



universität  
wien

# MASTER THESIS

Titel der Master Thesis / Title of the Master's Thesis

„Childhood Statelessness: The case of Refugees and  
Asylum Seekers in Europe“

verfasst von / submitted by

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angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of  
Master of Arts (MA)

Wien, 2018 / Vienna 2018

Studienkennzahl lt. Studienblatt /  
Postgraduate programme code as it appears on  
the student record sheet:

A 992 884

Universitätslehrgang lt. Studienblatt /  
Postgraduate programme as it appears on  
the student record sheet:

Master of Arts in Human Rights

Betreut von / Supervisor:

Dr. Christoph Pinter

## **Acknowledgments**

A special thank you and my warmest gratitude,  
to my supervisor, Christoph Pinter, for his invaluable guidance and meticulous  
feedback;  
to my parents, Panteli and Lila, and my sister, Elena, for always supporting me and  
believing in me;  
to Mohamed for listening to my complaints and giving me strength;  
to the Vienna Master of Arts in Human Rights team for offering me a unique, intense,  
educational and unforgettable experience;  
and to my university professors and colleagues for exploring with me the Human Rights  
world and giving me inspiration.

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## Index of Acronyms and Abbreviations

1930 Hague Convention	1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws
1951 Convention	1951 Convention relating to the Status of Refugees
1954 Convention	Convention Relating to the Status of Stateless Persons 1954
1961 Convention	1961 Convention on the Reduction of Statelessness
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CFR-EU	Charter of Fundamental Rights of the EU
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECHR	European Convention on Human Rights
ECN	European Convention on Nationality
ECN	European Convention on Nationality
ECOSOC	UN Economic and Social Council
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EMN	European Migration Network
ENS	European Network on Statelessness
EU	European Union
HIV/AIDS	Human Immunodeficiency Virus / Acquired Immune Deficiency Syndrome

HRC	United Nations Human Rights Council
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IDPs	Internally displaced persons
IOM	International Organization for Migration
ISI	Institute on Statelessness And Inclusion
LGBT	Lesbian, Gay, Bisexual and Transgender
MOU	Memorandum of Understanding
MSF	Médecins Sans Frontières (Doctors Without Borders)
NGO	Non-governmental organization
NHRI	National Human Rights Institution
NRC	Norwegian Refugee Council
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	United Nations Office of the High Commissioner for Human Rights
SDG	United Nations Sustainable Development Goals
SDP	Statelessness Determination Procedure
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
UPR	Universal Periodic Review
USA	United States of America

## Introduction

*To be stripped of citizenship is to be stripped of worldliness; it is like returning to a wilderness as cavemen or savages [...] A man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow man [...] they could live and die without leaving any trace, without having contributed anything to the common world.*

Hannah Arendt, *The Origins of Totalitarianism*, 1951

More people are forcibly displaced in the world today than at any other time since World War II.<sup>1</sup> From 2015 until today, 1.5 million asylum seekers have reached Europe by crossing the Mediterranean sea.<sup>2</sup> At a time when the international community is working to reduce and eliminate statelessness globally,<sup>3</sup> the current refugee situation poses new challenges and questions to the total elimination of statelessness and to the realisation of every child's right to a nationality. The current paper will analyse the issue of childhood statelessness for children born to refugees and asylum seekers in (member states of) the European Union and will examine suitable protection and prevention policies.

As the refugee situation in Europe was evolving, the issue of statelessness came back to the fore in the international press and the academic research,<sup>4</sup> which expressed concerns about the risk of a "stateless generation" being born in Europe. UNHCR's Melissa Fleming has also recognised that '*a generation of stateless children are being*

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<sup>1</sup> UNHCR, 'Global Trends: Forced Displacement in 2015', 2016f, p.5, <http://www.unhcr.org/576408cd7.pdf>, (accessed 6 April 2018).

<sup>2</sup> UNHCR, *Operational Portal Refugee Situation- Mediterranean Situation*, [website], 2018, [http://data2.unhcr.org/en/situations/mediterranean#\\_ga=2.123556235.1838562262.1525085370-2018591132.1524342895](http://data2.unhcr.org/en/situations/mediterranean#_ga=2.123556235.1838562262.1525085370-2018591132.1524342895), (25 April 2018).

<sup>3</sup> UNHCR, 'Global 2014-2024 Action Plan to End Statelessness', 2014, <http://www.unhcr.org/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html>, (accessed 5 February 2018).

<sup>4</sup> For instance: L. Osborne and R. Russel, 'Refugee crisis creates 'stateless generation' of children in limbo', *The Guardian*, 27 December 2015, <http://www.theguardian.com/world/2015/dec/27/refugee-crisis-creating-stateless-generation-children-experts-warn>, (accessed 29 January 2018); I. Sturkenboom and L. Van Waas, 'How Real Is the Risk of a 'Stateless Generation' in Europe?: Reflections on How to Fulfil the Right to a Nationality for Children Born to Refugee and Migrant Parents in the European Union', *SSRN*, 2016, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2877368](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2877368), (accessed 1 February 2018); S. Reynolds and T. Duoos, 'A Generation of Syrians Born in Exile Risk a Future of Statelessness', *European Network on Statelessness*, 15 July 2015, <https://www.statelessness.eu/blog/generation-syrians-born-exile-risk-future-statelessness>, (accessed 29 January 2018).

