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**Nationality and Statelessness:  
The Right to Birth Registration in the Context of  
the Syrian Conflict**

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## **ABSTRACT**

Statelessness is a human rights issue affecting more than ten million people worldwide and having detrimental consequences on children's lives. Every year, a great number of children come into this world lacking recognition and protection from any State. In the context of the Syrian conflict in particular, Syrian children born in exile are more vulnerable to statelessness since acquiring the nationality of the State in which they are born can be very difficult or even impossible. The situation is further compounded by lack of birth registration, a process that guarantees a child's recognition in the system of nation-states. In an era of internal conflicts and forced displacement, the existing problem of statelessness and the risks of a new generation of stateless children calls for immediate action from States and the international community as a whole to adopt every necessary measure in order to close all gaps in the international protection system. If the problem of statelessness will be solved in the near future, the protection of the universal right to a nationality and the right to birth registration must be safeguarded for every child regardless of his or her legal status.

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Thank you all,

Elena Olympiou

## **LIST OF ABBREVIATIONS**

GoJ	Government of Jordan
GoL	Government of Lebanon
CRC	Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
NRC	Norwegian Refugee Council
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Committee on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee
UNICEF	United Nations Children's Fund

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## CHAPTER I

### THE RESEARCH

It is an undeniable fact that the concept of human rights is facing unprecedented challenges. Ongoing armed conflicts alongside other forms of violence spread in different regions of the world continue to result in human rights abuses, negatively impacting the lives of millions of people. The mass exodus of people fleeing war, poverty and other forms of persecution<sup>1</sup> revives the bitter memories of World War II and recalls Hannah Arendt's concept of "rightlessness."<sup>2</sup> In addition, the significant movement of people beyond their national borders has brought questions of nationality and statelessness to the fore, causing conflicts between nationality laws of different States.<sup>3</sup> As scholar John Torpey noted, "In a world of nation-states, in which the population of the globe is theoretically divided up into mutually exclusive bodies of citizens, international migration is an anomaly with which the State system has some awkwardness coping."<sup>4</sup>

Most of us feel a natural sense of belonging to a particular State and don't have reason to question the process of nationality. As members of a society, we often take for granted the right to a nationality alongside the rest of the benefits provided to us. For instance, the right to education, the right to health, the right to employment, the right to elect and be elected

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<sup>1</sup> According to UNHCR, there are currently 59.5 million forcibly displaced people from whom 19 million are refugees worldwide. The ongoing Syrian conflict has produced the biggest refugee wave since World War II counting more than 4 million refugees.

Article 1(A)(2) of the 1951 Convention defines a refugee as an individual who is "outside his or her country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group". UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at:

<http://www.refworld.org/docid/3be01b964.html> [accessed 4 June 2016]

<sup>2</sup> Arendt, Hannah. 1979. *The origins of totalitarianism*. San Diego: A Harvest Book., pp. 267-302

<sup>3</sup> For an extensive analysis on nationality and statelessness see Wass, Laura Van and Edwards Alice, eds., *Nationality and Statelessness under International Law*, Cambridge University Press, 2014; Waas, Laura Van. *Nationality Matters: Statelessness under International Law*. Antwerp: Intersentia, 2008

<sup>4</sup> Torpey, John. *The invention of the passport: surveillance, citizenship and the state*. Cambridge University Press, 2000, p. 244.



and the right to legal identity are among the rights entwined with nationality. Accessing a range of rights as a citizen allows us to become active members of the society and plays a significant role towards the construction of our identities.

Unfortunately, this is not the case for millions of people around the world who do not have access to any nationality and are therefore rendered stateless. The problem of statelessness is one of great proportions, outspread to every continent of the world, negatively affecting an astronomical number of individuals. This social plague interferes with people's fundamental entitlements, stripping them off their "right to have rights"<sup>5</sup> and taking away the very essence of their human dignity. Statelessness is not a contemporary issue; it is a man-made problem that has existed as a pressing issue on the international level for years. However, for a long period of time, it did not attract the necessary attention from the international community, making it a demanding current reality that requires an effective and concrete response.<sup>6</sup>

The exact number of stateless people is not to be measured easily. Statistics and figures do not cover the magnitude of the problem mostly due to the lack of information provided by States.<sup>7</sup> This information deficit is either because States do not have the proper mechanisms to keep records of stateless persons or they simply do not consider it an issue of high priority in their political agenda.<sup>8</sup> Yet according to United Nations High Commissioner for Refugees (UNHCR) estimates, the number exceeds ten million with half of them being children.<sup>9</sup> In fact, every ten minutes a child is born stateless, a statistic that adds weight to

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<sup>5</sup> "Nationality is the individual's basic right, in fact, the right to have rights", Earl Warren, *Trop v. Dulles*, 1958 as quoted in Batchelor, Carol A. "Statelessness and the problem of resolving nationality status." *Int'l J. Refugee L.* 10 (1998): 156., p.160.

<sup>6</sup>For more information on the evolvement of statelessness research see: Manly, Mark, and Laura van Waas. 'The State of Statelessness Research.' *Tilburg Law Review* 19, no. 1-2 (2014): pp.3-10.

<sup>7</sup>UNHCR, *The World's Stateless People. Questions & Answers*, September 2007, p.6 available at: <http://www.refworld.org/docid/47a707900.html> [accessed 11 July 2016]

<sup>8</sup> Van Wass, L., 2008, p. 20.

<sup>9</sup> UNHCR, 'Stateless People' at: <http://www.unhcr.org/en-us/stateless-people.html> [accessed 20 March 2016]

the pervasiveness of the problem and highlights the vital need to eradicate the problem from its roots.<sup>10</sup>

Under international law, a stateless person is someone who is “not considered as a national by any State under the operation of its law”.<sup>11</sup> This definition is regarded today as part of customary international law and applies to every State, even those that are not members of the respective legal instrument.<sup>12</sup> For the purpose of this work, the definition of a stateless person as defined above will be the reference point when assessing who qualifies for the protection afforded under international law. However, since stateless is not solely a word stamped on legal documents but a problem affecting society at a human level, the understanding of a stateless person will be studied from a broader context, so as to include not only the *ex lege* but also the *de facto* stateless persons.<sup>13</sup>

In light of the current situation in Syria, where the ongoing conflict forces millions of people to flee their home seeking protection in neighbouring countries, the issue of child statelessness attracted my attention due to the complexities in matters related with nationality already present in the area. Syria, Jordan and Lebanon are amongst the 27 countries that have discriminatory nationality laws, whereby the transmission of nationality is exclusively passed on to a child via the father.<sup>14</sup> As the situation has become protracted, the number of births delivered in the aforementioned neighbouring countries has increased. According to UNICEF, 27,103 Syrian children have been born in Jordan since March

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<sup>10</sup> UNHCR, *Ending statelessness within 10 years: A special report*, 2014, available at: <http://www.refworld.org/docid/545b3b47ade.html> [accessed 14 June 2016].

<sup>11</sup> Article 1(1), United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954.

<sup>12</sup> Institute on Statelessness and Inclusion, *The World's Stateless*, 2014, p. 49

<sup>13</sup> Further analysis on the classification of stateless persons will follow in Chapter II.

<sup>14</sup> Some of these citizenship laws, however, do allow women to confer their nationality to their children in certain circumstances. For an overview of nationality laws see: UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2015*, 2015.

2011,<sup>15</sup> whereas in Lebanon, data by UNHCR indicate that the number has exceeded 50,000.<sup>16</sup> The large number of births in these territories has revealed new threats over the legal status of children born to Syrian refugees. The magnitude of the threat is compounded by challenges in the process of birth registration for refugee children. Due to procedural barriers that hinder the overall process, a large number of unregistered children face an acute risk of becoming stateless.<sup>17</sup>

Further analysis and more thorough examinations of the importance of the right to birth registration for the prevention of statelessness is warranted in order to avoid perpetuating this phenomenon to future generations. Although our current era has seen the entrenchment of human rights principles within protective frameworks, the uncertain future of millions of children today makes us wonder if human rights are indeed inalienable and universal. Can we still talk for a generation that has not been lost?

## 1.1 Research Scope

The aim of this thesis is to highlight the relation between nationality, birth registration and statelessness and show how the first two can prevent the later. With this as the foundation of the research, this work seeks to exemplify the heightened risks of statelessness for children born in the context of forced displacement. In order to narrow the scope of the research, this work will not seek to answer questions pertaining to nationality matters stemming from irregular migration. It will rather focus on the legal status of refugee children born in exile, more specifically, children born to Syrian refugees in Jordan and Lebanon. Finally, since the main point of departure is the international protection

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<sup>15</sup> Jordan Times, “27,103 Syrian children born in Jordan since March 2011 — UNICEF”, 8 December 2014, retrieved from <http://www.jordantimes.com/news/local/27103-syrian-children-born-jordan-march-2011-%E2%80%94-unicef> [accessed 1 June 2016]

<sup>16</sup> Al Jazeera, “UN: 36,000 newborn Syrians stateless in Lebanon”, 11 May 2015, retrieved from <http://www.aljazeera.com/news/2015/05/150506060248502.html> [accessed 1 June 2016]

<sup>17</sup> Based on a UNHCR survey on statelessness of 2014, 70% and 40% of Syrian new-borns in Lebanon and Jordan respectively did not have birth certificates. UNHCR, *Jordan Response Plan, Refugee Pillar Needs Assessment*, October 2014 and UNHCR, *Inter-Agency Update on Statelessness*, 19 December 2014.

framework against statelessness at birth; questions relating to the status of stateless persons will not be examined.

## 1.2 Research Questions and Structure

The following research questions will be investigated in this thesis:

- 1) What is the relation between statelessness, nationality and birth registration?
- 2) What are the causes and consequences of statelessness for children?
- 3) To what extent can guaranteeing birth registration in the context of forced displacement prevent incidences of statelessness?
- 4) What is the importance of the process of birth registration in the context of the Syrian conflict?
- 5) What are the impediments to effective birth registration for Syrian children in Jordan and Lebanon?

In order for the above questions to be answered, this thesis has been divided into five chapters. After the introduction of chapter I, in which the reader is provided with contextual information on nationality and statelessness, Chapter II looks into the developments in international law relating to nationality and focuses on the modes of acquisition of nationality at birth. Chapter 3 explores the phenomenon of statelessness and its various contemporary manifestations. The focus is on the ways in which statelessness is produced and its consequences on children's lives. After that, Chapter 4 deals with two related issues, namely, the obligations that stem from international legal framework regarding the right to be registered at birth and the challenges faced by babies born to Syrian refugees in Jordan and Lebanon in the process of birth registration. This assessment aims to highlight the need for a more comprehensive protection of children's rights in order to prevent statelessness during emergencies. Following the obligations identified in Chapter 4 and the discussion on

the gaps in national law in regards to the prevention of statelessness at birth, Chapter 5 offers recommendations and concludes with an overview of the main findings of this thesis.

### 1.3 Research Methodology

The research methodology is based on literature review and secondary data analysis. This methodology aims to provide an overview of both primary and secondary sources related to the right to a nationality and the prevention of statelessness at birth. Starting with an investigation of primary sources such as international treaties and relevant case law, the analysis is enhanced by scholarly research as well as United Nations' information resources (Concluding Observations, General Comments, Executive Conclusions and Reports). Since the research of this thesis focuses on the specific context of childhood statelessness in the context of forced displacement, this work combines new and old readings on the importance of the right to a nationality in order to identify gaps in the international protection system. In order to assess the identified barriers in the context of States' obligations under international law, the final part of this work is based on secondary document analysis (surveys and interviews) conducted by the Norwegian Refugee Council in Jordan and Lebanon.

## CHAPTER II

### NATIONALITY THROUGH THE LENS OF INTERNATIONAL LAW

The second chapter aims to describe the concept of nationality under international law. The first step in answering my research question, “What is the relation between nationality and statelessness,” is to identify the importance the right to a nationality has against statelessness. Starting with a literature review on the topic, this analysis will explore the developments relating to nationality through a series of international and regional human rights instruments. Further, we will focus on the attribution of nationality based on the two main principles of *jus solis* (right of the soil) and *jus sanguinis* (right of the blood) and on how nationality may be lost.

#### 2.1 Nationality as the Norm

Nationality, or citizenship<sup>18</sup>, is an important concept in international law and one of the essential elements within the system of human rights protection.<sup>19</sup> It is the status of belonging to a particular State and denotes the legal bond of an individual and a State.<sup>20</sup> Paul Weis, a prominent scholar on nationality matters argues that “the stateless person is an anomaly, and nationality, still [is] the principal link between individual and the state”.<sup>21</sup> If this primary link cannot be established, statelessness rises as an unwanted anomaly with harmful effects on people’s lives and personal dignity. The right to a nationality has, thus, a dual role; not only is it a fundamental human right but also a key right that paves the way for the enjoyment of several other rights and can potentially act as the token against

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<sup>18</sup> The terms nationality and citizenship will be used interchangeably throughout this work, denoting the legal bond between an individual and the State.

<sup>19</sup> For the concept of nationality under international law see: Edwards, A. and Van Waas, L. (eds.), 2014; Van Waas, L., 2008, Weis, P., 1979 and Weis Brian Opeskin et al. (eds.), 2012;

<sup>20</sup> Edwards, A. and Van Waas, L. (eds.), 2014, p.11

<sup>21</sup> Weis, P., *The United Nations Convention on the Reduction of Statelessness*, 1961, p. 1073.

statelessness.<sup>22</sup> Since nationality is closely intertwined with the phenomenon of statelessness it is crucial to realize its importance and discuss its various elements.

## 2.2 The Concept of Nationality in International Law

Nationality is, in principle, a matter of domestic jurisdiction.<sup>23</sup> States, as sovereign entities, enjoy broad discretion in setting up regulations determining who is a national of their country.<sup>24</sup> Questions related to the acquisition, loss or withdrawal of nationality can be answered through each State's nationality laws and relevant policies.<sup>25</sup> The way the right to a nationality is realized in practice can be a hint both for the creation and/or prevention of statelessness. However, in such an interconnected world, there lies a question as to whether this matter is in fact regulated exclusively by the States.

Looking back to 1923, the Permanent Court of International Justice, in its advisory opinion on the Tunis and Morocco Nationality Decrees, stated:

“The question whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; *it depends on the development of international relations*. In the present State of international law, questions of nationality are, in the opinion of this Court, in principle with this reserved domain... *[T]he right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other states*. In such a case, jurisdiction which, in principle, belongs solely to the State is limited

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<sup>22</sup> Batchelor, 1998, p.160.

<sup>23</sup> Edwards, A, and Van Waas, L., (eds.), 2014, p. 2; Bathcelor, 1998, p.168.

<sup>24</sup> “States have the right to determine the rules governing the attribution of their own nationality in accordance with their interest.” Ruth Donner, ‘Chapter 3: The imposition and Withdrawal of Nationality’, p. 121, as quoted in Van Wass, L., 2008, p. 35.

<sup>25</sup> M. Hudson, ‘Nationality, Including Statelessness’ Yearbook of the International Law Commission 2, Part Three, 1952, p. 12.

by the rules of international law.”<sup>26</sup>

Almost a century ago, States’ freedom to decide upon nationality issues could only be limited by the obligations they had towards other States.<sup>27</sup> Thus, this approach was implicitly upholding the prerogative of the State to regulate nationality issues under its domestic laws.

The same issue was touched upon some years later during the Hague Conference for the Progressive Codification of International Law. The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws adopted in 1930 stipulates in article 1 that “it is for each State to determine who are its nationals...[T]his law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality”.<sup>28</sup> This article goes beyond the general wording of the court’s opinion, expressing the importance of international norms and clarifying that domestic law must be in accordance with standards of international law if it is to be accepted by other States.

