positive correlation between nationality law and adopted international and/or regional law cannot be granted, states should reconsider the accession to Statelessness Conventions and relevant regional instruments.

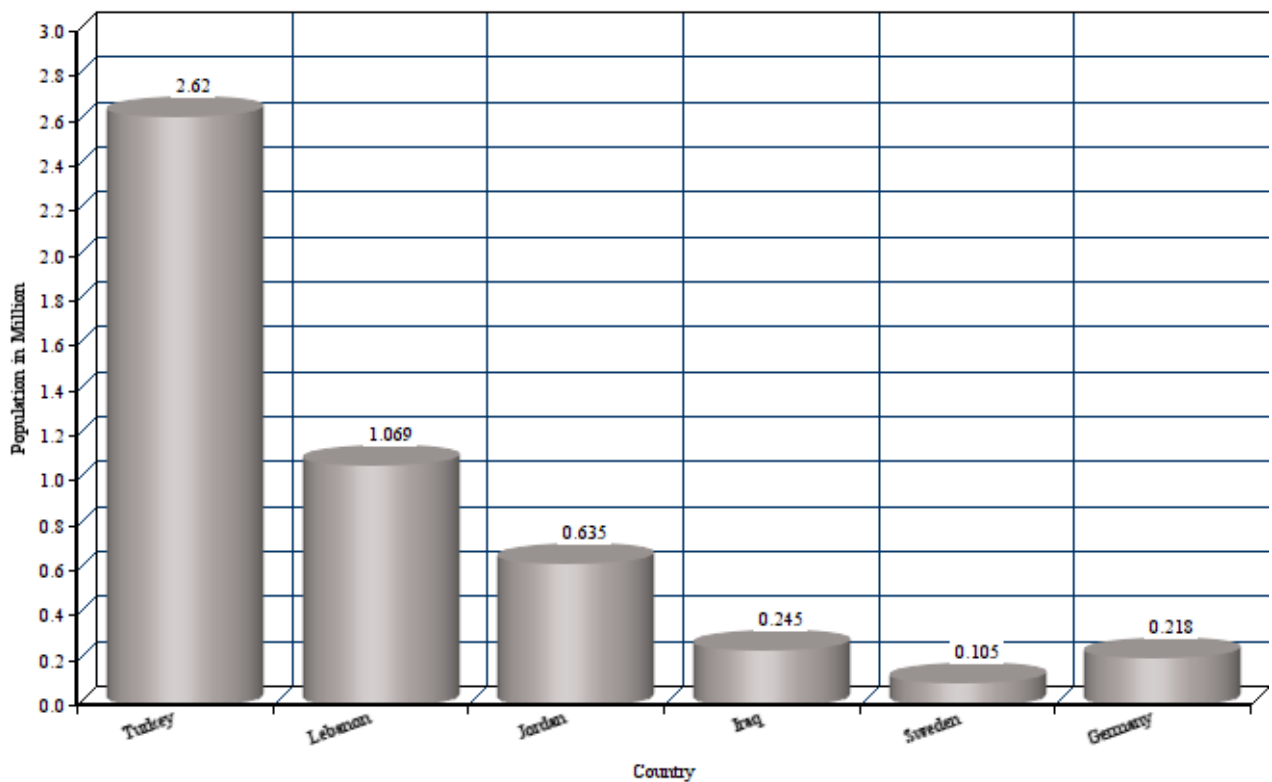
²²⁰ The CRC Committee has recommended to Jordan and Iraq to reconsider acceding to the statelessness conventions. See at CRC Committee, *Concluding observations on the combined fourth and fifth periodic reports of Jordan*, CRC/C/JOR/CO/4-5; or CRC Committee, *Concluding observations on the combined second to fourth periodic reports of Iraq*, CRC/C/IRQ/CO/2-4

²²¹ However, it is important to note that the exact number of the countries that have acceded to the CRCI is not clear. See at UN High Commissioner for Refugees (UNHCR), *The situation of stateless persons in the Middle East and North Africa*, October 2010, available at <http://www.refworld.org/docid/4cea28072.html> [accessed 20 February 2016], see the footnote 211

3.8.3 Practice of the states which helps preclude childhood statelessness

As the fifth year of the civil war is approaching its end, the number of Syrian refugees that were forced to leave the country is dramatically increasing every day. It is estimated that more than 4,5 million²²² Syrians fled the country, since the beginning of the conflict, and try to seek refuge either in one of the neighbouring countries or even farther. The following graph shows the population of the Syrian refugees in particular country.