*created*’ and described the situation as a “ticking time-bomb”.<sup>5</sup> However, in general, the heightened risk of statelessness for refugee and migrant children that are born in Europe has received little attention so far. Academic research and political discussion have focused on the different asylum and immigration policies that need to be put into place. As there is a bigger caseload nowadays in Europe, due to the increased refugee and migration flows, gaps and deficiencies of national legislation and practice regarding childhood statelessness, which would otherwise affect a smaller proportion of the population, are now creating more pressure on the European Union member states. The current situation requires more urgent measures, as well as a reform in national practices. Not as a way to align with international norms but as a way to protect an increasing number of children against the risk of statelessness. This research tries to bring statelessness as a topic back to the fore, provoking further debate and identifying suitable protection policies.

For addressing the issue of childhood statelessness in the context of refugees and asylum seekers born in the EU, the following question has been identified as the central to the present thesis: How to fully realise the right to a nationality for children born to refugees and asylum seekers in Europe? In order to answer the research question the paper will draw data from International and European legal documents and from academic reports and articles by scholars, experts, international and regional organisations and reputable NGOs.

The research will be divided into four parts. The first part of the paper sets the basis for the conceptual framework, by analysing the legal definitions and the principles connected to the two terms that the paper will continuously use: “nationality” and “statelessness”/“childhood statelessness”. Apart from analysing the legal definitions, the chapter explores the phenomenon of childhood statelessness, its impact on children’s life and the nexus between statelessness and displacement. In the second part of the research the current International and European legal framework will be documented. While states are, in principle, free to set the conditions for access to nationality in accordance with their own sovereign interests, international and regional law has

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<sup>5</sup> M. Fleming, ‘The situation in Syria is only going to get worse ... and here's why’, *The Guardian*, 2015, <https://www.theguardian.com/global-development-professionals-network/2015/feb/16/situation-syria-is-going-to-get-worse-melissa-fleming-united-nations>, (accessed 16 March 2018).



developed in a way that this freedom is no longer limitless<sup>6</sup>. Moreover, this Part will highlight the response of International and European supervisory mechanisms on the topic and UNHCR's global mandate for the identification, prevention and reduction of statelessness and the protection of stateless persons<sup>7</sup>. The third part of the research will examine the challenges of safeguarding the right to a nationality for children born to refugees and asylum seekers in Europe. Children born to refugees are particularly susceptible to problems in securing a nationality. This chapter includes analysis on the current situation of childhood statelessness in Europe and identifies possible causes of childhood statelessness related to the refugee context. In addition, this part examines the European state's performance on protecting children's right to nationality<sup>8</sup>. The fourth part of the research will collect protection and prevention mechanisms, policy recommendations and good practices from EU countries in the field of childhood statelessness.

## Methodology

This study employs qualitative research methods to analyse statelessness for children born to refugees and asylum seekers in states of the European Union and explores suitable protection and prevention policies.

In order to achieve the main objectives of the research, the study deploys, as sources of data, official legal documents deriving from states<sup>9</sup> in the international and European inter-governmental level. In specific, the study draws mainly data from seven international UN treaties: 1948 Universal Declaration of Human Rights, 1954 Convention to the status of stateless persons, 1961 Convention on the reduction of statelessness, 1965 Convention on the Elimination of All Forms of Racial Discrimination, 1966 International Covenant on Civil and Political Rights, 1979 Convention on the Elimination of All Forms of Discrimination Against Women and 1989 Convention on the Rights of the Child, as they are the main international legal

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<sup>6</sup> I. Sturkenboom and L. Van Waas, 2016, p.4.

<sup>7</sup> UNHCR Executive Committee of the High Commissioner's Programme, 'Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) – 2006', A/AC.96/1035, 2006, <http://www.refworld.org/docid/453497302.html>, (accessed 10 February 2018).

<sup>8</sup> Using research conducted by the European Network on Statelessness, Institute on Statelessness and Inclusion, EU and CoE.

<sup>9</sup> A. Bryman, *Social Research Method*, Oxford, Oxford University Press, 2016, p. 549.

instrument addressing statelessness and the right to nationality. Access to them was secured through the official website of United Nations Treaty Collection,<sup>10</sup> where all UN Treaties can be found. At the core of the regional human rights system in Europe are the European Union and the Council of Europe (CoE). Four documents were selected from the European level to be examined: 2000 Charter of Fundamental Rights of the European Union, 1950 European Convention on Human Rights, 1997 European Convention on Nationality and Resolution 2099 (2016) about the need to eradicate statelessness of children. These documents are available at the official website of each organisation, namely the EUR-Lex<sup>11</sup> site that contains all EU law and related documents and the Council of Europe Adopted Texts website.<sup>12</sup> All the aforementioned legal documents contain crucial provisions about the prevention of statelessness and establishment of safeguards for the protection of affected populations.

In addition to the primary data analysis, the research will also conduct secondary analysis of qualitative data<sup>13</sup> written by International and European governmental and non-governmental organisations and respectable experts on this field. Reports by UNHCR, which has an official global mandate on statelessness, UNICEF, the Council of Europe, the European Union, the European Network on Statelessness, the European Council for Refugees and Exiles, the European Migration Network and the Institution on Statelessness and Inclusion will be extensively examined. These secondary sources offer an invaluable interdisciplinary and cross-cultural insight on the current situation in Europe and on possible policy recommendations. Moreover, all of them are published by respectable and reliable organisations that have access to official information and are being conducted by high-quality experts.