Based on this approach laid out in the Hague Convention, the reality of the expansive consequences of States’ actions, and the fact that international law today “favours human rights over claims to State sovereignty,”<sup>29</sup> one can argue that domestic legislations fall far too short of the mark for States to use them as exclusive regulations. Indeed, this rhetoric comes to the support of today’s status quo, when States have not only duties towards other States but are also bound by obligations stemming from international law that calls for protection of individuals’ human rights.<sup>30</sup>

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<sup>26</sup> *Tunis and Morocco Case*, 1923, P.C.I.J. ser. B 4 (*emphasis added*).

<sup>27</sup> Batchelor, C., 1998, p. 160; Edwards, A., and Van Waas, L., (eds.), 2014, p.30.

<sup>28</sup> This echoes article 38 of the statute of the International Court of Justice, which outlines the international conventions, international custom, and the principles of law as the primary sources of international law.

<sup>29</sup> Batchelor, Carol A., Philippe Leclerc, and Marilyn Achiron. *Nationality and statelessness: A handbook for Parliamentarians*. Inter-Parliamentary Union, 2000., p. 9.

<sup>30</sup> Hailbronner, Kay. *Nationality in public international law and European law*. na, 2006, p. 1.



The scenery has changed significantly, chiefly due to the developments in the sphere of human rights law.<sup>31</sup> The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws<sup>32</sup> was the first universal attempt to advance nationality rights into a solid text.<sup>33</sup> Specific provisions aiming to avoid statelessness at birth or preventing it from occurring later in life are stipulated in certain articles of the convention.<sup>34</sup> Of great interest is Article 1 of the additional protocol on a “Certain Case of Statelessness”, which calls upon the States to confer nationality to children born in their territories who would otherwise be stateless.<sup>35</sup> Unfortunately, countries which granted nationality based on different doctrines saw this as a very progressive step even in very specific circumstances. The Convention was not ratified by a great number of States and its protocols did not attract many signatories.<sup>36</sup>

Since 1930, a body of international and regional legal instruments have emerged with the main focus of regulating nationality issues. The most notable examples are the 1957 Convention on the Nationality of Married Women, the 1961 Convention on the Reduction of Statelessness (1961 Statelessness Convention), the 1954 Convention Relating to the Status of Stateless Persons, the Convention Relating to the Status of Refugees and within the European system the 1997 European Convention on Nationality. The common target of all these instruments is to ensure that everyone is provided with the right to a nationality and to play a major role in the efforts to restrain the number of incidents of statelessness.

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<sup>31</sup> Batchelor, C., 1998, p. 168.

<sup>32</sup> League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, available at: <http://www.refworld.org/docid/3ae6b3b00.html> [accessed 25 June 2016]

<sup>33</sup> Cfr. *supra* footnote 29, p.15

<sup>34</sup> Articles 8 and 9 relating to the nationality of married women, articles 16 to 18 dealing with the nationality of children and article 17 dealing with adoption.

<sup>35</sup> According to article 1, “a child born in a State which does not apply *jus soli* of a mother who is a national of that State and of a stateless father or of a father of unknown nationality shall have the nationality of that State.” Report by Mr. Manley O. Hudson, Special Rapporteur, ‘Nationality, including Statelessness’, A/CN.4/50, ILC Yearbook (1952-II), p.14.

<sup>36</sup> *Ibid.*

Further, the UN General Assembly often nudges States in the direction of adopting nationality legislation that would reduce and prevent statelessness.<sup>37</sup>

In addition to these instruments specifically created with nationality in mind, nationality as a right is enunciated in every core international and regional human rights instrument, first and foremost being article 15 of the Universal Declaration of Human Rights (UDHR), which is widely perceived by many commentators today as part of customary international law.<sup>38</sup> On a multinational level, the Convention on the Rights of the Child (CRC),<sup>39</sup> the most widely ratified legal instrument, provides the most comprehensive protection in regards to children's rights.<sup>40</sup> Article 7 safeguards the right to a nationality from birth and provides that "State 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," and goes one step further to safeguard this right particularly "where the child would otherwise be stateless".<sup>41</sup> State Parties to CRC are required to "undertake all

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<sup>37</sup> See United Nations, Executive Committee Conclusions No. 78 (XLVI), Prevention and Reduction of Statelessness and Protection of Stateless Persons, 1995 and No.106 (LVI), on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 2006 available at: <http://www.refworld.org/docid/4b28bf1f2.html> [accessed 11 July 2016]

<sup>38</sup> Along with UDHR, a plethora of international and regional legal instruments make explicit reference to the right to a nationality. These provisions are stipulated in article 5 par. 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), article 9 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), article 18 of the Convention on the Rights of Persons with Disabilities and article 29 the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. On a regional level, the right to a nationality is protected under article 20 of the American Convention on Human Rights, article 6 of the African Charter on the Rights and Welfare of the Child and article 29 of the Arab Charter on Human rights. The right to a legal identity is also stipulated in article 7 of the Covenant on the Rights of the Child in Islam.

<sup>39</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed 27 June 2016]

<sup>40</sup> USA is the only country that has not yet ratified the CRC.

<sup>41</sup> The Committee on the Rights of the Child, the body responsible for the implementation of the Convention by State Parties, has raised concerns about States' actions that can lead to statelessness and is repeatedly urging States to ratify the Statelessness Conventions. UNICEF, *Implementation Handbook for the Convention of the Rights of the Child: Fully Revised Third Edition*, 2007, p.103-104 available at: [http://www.unicef.org/publications/index\\_43110.html](http://www.unicef.org/publications/index_43110.html) [accessed 11 June 2016]. An analysis of Concluding Observations follows in Chapter IV.

appropriate legislative, administrative, and other measures” for the realization of the rights set forth in the Convention.<sup>42</sup>

Additionally, article 24(3) of the International Covenant on Civil and Political Rights (ICCPR)<sup>43</sup> protects the right for every child to acquire a nationality without discrimination of any kind.<sup>44</sup> In the General Comment on article 24, the Human Rights Committee (HRC) states that “special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3...[S]tates are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born”.<sup>45</sup>

As evidenced by the analysis above, the evolution of human rights norms has changed the perception of the matter of nationality and legal identity and advanced the importance of the universal right to a nationality. It is worth mentioning that the concept of nationality started as an attempt to categorize individuals who had duties towards a State and others who did not fall to this group.<sup>46</sup> This rhetoric has changed through the years; as one scholar argues, nationality has moved beyond the “personal relationship of allegiance,” to combine a legal status of shared rights and obligations both from the State and its nationals.<sup>47</sup> Indeed today, nationals have a duty of obedience towards the State they belong to; they have certain public duties while at the same time enjoy the State’s protection and wide range of

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<sup>42</sup> Article 4 of CRC states that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention”.

<sup>43</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 27 June 2016]

<sup>44</sup> Article 24(1) of ICCPR states that “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”.

<sup>45</sup> United Nations Committee on the Rights of the Child, General Comment no.7: The Implementation of child’s rights in early childhood, 2005, par.8

<sup>46</sup> Edwards.A , and Van Waas. L, eds., 2014, p. 12.

<sup>47</sup> Hailbronner, Kay. *Nationality in public international law and European law*. na, 2006, p. 1.

social benefits reserved for those who qualify as nationals.<sup>48</sup> Therefore, nationality is primarily a matter of domestic jurisdiction “but has consequences in international law”.<sup>49</sup>

### 2.2.1 Attribution of Nationality

Article 15 of UDHR states: “Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality.”<sup>50</sup> The wording of this article articulates the universal nature of the right and prohibits its arbitrary deprivation, but as seen from its wording it does not specify which State is responsible for guaranteeing it.<sup>51</sup> Under international law, it is commonly accepted that nationality “reflects a formal link of a political and legal character, between that individual and a particular state.”<sup>52</sup> As mentioned above, this legal bond comes with rights and responsibilities both for the individual and the State concerned.

The concept of nationality was elucidated in the *Nottebhom Case*, where the International Court of Justice described nationality “as the 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.”<sup>53</sup> Arguably, States will not offer nationality as a gift to anyone; in order for people to qualify for a specific nationality, they need to establish a connection with the State first. The concept of a “genuine and effective link” is a requirement that needs to be met for the purposes of nationality conferment. Taking a look into States’ practices, one can identify the features that support this connection; they are most often place of birth, parentage, place of residence and family ties.<sup>54</sup> Specifically, place

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<sup>48</sup> Brian Opeskin et al. (eds.), 2012, p. 93

<sup>49</sup> Ibid.

<sup>50</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 27 June 2016].

<sup>51</sup> Cfr. supra footnote 29, p. 21.

<sup>52</sup> Ibid.

<sup>53</sup> *Liechtenstein v. Guatemala*, International Court of Justice, 1953, p. 2.

<sup>54</sup> Batchelor, C., 1998, p. 161; Van Wass, L., 2008, p. 32 and Edwards.A , and Van Waas. L, eds., 2014, p. 16.

of birth and descent are mentioned most frequently in domestic legislations as the links of the bestowal of nationality.<sup>55</sup>

Based on State practice, nationality is conferred either at birth, as prescribed by law, or at a later stage in life through the process of naturalization.<sup>56</sup> Safeguarding the right to a nationality for all children at birth is of critical importance since such a guarantee will give them recognition under a country's system and will allow States to identify those who fall under their protection. To this effect, the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights make explicit reference to the importance of registration of children upon birth.<sup>57</sup> Birth registration alone does not warrant the acquisition of nationality; nonetheless it is an essential step in that direction since it offers the vital information necessary to indicate nationality.<sup>58</sup>

In general, acquiring nationality at birth follows an automatic process based on the principles of *jus solis* and *jus sanguinis*, which constitute the two main ways in which people acquire nationality.<sup>59</sup> Following the *jus solis* principle, a child acquires the nationality of the State in which he or she was born, regardless of whether his or her parents are nationals. In this case, the place of birth is a determinant to the citizenship of the child. There are numbers of countries adhering to this approach, most of them being on the American continent.<sup>60</sup> The United States is a well-known example of the "birthright citizenship" doctrine and has adhered to it for almost 150 years.<sup>61</sup> *Jus sanguinis*, on the other hand, is the doctrine upon which children acquire the nationality of the State of which one or both of their parents are nationals. In this instance, parentage is the element

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<sup>55</sup> Batchelor, C., 1998, p. 161.

<sup>56</sup> Van Wass, L., 2008, p. 33.

<sup>57</sup> See Cfr. *supra* footnotes 39 and 43.

<sup>58</sup> Todres, Jonathan. 'Birth Registration: An Essential First Step toward Ensuring the Rights of All Children.' *Human Rights Brief* 10, no. 3, 2003:8, p.1.

<sup>59</sup> Batchelor, C., 1998, p. 161.

<sup>60</sup> *Ibid.* at p. 157.

<sup>61</sup> "All persons born in the United States are 'citizens of the United States'", *The United States Constitution*, 1868 as cited in Brian Opeskin et al. (eds.), 2012, p. 97

indicating the affiliation with the State. The latter doctrine is practiced in most of the European countries as well as many Asian and Arab nations.<sup>62</sup>

In recent years, the unprecedented migration flows have driven States to implement limitations to the acquisition of nationality based on *jus solis* by allowing only citizens or permanent residents to make use of that principle. Evidently, there is a tendency among *jus solis* States to redefine their immigration laws, tightening up the rules and conditions for the conferral of nationality, making it hard for children born in a migratory context to acquire that country's nationality.<sup>63</sup>

The policy of every State regarding the bestowal of nationality at birth includes these dogmas either combined or on their own and are perceived today as evenly legitimate.<sup>64</sup> As clearly stated by Hudson, the special rapporteur of the United Nations, in the report *Nationality Including Stateless*, "this uniformity of nationality laws seems to indicate a consensus of opinion of States that conferment of nationality at birth has to be based on' either or both of these modes".<sup>65</sup> However, the unitary character of the *jus sanguinis* principle can affect refugee children born in exile if the country concerned does not apply safeguards against childhood statelessness. To this effect, in circumstances when the risk of statelessness is evident, international law supports the implementation of the *jus soli* principle. For example, States party to the 1961 Convention on the Reduction of Statelessness are obliged to grant nationality to those persons born in their territories who would otherwise be stateless.<sup>66</sup> The European Convention on Nationality espouses a similar approach for children who lack nationality.<sup>67</sup>

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<sup>62</sup> Van Wass, L., 2008, p 33.

<sup>63</sup> Bhabha, Jacqueline. *Children without a state: a global human rights challenge*. MIT Press, 2011, p.6

<sup>64</sup> "Jus soli and jus sanguinis are both fully developed and equally legitimate" at Batchelor, C., 1998, p. 169;

<sup>65</sup> Report by Mr. Manley O. Hudson, Special Rapporteur, 'Nationality, including Statelessness', A/CN.4/50, ILC Yearbook (1952-II), p. 3, at p. 7; cited also in Van Wass, L., and Edward, L. 2014, p. 17.

<sup>66</sup> Article 1, 1961 Statelessness Convention

<sup>67</sup> Article 6, 1997 European Convention on Nationality

Having introduced the main features in regards to the attribution of nationality at birth, we will now present the factors under which nationality might be withdrawn, renounced or deprived. There is a section in the domestic regulations of each State prescribing the possibilities for the loss of nationality, showing that this is not an absolute right but can, under certain circumstances, be lost.<sup>68</sup> As mentioned above, it is up to the States to decide the rules concerning the acquisition of nationality, while at the same time being bound by norms of international law that prohibit actions resulting in statelessness. This “negative duty” corresponds with Chan’s argument that “any deprivation must be prescribed by law and accompanied by full legal proceeding and should not result in statelessness.”<sup>69</sup>

### 2.2.2 Loss of Nationality

There are three possible ways for nationality to be lost. Individuals who wish to renounce their nationality for the purpose of acquiring the nationality of another State or because they do not feel affiliated with the nationality they have been ascribed can do so voluntarily.<sup>70</sup> The right of a voluntary renunciation can be found in the domestic laws of States, modelled after the wording of article 15 of the Universal Declaration of Human Rights that mentions “everyone’s right to change their nationality.” However, as noted by Van Wass and Edwards, there are countries that may not permit renunciation and may even create regulatory procedures to hail the process.<sup>71</sup> Under international law, article 7 of the 1961 Stateless Convention provides safeguards against statelessness stating that “renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.”<sup>72</sup>

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<sup>68</sup> Cfr. supra footnote 12, p.20.

<sup>69</sup> Chan, J.M.M., *The Right to a Nationality as a Human Right* (1991). *Human Rights Law Journal*, 12, pp.1-at. as quoted in Batchelor. C., 1998, p. 238.

<sup>70</sup> Weis, P., 1979, pp. 115-117.

<sup>71</sup> Edwards, A., and Van Waas, L., eds., 2014, p.22.

<sup>72</sup> Article 7, 1961 Stateless Convention.

Secondly, under certain domestic laws, the nationality status of an individual can be changed if his or her personal status alters through a marriage, dissolution of a marriage or adoption. According to some countries' laws, women married to a person who holds the nationality of another State automatically lose their own nationality.<sup>73</sup> Such practices, however, contradict with the principle of non-discrimination against women enunciated in Article 9 of the Convention on the Elimination of all Forms of Discrimination against Women that is accompanied with provisions that safeguard equal rights on nationality matters both for women and men. Building on international obligations, article 5 states that in cases when changes in the personal status of an individual results in loss of nationality, acquisition of another nationality should be a prerequisite.<sup>74</sup>

Thirdly, a State might revoke the nationality of its nationals for reasons falling within its sole purview which are explicitly stipulated in the relevant laws. This is limited to cases in which a person acquires nationality by wrongful means or acts in contradiction with the principles of the State concerned.<sup>75</sup> In this realm, the 1961 Statelessness Convention allows Contracting Parties to revoke the nationality of their nationals if such nationality is acquired by misrepresentation or fraud, even if they will be rendered stateless.<sup>76</sup> Lastly, revocation of a nationality can be the result of permanent residency abroad if the individual concerned fails to register with the State's authorities on a regular basis.<sup>77</sup> The developments in international law do not permit withdrawal of nationality based on such practices, which are often considered to be arbitrary, if the person will be rendered stateless.<sup>78</sup>

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<sup>73</sup> UNHCR, *Nationality and Statelessness: Handbook for Parliamentarians* N° 22, July 2014, p. 39.