Illustration 3: Population of Syrian refugees in millions in the country of refuge



It is obvious that vast majority of Syrian refugees is situated in the countries of the Middle East. Consequently, millions of children have been affected by this situation, and many of them have never seen Syria yet. As of October 2015, around 142,000 babies have been born in exile since

²²² The number was estimated by Syria Regional Refugee Response portal in mid-January 2016, available at http://data.unhcr.org/syrianrefugees/regional.php#_ga=1.136853240.991641679.1444425656 [accessed 20 January 2016]

2011 in all countries of refuge.²²³ Since nationality of newborn babies is endangered, good practice in the birth registration is extremely important as it is the first legal recognition of the child. It was already mentioned that the birth certificate has no effect on acquisition of nationality. Nevertheless, it plays crucial role in establishing legal identity of a child and helps to support the claim of attribution of particular nationality. Each country of the present study showed different procedure of the birth registration. The rates of the birth registration in European countries are reaching almost 100 per cent and thus are less problematic than the Middle East countries.²²⁴ We may observe similar problems that restrain parents from registering their children within competent authorities in the particular Middle East country. These obstacles are manifold. Firstly, the process of birth registration in Turkey, Lebanon, Jordan and Iraq consists of excessively many steps. Parents often have limited access to relevant authorities, or they have to face administrative barriers. Furthermore, lack of documentation is one of the main causes that preclude child from being registered at birth. All four countries require to enclose legal marriage certificate during registration process. This is particular problem for refugees as they often do not possess needed documentation. Financial costs constitute another problem faced by parents who often need to travel to different cities and places to get registered. Lastly, Syrian refugees are often not aware of the possibility to register their child within the country of the birth of the child or many misinformation create fear among Syrians that they may be expelled from the country of refuge back to Syria.

The work of the UNHCR is significant not only concerning humanitarian aid but also to registration of refugee populations including newborn babies. However, registration within the UNHCR does not provide legal birth certificate which could establish legal identity of the child. Therefore, the responsibility of making the birth registration process more effective lies upon the states themselves.

3.9 Concluding remarks

The third chapter is devoted to the case study of the nationality laws of seven countries and their comparative analysis. Examining each country separately showed variety of the safeguards

²²³ United Nations General Assembly, *Executive Committee of the Programme of the United Nations High Commissioner for Refugees*, Summary record of the 691st meeting, A/AC.96/SR.691, October 2015, p. 4

²²⁴ European Network on Statelessness, *Supra* note 216, p. 21-22

provided in the nationality laws in relation to the children born in the territory. Moreover, the differences have also been observed in the procedures of the birth registration in each country. The analysis of the all individual countries aims to compare three dimensions. Firstly, it is the aspect of the national legal safeguards related to the preclusion of childhood statelessness at birth. Since the Syrian nationality law does not allow women to transfer nationality to their children, situation becomes even more complicated when it comes to migratory context. Despite the cultural differences between the Arab and European states, the gaps either in the nationality laws or real implementation to the practice have been observed in all states of the present study. The second dimension of comparative analysis drawn attention to the international and regional standards adopted by country. Under the provisions of the CRC and other human rights documents, the states are obliged to ensure the right to nationality and birth registration to all children even though that majority of the states of the present case study have not adopted the Statelessness Conventions. Lastly, the practice of the states which helps preclude childhood statelessness has been compared. It has been observed that Syrian refugees in the Arab countries face serious obstacles in the birth registration process of their children which causes that many of newborn children do not possess the birth certificate. On the other hand, as it has been examined, the registration rates in the European countries reach almost 100 per cent. Nevertheless, this chapter has proofed that children of Syrian refugees are at high risk of statelessness in all countries of the present case study.

Conclusion and Recommendations

The childhood statelessness is a phenomenon which affects all regions all over the world. As the Syrian civil war has almost reached the end of its fifth year, the matter of the nationality and statelessness has become more alarming particularly in the migratory context. Millions of Syrians were forced to flee their home since the beginning of the turmoil. Consequently, this left many children at risk of statelessness. The legal research, conducted in this thesis, aimed to bring the answers to the question: When and why are children of Syrian refugees born in exile exposed to statelessness? Addressing this issue, it has been confirmed that there are various reasons and causes which constantly jeopardize the children of refugees. Situations, when children are exposed to statelessness, may be captured into two general groups.

Firstly, children are at risk of becoming stateless particularly when state does not effectively provide the nationality to children born in the territory that would otherwise be stateless. Incorporating this safeguard into the domestic law and its effective implementation into practice would certainly help to diminish the number of stateless children. Secondly, when state does not ensure that all children are registered at birth, it may bring severe consequences to the child's life. Even though the birth certificate does not automatically give the nationality to a child, it is crucial document for claiming one's identity. Without any official document, children may be denied to have access to different rights such as the right to proper health care or the right to education.

The case study of the present thesis showed reasons why the future of many children of Syrian refugees is affected by phenomenon of statelessness. Concerning the non-facilitation of the nationality to Syrian children born in exile, we may observe three specific factors contributing to childhood statelessness. Above all, the discriminatory practice in Syrian nationality law which precludes mother to pass nationality to her child brings initial risk for the child. Since 2011, the civil war has torn apart thousands of families. Many fathers died during the conflict, or they serve in the military service. Consequently, when paternity cannot be established, the child is not eligible to acquire Syrian nationality. Therefore, Syrian refugee parents, who find themselves in similar situation, are entirely dependent on the safeguards based on the doctrine of the *jus soli* principle. This leads us to the second factor which may result in childhood statelessness. The majority of the Syrian refugees are nowadays situated in the countries of the present case study. It has been observed that countries of refuge fail to meet their international commitments since

most of them do not grant nationality on the unconditional *jus soli* principle for children who would otherwise be stateless. Furthermore, even those countries, in which nationality laws are in line with the international obligations, do not effectively implement legislation into practice. The lack of standard practice causes that groups of Syrian refugees face those scenarios on daily basis. The findings resulting from the present research has allowed to address a number of recommendations:

- a) *The competent authorities should revise the Syrian Legislative Decree 276, remove the provision precluding women to pass their Syrian nationality on a child and put the nationality law in line with the relevant international and regional standards.*

Even though the current situation in Syria makes it nearly impossible to reach this goal in the nearest future, it does not change the fact that this recommendation can be addressed and demanded. The discriminatory practices do not severely affect only the Syrian women but also the new generations of children. Therefore, it is needed to take all measures to ensure that principle of non-discrimination is bestowed in the domestic system in relation to the right of nationality.

- b) *All states should incorporate the provision of the unconditional *jus soli* principle for all children that would otherwise be stateless and comply with the principle of non-discrimination and the principle of the best interest of the child.*

This would imply the positive action of the governments and the relevant state authorities. Nowadays, the relevance of the safeguards based on the *jus soli* principle is specifically significant in the context of Syrian refugees. The further academic research, as well as the field work study, would certainly support the adoption of the safeguards into the nationality laws in order to preclude childhood statelessness. Therefore, the voice of the civil society should not stay mute but, instead, should raise awareness in this particular matter.

- c) *All states should eliminate the administrative and financial obstacles to ensure that every child, regardless his or her status or the status of the child's parents, shall obtain the birth certificate.*

As the birth certificate represents the entry ticket to other children's rights, it is inevitable to raise awareness of the importance of birth registration process. The status of the children or their parents should not have any effect on the right to be registered at birth. Current situation of the children of Syrian refugees born in exile caused that thousands of them have not obtained the birth certificate, yet, due to the earlier explained difficulties. Therefore, addressing this pressing problem should be granted the priority in the realm of the child's-related issues.

d) All states should consider acceding to the 1954 Convention and 1961 Convention, and implement relevant legislation effectively in the real practice in order to put an end to childhood statelessness.

Adoption of the Statelessness Conventions should be the first, but certainly not last, step on the way to solve the problem. As it was observed in the thesis, the Statelessness Conventions provide far-reaching protection against statelessness. Nevertheless, accession to the relevant legislation cannot reach its goal without good will of the states. Indeed, unwillingness of the states remains one of the major challenges in the area of nationality and statelessness. The gaps between legal obligations and real implementation are often very broad. This hints that states are hesitant to comply with their legal commitments. It may be assumed that the right of every child to nationality is not among prioritized rights. The role of the civil society and diplomacy could help to challenge the strict approach of particular state.

In conclusion, it is certain that children of Syrian refugees born in exile are exposed to statelessness. This situation will continue until significant changes in the nationality laws, as well as the attitudes of the states, are not imposed. The high importance of the central topic of the paper has been stressed several times. During the time of writing this thesis numbers of Syrian refugees fleeing the country dramatically increased. Without proper protection we risk that new generation of Syrian children will not be able to claim any nationality in the future, thus, they will end up in the legal limbo. Therefore, the state has the responsibility to bring all three pillars - the international law, nationality law, and good practice- together. Similarly, it is up to the international community, NGO's and the civil society to raise awareness of this particular matter in order to bring the childhood statelessness to an end.

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Annex: The relevant international and regional legislation

1) Universal Declaration of Human Rights

Article 15

Everyone has the right to a nationality.

No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

2) Convention on Certain Questions Relating to the Conflict of Nationality Laws The Hague

Article 15

Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.

3) Convention on the Rights of the Child

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

4) International Covenant on Civil and Political Rights

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, 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.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

5) Convention on the Elimination of All Forms of Discrimination against Women

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

6) International Convention on the Elimination of All Forms of Racial Discrimination

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(d) Other civil rights, in particular: (...)

(iii) The right to nationality;

7) Convention relating to the Status of Stateless Persons

Article 1

1. For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.

8) Convention on the Reduction of Statelessness

Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with sub-paragraph (b) of paragraph 1 of this Article subject to one or more of the following conditions:

(a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;

(c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

(d) that the person concerned has always been stateless

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he had passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this article, such application shall not be refused.

5. The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;

(c) that the person concerned has always been stateless.

9) Arab Charter on Human Rights

Article 29

1. Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.
2. States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.

10) Covenant on the Rights of the Child in Islam

Article 7: Identity

1. A child shall, from birth, have right to a good name, to be registered with authorities concerned, to have his nationality determined and to know his/her parents, all his/her relatives and foster mother.
2. State parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality, and family relations in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.

11) European Convention on Nationality

Article 4 – Principles

The rules on nationality of each State Party shall be based on the following principles:

- a) everyone has the right to a nationality;
- b) statelessness shall be avoided; (...)

Article 6 – Acquisition of nationality

2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
 - a) at birth *ex lege*; or
 - b) subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.