As this qualitative data collection generates a large amount of data, the research will use the method of coding<sup>14</sup> in order to achieve appropriate data analysis. The findings of the document analysis will be presented by highlighting common themes in the existing protection apparatus that consistently emerged and were deemed

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<sup>10</sup> United Nations Treaty Collection, *UN Treaty Series*, [website], <https://treaties.un.org/pages/Home.aspx?clang=en>, (accessed 10 February 2018).

<sup>11</sup> EUR-Lex, *Access to European Union Law*, [website], <http://eur-lex.europa.eu/collection/eu-law.html>, (accessed 11 February 2018).

<sup>12</sup> Council of Europe, *Adopted Texts*, <https://www.coe.int/en/web/cm/adopted-texts>, (accessed 12 February 2018).

<sup>13</sup> A. Bryman, p.311.

<sup>14</sup> A. Bryman, p.575.

representative of demonstrating preventive policies for eliminating childhood statelessness in the current refugee context. Sources are used to identify emerging categories, which can lead to the formation of suitable prevention mechanisms. The data analysis starts after some of the data are collected and the results of that analysis will then shape the next steps in the data-collection process<sup>15</sup>.

## **Part 1 –Conceptualising (childhood) statelessness and the right to a nationality**

### **1.1 Introduction**

The history of states is strongly connected with the principle of state sovereignty. This power of the state to create and apply its own laws and exercise control over its internal affairs is an integral part of the current international system. Nationality, as a manifestation of a country's sovereignty and identity, falls under the state's jurisdiction; giving each state the power to determine who is considered a citizen and under which conditions a person can acquire nationality.<sup>16</sup> During the 20<sup>th</sup> century, there is an increase in incidents of stateless, but also a growing awareness on the phenomenon. The developments in international human rights law and the growing concerns related to statelessness have led to the establishment of international law and standards, with which states have to comply when deciding about nationality matters.

A proper understanding of the key terms of the research is an essential first step to fully grasp the issue and be able to answer the research question. Therefore, the first part of the paper sets the basis for the conceptual framework, by analysing the legal definitions and the principles connected to the two terms that the paper will continuously use: “nationality” and “statelessness”/“childhood statelessness”. Apart from analysing the legal definitions of these terms, the chapter also examines their relevance for people's lives and ways to acquire nationality at birth. Moreover, the importance of identifying stateless populations and the challenges connected to this task

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<sup>15</sup> A. Bryman, p.566.

<sup>16</sup> C. Batchelor and P. Leclerc, ‘Nationality and Statelessness: A handbook for parliamentarians’, *UNHCR*, 2005, p.8, <http://unhcr.csod.com/content/unhcr/publications/752/Course%20materials/Nationality%20and%20Statelessness%20A%20handbook%20for%20Parliamentarians.pdf>, (accessed 13 April 2018).

will be critically evaluated. Furthermore, the chapter explores the phenomenon of childhood statelessness and its impact on children's life. Finally, the nexus between statelessness and displacement will be examined in order to highlight the existing approaches on the topic in literature and their complex interconnectedness.

## 1.2 Nationality matters

In a world divided into states, borders have become a way of demarcating territory and nationality has become the instrument for demarcating populations.<sup>17</sup> The importance of nationality lies in the fact that nationality provides people with a sense of identity but, more importantly, enables them to exercise a wide range of rights.<sup>18</sup> Nationality is often the key for participating in the society; without it people can be excluded not only from the political process, but also from residing in a country and for having access to social services. In this way, nationality acts as a prerequisite for the enjoyment of some of the most fundamental human rights.<sup>19</sup>

There is no legal, unanimously accepted definition of nationality.<sup>20</sup> Under international law, the *Nottebohm* case before the International Court of Justice (ICJ) provides us with a definition of nationality. The ICJ defined nationality as '*a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties*'.<sup>21</sup> In general, nationality is considered the legal bond between a state and an individual, which confers, in reciprocal, rights and responsibilities to both actors. The rights bestowed to nationals include the right to return and reside within the territory of the state and participate in the political processes.<sup>22</sup> Similarly, the corresponding duties of nationals reflect their allegiance to the state and may, for example, include the

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<sup>17</sup> UNHCR, 'Self-Study Module on Statelessness', 2012a, p.7, <http://www.refworld.org/docid/50b899602.html>, (accessed 31 March 2018).

<sup>18</sup> UNHCR, 'Preventing and Reducing statelessness: The 1961 Convention on the Reduction of Statelessness', 2014d, <http://www.unhcr.org/protection/statelessness/519e210a9/preventing-reducing-statelessness-january-2014.html>, (accessed 13 April 2018), p. 1.

<sup>19</sup> K. Faulks, *Citizenship*, London, Routledge, 2000, p.8.

<sup>20</sup> For example, according to the Oxford Dictionary, nationality is 'the status of belonging to a particular nation'. *Oxford Dictionaries*, [website], <https://en.oxforddictionaries.com/definition/nationality>, (accessed 10 April 2018).

<sup>21</sup> International Court of Justice, *Nottebohm Case (Liechtenstein v. Guatemala)*, Second Phase, 6 April 1955, p.23, <http://www.icj-cij.org/files/case-related/18/018-19550406-JUD-01-00-EN.pdf>, (accessed 13 April 2018).

<sup>22</sup> UNHCR, 2012a, p.7.

obligation to pay taxes or to perform military or equivalent service.<sup>23</sup> States have also rights and responsibilities, for example, to guarantee various civil and political rights to their nationals. In return, states may demand certain obligations -as described above. At this point, it is important to point out that the terminology used to describe a “national” varies from country to country. For example, other terms that might be used for this status include the terms “citizen” or “subject”. It is essential to highlight that the use of the terms nationality and citizenship are frequently used interchangeably under international law<sup>24</sup>, which will be also the case for the purposes of this paper.