<sup>74</sup> Ibid. at Article 5.

<sup>75</sup> Ibid. at Article 8.

<sup>76</sup> Ibid. at Article 8 (2b).

Article 8 (3), Contracting Parties should specify at the time of signature, ratification or accession their will to retain the right to deprive such right based on the grounds stipulated in article 8.

<sup>77</sup> UNHCR, *Nationality and Statelessness: Handbook for Parliamentarians* N° 22, July 2014, p. 39.

<sup>78</sup> Ibid. at p. 40. See also, Article 7(3) of the 1961 Convention.



In summary, there are limited exceptions at the current stage of international law where loss of nationality can lead to statelessness without being considered arbitrary. Withdrawal of nationality that is not based on reasonable justification goes against the principles of international human rights law and conflicts with recognized human rights standards. The developments in international law against statelessness, as discussed below, seek to plug the gaps in nationality laws that, inadvertently at times, impact the legal status of individuals.

## CHAPTER III

### CONCEPT OF STATELESSNESS

The third chapter aims at shedding light on the main features of statelessness by introducing the current scope and magnitude of the phenomenon. It will then explore the international legal instruments related to statelessness and the different classification of the stateless definition. From this foundation, this analysis will focus on the complex nature of the issue and further pinpoint the main causes and consequences of childhood statelessness.

#### 3.1 Global Scope and Magnitude

In the current societal landscape, it is generally agreed that statelessness constitutes a great problem with large dimension. The current refugee crisis, resulting to a large extent from the ongoing Syrian conflict, has brought the question of statelessness to the fore, as refugee children born in exile face acute threats over their legal identity.<sup>79</sup> In 2014, UNHCR launched an ambitious campaign aiming to end childhood statelessness within the next ten years.<sup>80</sup> The pledge to eliminate statelessness by 2024 has marked the issue as one of actual concern for the international community, revealing how urgent it has become and that only through systematic and thorough work can it be effectively conquered.

In order to gain a clearer picture of the context under which the problem arises, it is important to investigate its scope from a global perspective. UNHCR has been appointed by the UN General Assembly (UNGA) to “effectively become the overseer and guardian of

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<sup>79</sup> UNHCR, *Born in exile, Syrian children face threat of statelessness*, 4 November 2014, available at <http://www.unhcr.org/en-us/news/latest/2014/11/54589fb16/born-exile-syrian-children-face-threat-statelessness.html> [accessed 13 March 2016]

<sup>80</sup> For more information about the campaign visit the UNHCR website at: <http://www.unhcr.org/ibelong/i-belong-i-am-here/> [accessed 15 March 2016]

the world's stateless people.”<sup>81</sup> In order for UNHCR to carry through to its statelessness mandate, it has been assigned with the mission of protecting and assisting stateless populations, providing advanced legal and humanitarian aid especially in cases where the States concerned fail to do so.<sup>82</sup> Through a series of Conclusions, the UNGA reiterates the UNHCR's mandate to identify, prevent and reduce statelessness around the world and calls on the agency to work closely with Governments in order to provide technical support and to encourage States to accede to the Statelessness Conventions.<sup>83</sup>

UNHCR is also sharing important data, shedding light on statelessness as a whole. Positively, the agency is doing significant work on gathering statistics and reporting on the numbers of stateless persons on a global level.<sup>84</sup> The reporting data of 2014, the most recent report, covered 75 countries and identified three and a half million stateless persons.<sup>85</sup> While a universal count of stateless people still remains to be conducted, UNCHR estimates there are “at least ten million stateless persons worldwide.”<sup>86</sup> As this is an estimate rather than a reliably accurate number,<sup>87</sup> there are in fact many more stateless people not identified who are lost in the statistics.<sup>88</sup> The Institution on Statelessness and Inclusion estimates that “are likely to be more than 15 million stateless persons worldwide”.<sup>89</sup>

While the statistical reporting on statelessness has increased significantly due to the systematic work of UNHCR and the engagement of several other actors in the fight against

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<sup>81</sup> Cfr. supra footnote 7, p. 12.

<sup>82</sup> For more information on how UNHCR assists stateless people visit: <http://www.unhcr.org/en-us/how-unhcr-helps-stateless-people.html> [accessed 15 March 2016]

<sup>83</sup> UN General Assembly, Executive Committee Conclusions on Statelessness: No. 99 (LV), 2004, par. (aa); No.106 (LVII), 2006, par. (f).

<sup>84</sup> Cfr. supra footnote 12, at p. 5.

<sup>85</sup> For the statistics of the last decade see: UNHCR, *UNHCR Statistical Yearbook 2004-2014*, available at <http://www.unhcr.org/pages/4a02afce6.html> [accessed 13 May 2016]

<sup>86</sup> UNHCR, ‘*UNHCR Global Trends 2014: World at War*’, 18 June 2015, available at: <http://www.refworld.org/docid/558292924.html> [accessed 13 May 2016]

<sup>87</sup> Cfr. supra footnote 29, p. 3.

<sup>88</sup> The statistics exclude stateless refugees and stateless asylum seekers as well as Palestinian stateless who fall under the protection mandates of UNRWA.

<sup>89</sup> Cfr. supra footnote 12, p. 16.

statelessness,<sup>90</sup> the highly complex nature of the phenomenon works as an impediment to the efforts of measuring its proportion. The source of the problem can be found in States' actions that do not align with their intended responsibilities under international law to protect stateless people and gather data regarding the stateless population in their territories.<sup>91</sup> Since the issue has been highly politicized and controversial among countries until today, the level of importance, as well as reliable statistics, differs from country to country.<sup>92</sup> Some governments do not gather information about statelessness, others do not have the proper mechanisms to identify it, and those who do might not always provide accurate or reliable counts.<sup>93</sup> Arguably, as long as there is an absence of a uniform approach by the States, the issue will continue occupying different ranks on each State's political agenda and statistics will remain vague.

Mapping the phenomenon gives an insight into its magnitude, but numbers cannot solve the problem. Besides the reported numbers, it will be interesting to understand which countries are most affected by this social plague according to the data reported by UNHCR.<sup>94</sup> Giving names to these people, knowing where they are and the reasons behind their statelessness can help foster greater awareness of the problem and work towards its elimination.

To begin with, Asia and the Pacific is a region where statelessness is a widespread and serious problem. In Myanmar, there is a total of 810,000 reported stateless persons, mostly belonging to the Rohingya religious and ethnic minority group.<sup>95</sup> Minority communities are also affected in Thailand, which ranks second on the list with 506,197 reported stateless

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<sup>90</sup> The Non-Governmental organization "Refugees International" is notable for its work in the field of statelessness and has published several reports on statelessness. For more information visit their site at <http://www.refugeesinternational.org/>.

<sup>91</sup> Obligations derive particularly from the conventions relating to statelessness and other instruments linked to the right to a nationality. For the challenges on mapping statelessness see Cfr. supra footnote 12, pp. 37-52.

<sup>92</sup> Cfr. supra footnote 29, p. 3.

<sup>93</sup> Cfr. Supra footnote 7, p. 6.

<sup>94</sup> The figures are taken from UNHCR's '*UNHCR Global Trends 2014*' and the Report '*The World's Stateless*', Cfr. supra footnote 12, pp. 53-127.

<sup>95</sup> Cfr. supra footnote 12, p. 87

people. In Africa, Cote d'Ivoire alone is home to 700,000 stateless persons chiefly due to restrictive citizenship laws which exclude a great part of the population from nationality rights.<sup>96</sup> Looking at Europe, the problem mostly affects the Baltic countries, which gained their independence after the dissolution of the USSR. As a result of State succession, Latvia and Estonia hold a number of 262,802 and 88,076 stateless people respectively. Similarly, other former soviet republics have thousands of stateless persons in their territories.<sup>97</sup> Lastly, in the Middle East and North Africa, Syrian Arab Republic (160,000) and Kuwait (93,000) are among the states with relatively high numbers of stateless populations. This is the result either of the arbitrary deprivation of nationality from minority groups by a State's act, as is the case in Syria, or discriminatory nationality laws which do not allow women to pass on their nationality to their children.<sup>98</sup>

In all of the above examples, the context under which statelessness comes about differs. We must keep in mind that these numbers represent the stateless populations as recorded by UNHCR, highlighting the cases of large scale incidences of statelessness, but are only a small piece of the whole problem. Discriminatory practices and unlawful deprivation of nationality have a comparable impact on children's right to a nationality. Stateless persons that have been overlooked and the emergence of new trends in statelessness reveal the pressing need for coordinated efforts and call for the effective adoption and implementation of international norms if the problem is to be conquered by 2024.<sup>99</sup>

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<sup>96</sup> Cfr. supra footnote 12, p. 61.

<sup>97</sup> Cfr. supra footnote 12, p. 96.

<sup>98</sup> Cfr. supra footnote 12, p. 106.

<sup>99</sup> The causes of statelessness will be discussed below in paragraph 3.4.

### 3.2 International Legal Framework Addressing the Problem of Statelessness

The issue of statelessness “regained” ground in the wake of the 20th century, chiefly due to a thorough understanding of its severity and the realization of its profound implications by the international community.<sup>100</sup> As a result, renewed efforts to address the challenges stemming from statelessness have become the preoccupation of the international community as well as of scholars, policy-makers and practitioners.<sup>101</sup> An important current development in UNHCR’s overall work is the “Framework for the protection of Children” which mirrors the agency’s firm commitment towards the protection of children falling under its mandate.<sup>102</sup> Of the six goals set out in the framework, goal number four addresses the right to legal identity.<sup>103</sup> However, despite a growing consensus on the undesirability of statelessness, challenging questions remain as for the contemporary aspects of the problem.

In the aftermath of World War II, the members of the international community committed themselves to maintaining peace through international cooperation and collective security in an attempt to make sure that the world would never experience such atrocities again. The apparent and urgent needs of millions of refugees and stateless persons as a result of the war became the main concern of the newly formed organization of the United Nations.<sup>104</sup>

As a result of the war, stateless persons and refugees shared the same condition, since both were short of national protection, and as such were offered the same “assistance and protection”.<sup>105</sup> The international community brought their efforts together to establish the

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<sup>100</sup> See Van Wass, L., 2008; Edwards, A., and Van Waas, L., (eds.), 2014.

<sup>101</sup> The campaign ‘#ibelong’ for the elimination of childhood statelessness, launched by the UNHCR, strengthens the efforts of the international community to counter the phenomenon of statelessness. Additionally, a growing number of NGO’s offer assistance and legal aid to stateless people around the world and are actively supporting the efforts of the UNHCR, becoming a valuable asset to the fight against statelessness.

<sup>102</sup> UNHCR, *A Framework for the Protection of Children*, 26 June 2012, available at: <http://www.refworld.org/docid/4fe875682.html> [accessed 13 May 2016]

<sup>103</sup> Ibid.

<sup>104</sup> Cfr. supra footnote 29, p.9.

<sup>105</sup> Batchelor, C., 1998, p. 243.

protective legal framework for these categories of people. The pattern at that time was that the majority of stateless persons were in fact refugees, and as such were treated under international law.<sup>106</sup> In fact, initially, provisions regulating the status of stateless persons were incorporated as a protocol to the Refugee Convention.<sup>107</sup> During the process, a distinct convention specifically addressing the needs of stateless persons was adopted, asserting the current reality, that “not all stateless persons are refugees.”<sup>108</sup>

Both the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention)<sup>109</sup> and the 1954 Convention Relating to the Status of Stateless Persons (1954 Stateless Convention)<sup>110</sup>, today in their final form, reflect upon the same principles and even share certain provisions.<sup>111</sup> The 1954 Convention is complemented by the 1961 Stateless Convention<sup>112</sup> and together constitute the “tailor-made” international legal instruments specifically addressing statelessness.

Up to this day, the 1954 Stateless Convention alongside the 1961 Stateless Convention constitute the most comprehensive and important international legal instruments in the fight against statelessness. It is important to mention that a contracting party is not obliged to grant nationality to any stateless person residing in or any child born in their territory. This upholds the rhetoric that neither of the conventions seek to establish a universal norm for the right to a nationality.

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<sup>106</sup> Ibid. at p.239

<sup>107</sup> Cfr. supra footnote 29, p. 10.

<sup>108</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, Par. 104, 1992, HCR/IP/4/ENG/Rev, Reedited, Geneva.

<sup>109</sup> See Cfr. supra footnote 1.

<sup>110</sup> UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html> [accessed 22 June 2016]

<sup>111</sup> Cfr. supra footnote 29.

<sup>112</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <http://www.refworld.org/docid/3ae6b39620.html> [accessed 22 June 2016]

The main objective of the first convention is to regulate the status of stateless persons and to “safeguard a minimum standard of treatment” by ensuring that those who qualify for protection will fully enjoy the rights and protections stipulated in its provisions.<sup>113</sup> The main idea of the 1961 Stateless Convention on the other hand, lies in its title – the Convention on the *Reduction* of Statelessness, which sets the tone for the wording of its major provisions. The Convention pursues to find a balance between the principles of *jus sanguinis* and *jus soli* that demonstrates the genuine link a person has with the State concerned in order to avoid the incidence of statelessness at birth.<sup>114</sup> Thus, as Van Wass argued, the most substantive provisions set forth the criteria for the reduction of statelessness resulting from nationality law shortcomings.<sup>115</sup> Today, the provisions of both Conventions are accompanied by the norms of international human rights law and all other relevant treaties.<sup>116</sup> Therefore, in order for stateless persons’ rights to be ensured, the contracting parties should always bear in mind their commitment towards the protection of human rights when applying both conventions respectively.

Despite the prevalent role these conventions have in the protection against statelessness, the relatively low number of signatories reduced its international impact for a long period of time. Today, the number has increased substantially due to the systematic efforts of the United Nations to increase the number of accessions through promotion campaigns.<sup>117</sup>

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<sup>113</sup> UNHCR, Handbook on Protection of Stateless Persons: Under the 1954 Convention Relating to the Status of Stateless Persons, Geneva 2014, p. 3.

<sup>114</sup> Article 1 (1), safeguards the right to a nationality for every child born in the territory of a contracting party, who faces the risk of becoming stateless. States that apply the *jus sanguinis* principle for the conferral of nationality are bound by article 1(1) to apply *jus solis* in a conditional way. Therefore, statelessness rising from conflict of laws can be precluded if these articles are effectively implemented, especially by the *jus sanguinis* States. Ibid.

<sup>115</sup> Van Wass, L., 2008, p. 194.

<sup>116</sup> UNHCR, UN Conventions on Statelessness at: <http://www.unhcr.org/pages/4a2535c3d.html> [accessed 10 March 2016].

<sup>117</sup> Van Wass, L., ‘*Campaign for statelessness conventions gains traction, at last*’, October 2012 available at <http://www.statelessness.eu/blog/campaign-statelessness-conventions-gains-traction-last> [accessed 10 March 2016]



Turkey's latest accession in 2015 raised the contracting parties to the 1954 Stateless Convention to 86. The 1961 Stateless Conventions stands behind with 61 States party.<sup>118</sup>

### 3.2.1 Defining Statelessness: *De jure* and *De facto* Stateless Person

The 1954 Stateless Convention establishes the universal legal definition of a stateless person; a definition which is recognized by the International Law Commission as part of customary international law and, therefore, binding to all States regardless of their contractor status.<sup>119</sup> To date, there is no international consensus in regards to the categorization of the different types of stateless persons.<sup>120</sup> The issue primarily arises due to the lack of a uniform approach by States to create a definition, leaving gaps in the international protection system.

As stipulated in article 1(1), a stateless person is someone who is “not considered as a national by any State under the operation of its law.”<sup>121</sup> Persons who fall under the scope of this definition are identified as *de jure* stateless persons. The term “person” includes children on an equal basis. In reading this provision, one can clearly see that such a definition only denotes in absolute terms who is or is not a stateless person it does not touch upon other factors like if, in practice, a nationality is effective or not. As a result of its strictly legal nature, it has been criticized as denying protection to those who might have nationality in name but cannot claim their rights to nationality for their protection.<sup>122</sup> The latter group of individuals are known as *de facto* stateless persons and refer to those who

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<sup>118</sup> Ibid.

<sup>119</sup> The International Law Commission recognizes the definition as part of customary international law. UNHCR, *The Concept of Stateless Persons under International Law: Summary Conclusions*, May 2010, p. 2.

<sup>120</sup> For the confusion around the definition of a stateless person, see Batchelor, C., 1998, pp. 170-174; Manly, M., and Van Waas, L., 2014, p. 6.

<sup>121</sup> This is the only article where reservations are not allowed.

<sup>122</sup> Brian Opeskin et al. (eds.), 2012, p. 12.

technically possess the nationality of a State but in practice cannot reach benefits from the rights flowing from such a status.<sup>123</sup>

The discussions as to who qualifies for the stateless definition dates back to the drafting process of the conventions. Manley Hudson, at that time, the special rapporteur of the UNHCR, noted that since *de facto* stateless people possessed the nationality of a State, they should not have been regarded as stateless *per se* but rather as “*de facto* unprotected persons.”<sup>124</sup> At the same time, departing from a legal-minded observation, he went on to argue that:

“Any attempt to eliminate statelessness can only be considered as fruitful if it results not only in the attribution of a nationality to individuals, but also in an improvement of their status. As a rule, such an improvement will be achieved *only if the nationality of the individual is the nationality of that State with which he is, in fact, most closely connected, his ‘effective nationality’*...[P]urely formal solutions which do not take account of this desideratum might reduce the number of stateless persons but not the number of unprotected persons. They might lead to a shifting from statelessness *de jure* to statelessness *de facto* which, in the view of the Rapporteur, would not be desirable.”<sup>125</sup>

Hudson could not explain more clearly the connection between nationality and the necessity for real enjoyment of all the rights inherent to it. Every person who holds a nationality is not *per se* holding an effective nationality and a strict adherence to the legal definition can subsequently create protection gaps. But as with any progressive step pursuing the change of the status quo in matters of nationality, any suggestions for adopting

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<sup>123</sup> “De facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country.” UNHCR, *Expert meeting – The concept of Stateless Persons under International Law (‘Prato Conclusions’)*, May 2010, Section II.A.

<sup>124</sup> Manley O. Hudson, Special Rapporteur, ‘Nationality, including Statelessness’, A/CN.4/50, ILC Yearbook (1952-II), p. 17.

<sup>125</sup> Ibid. at p. 20. (*Emphasis Added*)

a broader definition instantly clashes with the prerogative of States' sovereignty to regulate such issues.

The de facto term is to this day related to the concept of effective nationality,<sup>126</sup> but neither of the statelessness conventions defines the de facto stateless persons, nor is there a legal framework addressing wholly their needs.<sup>127</sup> Nevertheless, the Stateless Conventions are not entirely silent on the issue and for this reason, paragraph three of the Final Act of the 1954 Stateless Convention recommends, with the use of very soft language, that contracting parties extend the treatment offered by the Convention to the de facto stateless persons.<sup>128</sup>

Similarly, reference is made in the Final Act of the 1961 Stateless Convention which attempts to guarantee minimum standards of protection for the de facto stateless population respectively by stipulating that “persons who are stateless de facto should as far as possible be treated as stateless de jure to enable them to acquire an effective nationality.”<sup>129</sup> Once more, extending the protection to a de facto stateless person remains the ideal direction that States should follow but not an obligation. In practice, the way States interpret and implement the definition reveals a concentration on its legal element rather than protection, making it impossible for a de facto stateless person to satisfy the legal test.

Furthermore, the ambiguity surrounding the definition becomes a potential issue in the twenty-first century migratory context. UNHCR relates statelessness to the root causes of displacement which, in turn, can lead to refugee flows across the globe.<sup>130</sup> However, as evidenced by the acute risks of statelessness in the context of the Syrian conflict,

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<sup>126</sup> Batchelor, C., 1995, p. 233;

<sup>127</sup> UNHCR, *Handbook on Protection of Stateless Persons*, Geneva 2014, p. 5.

<sup>128</sup> “Recommends that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, *consider sympathetically* the possibility of according to that person the treatment which the Convention accords to stateless persons”

<sup>129</sup> The Final Act of the 1961 Convention links the notions of effectiveness and statelessness. See Cfr. *supra* footnote 123, p. 6.

<sup>130</sup> See UNHCR, Executive Committee Conclusion No.92 (LIII), 2002.

statelessness can also be the result of forced displacement. In terms of law, stateless persons are divided into two groups: *de jure* and *de facto*. Yet, the contemporary aspects of the phenomenon show that what unites these groups is greater than what divides them.

Considering Syrian children born in exile, for instance, despite the apparent association with the Syrian nationality might find themselves *de facto* stateless due to the barriers in birth registration.<sup>131</sup> When they will be allowed to return home, the lack of documentation proving their legal status can be the rationale of *de jure* statelessness if the Syrian authorities fail to recognize their legal ties to the State. As seen from this case, statelessness in the context of a forced displacement can easily shift from *de facto* to *de jure* having the same consequences. For this reason, a more systematic approach to the “important dynamics that generate rightlessness”<sup>132</sup> is required if every different type of statelessness is to be effectively protected.

### 3.3 Causes of (Childhood) Statelessness

In all the efforts to combat statelessness, due regard must be given to its root causes. There is a variety of reasons that cause this phenomenon either at birth or later in life. States hold the key to resolve issues of statelessness, however, as the problem stubbornly persists; it seems that the primary blame for statelessness rests on their own actions. At birth, children might inherit statelessness from their already stateless parents or become stateless as a result of conflicting laws and discriminatory practices. Later in life, children belonging to a certain group of the population might find themselves trapped in strict or discriminatory nationality laws, or become the subjects of nationality decrees that strip them of their nationality instantly. Territorial changes can also ignite statelessness and leave behind a significant amount of people without the protection of any State. Lastly, apart from these

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<sup>131</sup> Chapter III is devoted to an analysis of the barriers in birth registration for Syrian children born in Jordan and Lebanon and the risks of becoming stateless resulting from the lack of birth registration.

<sup>132</sup> Bahbah, J., 2011, p. 2.

causes that are all addressed in the statelessness legal instruments, there are also, according to scholar Laura Van Wass, “new” sources of statelessness for which the international community has been silent until very recently.<sup>133</sup> Lack of access to birth and marriage registration constitute the main features of statelessness in today’s world.<sup>134</sup> The new causes of statelessness fall under the contemporary concept of statelessness which has major impact on children.<sup>135</sup> This section will be devoted to discussing the major causes of the problem as a result of the situations mentioned above.

### 3.3.1 Conflict of Laws

Conflict of laws is one of the most classic causes of statelessness.<sup>136</sup> The way domestic matters are regulated differs from country to country and the attribution of nationality at birth is not always based on the same doctrines.<sup>137</sup> At first glance, as long as they are properly implemented, the existence of varied citizenship laws does not appear to be a problem. Questions arise, however, when they are implemented together. Domestic regulations of two or more countries, when applied simultaneously, can inadvertently cause statelessness.<sup>138</sup> We see this often today, due to the increasing cross-border movement of people. Here is a simple example: A child is born on the territory of State X which grants nationality based on the principle of *jus sanguinis* to parents who are nationals of State Y which applies the *jus solis* principle. In this event, “the incidental outcome of conflicting municipality laws renders the child stateless from birth”.<sup>139</sup> Due to the common idea shared between States who implement the *jus sanguinis* principle that children have more

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<sup>133</sup> Van Wass, L., 2008, p. 151.

<sup>134</sup> Chapter IV will be devoted in discussing in detail the importance of birth registration in the context of statelessness.

<sup>135</sup> Van Wass, L., 2008, p. 152.

<sup>136</sup> Cfr. *supra* footnote 29, p. 27.

<sup>137</sup> As discussed in Chapter III, nationality is acquired at birth, following either or in conjunction *jus soli* and/or *jus sanguinis* principles.

<sup>138</sup> Van Wass, L., 2008, p. 89.

<sup>139</sup> Executive Committee of the High Commissioner’s Program, ‘*Stateless persons: A discussion note*’, 1992, p. 5.

connections to the State their parent(s) are from than the State in which they are born, *jus solis* is widely acknowledged by scholars as the simplest way to guarantee the right to nationality at birth.<sup>140</sup> In order to avoid statelessness occurring at birth due to the technicalities of implementing conflicting laws, States must understand how their nationality legislations are realized in practice. When a State's laws are implemented in cohesion with the relevant laws of other States, they must be amended to exclude the "thorny" provisions that can affect an individual's legal status.

### 3.3.2 Discrimination and Arbitrary Deprivation

As discussed above, the universal principles of equality and non-discrimination constrain States' powers and often rule out domestic legislation with discriminatory nuances. Nevertheless, deprivation of nationality based on a deliberate act of a State still occurs in certain regions resulting in statelessness on a great scale. In particular, some governments intentionally amend their laws in order to strip a whole population of their nationality, or enact stern citizenship laws chiefly to render it impossible for some groups to claim any benefit from their citizenship.<sup>141</sup> In such cases, there is always an element of discrimination at play, often targeting ethnic, linguistic or religious minority groups that in the eyes of the State do not fit with its national identity.<sup>142</sup>

This is the experience of hundreds of thousands of children in the Dominican Republic. Notwithstanding the country's *jus solis* system for the conferral of nationality, discriminatory regulations deny access to citizenship for children of Haitian descent. Irrespective of their families' long-period of residence in the country, they are nevertheless

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<sup>140</sup> UNHCR, 'Statelessness and Citizenship' in *The State of the World's Refugees – A humanitarian Agenda*, Oxford University Press, Oxford: 1997, p. 256 as cited in Van Wass, L., 2008, p. 53.

<sup>141</sup> Cfr. *supra* footnote 12, p. 33.

<sup>142</sup> Blitz, K., Brad and Lynch, Maureen (eds.), *Statelessness and the Benefits of Citizenship: A comparative Study*, 2009, p.8.

considered as “illegal” and not eligible for citizenship.<sup>143</sup> The *Yean and Bosico v. Dominican Republic* case, exemplifies the discrimination against a certain population group by the State authorities.<sup>144</sup> The Inter-American Court of Human Rights found that the authorities, by refusing mothers of Haitian descent to obtain birth certificates of their children’s birth partook in, *inter alia*, direct discrimination in regards to access to nationality that had an impact on the enjoyment of all other rights.<sup>145</sup> This form of “negligence,” goes against the values of equality and can only intensify children’s marginalization. Inevitably, such discriminatory practices render children stateless and along with the consequences that this situation entails, create a society where children belonging to a certain group of population value less than others.

Another factor that gives rise to statelessness at birth is the existence of provisions in nationality laws that have an adverse effect on women’s legal status which, in most cases, also affect their children’s legal status. In countries that adhere to the principle of *jus sanguinis*, issues arise when the conferral of nationality upon descent remains a privilege limited to the father. Although discrimination based on gender is prohibited today under international law and most countries provide for safeguards in their domestic legislations, there are still 27 countries worldwide that, due to their patriarchal laws, are restricting equal access to citizenship rights for women.<sup>146</sup> To this end, when a child is born in his or her mother’s State of nationality to a stateless or absent father, the high risk of statelessness becomes nearly a guarantee for that child.<sup>147</sup> The countries in focus in this thesis still have discriminatory nationality laws which contribute to the increased risks of statelessness.

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<sup>143</sup> Human Rights Watch, ‘Illegal People’: Haitians and Dominico-Haitian in the Dominican Republic,’ April 4, 2002, B1401, <<http://www.unchr.org>>, as cited in Bahbah, J., 2012, p. 12.

<sup>144</sup> *Yean and Bosico Children v. The Dominican Republic*, Inter-American Court of Human Rights, 2005

<sup>145</sup> Open Society Foundation, *Litigation: Yean and Bosico v. Dominican Republic*, 1 July 2009 available at <https://www.opensocietyfoundations.org/litigation/yeen-and-bosico-v-dominican-republic> [accessed 10 May 2016]

<sup>146</sup> See Cfr. *supra* footnote 14.

<sup>147</sup> Cfr. *supra* footnote 12, p. 26.

### 3.3.3 State Succession

History shows that, specifically in connection with State succession,<sup>148</sup> a great number of individuals are in a vulnerable position of becoming stateless.<sup>149</sup> Statelessness can be the result of changes in the territorial integrity of a State through its dissolution and the subsequent emergence of new States.<sup>150</sup> When sovereignty over a territory changes hands, the adoption of new nationality laws by the States concerned usually follows. The new legislation can affect the legal status of the people who, as a result of the succession, might be surprised to find themselves denied citizenship of any State.

In Europe, both the disintegration of Soviet Union and the breakup of Yugoslavia during the 1990s affected the legal status of a great number of people who to this day are labelled as stateless. For example, the new citizenship legislations adopted by Latvia and Estonia after the re-establishment of their independence excluded a large part of the population who used to be inhabitants of that territory prior to the dissolution from being eligible to acquire their nationality.<sup>151</sup> There are populations all over the world affected by events like this.<sup>152</sup>

### 3.3.4 Administrative and Procedural Obstacles

Lastly, a great number of situations of statelessness actually generate by reason of administrative and procedural obstacles.<sup>153</sup> In reality, there is a great amount of people that, although being entitled to a nationality, for several reasons fail to acquire written evidence

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<sup>148</sup> Article 2 of the Vienna Convention on Succession of States in Respect of Treaties, sets out the definition of State Succession as “the replacement of one State by another in the responsibility for the international relations of territory”.

<sup>149</sup> Council of Europe, Explanatory Report to the Council of Europe Convention on the avoidance of statelessness in relation to State succession, 2006, par.3

<sup>150</sup> Brian Opeskin et al. (eds.), 2012, p.101.

<sup>151</sup> For more information on statelessness in Europe see Sawyer, Caroline, and Brad K. Blitz, *Statelessness in the European Union: Displaced, Undocumented, Unwanted*, Cambridge: Cambridge University Press, 2011.

<sup>152</sup> Some examples of stateless populations as a result of State succession are the Bihari minority group in Bangladesh, the Kurds in Syria, the Crimean Tatars, and the stateless persons in Ethiopia after the war with Eritrea in 1998.

<sup>153</sup> Cfr. supra footnote 12, p. 26.



of their nationality, becoming effectively stateless.<sup>154</sup> Barriers in the obtainment of civil documentation often reflect deliberate actions on behalf of States which seek to exclude minority population groups from the benefits of citizenship.<sup>155</sup> According to UNICEF, children who are already living in the margins of society are more likely not to be registered at birth.<sup>156</sup> Adding to this, gender bias practices can intentionally exclude women from registering their children.<sup>157</sup> For instance, in countries where laws require the presence of a father for the registration process, single mothers are deprived of their right to register their children.<sup>158</sup> Being denied access to birth or marriage registration can put children's right to legal identity at risk on the condition that they cannot attest the link they have with the State concerned.<sup>159</sup>

### 3.4 Consequences of Childhood Statelessness

International law safeguards the right to a nationality for every child regardless of status and without discrimination. Yet, statelessness affects around six million children across the world.<sup>160</sup> Despite the positive rhetoric, in the current state of international law, as regards the protection of children's rights, the size of the problem leaves little room for doubt that the protection regime has not fulfilled its objectives. As Bahbah Jacqueline points out in her work, *Children without a State*, a clear-cut connection between statelessness and its impact

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<sup>154</sup> According to UNHCR, "at least 20% of States have populations which are entitled to nationality under law but cannot acquire documentary proof of nationality." UNHCR, *Global Action Plan to End Statelessness 2014-2024*, 2014, p. 27.