Nationality is a subject under the jurisdiction of each state and, therefore, nationality is acquired or lost according to rules set by each state. These rules determine which links between the individual and the state should be reflected in this formal bond of membership.<sup>25</sup> Although the exact rules vary from state to state, there are two basic forms of links used for the purpose of nationality attribution. One is a connection with the state’s territory, which may be evidenced by birth on state soil or residence within the borders of the state.<sup>26</sup> The other is a connection with the state’s existing body of nationals, which is generally substantiated through family ties with a national, such as descent or marriage.<sup>27</sup> International instruments relating to nationality, such as the 1961 Convention relating to the Reduction of Statelessness and the 1997 European Convention on Nationality also base their rules on these types of linkage through birth, residence or descent.<sup>28</sup>

As mentioned above, nationality is generally acquired on the basis of a legal bond, e.g. a factual link between the individual and the state. In the case that people can not prove this link by acquiring the necessary evidence, according to domestic law, they are at risk of not being considered nationals by the state. To prove this link, a variety of evidence are being employed from testimonies of witnesses to civil registers, such as birth certificates or national identity documents that can indicate that a person was considered a national at the time of issuance.<sup>29</sup>

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<sup>23</sup> Ibid, p.7.

<sup>24</sup> K. Faulks, p.7.

<sup>25</sup> UNHCR, 2012a, p.7.

<sup>26</sup> Ibid, p.18.

<sup>27</sup> Ibid, p.18.

<sup>28</sup> Ibid, p.18.

<sup>29</sup> Ibid, p.8.

Birth represents a critical point in a person's life regarding to nationality. At this point the state has to set rules that define the circumstances under which nationality will be acquired by newborns. Different weight to the factors determining the link between the individual and the state is being applied by the nationality laws of different states. Some states focus, for the formation of the identity, on the connection with the territory, within which a person lives or grows up, and, therefore, grant nationality at birth to children born on their soil (*jus soli*). Other states place more weight on the role of the family in providing a person with a sense of belonging and on that basis confer nationality to children born to nationals (*jus sanguinis*). Nowadays, and specifically in the case of Europe, states confer nationality at birth based on *jus sanguinis* or *jus soli*, or a combination of the two. Since there is more than one doctrine in the conferral of nationality at birth, there exists the possibility of conflict of law or gaps in laws that can lead to statelessness.<sup>30</sup> Moreover, the inherent need for mobility of people puts the compatibility of these different, but, at the same time, coexisting doctrines under pressure. For instance, when a child is born in a country that grants nationality by *jus sanguinis* only, but the laws of the state of which the parents are nationals grant citizenship by *jus soli*, the child faces the risk of statelessness.<sup>31</sup> This highlights the pressing need for cooperation among states on nationality issues and for safeguards that limit the freedom of states to determine who is a citizen.

### 1.3 What is Statelessness?

Statelessness presents an urgent challenge to the fulfillment of human rights. UNHCR has identified that no region of the world is free of the problems that lead to statelessness.<sup>32</sup> During the first half of the 20<sup>th</sup> century statelessness was characterised as a global problem and, therefore, rules and principles have been established in the realm of international law to tackle the issue. Today, at least 10 million people around the world are denied a nationality.<sup>33</sup>

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<sup>30</sup> UNHCR, 2012a, p.22.

<sup>31</sup> Besides of this example there are a number of other reasons and causes that contribute to the risk of being stateless, which are going to be thoroughly analysed in Part 3 of this paper.

<sup>32</sup> Batchelor C. and Leclerc P., p.6.

<sup>33</sup> UNHCR, 'Special Report, Ending Statelessness within 10 years', 2014a, p. 20, <http://www.unhcr.org/cgi->

To achieve a more coherent picture of statelessness, it is important that there is a common understanding of the relevant terms. The international legal definition of a stateless person is ‘*a person who is not considered as a national by any State under the operation of its law*’.<sup>34</sup> This means that a stateless person does not have the nationality of any country, which is sometimes referred to as “de jure statelessness” -even though this term is not used in any Convention. This definition is found in Article 1.1 of the Convention Relating to the Status of Stateless Persons 1954 (1954 Convention), which is an international treaty aimed specifically at regulating the standard of treatment for stateless persons.<sup>35</sup> The 1954 Convention does not permit reservations to Article 1.1 and thus this definition is binding for all state parties to the treaty.<sup>36</sup> Even though not every state has acceded to the 1954 Convention,<sup>37</sup> the International Law Commission has concluded that the definition in Article 1.1 is part of customary international law; and thus is binding for all states.<sup>38</sup> At this point, it is important to mention that the definition of statelessness is applicable in both migration and non-migration contexts.<sup>39</sup> Some stateless person may never have crossed an international border, but some may also be refugees or persons eligible for complementary protection.<sup>40</sup>

As mentioned above, persons who fall under Article 1.1 of 1954 Convention are sometimes referred as “de jure stateless” persons.<sup>41</sup> There is another term that was explicitly used in the Final Act of the 1961 Convention and implicitly referenced in the

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[bin/texis/vtx/home/opendocPDFViewer.html?docid=546217229&query=Special%20Report:%20Ending%20Statelessness%20Within%2010%20Years](http://bin/texis/vtx/home/opendocPDFViewer.html?docid=546217229&query=Special%20Report:%20Ending%20Statelessness%20Within%2010%20Years), (accessed 28 March 2018).