<sup>155</sup> Hawke, Angela. 2002. *Birth registration: right from the start*. Florence, Italy: UNICEF Innocenti Research Centre, p.13.

<sup>156</sup> An assessment conducted by UNICEF in Vietnam, Chad and Central African Republic indicated that there are great imbalances in birth registration rankings between children who belong in ethnic or religious minority groups and nationals. UNICEF, *Every Child's Birth Right: Inequities and Trends in Birth Registration*, 2013, pp. 22-23.

<sup>157</sup> For an interesting study on this issue see, Plan International, *Mother to child: how discrimination prevents women from registering the birth of their child*, 2012, available at: <http://goo.gl/bkLgmz> [accessed 10 June 2016]

<sup>158</sup> Cfr. supra footnote 155, p. 15

<sup>159</sup> Cfr. supra footnote 7, p. 12.

<sup>160</sup> Plan and UNHCR, *Under the Radar and Under Protected: The Urgent Need to Address Stateless Children's Rights*, 2012.

on children has not yet been adequately explored by scholars.<sup>161</sup> She argues that statelessness is a crucial “social and political child-rights issue,” stemming primarily from children’s inherent dependency on States for protection.<sup>162</sup> In effect, States, as duty bearers, are required to guarantee children’s access to education, health care and any other public service integral to the fulfilment of their rights. Therefore, in the absence of a nationality, these guarantees flowing from States’ obligations can be unfairly denied.<sup>163</sup>

Children by their very nature are among the most vulnerable within the society and more likely to be exposed to the real risks that go hand in hand with the absence of a State’s protection. The absence of a nationality, and the subsequent lack of any State’s protection, interfere with children’s fundamental rights and expose them to heightened risks of neglect and exploitation.<sup>164</sup> To begin with, having no proof of their presence, stateless children are often unable to access the most basic services provided by the State. Social welfare systems, designed for the nationals of a State, are not easily accessible by stateless communities.<sup>165</sup> Due to their status, stateless children might not be able to seek medical care. Lack of access to health care services can leave them exposed to infectious diseases and illnesses.<sup>166</sup> Worse even, lack of access to neonatal care for new-borns and their mothers can increase the risks of childhood mortality.<sup>167</sup> Furthermore, stateless children are more likely to be denied their right to education. Schools often require a birth certificate for enrolment, an important document that stateless children do not always hold. Without access to education, work becomes an inevitable necessity for these children, who, often as

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<sup>161</sup> Bahbah, J., 2011, p.4

<sup>162</sup> Ibid.

<sup>163</sup> These duties stem from States’ obligations under the CRC which in its preamble reaffirms that “children’s rights require special protection” and goes on to state that “special safeguards and care, including appropriate legal protection, before as well as after birth”.

<sup>164</sup> Child exploitation can be broken down to different categories such as child labour, forced marriages, sexual exploitation and children’s enlistment in arm forces. Cfr. supra footnote 160, p. 8.

<sup>165</sup> Ibid.

<sup>166</sup> According to UNHCR, “in at least 20 countries stateless children cannot be legally vaccinated” Ibid.

<sup>167</sup> WHO, ‘Factsheet: Children Reducing Mortality’, January 2016, available at: <http://www.who.int/mediacentre/factsheets/fs178/en/> [accessed 15 May 2016]

the bread-winners of the family, are forced to work under hazardous conditions for very little money.<sup>168</sup>

In cases of armed conflicts, if unable to prove their age, children can be engaged in the fight as child soldiers against their will;<sup>169</sup> an experience that can have detrimental effects on the psychological and physical integrity of children. Lastly, because of their status, stateless children within a juvenile justice system fear the risk of being prosecuted as adults and sentenced to adults' prisons, contrary to international human rights standards.<sup>170</sup> From a human rights perspective, deprivation of a child's liberty should only be prescribed by law and detention must be a measure of last resort.

Incontestably, statelessness has major repercussions on children's lives. Stateless children belong to one of the most powerless communities in the countries they reside in and often live in the margins facing uncertain futures. As any other child, they have their own dreams and aspirations; however, barred from access to basic services their prospects for the future are nothing but limited.

### 3.5 Concluding remarks

The significant development of international law should pose no question as regards the universal right to a nationality. Particularly, children's right to a nationality has been well established in almost every national, regional and international legal instrument standing today as one of the foundations of human rights protection. The reality, however, reveals that there is a gap from theory to practice. The right to a nationality is hampered by States' actions which often do not apply it to everyone on an equal basis, leaving behind a great amount of stateless people across the world. As seen from the UNHCR's statistics, the

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<sup>168</sup> Limited access to social services and education makes children to work at a really early age. See Cfr. supra footnote 160, p. 10.

<sup>169</sup> UNICEF, *Birth registration and armed conflict*, Florence, Italy: UNICEF, 2007, p.25 available at: <http://www.unicef-irc.org/publications/pdf/insight-br-eng.pdf>. [accessed 10 May 2016]

<sup>170</sup> See Cfr. supra footnote 160, p.10

scope of the problem affects around six million children, a sizeable number which unfolds stark gaps in the protection against childhood statelessness.

In recent years, internal conflicts and instability present in many societies have significantly increased the forced movement of people, which in turn, created new risks as concerns the legal identity and nationality of individuals.<sup>171</sup> Within the context of forced displacement, the threats over the legal identity of children seem to be particularly acute, conflicting with their inherent rights. In the statelessness equation, the magnitude of the problem multiplied by the horrific repercussions on children's lives equals a high-priority situation that the international community, as the real proctor of human rights, is urged to address immediately.

## **CHAPTER IV**

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<sup>171</sup> Van Wass, L., 2008, p. 152.

## **THE UNIVERSAL RIGHT TO BIRTH REGISTRATION; BARRIERS TO BIRTH REGISTRATION FOR SYRIAN CHILDREN IN JORDAN AND LEBANON**

The last two chapters examined the right to a nationality and the phenomenon of statelessness under international law. They explored the link between statelessness and nationality and stressed how the fulfilment of the right to a nationality can avoid incidences of statelessness. Chapter III further pinpointed the main causes of statelessness and its effects on children's lives. The aim of this chapter is to examine the challenges in birth registration for babies born to Syrian refugees in Jordan and Lebanon and how these challenges raise concerns about statelessness. It will first introduce the right to birth registration and will discuss the international legal framework as protected under article 7 of the CRC and article 24 of the ICCPR. The subsequent focus on the Syrian conflict seeks to draw attention to one of the current aspects of childhood statelessness as defined by Van Wass; namely, the lack of birth registration in the context of forced displacement and its impact on the legal status of refugee children. The data will be retrieved by the recent reports published by the Norwegian Refugee Council (NRC) in association with the International Human Rights Clinic at Harvard Law School on the challenges of birth registration in Jordan and Lebanon.<sup>172</sup> Finally this chapter will discuss the implications of non-registration in the legal status of children.

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<sup>172</sup> NRC, *Birth Registration Update: The challenges of Birth Registration in Lebanon for Refugees from Syria*, January 2015; NRC and IHRC, *Registering Rights: Syrian Refugees and the Documentation of Births, Marriages, and Deaths in Jordan*, January 2016.

#### 4.1 Defining Birth Registration and the International Human Rights Legal Framework

The right to birth registration is a universal human right protected under a series of human rights instruments.<sup>173</sup> As defined by UNICEF, “birth registration is the continuous, permanent and universal recording, within the civil registry, of the occurrence and characteristics of births in accordance with the legal requirements of a country.”<sup>174</sup> Birth registration is part of a State’s domestic civil registration system, which keeps accounts of births, marriages, deaths as well as any other information about changes in the personal status of its nationals.<sup>175</sup> As noted by UNHCR, a functional civil registry that systematically records information of the State’s population can be used by the government for the formation of “national policies and humanitarian plans.”<sup>176</sup> Additionally, it can help governments identify changes in birth and death trends. Being aware of these trends, a State can move towards a comprehensive adoption of better protection mechanisms, specifically addressing the needs of its population.<sup>177</sup>

Safeguarding the right to birth registration for every child is of paramount importance, as this key-document officially records the elements that constitute a child’s identity and creates the first connection between the State and the child.<sup>178</sup> The subsequent obtainment of a birth certificate provides for the establishment of a child’s legal recognition as a person before the law.<sup>179</sup> The social fact of attachment, as described in the *Nottebhom Case*,<sup>180</sup> is described by Harbitz and Boekle-Giuffrida as the “social contract” between the State and

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<sup>173</sup> Article 7 of CRC; Article 24 of ICCPR; Article 18(2) of the Convention on the Rights of Persons with Disabilities; Article 20 of the American Convention on Human Rights; Article 6, African Charter on the Rights and Welfare of Children and Article 7(1) of the Covenant on the Rights of the Child in Islam.

<sup>174</sup> Cfr. supra footnote 156.

<sup>175</sup> Cfr. supra footnote 155, p. 2.

<sup>176</sup> UNHCR, *Conclusion on civil registration*, 17 October 2013, No.111(LXIV)-2013, available at: <http://www.refworld.org/docid/525f8ba64.html> [accessed 11 July 2016]

<sup>177</sup> For the State’s benefits see, Cfr. supra footnote 155, pp. 6-7.

<sup>178</sup> Plan International. (2005). *Universal birth registration-A Universal Responsibility*, p. 11 available at: [64.150.160.107/cms/wp-content/PLAN.pdf](http://64.150.160.107/cms/wp-content/PLAN.pdf) [accessed 10 June 2016]

<sup>179</sup> UN Human Rights Council, *Birth registration and the right of everyone to recognition as a person before the law*, 3 April 2012, <A/HRC/19/L.24>.

<sup>180</sup> See Cfr. supra footnote 53.

its nationals.<sup>181</sup> Plainly, they write, “In order to obtain and demonstrate the basic social and political attachment between a citizen and a state, a contract—namely a social contract—must be in place. This contract is the entry of the person’s birth into the civil registry. Only when the contract is in place can the person exercise his or her citizenship.”<sup>182</sup>

Unregistered children are most likely to be denied access to basic rights and have increased risks to be exposed to exploitation and abuse.<sup>183</sup> In essence, failure to register births has been linked with unlawful practices such as the trafficking of babies.<sup>184</sup> In the latest report regarding the right to birth registration, the Human Rights Council has also emphasized the role of birth registration as the guarantor for the avoidance of widespread violations of children’s rights.<sup>185</sup>

Together, these constitutive elements open the door to the enjoyment of a wide range of rights, and allow children, as members of the society, to benefit from the State’s protection. Indeed, an effective process of birth registration, which is free and equally accessible to every child, acknowledges and values every child and serves as the basis for a wider concept of protection.

Certainly, in our days, the obtainment of a birth certificate becomes a key tool in resolving disputes and conflicts in matters related to nationality.<sup>186</sup> As mentioned in the previous chapter, the interrelation between birth registration, nationality and statelessness is increasingly noted by scholars, human rights advocates and the international community as

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<sup>181</sup> Harbitz, M and Boekle-Giuffrida, B., *Democratic Governance, Citizenship, and Legal Identity: Linking Theoretical Discussion and Operational Reality*, Inter-American Development Bank Working Paper, 2009, p.18, as cited in Apland, Kara, Brad K. Blitz, et al. 2014. *Birth registration and children's rights: a complex story.*, p. 31.

<sup>182</sup> Ibid.

<sup>183</sup> UNICEF, *Reversing the Trend: Child Trafficking in East and South-East Asia*, 2009, p. 53.

<sup>184</sup> Annan, A., Kofi, *We the Children: Meeting the promises of the World Summit for Children*, 2001, p. 77. For the consequences of lack of birth registration see, Bhabha, J., 2011, pp.1-44 and UNICEF, (2013) *A Passport to Protection: A Guide to Birth Registration Programming.*

<sup>185</sup> Office of the UN High Commissioner for Human Rights (OHCHR), *Birth Registration and the right of everyone for recognition everywhere as a person before the law*, 2014, A/HRC/27/22, paras. 23 and 24

<sup>186</sup> Van Wass, L., 2008, p. 152.

a whole.<sup>187</sup> While official birth certificates do not grant nationality to children, they include the requisite information that determine a child's nationality, namely, "the child's name, sex, date and place of birth, and the name, address and nationality of both parents."<sup>188</sup> As one scholar underlined, "[o]fficial government-issued and recognized documents...do not *confer* legal identity; they merely *confirm* it."<sup>189</sup> During emergencies in particular, birth registration has an added value for the realization of the right to a nationality for refugee and displaced children.<sup>190</sup> Safeguarding the right to birth registration can prevent incidences of statelessness, by providing the evidence base for recognition of a child's link, on the basis of *jus solis* or *jus sanguinis*, with the State concerned.<sup>191</sup>

Lack of access to birth registration is a matter of serious concern affecting millions of children globally.<sup>192</sup> Systematic efforts by international organizations, such as UNICEF and Refugees International, to reinforce birth registration in countries where the level was worryingly low have decreased the rates of unregistered children from 41 to 36 per cent in the past decade.<sup>193</sup> Still, according to these organizations, there are 230 million children under the age of five who are unregistered, a massive number indicating that there is a lot of work to be done for the accomplishment of a universal birth registration.<sup>194</sup>

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<sup>187</sup> As Van Wass observed, the first time that UNHCR, referred to lack of birth registration as a cause of statelessness was in 1997 in the State of the World's Refugees. From that day forward, it has been noted as an issue of concern in a series of its executive conclusions and experts meetings. UNHCR, *Statelessness and Citizenship in The State of the World's Refugees- A humanitarian Agenda*, Oxford University Press, Oxford: 1997, p. 226 as cited in Van Wass, 2008, pp. 151-152.

<sup>188</sup> Cfr. supra footnote 155, p.2.

<sup>189</sup> Bahbah, J., 2011, p. 307.

<sup>190</sup> See Cfr. supra footnote 169

<sup>191</sup> Cfr. supra footnote 184, p. 12.

In Jordan and Syria, UNHCR is working closely with the host countries to ensure that birth registration of refugee children is performed. However, as the following analysis will show, challenges in birth registration are hindering the overall process.

<sup>192</sup> Cfr. supra footnote 184, at p. 22.

<sup>193</sup> Cfr. supra footnote 169, p.2

<sup>194</sup> Asia and Sub-Saharan Africa are the most affected regions being home to 96 per cent of the world's unregistered children. One in two children born in these regions is left unregistered. UNICEF, *Every Child's Birth Right: Inequities and Trends in Birth Registration*, 2013, p. 16.



#### 4.1.1 Article 24 of the International Covenant on Civil and Political Rights

Article 24 (2) of the ICCPR safeguards the right to birth registration. It states that, “every child shall be registered immediately after birth and shall have a name.” The General Comment of the Human Rights Committee on article 24 notes 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.”<sup>195</sup> Arguably, these special measures require States to take affirmative steps to assure that the right to birth registration can be fully realized. In the same article, “the right for every child to acquire a nationality” is protected. From a human rights perspective, this sequence highlights the interconnection between birth registration and the right to nationality. As Wass observed, despite the fact that birth registration is increasingly recognized by the international community as one of the aspects that aids in preventing statelessness,<sup>196</sup> the drafters of the Covenant did not link those paragraphs in this direction.<sup>197</sup> The initial purpose of this provision, as noted in the General Comment, was “to reduce the danger of abduction, sale of or traffic in children.”<sup>198</sup>

However, new challenges concerning children’s right to a nationality related with the lack of access to birth registration have been timidly noted through the course of the past decade in the Concluding Observations of the Committee.<sup>199</sup> Although the number of references is relatively low, it is nevertheless a first step towards a more comprehensive approach to the issue. For example, in the Concluding Observations on Slovenia, the committee noted that “while recognizing that registration is distinct from conferral of nationality...[s]ome

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<sup>195</sup> Human Rights Committee, *CCPR General Comment No. 17: Article 24 (Rights of the Child)*, 7 April 1989, par. 7, available at: <http://www.refworld.org/docid/45139b464.html> [accessed 22 May 2016]

<sup>196</sup> In 2014, the Human Rights Council underlined that “birth registration is fundamental to the prevention of statelessness and essential to ensure the right of every child to acquire a nationality.” Cfr. *supra* footnote 179, at paras. 23 and 24

<sup>197</sup> Wan Vass, L., 2008, p. 157.

<sup>198</sup> HRC, “*General Comment No.17: Article 24*”

<sup>199</sup> See Concluding Observation: Ecuador, CCPR/C/79/Add.92, Geneva 1998, par. 18.

children are registered at birth without a nationality.”<sup>200</sup> Correspondingly in Thailand, the Committee raised its concerns for the increased numbers of stateless persons in the country and called upon the State to “review its policy regarding birth registration of children belonging to ethnic minority groups...[a]nd ensure that all children born in the State party are issued with birth certificates.”<sup>201</sup>

States party to the Covenant are obliged to take all the appropriate measures to ensure the universal application of the right to birth registration within their jurisdiction, and to provide the committee with a list of measures taken to this direction.<sup>202</sup> The Human Rights Committee provides guidance to States on how to effectively implement the rights set forth in the Covenant, and with regards to the right to birth registration has raised awareness of the need for a greater protection.<sup>203</sup>

#### 4.1.2 Article 7 of the Convention on the Rights of the Child

CRC reflects through its provisions the international community’s strong commitment as regards the right of every child to be registered at birth. Article 7(1), stipulates that “the child shall be registered immediately after birth,” a provision similar to the wording of article 24(2) of the ICCPR.<sup>204</sup> The former provision is followed by “the right from birth to a name,” “the right to acquire a nationality,” and also introduces the child’s right “to know and be cared for by his or her parents.”<sup>205</sup> The 1997 Manual on Human Rights Reporting highlights the importance of a universal registration stating that, “birth registration should be ensured by States Parties to every child under their jurisdiction, including non-nationals,

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<sup>200</sup> Slovenia, CCPR/CO/84/SVN, Geneva: 2005, par. 15.

<sup>201</sup> Thailand, CCPR/CO/84/THA, Geneva: 2005, par. 22.

<sup>202</sup> HRC, ‘*General Comment No.17: Article 24*’, par.1

<sup>203</sup> Recommendations on birth registration can also be found in Concluding Observations: Sudan, CCPR/C/SDN/CO/4, Geneva 2014, par.25; Macedonia, CCPR/C/MKD/CO/3, Geneva 2015.

<sup>204</sup> UNTS, Vol. 999, p. 17.

<sup>205</sup> Article 7 of the CRC.

asylum seekers, refugee and stateless children.”<sup>206</sup> Indeed, States Party to the CRC are obliged to ensure the implementation of the rights set forth in article 7 for every child born in their jurisdiction irrespective of their status, in line with their international obligations. The convention also illustrates an additional duty States have towards vulnerable groups of children by stating in paragraph 2 of article 7 the focus “in particular where the child would otherwise be stateless.”

In regards to vulnerable groups of children, article 7 must be read in conjunction with article 22 of the CRC which obliges contracting parties to ensure “appropriate protection and humanitarian assistance” for all refugee children in their jurisdiction.<sup>207</sup> The implementation handbook for the CRC also insists this article be read in conjunction with other articles of the convention, *inter alia*, the right to a nationality.<sup>208</sup> As elaborated in paragraph 2 of article 7, States are required to take all the appropriate measures in cooperation with the international community in order to effectively guarantee refugee children’s rights.<sup>209</sup> This protection is guaranteed for every refugee child regardless of his or her parent’s legal status. Nevertheless, history shows that States practices do not always uphold this rhetoric. The refugee situation today recalls what UNHCR was highlighting more than twenty years ago: “Statelessness is often caused by States’ deliberate policies not to confer nationality to children born to refugees...[A]ll refugee children in the country of asylum must be considered as having, or being able to acquire...[a]n effective nationality.”<sup>210</sup> Even though refugee children born in exile can be eligible for their parent’s nationality, the absence of affirmative steps taken by the host countries to guarantee that every child born to a refugee is registered at birth heightens the risks over their legal status.

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<sup>206</sup> OHCHR, *Manual on Human Rights Reporting Under Six Major International Human Rights Instruments*, 1997, HR/PUB/91/1 (Rev.1), p.430.

<sup>207</sup> Article 22 of the CRC

<sup>208</sup> Hodgkin, R. and Newell, P. *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 305.

<sup>209</sup> Ibid.

<sup>210</sup> UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, p. 104.

Comparably, the Committee on the Rights of the Child has issued numerous Concluding Observations which address the importance of the right to birth registration in relation to health and education,<sup>211</sup> highlighting the increased risks faced by vulnerable groups.<sup>212</sup> As regards the right to a nationality, the committee noted that official birth registration was hindered by the fact that “undocumented migrants are unable to register the birth of their children, and that this has also resulted in cases of statelessness”.<sup>213</sup>

Given the fact that issues concerning children’s nationality are still highly politicized, often asserting States’ obstinate views on sovereignty matters, international guarantees flowing from human rights law create a strong protection framework for children’s right to birth registration. Arguably, the Committee holds an important role as regards the implementation of the Convention by member States, yet at the same time, States hold the key for the implementation of these recommendations. In the absence of affirmative actions taken by States to resolve issues that blockade universal access to birth registration, these recommendations can only be seen as mere aspirations.

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<sup>211</sup> For Concluding Observations on the importance of birth registration in relation to other rights see: Committee on the Rights of the Child, Concluding Observations: Afghanistan, CRC/C/AFG/CO/1, Geneva 2011, par. 34-34; Togo, CRC/C/15/Add.25531, Geneva 2005, par. 38; Macedonia, CRC/C/MKD/CO/2, Geneva 2012, par. 32; Dominican Republic, CRC/C/15/Add.150, Geneva 2001, par.27; JORDAN, Geneva CRC/C/JOR/CO/4-5, Geneva 2014; LEBANON, CRC/C/LBN/CO/3, Geneva 2006, par. 38; Mozambique, CRC/C/MOZ/CO/2, Geneva 2009; Malaysia, CRC/C/MYS/CO/1, Geneva 2007; Iran, CRC/C/15/Add.254, Geneva 2005, par 38; IRAQ, CRC/C/IRQ/CO/2-4, Geneva 2015.

<sup>212</sup> See also, Concluding Observations: Sri Lanka, CRC/C/15/Add.40, Geneva 1995, par. 14; China, CRC/C/CHN/COI2/, Geneva 2013, par.42; Thailand, CRC/C/THA/COI2, Geneva 2012, par.31.

<sup>213</sup> Japan, CRC/C/15/Add.231, Geneva 2005, par.31.

#### 4.3 Legal Instruments, Barriers and Birth Registration for Syrian Children born in Jordan and Lebanon<sup>214</sup>

In the last five years, the Syrian war has forced more than 4.8 million people to seek safe havens in neighbouring countries.<sup>215</sup> When some European countries responded to the refugee crisis by building border fences and pushing back refugees fleeing war,<sup>216</sup> the governments of Jordan and Lebanon, to their considerable credit, adhered to their open border policy and welcomed a significant number of refugees in their territories.<sup>217</sup> Since these countries have no refugee legal framework, refugees' legal status is administrated mainly by these countries' national laws<sup>218</sup> and the Memorandum of Understanding (MoU) both countries have signed with UNHCR.<sup>219</sup>

Despite the fact that neither Jordan nor Lebanon are signatory to the 1951 Refugee Convention or its 1967 Protocol, both countries are bound by the customary principle of non-refoulement<sup>220</sup> and the right to seek asylum as stipulated in UDHR. In 1998, Jordan

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<sup>214</sup> Children, who were born in Syria prior to their arrival in Jordan and Lebanon, face similar risks over their legal status. However, due to the different standards applicable on those cases, assessment of their situation goes beyond the scope of this thesis and for this reason it will not be included in the analysis below.

<sup>215</sup> Based on Syrian refugee population projections as of June 2016, more than 4.8 million Syrians are now registered as refugees in Turkey, Jordan, Lebanon, Iraq and Egypt. UNHCR, *Inter-Agency Information Sharing Portal*, 'Total persons of Concern'

<sup>216</sup> For a map illustrating the division of Europe in the refugee crisis, visit Business Insider at <http://uk.businessinsider.com/map-refugees-europe-migrants-2016-2>. [accessed 1 June 2016]

<sup>217</sup> Human Rights Watch, '*Fleeing Syria: Insights on Lebanon's open border*', March 2013 available at <https://www.hrw.org/news/2013/03/24/fleeing-syria-insights-lebanons-open-border> and The Jordan Times, '*Jordan Committed to Open Border Policy Ensour*', 22 October 2013 available at: <http://www.zawya.com/mena/en/story/ZAWYA20131023054106/> [accessed 10 June 2016]

<sup>218</sup> The status of Syrians in Lebanon is governed by the 1962 Law Regulating the Entry, Stay, and Exit from Lebanon, available at: <https://www.ilo.org/dyn/natlex/.../LBN-39234.pdf> [accessed 10 June 2016] and in Jordan by Jordanian Law no.24 of 1973 on Residence and Foreign Affairs, available at: <http://www.refworld.org/docid/3ae6b4ed4c.html> [accessed 11 June 2016]. In both cases refugees are treated as any other foreigner in the country. Bidinger Sarah et al., 2015, pp. 35 and 60.

<sup>219</sup> UNHCR, *Legal Status of Individuals Fleeing Syria: Syria needs analysis project*, June 2013, p. 3; See also Bidinger Sarah et al., '*Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*.' Boston University School of Law, 2015, p. 26.

<sup>220</sup> "The principle of *non-refoulement* is the cornerstone of asylum and of international refugee law...[t]his principle reflects the commitment of the international community to ensure to all persons the enjoyment of

signed a MoU with UNHCR for the protection of refugees and asylum seekers in accordance with the applicable international standards.<sup>221</sup> To this effect, the international legal definition of a refugee is used to define a refugee under the MoU.<sup>222</sup> Jordan agreed not to forcibly return refugees seeking asylum to a country where their lives will be in danger.<sup>223</sup> However, the MoU clarifies that Jordan is a “transit country” for refugees rather than a country of asylum.<sup>224</sup> It provides for refugees six months temporary residence until a durable solution is found by UNHCR elsewhere.<sup>225</sup>

Likewise, the MoU signed in 2003 between UNHCR and Lebanon<sup>226</sup> states clearly in its preamble that the Government of Lebanon “is not an asylum country and the only viable durable solution for refugees recognized under the mandate of UNHCR is the resettlement in a third country.”<sup>227</sup> A noticeable difference about Lebanon’s agreement is that no reference to the principle of non-refoulment is made in the MoU.<sup>228</sup> According to the MoU, refugees can stay in Lebanon for a period up to twelve months. Efforts by UNHCR aim to regularize refugees’ legal status in the country in order to avoid deportation and forcible return.<sup>229</sup>

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human rights...[T]hese and other rights are threatened when a refugee is returned to persecution or danger.” UNHCR, *UNHCR Note on the Principle of Non-Refoulement*, November 1997.

<sup>221</sup> UNHCR, *Memorandum of Understanding between the Government of Jordan and UNHCR*, translated by UNHCR, 5 April 1998, available at:

[https://www.google.com/search?q=mawgeng.unblog.fr/fles/2009/02/moujordan.doc&ie=utf-8&oe=utf-8&client=firefox-b&gfe\\_rd=cr&ei=dyhpV9WQLoru8wFB163IDA](https://www.google.com/search?q=mawgeng.unblog.fr/fles/2009/02/moujordan.doc&ie=utf-8&oe=utf-8&client=firefox-b&gfe_rd=cr&ei=dyhpV9WQLoru8wFB163IDA); [accessed 10 June 2016]

<sup>222</sup> Ibid., at article 1.

<sup>223</sup> Ibid., at article 2.

<sup>224</sup> Bidinger Sarah et al., 2015, p. 56

<sup>225</sup> Cfr. supra footnote 221, at article 5.

<sup>226</sup> UNHCR, *Country Operation Plan, Country: Lebanon, Planning Year:2004*, available at:

<http://www.unhcr.org/refworld/pdfid/3fd9c6a14.pdf> [accessed 10 June 2016]

<sup>227</sup> FRONTIERS CENTER-Frontiers Ruwad, *Lebanon-UNHCR Memorandum of Understanding*, November 2003, p. 2, available at: [www.frontiersruwad.org/pdf/FR\\_Public\\_Statement\\_MOU\\_Nov\\_2003.pdf](http://www.frontiersruwad.org/pdf/FR_Public_Statement_MOU_Nov_2003.pdf) [accessed 10 June 2016]

<sup>228</sup> Ibid.

<sup>229</sup> Cfr. supra footnote 219, p. 2.

#### 4.3.1 Demographics and Legal Status of Registered Syrian Refugees<sup>230</sup>

As of June 2016, the total number of refugees registered with UNHCR in Jordan is 655,217 with children comprising 57 per cent of the population.<sup>231</sup> More than 70 per cent of the population arrived in Jordan in 2012 and 2013.<sup>232</sup> Nearly 80 per cent live in urban areas whereas the rest of the population is accommodated in refugee camps.<sup>233</sup> At the end of 2014, it was estimated that since March 2011, over 27,000 Syrian children had been born in Jordan.<sup>234</sup> The following year, data analysed by the United Nations Population Fund (UNFPA), showed that around 153,000 women and girls were of reproductive age and nearly 11,500 were pregnant.<sup>235</sup> In the first half of 2014, 17,500 certificates were issued by the Government of Jordan (GoJ).<sup>236</sup> Yet, UNHCR estimates that 30 per cent of Syrian Children in Jordan lack birth certificates.<sup>237</sup>

In Lebanon, as of March 2016, the number of registered refugees has reached 1,048,275 million making up a quarter of the country's population of 4.1 million people.<sup>238</sup> Children represent 50 per cent of all registered refugees.<sup>239</sup> Today, Lebanon continues to have “the

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<sup>230</sup> As the time of writing, there are no accurate data on the number of unregistered Syrian refugees in Lebanon and Jordan. The number cited throughout this analysis refers to the total number of Syrian refugees registered as ‘persons of concern’ to UNHCR according to the office’s latest updates. For registered Syrians in Lebanon the data are as of March 2016 and with regards to Jordan, as of June 2016. All information referenced in this analysis can be found at: UNHCR, Inter-Agency Sharing Portal on Syrian Refugees: <https://data.unhcr.org/syrianrefugees/>.

<sup>231</sup> UNHCR, ‘*External Statistical Report on UNHCR registered Syrians in Jordan*’, 1 June 2016.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

Zaatari is the biggest refugee camp in Jordan hosting 79,355 refugees. UNHCR, ‘*Total Persons of Concern: Zaatari Refugee camp*’ 31 May 2016.

<sup>234</sup> Jordan Times, ‘*27,103 Syrian children born in Jordan since March 2011 — UNICEF*’, 8 December 2014 available at <http://www.jordantimes.com/news/local/27103-syrian-children-born-jordan-march-2011-%E2%80%94-unicef> [accessed 10 June 2016]

<sup>235</sup> UNFPA, *Regional Situation Report for Syria Crisis*, 1-31 May 2015, Issue No 33, p. 3.