<sup>34</sup> Convention Relating to the Status of Stateless Persons, (adopted 28 September 1954, entered into force 6 June 1960), 360 UNTS 117, Article 1.1.

<sup>35</sup> Convention Relating to the Status of Stateless Persons, (adopted 28 September 1954, entered into force 6 June 1960), 360 UNTS 117, Article 1.1.

<sup>36</sup> UNHCR, ‘Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons’, HCR/GS/12/01, 2012b, p.2, <http://www.refworld.org/docid/4f4371b82.html>, (accessed 8 April 2018).

<sup>37</sup> According to the UN, there are 90 parties to the 1954 Convention. United Nations Treaty Collection, *Status of Convention Relating to the status of Stateless Persons*, [website], 2018, [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtsg\\_no=V-3&chapter=5&Temp=mtsg2&lang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtsg_no=V-3&chapter=5&Temp=mtsg2&lang=en), (accessed 16 April 2018).

<sup>38</sup> International Law Commission, ‘Draft Articles on Diplomatic Protection with commentaries’, 2006, UN, p.49, <http://www.refworld.org/docid/525e7929d.html>, (accessed 14 May 2018).

<sup>39</sup> Ibid, p.3.

<sup>40</sup> UNHCR, ‘Handbook on Protection of Stateless Persons’, 2014b, p. 10, [http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR\\_Handbook-on-Protection-of-Stateless-Persons.pdf](http://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf), (accessed 2 February 2018).

<sup>41</sup> In this research paper all references to “stateless persons” are made for persons who fall under Article 1.1 of the 1954 Convention, unless is otherwise explicitly stated.

Final Act of the 1954 Convention, the term “de facto stateless”.<sup>42</sup> “De facto statelessness” is not defined in any international instruments<sup>43</sup> and there is no treaty regime specific to this category of persons; with the recommendations in the two Final Acts being non binding in nature.<sup>44</sup> Traditionally, the term has been viewed as referring to situations where although a person retains the formal bond of nationality, is unable, or for valid reasons, unwilling to avail him or herself of the protection of that country.<sup>45</sup> In other words, de facto stateless are persons who formally possess a nationality, but do not enjoy the benefits generally associated with nationality. One of the reasons for not including de facto statelessness in the Statelessness Conventions is because drafters believed that persons without an effective nationality –e.g. de facto stateless persons– will fall under the category of refugees; assuming that a person becomes de facto stateless after fleeing their country of nationality due to persecution.<sup>46</sup> However it has been recognised later by UNHCR that there are many de facto stateless persons who are not refugees and refugees that are de facto stateless.<sup>47</sup>

An individual is considered a stateless person from the moment that the conditions in Article 1.1 of the 1954 Convention are met.<sup>48</sup> Article 1.1 can be examined by breaking the definition down into two constituent elements: “*not considered as a*

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<sup>42</sup> The Final Act of 1954 Convention requests that the benefits of the Convention should be also extended to persons who have a valid reason for renouncing the protection of their state of nationality. In addition, according to the Final Act of the 1961 Convention, ‘*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*’. Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness, 28 August 1961, A/CONF.9/14 and Add.1, 989 TS 250, Resolution I; OSCE and UNHCR, ‘Handbook on Statelessness in the OSCE Area, International Standards and Good Practices’, 2017, p. 13-15, <http://www.osce.org/handbook/statelessness-in-the-OSCE-area?download=true>, (accessed 25 March 2018).

<sup>43</sup> There is a definition by UNHCR’s Expert meeting: “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. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality”. UNHCR, ‘Expert Meeting: The Concept of Stateless Persons under International Law, Summary Conclusions’, 2010, <http://www.unhcr.org/protection/statelessness/4cb2fe326/expert-meeting-concept-stateless-persons-under-international-law-summary.html>, (accessed 10 May 2018).

<sup>44</sup> OSCE and UNHCR, ‘Handbook on Statelessness in the OSCE Area, International Standards and Good Practices’, 2017, p. 13-15, <http://www.osce.org/handbook/statelessness-in-the-OSCE-area?download=true>, (accessed 25 March 2018).

<sup>45</sup> L. Van Waas, ‘Nationality Matters: Statelessness under International Law’, School of Human Rights Research Series, vol. 29, 2008, p.20, [http://www.institutesi.org/Nationality\\_Matters.pdf](http://www.institutesi.org/Nationality_Matters.pdf), (accessed 14 April 2018).

<sup>46</sup> C. Batchelor and P. Leclerc, p. 12.

<sup>47</sup> UNHCR, 2010, p.6.

<sup>48</sup> UNHCR, 2012b, p.4.



*national...under the operation of its law*” and *“by any State”*.<sup>49</sup> It is more practical to start by examining the matter of *“by any State”*. Although this statement is formulated in a negative way, inquiring whether someone is stateless should focus on the States with which a person enjoys a relevant link, in particular by birth on the territory, descent, marriage, or habitual residence.<sup>50</sup> As far as the second element is concerned, establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a state applies its nationality laws in an individual’s case in practice.<sup>51</sup>

An important distinction must be made between statelessness and the situation of being undocumented, of undetermined nationality or at risk of statelessness. The lack of such documentation or proof does not necessarily mean the person is stateless. It could also mean that they may become stateless in the future, if unable to establish or prove links to the state of nationality. The current paper will use the term “stateless persons” and “statelessness” to include also persons at the risk of statelessness, as this is deemed to contribute to a more comprehensive approach and includes also the cases of children that –although not all of them are officially registered as stateless- are in risk of statelessness in the near future.