<sup>236</sup> Arab Renaissance on Democracy and Development-Legal Aid, *Birth and Marriage Registration in Jordan*, available at <http://ardd-jo.org/reports-documents/birth-and-marriage-registration-jordan> [accessed 10 June 2016]

<sup>237</sup> UNHCR, *Jordan Response Plan: Refugee Pillar Needs Assessment*, October 2014.

<sup>238</sup> UNHCR, ‘*Registered Syrians in Lebanon*’, 31 March 2016.

<sup>239</sup> Ibid.

highest per capita ratios of refugees worldwide.”<sup>240</sup> Contrary to Jordan, owing to the absence of formal refugee camps, Syrian refugees in Lebanon are spread “in more than 1,700 localities across the country.”<sup>241</sup> Since the beginning of the conflict, UNHCR recorded approximately 70,000 births in Lebanon.<sup>242</sup> In the case of Lebanon, UNFPA data from 2015 showed that 290,800 women and girls were of reproductive age and 20,588 were at that time pregnant.<sup>243</sup> UNHCR and NRC surveys suggest that up to 70 per cent of the overall documented births might not possess an official birth certificate.<sup>244</sup> Albeit we cannot be certain of the total number of refugee children born in both countries, as the number is changing every day; the data mentioned above indicate that the number of births is likely to exceed 150,000.

Jordan and Lebanon have been hosting a great number of Syrian refugees and with the impactful help of UNHCR and several partners are doing their best to register refugees and provide them with humanitarian assistance.<sup>245</sup> Unfortunately, despite the engagement of multiple actors, the situation is becoming more and more challenging for Syrian refugees and calls for greater support and efforts by the international community as a whole. The massive influx of refugees has placed immense pressure and considerable strain on the already unstable economies and infrastructure of Lebanon and Jordan, which are struggling every day to cope with the unprecedented refugee wave.<sup>246</sup> Unsurprisingly governmental resources can no longer meet refugees’ basic needs.<sup>247</sup> According to UNHCR, 90 per cent

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<sup>240</sup> UNHCR, *Overview: 2015 Syria Response Plan and 2015-2016 Regional Refugee and Resilience Plan*, December 2014, p. 3

<sup>241</sup> European Commission-Humanitarian Aid and Civil Protection, *Lebanon: Syrian Crisis, ECHO FACTSHEET*, p. 2.

<sup>242</sup> NRC, *Drivers of Despair: Refugee Protection Failures in Jordan and Lebanon*, January 2016, p. 3.

<sup>243</sup> Cfr. supra footnote 235, p.3

<sup>244</sup> REUTERS INVESTIGATES, ‘A generation of Syrian children who don’t count’, 3 May 2016 available at: <http://www.reuters.com/investigates/special-report/syria-refugees-stateless/> [accessed 10 June 2016]

<sup>245</sup> UNHCR, *Jordan Refugee Response: Vulnerability Assessment Framework-Baseline Survey*, p. 22.

<sup>246</sup> See Yassin Nasser et al., ‘No Place to Stay? Reflections on the Syrian Refugee Shelter Policy in Lebanon’, UN-Habitat, 2015; ILO and FAO, *Impact of Syrian Refugees on the Jordanian Labour Market*, 2015; UNHCR, WFP and UNICEF, *Joint Assessment Review of the Syrian Refugee Response in Jordan*, January 2014.

<sup>247</sup> UNHCR, Syria Regional Refugee Response, ‘Needs Assessment Registry’.



of the Syrian population in Jordan and 70 per cent in Lebanon live below the poverty line.<sup>248</sup> A disturbing fact is that in both countries, the majority of refugees are children who are in dire need of protection, with thousands remaining out of school and in need of health assistance.<sup>249</sup> At the same time, figures on child labour are alarming.<sup>250</sup>

The situation is further compounded by the adoption of entry and movement restrictions for Syrian refugees by the host countries.<sup>251</sup> In December 2014, the government of Lebanon adopted new entry and residency regulations as an attempt to restrict the flow of refugees arriving to Lebanon and the efficacy of those already accommodated in the country.<sup>252</sup> As of January 2015, all Syrians who arrive in Lebanon, regardless of their right to seek asylum on humanitarian grounds, must now produce specific documents based on entry categories such as tourism, education and business, leisure and medical reasons.<sup>253</sup> Furthermore, for Syrians who already reside in Lebanon, a fee of US \$200 and a series of documents are required for the renewal of their six-month residence permit.<sup>254</sup> These practices make it even harder for the majority of families who cannot afford such costs, and their limited legal status further aggravates the risk of detention and deportation.<sup>255</sup> Lastly, as of May

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<sup>248</sup> UNHCR, Syria Regional Refugee Response, ‘Registered Syrians in Jordan, 31 May 2016; UNHCR, ‘Inter-agency Multi Sectoral Statistical Dashboard - April 2016’, April 2016.

<sup>249</sup> UNICEF, *Syrian Crisis: February 2016, Humanitarian Results*, pp. 7 and 13.

<sup>250</sup> UNICEF estimates that one in ten Syrian refugee children is engaged in child labour. UNICEF, *No Lost Generation, Strategic Overview*, January 2014.

<sup>251</sup> In 2014, entry restrictions from Jordan and Lebanon blocked thousands of refugees at the borders between those countries. As the situation was becoming more and more difficult for refugees, reports show that the border control authorities were sending many refugees back to Syria. See: Reuters, ‘Lebanon blocks Syrian refugees from entering: United Nations’, 18 October 2014, available at: <http://www.reuters.com/article/us-mideast-crisis-lebanon-refugees-idUSKCN0I70BH20141018> [accessed 30 May 2016]; Human Rights Watch, ‘Jordan: Syrians Blocked, Stranded in Desert’, 3 June 2015, available at <https://www.hrw.org/news/2015/06/03/jordan-syrians-blocked-stranded-desert>, [accessed 30 May 2016]; Al Jazeera, ‘Lebanon forcibly returns 100 stranded Syrian refugees’, 9 January 2016, available at: <http://www.aljazeera.com/news/2016/01/lebanon-forcibly-returns-100-stranded-syrian-refugees-160108181532635.html> [accessed 1 June 2016]

<sup>252</sup> UNHCR, *Syrian Refugees in Lebanon: Quarterly snapshot, January-March 2015*, 2015.

<sup>253</sup> Amnesty International Public Statement, *Lebanon: New entry requirements for Syrians likely to block would-be refugees*, 6 January 2016.

<sup>254</sup> Ibid.

<sup>255</sup> NRC, *Legal Status of Refugees from Syria: Overview of the new entry and renewal regulations*, Beirut: NRC, Lebanon, 2015

2015, UNHCR Lebanon, following the government of Lebanon's directions, has provisionally postponed new registrations.<sup>256</sup>

In Jordan, refugees who enter through the official borders prior to 2014 were registered with UNHCR and Jordan's Ministry of Interior (MoI).<sup>257</sup> Through this registration, they were obtaining the so called "MoI Service Card" with which they had access to subsidiary health care and education services run by the government.<sup>258</sup> In addition to their registration with the GoJ, refugees could still benefit from humanitarian assistance provided by UNHCR.<sup>259</sup> In 2014, however, the government announced the adoption of a new policy known as "bail-out" process, which aims to restrain Syrian refugees in the camps by limiting their freedom of movement.<sup>260</sup> In line with the "bail-out" system, refugees who wished to leave the camps had to meet certain conditions, including having a Jordanian relative that could act as their sponsor.<sup>261</sup> The Jordanian authorities ordered UNHCR not to issue humanitarian cards to refugees who left the camps without following the bail process.<sup>262</sup> The fact that a great number of refugees left the camps outside this process<sup>263</sup> meant that their legal status was no longer recognized by the authorities nor could they be registered with UNHCR. Nonetheless, in the course of 2015, efforts by the GoJ in collaboration with UNHCR had a positive impact on the re-establishment of Syrians' legal status, and according to NRC, by the end of August 2015, more than 183,000 new cards

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<sup>256</sup> UNHCR, *'Registered Syrians in Lebanon'*, 31 March 2016.

<sup>257</sup> SNAP, *'Regional Analysis, Syria, Part B. Host Countries Q4 2014'*, January 2015, p. 18.

<sup>258</sup> UNHCR, *Jordan Refugee Response: Vulnerability Assessment Framework*, p. 22, as cited in NRC and IHCR, *'Registering Rights'*, p.10.

<sup>259</sup> *Ibid.* at p. 11.

<sup>260</sup> NRC and IHCR, *'Registering Rights'*, 15 January 2016, p. 11; For the bail-out policy see also Protection Working Group, *2016 Jordan Refugee Response*, 2016

<sup>261</sup> NRC and IHCR, *'Registering Rights'*, p. 11.

<sup>262</sup> *Ibid.*

<sup>263</sup> NRC is estimating that 45 per cent of Syrian refugees had left the camps without going through the bail-out process. Source: NRC Jordan, *In Search of Home- Access to Adequate Housing in Jordan*, June 2015. See also, Cfr. *supra* footnote 258 at p.18

were issued.<sup>264</sup> Since then, the registration process of Syrians that had been frozen has been restored.<sup>265</sup>

On the one hand, the aforementioned measures can be seen as coping mechanisms on behalf of the States who are unable to deal with the situation. This doesn't diminish the fact, however, that they escalate the predicament of millions of desperate people fleeing war. Arguably, from the point of view of international law, these practices are inconsistent with the principles of human rights which both States are bound by.

Besides challenges faced by Syrian refugees in the process of regularizing their legal status, the increased number of births in conjunction with the low levels of birth registration raise concerns about a generation of stateless children, since without a birth certificate, proving their Syrian nationality can become extremely difficult.<sup>266</sup>

#### 4.3.2 Birth Registration Process for Syrian Children

Neither Jordan nor Lebanon is a State party to any of the Statelessness Conventions. However, they are States party to CRC, and are therefore obliged to guarantee access to birth registration for every child born in their territories.<sup>267</sup> Jordan has ratified the ICCPR,<sup>268</sup> and both are treaty members to UDHR, which safeguards the right to a nationality for everyone. In addition, the Constitution of Lebanon states in its preamble that Lebanon is bound by UDHR and its human rights principles, and will incorporate these principles in every area of its domestic jurisdiction.<sup>269</sup>

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<sup>264</sup> UNHCR, *Jordan Operational Update*, August 2015 as cited in NRC and IHRC, *Registering Rights, Jordan*, p. 13.

<sup>265</sup> UNHCR, 'Registered Syrians in Jordan', 1 June 2016.

<sup>266</sup> UNHCR, *Born in exile, Syrian children face threat of statelessness*, November 2014.

<sup>267</sup> Lebanon ratified the CRC on 14 May 1991 and Jordan on 24 May 1991.

<sup>268</sup> Jordan ratified the ICCPR on 28 May 1975.

<sup>269</sup> Lebanon: Constitution [Lebanon], 21 September 1990, available at: <http://www.refworld.org/docid/44a24a674.html> [accessed 22 June 2016];

According to the domestic laws of Jordan and Lebanon, Syrian refugees, as any other foreign national, have the right to register the births of their child at the respective civil registry.<sup>270</sup> Under normal conditions, foreigners need to have their documents approved by the embassy of their country of origin in order to undergo this process.<sup>271</sup> However, due to the ongoing conflict in Syria, Syrian refugees are exempt from this step.<sup>272</sup>

As discussed above, birth registration does not entail automatic acquisition of a country's nationality. Article 1 of the Lebanese nationality law, which governs the acquisition of nationality, states that: "Every person born of a Lebanese father is considered Lebanese."<sup>273</sup> Similarly, article 3 of Jordanian nationality law states that, a Jordanian national is considered to be "any person whose father holds Jordanian nationality."<sup>274</sup> Nevertheless, it is very important for Syrian parents to register their child's birth in the host countries, as this will be their "passport" to exit these countries and to be recognized as Syrian nationals by the relevant authorities once they return home.<sup>275</sup>

#### 4.3.2.1 Jordan

In Jordan, birth registration procedures for Syrian refugees involve three main steps.<sup>276</sup> Once a child is born the family is provided with a birth notification from the hospital or an

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<sup>270</sup> Article 13 (a), Jordan Civil Status Law of 2001, available in Arabic at: <http://moi.gov.jo/arabic/pages/%D8%A7%D9%84%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86.aspx> ; Article 11, Lebanese Personal Status Records Registration Law of 1951, available in Arabic at: <http://ahdath.justice.gov.lb/law-nearby-personal.htm> [accessed 10 July 2016]

<sup>271</sup> NRC and IHRC, 'Registering Rights', p. 14.

<sup>272</sup> Ibid.

<sup>273</sup> *Decree No15 on Lebanese Nationality including Amendments* [Lebanon], 19 January 1925, available at: <http://www.refworld.org/docid/44a24c6c4.html> [accessed 10 June 2016]

<sup>274</sup> *Jordanian Law No6 of 1954 on Nationality* (last amended 1987), available at: <http://www.refworld.org/docid/3ae6b4ea13.html> [accessed 10 June 2016]

<sup>275</sup> UNHCR Lebanon, *Outline for Birth Registration Counselling*, December 2012, p. 2.

<sup>276</sup> NRC and IHRC, 'Registering Rights', p. 14.

authorized midwife.<sup>277</sup> According to article 13 (a) of the Civil Status Law, within thirty days from the day of birth, a family member must take the birth notification to the nearest Civil Status Department office.<sup>278</sup> There, alongside the birth notification, the child's parent is required to present official papers such as identification documents<sup>279</sup> and their marriage certificate.<sup>280</sup> Once the documents are approved by the Civil Status Department, the family member has to pay a fee of JOD 1 (USD 1.40) to register the birth and obtain a birth certificate.<sup>281</sup> If the registration does not occur within the first thirty days, a fine of JOD 10 is imposed.<sup>282</sup>

#### 4.3.2.2 Lebanon

In Lebanon, the process of birth registration is lengthy and more complex. To begin with, both parents must be legal residents of Lebanon.<sup>283</sup> When a child is born, a birth certificate must be obtained by the hospital or midwife.<sup>284</sup> Within thirty days from the day of birth, a family member brings the birth notification to the *Mukhtar* situated closest to the place where the birth occurred.<sup>285</sup> In the case of Lebanon, obtainment of a birth certificate and birth registration are subject to two different procedures. The birth certificate is first signed by the *Mukhtar* upon the submission of identification documents, valid residency visas, marriage certificate of parents and a payment of 10,000 to 30,000 LBP (6,6 to 19,80 USD).<sup>286</sup> With the birth certificate signed, the family, in the timeframe of a year, must reach the local government registry office- a branch of the Personal Status Department

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<sup>277</sup> Ibid.

<sup>278</sup> Article 13 (a), Jordan Civil Status Law.

<sup>279</sup> Identification documents include the MoI Service Card of the person registering the child.

<sup>280</sup> Couples that do not possess any proof of their marriage can register their marriage with the Jordanian Shari'a courts. For marriage registration procedures for Syrian refugees see: NRC and IHCR, '*Registering Rights*', pp.18-23.

<sup>281</sup> Ibid. at p. 14.

<sup>282</sup> Article 13 (c), Jordan Civil Status Law

<sup>283</sup> Frontiers-Ruwad Association, *Birth Registration Procedures in Lebanon-Practical Manual*, 2014, p. 28.

<sup>284</sup> Ibid.

<sup>285</sup> NRC, '*Birth Registration Update*', p. 13.

<sup>286</sup> UNHCR, *Q&A on Birth Registration for Syrians*, 15 July 2015, p. 2.