There are many reasons why an individual may become stateless. Some people become stateless later in life due to state succession, conflict of nationality laws and discrimination. Of course the list provided is not exhaustive, but rather includes the main causes. However, many individuals become stateless at birth and very often remain stateless for the rest of their life. Therefore, in the next sub-chapter, the research will focus on childhood statelessness.

#### **1.4 Childhood statelessness**

Notwithstanding the importance of protecting the rights of stateless people, the only truly adequate response to statelessness is to realise its eradication. Eradicating statelessness is an ambitious target; one first step towards that direction, which is practicable and achievable, is to prevent its proliferation by eradicating childhood statelessness. This paper will focus on childhood statelessness, as the prevention of

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<sup>49</sup> Ibid, p.4.

<sup>50</sup> Ibid, p.4.

<sup>51</sup> Ibid, p.4.

children becoming statelessness can be an achievable solution in tackling the issue when it first occurs, at birth.

According to UNHCR, every ten minutes, a stateless child is born.<sup>52</sup> Which means that over a third of the world's stateless are children<sup>53</sup>, the vast majority of whom have been stateless since birth and have never experienced the level of protection nationality bestows.<sup>54</sup> Stateless children are one of the most vulnerable groups of stateless people, as they need specific care and proper representation to stand for their rights. Nationality is an important aspect of a child's identity and facilitates children's access to and enjoyment of other human rights. Across the world today children are still being born stateless, either inheriting this status from their parents or because of conflicts or gaps in nationality laws. Stateless infants, children and youth, through no fault of their own, inherit circumstances that limit their potential and provide, at best, an uncertain future.

There are several reasons why a child might end up stateless. Apart from the ways in which any person can become stateless, a child in particular can become stateless due to lack of birth registration, loss of birth records and discriminatory nationality laws against women that don't allow them to confer nationality to their children.<sup>55</sup> Moreover, as explained above in the context of migration and displacement nationality can be lost due to conflict in laws, for instance where there is a conflict between *jus soli* and *jus sanguinis*. One of the most tremendous global humanitarian issues is currently taking place as a result of the conflict in Syria and as part of the huge displacement in the wider region. The case of Syria is not the only one that causes people to leave their homes and look for refuge in Europe. Many children of refugees and asylum-seekers that are born in Europe are facing the risk of statelessness due to the fact that their parents are themselves stateless or due to conflicts or gaps in nationality

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<sup>52</sup> UNHCR, 2014a, p.8.

<sup>53</sup> Ibid, p.8.

<sup>54</sup> S. Jansen and L. van Waas, 'Preventing Childhood Statelessness in Europe: Issues, Gaps and Good Practices', *European Network on Statelessness*, 2014, p.2, <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Preventing%20childhood%20statelessness%20in%20Europe%20-%20issues%2C%20gaps%20and%20good%20practices.pdf>, (accessed 12 February 2018).

<sup>55</sup> M. Lynch and M. Teff, 'Childhood statelessness', *Forced Migration Review*, Issue 32, 2009, p. 32, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR32/FMR32.pdf>, (accessed 15 April 2015).

laws.<sup>56</sup> This paper will try to clarify the specific circumstances under which these children can end up stateless in Part 3.

### **1.5 Identifying Stateless Persons and Children**

As outlined by UNHCR, the identification of stateless persons lies at the heart of any response to statelessness.<sup>57</sup> Identifying and mapping existing stateless populations, as well as groups that are at risk of statelessness remains a key point to address statelessness. This means, on the one hand, acquiring basic but comprehensive statistics on the existing stateless population and, on the other hand, building a complete picture of the situation by uncovering the full profile of the population affected.<sup>58</sup> Identification of affected individuals and groups in this way is a prerequisite to guaranteeing protection and resolving nationality status. This information can be put to use in devising strategies for the prevention and reduction of statelessness as well as for the protection of stateless persons.<sup>59</sup>

In general, it is difficult to get a clear picture of the magnitude of the phenomenon of statelessness as there is a distinct absence of concrete and reliable information.<sup>60</sup> Official data on statelessness on a national level are scarce and data on childhood statelessness are even rarer, because of the fact that any existing statistics on statelessness are often not disaggregated by age. Therefore, it is impossible to distinguish how many among them are children. This lack of adequate data collection on (childhood) statelessness not only reduces the visibility of the phenomenon, but also minimises the chance that authorities will take the necessary measures. However, there has been a gradual expansion in coverage and knowledge on stateless persons over the last years, due to the increasing awareness of statelessness in a number of countries around the world.<sup>61</sup> Nevertheless, identification of statelessness remains a challenge.

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<sup>56</sup> UNHCR, 'Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness', 2012c, p. 6, <http://www.refworld.org/docid/50d460c72.html>, (accessed 22 April 2018).

<sup>57</sup> UNHCR Executive Committee of the High Commissioner's Programme, 'Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) – 2006', A/AC.96/1035, 2006, <http://www.refworld.org/docid/453497302.html>, (accessed 10 February 2018).

<sup>58</sup> UNHCR, 2012a, p.56.

<sup>59</sup> Ibid, p.56.

<sup>60</sup> Institute on Statelessness and Inclusion, 'The World's Stateless', 2014a, p. 41, <http://www.institutesi.org/worldsstateless.pdf>, (accessed 14 April 2018).

<sup>61</sup> Ibid, p.41.

There are several reasons why quantifying statelessness is a complicated task and why there are varying approximations of the number of stateless persons. One of them involves the discussions surrounding the definition of statelessness. The term “*not considered as a national... under the operation of its law*” has been authoritatively interpreted as being both a question of fact and law, as it requires a careful analysis of how a state applies its nationality laws in practice.<sup>62</sup> Therefore, different states often still adopt their own approach not only to the definition of statelessness, but also to procedures for the recognition of stateless status and requirements surrounding the establishment of proof of statelessness.<sup>63</sup> Also sometimes, even in cases where there is a registration process, the correct identification of a person as stateless plays a significant role. In many cases a stateless person is register as a person of “unknown nationality” or simply as a “non-citizen”, which can aggravate more the invisibility of this group.<sup>64</sup> Moreover, the consideration of statelessness is a highly politicised issue that leads sometimes to statelessness being not high on the political agenda. Consequently, state authorities may not deem it important to put in place measures to identify stateless persons.<sup>65</sup> In other cases, this is done deliberately to deny the existence of stateless population and attribute their existence to nationals of other states.<sup>66</sup> Of the 142 national censuses between 2005 and 2014 for which the UN possesses questionnaires, only 112 include questions on nationality of which less than 25% provide for statelessness to be recorded.<sup>67</sup> Indeed, there is no clear requirement for States to report on the numbers of stateless persons living on their territory.<sup>68</sup>

There is not only a clear gap of data collected on a domestic level by states, but also there are difficulties finding data that offer a comprehensive picture on the international level, namely by the UN. UNHCR, which has the UN statelessness protection mandate, is the main source of data that report on the global numbers on statelessness. However, UNHCR’s reporting fails to cover a comprehensive picture of

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<sup>62</sup> UNHCR, 2014b, para.23-24.

<sup>63</sup> L. Van Waas, 2008, p.9.

<sup>64</sup> Ibid, p.9-10.

<sup>65</sup> Institute on Statelessness and Inclusion, 2014a, p. 41.

<sup>66</sup> Ibid, p.41.

<sup>67</sup> UNHCR, ‘Global 2014-2024 Action Plan to End Statelessness’, 2014c, p. 24, <http://www.unhcr.org/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html>, (accessed 5 February 2018).

<sup>68</sup> Batchelor C. and Leclerc P., p.6.

the stateless population.<sup>69</sup> First of all, UNHCR has only reliable data for 75 countries<sup>70</sup>, which means that statelessness remains unmapped for 50% of the world's states. Consequently, the 10 million stateless persons around the world is an estimated number, from which only 3.2 million are captured and thoroughly reported by UNHCR's report.<sup>71</sup> The goal set by UNHCR, as part of the campaign to end statelessness, of achieving quantitative data coverage for 150 states by 2024 is, therefore, an important step to bridge this gap.<sup>72</sup>

Another issue that is very relevant for this specific research is the fact that in UNHCR's statistical reporting, stateless persons who also fall under other UNHCR protection mandates -such as refugees, IDPs or asylum seekers- are not counted as stateless.<sup>73</sup> This means, that people who are stateless and at the same time refugees, asylum seekers or IDPs are not mentioned in these data, which makes it difficult –if not impossible- to find out how many children born from refugees and asylum seekers are stateless. Excluding these groups of population from the global statelessness statistics contributes to the invisibility of the phenomenon. The compilation of statistical and other basic data is not only of interest in building a more comprehensive picture of the global scale of statelessness, it can also raise awareness on the phenomenon of statelessness and push states to take positive measures.

In addition to the aforementioned, the challenge of identification also involves building a population profile. The objective of population profiling is to obtain baseline information and a subsequent overview of the population to allow, for example, better targeting of advocacy and assistance or understanding of dynamics among the communities.<sup>74</sup> In the context of statelessness, an assessment of the population profile should include, according to UNHCR, at a minimum, the following elements: size, demographic composition, in particular age and gender, location, language spoken, ethnicity, migratory background, overall level of education enjoyed, an awareness of relevant laws, procedures and rights, structures and organization within the population,

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<sup>69</sup> UNHCR, 'Global Trends 2016: Forced Displacement in 2016', 2017a, p. 48, <http://www.unhcr.org/5943e8a34.pdf>, (accessed 20 April 2018).

<sup>70</sup> Ibid, p.49.

<sup>71</sup> Ibid, p.48.

<sup>72</sup> UNHCR, 2014c, p.24.

<sup>73</sup> Institute on Statelessness and Inclusion, 2014a, p.50.

<sup>74</sup> UNHCR, 2012a, p.57.

cultural factors or attitudes that may be of influence to the situation, level of documentation, and legal status and enjoyment of rights, especially in comparison to nationals.<sup>75</sup> This comprehensive identification of stateless and at risk populations that covers the aspects outlined above will contribute to the effective formation of detailed strategies.

In conclusion, the correct identification of stateless population and of groups at risk of statelessness is an integral part on planning, implementing and monitoring protection and prevention policies.<sup>76</sup>

## **1.6 The impact of statelessness on children**

Statelessness can have a severe impact on the lives of individuals concerned, especially in the case of children. This is due, in part, to the role that nationality plays in the formation of a person's identity and the connection that they feel to the place where they live and to the people around them.<sup>77</sup> Stateless children face a range of different challenges, depending on where they live and why they are stateless. For the children affected, statelessness can mean lack of access to other rights and services that are taken for granted by citizens. A stateless child often has limited access to identity documentation, education, health care and freedom of movement. Moreover, it affects the child's ability to fulfill its ambitions and dreams for the future. Statelessness can have even more severe consequences on children, who are already traumatised through conflicts and terrors, such as refugee and asylum seeking children.