(PSD)- to register it.<sup>287</sup> According to guidelines from NRC, the process for Syrian refugees is officially completed once the birth certificate is submitted to the Foreigners' Register department.<sup>288</sup>

#### 4.3.4 Barriers to Birth Registration

The completion of the aforementioned steps is crucial to the acquirement of an official birth certificate for Syrian babies. Even though the host countries allow Syrian refugees to register their children, a number of obstacles act as an impediment to the completion of the process.<sup>289</sup> According to a survey of 797 individuals conducted by the NRC in Lebanon, in January 2014, 78 per cent of the interviewees “were not able to register the birth of their child according to Lebanese law.”<sup>290</sup> The most cited factors among refugees were lack of general information concerning the administrative procedures, along with legal and geographical barriers.<sup>291</sup> Notwithstanding the obtainment of a birth certificate from the vast majority of refugees, in the process of completing each step, the number was dropping significantly and finally only 60 out of 771 refugees were able to officially complete the process.<sup>292</sup>

The first step, obtaining a birth notification from hospital or midwife, was completed by the vast majority (nearly 97 per cent) of refugees.<sup>293</sup> However, the numbers of interviewees being able to complete the second step stood lower at 554, or nearly 70 per cent, and, according to the assessment, the main barrier was lack of civil documentation papers on

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<sup>287</sup> If birth registration is not completed within the first year, a court procedure is required. Ibid.

<sup>288</sup> In principle, Syrian parents need to hold a valid residency visa in order to complete this last step. NRC, *'Birth Registration Update'*, p. 12.

<sup>289</sup> UNHCR, *The future of Syria: Refugee Children in Crisis, 'Scope of the problem'*, available at: <http://unhcr.org/FutureOfSyria/born-in-exile.html> [accessed 11 June 2016]

<sup>290</sup> NRC, *'Birth Registration Update'*, p. 18.

<sup>291</sup> Ibid., at pp. 18-19.

<sup>292</sup> Ibid.

<sup>293</sup> Ibid.

behalf of the child's parents.<sup>294</sup> These findings correspond with UNHCR's identified "complex procedures with onerous requirements for documentation" as the main barrier to birth registration.<sup>295</sup> Inability to provide the *Mukhtar* with identity documents automatically halts the rest of the procedure. More than one third of the interviewees did not complete the procedure due to lack of civil documentation.

In addition, lack of demonstrable proof of marriage remains a prohibitive aspect for many families. The aforementioned assessment indicated that 14 per cent of those interviewed did not hold any documentary proof of their marriage.<sup>296</sup> The main reasons behind the inability to possess a marriage certificate vary and clash with the country's compulsory marriage registration laws.<sup>297</sup> Refugees who do not manage to bring their documents to Lebanon are able to prove their marriage through religious court. On the other hand, those who got married after their arrival in Lebanon meet obstacles in the process of testifying their marriage.<sup>298</sup> Given that possessing civil documentation sometimes goes beyond the capabilities of Syrian refugees, the Lebanese authorities should have simplified the document requirements concerning birth registration to allow a greater number of babies to acquire birth certificate.

Furthermore, a considerable number of refugees were unable to complete the registration due to lack of a valid residency visa.<sup>299</sup> To quote a scholar, "having limited legal status has direct negative consequences for Syrian refugees' access to protection and assistance during their stay in Lebanon".<sup>300</sup> Arguably, fear of being arrested becomes evident and in the absence of a residency permit, refugees will hesitate to approach the governmental

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<sup>294</sup> NRC, 'Birth Registration Update', p. 18.

<sup>295</sup> UNHCR Lebanon, 'Statelessness Update', September 2014 available at: <https://data.unhcr.org/syrianrefugees/download.php?id=7487> [accessed 10 June 2016]

<sup>296</sup> NRC, 'Birth Registration Update', p. 21.

<sup>297</sup> Article 1, Decree No. 2851, 2 January 1924.

<sup>298</sup> NRC, 'Birth Registration Update', p. 23.

<sup>299</sup> Ibid.

<sup>300</sup> Aranki, Dalia and Olivia Kalis, *Limited Legal Status For Refugees From Syria In Lebanon*, Forced Migration Review No.47, 2014, pp. 17-18.

authorities to register their children. In effect, the measures adopted by the government of Lebanon concerning the procedure for renewal of legal status can become a deterring factor for families previously registered with UNHCR that failed to update their permit document. In the long-term, this situation can lead to more cases of unregistered births with all the associated negative consequences.

Lastly, according to the assessment, the reason that the majority of the refugees did not complete the third step -*registering the birth certificate at the governmental registry office*- was lack of information regarding the registration process.<sup>301</sup> Refugees also reported to NRC the existence of administrative barriers. The relevant departments appeared not to have a common line concerning the required documents the refugees had to provide. In certain cases, they were asking for valid residency visa and in others that was not a prerequisite. Lack of information, together with the inconsistency on behalf of the administrative authorities, inevitably created misunderstandings among refugees and further confused the registration process.<sup>302</sup>

In Jordan, the corresponding assessment was conducted by NRC in March 2015 in the northern part of the country.<sup>303</sup> The number of families interviewed was comparatively low, however, the identified barriers were relatively the same.<sup>304</sup> According to the assessment, lack of awareness and lack of required documents as well as inconsistency in Civil Status Department practices were the most cited reasons behind parents' inability to register their child's birth.<sup>305</sup>

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<sup>301</sup> Among the cited reasons 65 per cent of the interviewers said that they lack information on the procedural steps. NRC, *'Birth registration Update'*, p. 22.

<sup>302</sup> Ibid.

<sup>303</sup> NRC, *'Registering Rights'*, p. 6.

<sup>304</sup> In Jordan, NRC interviewed "37 families, covering the births of 45 children".

<sup>305</sup> Ibid, pp. 15-17.



In order to assist refugees, UNHCR, its NGO partners and the GoJ have launched two national campaigns to raise awareness on the civil registration process.<sup>306</sup> In addition, birth registration campaigns have been initiated in the country as part of a UN campaign against childhood statelessness to inform families on the registration steps.<sup>307</sup> Yet, lack of awareness remains an issue. Families reported to NRC that there are “differences between Jordanian and Syrian birth registration practices that complicate refugees’ understanding of processes in Jordan.”<sup>308</sup> According to refugees, an important difference between the two countries is that in Syria, if the time limit of twelve months for birth registration is exceeded, parents do not automatically lose their chance to complete the process.<sup>309</sup>

In addition, lack of required documentation constitutes another pressing issue in Jordan. According to UNHCR, from November to December 2014, Jordan exempted Syrian refugees from fines in the case that they fail to register their marriage.<sup>310</sup> The initiative started over in May 2015 and lasted for three months.<sup>311</sup> During the first exemption period, 1,947 couples could officially register their marriage.<sup>312</sup> However, couples who did not benefit from this initiative could not obtain a birth certificate.<sup>313</sup> As the assessment indicated, nearly half of all families interviewed could not proceed with the registration due to lack of a marriage certificate, an important prerequisite for birth registration.<sup>314</sup>

Last but not least, the fact that the Civil Status Department in some cases accepted copies of marriage certificates or family books, whereas in other cases required the originals,<sup>315</sup> reveals inconsistency on behalf of administrative authorities who seem to have a selective

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<sup>306</sup> See Cfr. *supra* footnote 236.

<sup>307</sup> UNHCR, *‘Jordan Inter-Sector Working Group Update’*, November 2014, p. 4.

<sup>308</sup> NRC, *‘Registering Rights’*, p. 15

<sup>309</sup> Sixteen out of twenty five children who did not have a birth certificate were more than one year old.

<sup>310</sup> NRC, *‘Registering Rights’*, p. 5

<sup>311</sup> UNHCR, *‘Jordan Operational Update’*, 2015

<sup>312</sup> *Ibid.*

<sup>313</sup> NRC, *‘Registering Rights’*, p. 15

<sup>314</sup> *Ibid.*

<sup>315</sup> *Ibid.*

approach to the issue. In the absence of common coordination by the relevant authorities concerning the required documents, the confusion will perpetuate and no one will benefit.

As indicated by the survey results in both countries, lack of identification documents is the main issue faced by Syrian refugees. Marriage certificates and identity documents are mandatory papers that governmental authorities require in every step of the process. In many cases, however, refugees are unable to provide the original documents either because they lost them or they were attained, as in the case of Jordan, by the governmental authorities.<sup>316</sup> In addition, couples who did not register their marriages back in Syria find it hard to prove their marriage within the host countries' civil registry authorities.<sup>317</sup> Given that Syrian refugees cannot always possess these documents and that administrative authorities are not consistent with their practices, serious concerns are raised as to what extent the births of their children can be successfully registered.

#### 4.4 Consequences of Non-registration

Failure to obtain a birth certificate is a real threat for refugee children, both in Jordan and Lebanon. Syrian refugees struggle to guarantee their children's legal identity but regrettably, in many cases fail to complete the registration process. As indicated by the assessment, administrative, legal and economic barriers hinder the overall process leaving thousands of Syrian refugee children in legal limbo.

As a result of these barriers, Syrian refugees often use unsafe methods in order to complete the registration process. UNHCR reported that many refugees in Lebanon take the dangerous trip back to Syria either to acquire the necessary documents or even to give birth on Syrian soil.<sup>318</sup> The situation in the countries of asylum is already overwhelming for

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<sup>316</sup> UNHCR, *The future of Syria: Refugee Children in Crisis*, November 2013, p.56

<sup>317</sup> Ibid.

<sup>318</sup> Ibid.

refugees; these practices inevitably put at further risk both the lives of parents and their children.

For Syrian children, this situation can have serious and long-term consequences on their lives. Lack of birth registration can potentially block access to health care and education services not only in the host countries but also in Syria. The worst case scenario is that in the absence of safeguards on behalf of host countries concerning the protection of their legal identity, refugee children will not be able to enter Syria through legal channels once the war is over. Despite their obvious link to Syrian nationality, the inability to acquire a birth certificate and subsequently to prove their legal status can result in statelessness and prevent a whole generation of children from enjoying their fundamental human rights.

#### 4.5 Ways forward

The current crisis has brought to the fore concerns about the right to a nationality for refugee children born in exile. While Jordan and Lebanon are not States Party to any of the Statelessness Conventions, they are, nevertheless, bound by international law to guarantee the right to a nationality and the right to birth registration for every child born in their territories who would otherwise be stateless.

As argued, birth registration has a direct impact on a child's legal identity. Holding a birth certificate ultimately "promotes rights associated with legal identity, by providing individuals with means through which to claim them."<sup>319</sup> Certainly, in the current stage, the only way for Syrian children to access services and benefit from rights inherent to a nationality is to prove their legal identity through the process of birth registration. Until the moment they acquire Syrian nationality, birth certificates will be their only "ticket to citizenship,"<sup>320</sup> and for this reason, the registration process should be effectively guaranteed

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<sup>319</sup> Aplan, Kara, Brad K. Blitz, et al. 2014. *"Birth registration and children's rights: a complex story."* p. 32

<sup>320</sup> See Cfr. *supra* footnote 184.

by neighbouring countries' authorities to all children born in their territory, regardless of their parents' legal status.

Since birth registration has a significant weight in terms of the protection of children's rights, and during emergencies can act as a token against statelessness, the international community must improve its cooperative capacity and work closely with States in order to promote the importance of birth registration and the value of the two Statelessness Conventions on a global level. From their side, States should develop a more comprehensive approach to identifying population groups whose right to a nationality is at stake. In addition, they should protect the right to a nationality for every child born on their territory without this being affected by their or their parents' legal status.

In this regard, asylum countries should simplify the registration procedure for refugee population, by removing barriers, either legal and/or administrative barriers that impede access to birth registration. For instance, they should adopt "exemption regulations" as concerns fees and any other restrictions that make it impossible for refugees to obtain a birth certificate for their children. In addition, administrative authorities on their side, should adopt a more flexible and consistent approach, as regards the various requirements for the registration process. Although a general set of requirements needs to accompany the application form, nevertheless, a human rights-based approach, that concentrates on those people fleeing war and persecution belonging, undeniably, to the most vulnerable segments of the populations, must become a priority.

## CHAPTER V

### CONCLUSION

At the current state of international law is hard to challenge States' prerogative to rule over their nationality matters. Their reserve powers primarily stem from the division of the world into nation-states; a division between "citizens who are members of a state and foreigners who are not".<sup>323</sup> Yet, the evolution and development of international law, as discussed in Chapter II, do pose limitations on a State's power to regulate nationality issues. Particularly, the right to acquire a nationality at birth constitutes a universal human right that has been rooted in almost every national, regional and international legal instrument guaranteeing nationality to every child that comes to this world regardless of his or her legal status. Nevertheless, State practice upholds the old attestation of nationality as a concept that goes hand in hand with the "effective and genuine link" between an individual and the State creates, thus, a selective approach as to who qualifies for their nationality.<sup>324</sup>

As highlighted in Chapter III, the international community has gradually developed strong sentiments against statelessness. Certainly, the adoption of the two Statelessness Conventions marked the beginning of an era focused on the prevention of statelessness at birth and, in turn, on its global reduction. Their effectiveness, however, turned out to be limited due to the relatively low number of accessions and lack of a common approach by Member States regarding the identification of stateless persons.<sup>325</sup> This protection gap is made manifest by the fact that the phenomenon of statelessness continues to constitute a major human rights problem. Estimations by the UNHCR indicate that there are more than ten million stateless persons around the world, half of them being children. This group of people is ironically entitled to no State's protection rather than to their fundamental human

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<sup>323</sup> Yaffa Zilberschats, "Chapter 3 – The Horizontal Aspect of Citizenship" in the Human Right to Citizenship, Transnational Publishers, Ardsley, NY: 2002, p.71 as cited in Van Wass, 2008, p.433

<sup>324</sup> See Chapter II part 2.2.1

<sup>325</sup> See Chapter III

rights. Owing to this reason, the idealistic view of a universal right to a nationality falls far short of meeting its expectations.

The reality we face today due to the unprecedented refugee movement adds weight on the already noted problem and demands a new approach to the intertwined issues of nationality and statelessness, different from the approach that the international community has been concentrated on for the past five decades. A major issue that needs to be addressed is potential threat of statelessness for refugee children born in exile. As a scholar argued, it is not always easy to prove that there is a risk of statelessness, since “the individual must demonstrate something that is not there”.<sup>326</sup> Nevertheless, as argued many times throughout the course of this thesis, lack of birth registration for children born to Syrian refugees in Jordan and Lebanon can have negative consequences on their lives and result in statelessness. Lack of documentation on behalf of their parents can be the root cause of their statelessness, in case the competent authorities fail to recognize these children’s legal ties to the State. As seen from this case, statelessness in the context of a forced displacement can be generated from administrative and legal barriers that hinder the process of acquiring a birth certificate.<sup>327</sup>

On account of the important role of birth registration in the protection of children’s legal identity, their human rights and avoidance of statelessness; governmental authorities need to focus on a human rights-based approach that will allow access to birth registration for every child born in their territories and integrate human rights norms and standards in their policy planning in order to strengthen civil registration mechanisms.

Above all, the international community must shift to invest more in the prevention of statelessness at birth by promoting birth registration, especially in cases where the bond between legal identity and statelessness is more than ever fundamental. To make this work,

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<sup>326</sup> Batchelor, C., *The 1954 Convention relating to the status of Stateless Persons: Implementation within the European Union Member States and Recommendations for Harmonisation*, 2004, p.13

<sup>327</sup> See Chapter IV

UNHCR should provide further guidance and legal expertise to the competent authorities on how to effectively implement the international legal instruments in their domestic jurisdiction and offer a broader concept of protection under these legal instruments that will embrace contemporary aspects of the problem.

When assessing the current state of international human rights law, it becomes evident, that the time has come for the international community to go beyond enunciating protection gaps and challenges, to develop concrete action plans. In this regard, the far-reaching goal of the international community for the elimination of statelessness by 2024, calls for a systematic approach to engaging all the relevant actors in the battle against statelessness. The United Nations, the universal organization for peace and human rights protection, needs to transform political action into a fruitful field that will lay the foundations for the resolution of the aforementioned major issues.

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