One of the major issues that arise, is the difficulty of obtaining identity documentation, including birth certificate, identity and passport. Stateless people have no official proof about their existence and no means by which to identify themselves in their every day interactions with the state or with private entities. Therefore, statelessness is often referred to as an invisible problem, as affected people can remain unseen and unheard. Closely related to having identity documents is the ability of free movement. Free movement within the state of residence can be difficult and international travelling is almost inconceivable. Not having official travel documents

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<sup>75</sup> Ibid, p.58.

<sup>76</sup> UNHCR, 2012a, p.57.

<sup>77</sup> Ibid, p. 31.

means for children no possibility of education abroad or even travelling to visit family and relatives.<sup>78</sup> In this context, stateless children face difficulties due to the lack of official documentation to be eligible for the family reunification process.<sup>79</sup> According to ECRE, there are limited procedural safeguards in the EU to ensure that applications for reunification without the official documentation are not rejected.<sup>80</sup>

Access to health care poses another major difficulty. In more than 30 countries in the world documentation is required to get treatment in a health facility and in at least 20 countries in the world stateless children cannot be legally vaccinated.<sup>81</sup> For stateless children, medical care may be less readily available or more costly than for other citizens.<sup>82</sup> In addition, stateless children face numerous challenges when pursuing an education. Education is usually limited or unavailable to them, as in some countries education is a privilege of citizens.<sup>83</sup> There are cases where schools denied non-nationals entry to the classroom or demanded fees applicable to foreigners, rendering an education beyond reach.<sup>84</sup> Moreover, stateless children can be refused scholarships or student loans.<sup>85</sup> Having to struggle through the school system frequently results in delays in starting school or moving on to the next term, putting stateless children and youth several years behind their peers.<sup>86</sup>

More than everything statelessness creates a sense of never quite belonging, pushing people to live in the margins of society, making them vulnerable to exploitation and exacerbating existing vulnerabilities. Statelessness subjects children to significant threats of their safety and well-being, as they are vulnerable to abduction, sale and trafficking, illegal adoption, and sexual exploitation.<sup>87</sup> Statelessness threatens the right

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<sup>78</sup> M. Lynch and M. Teff, p.32.

<sup>79</sup> European Council for Refugees and Exiles and Red Cross EU Office, 'Disrupted Flight: The Realities of Separated Refugee Families in the EU', *European Council for Refugees and Exiles*, 2014, p.23, <http://www.refworld.org/docid/58514a054.html>, (accessed 15 May 2018).

<sup>80</sup> Ibid, p.23.

<sup>81</sup> UNHCR, 'I Am Here, I Belong: The Urgent Need to End Childhood Statelessness', 2015a, p.12, [http://www.unhcr.org/ibelong/wp-content/uploads/2015-10-StatelessReport\\_ENG16.pdf](http://www.unhcr.org/ibelong/wp-content/uploads/2015-10-StatelessReport_ENG16.pdf), (accessed 11 March 2018).

<sup>82</sup> Institute on Statelessness and Inclusion, 'The World's Stateless Children', 2017b, p.221, <http://www.institutesi.org/worldsstateless17.pdf>, (accessed 1 February 2018).

<sup>83</sup> M. Lynch and M. Teff, p.32.

<sup>84</sup> UNHCR, 2015a, p. 9.

<sup>85</sup> Ibid, p.9.

<sup>86</sup> Ibid, p.10.

<sup>87</sup> Ibid, p.18.

of the child to feel secure, to be carefree and simply be a child.<sup>88</sup> In many cases stateless children are being separated and treated differently from an early age, labeled as ‘outsiders’.<sup>89</sup> Most of them are forced to grow up too quickly, because they have to work from a young age, live in insecure housing arrangements or endure troubled relationships with authorities.<sup>90</sup> Moreover, girls might be forced into early marriages as a means to escape poverty or acquire a nationality.<sup>91</sup>

While every child is entitled to state protection against exploitation and abuse, stateless children have limited such guarantees. In this regard, absence of official documents proving a child’s age can play a detrimental role. Lack of documents proving age can, for example, leave them unprotected by child labour laws.<sup>92</sup> Moreover, stateless children in conflict with the law risk to be prosecuted as adults or face arbitrary arrest and detention and difficulties in accessing justice, in the cases where they are victims of crime or exploitation.<sup>93</sup>

The limited access to these rights affects not only the individuals concerned, namely the children, but also their families, and society as a whole. In other words, excluding a sector of the population, especially children that are the future of a society, can have wider effects on the society in terms of economic and social development and can fuel social tensions and conflicts.<sup>94</sup> The enjoyment of an effective nationality is seen as a crucial component of human security in a society. Statelessness doesn’t foster social harmony among the non-citizen population and the surrounding community, but destabilises the co-existence of both groups and leads to social unrest.<sup>95</sup> The state also does not benefit from the exclusion of a specific group from nationality. Although it might gain temporary political advantages, the exclusion from participation in the internal value process of future generations can deprive the state of the contribution of potentially qualified population. In this regard, the need for young active generations in Europe must be stressed, in the light of the aging population. Low birth rates and higher

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<sup>88</sup> Ibid, p.16.

<sup>89</sup> Ibid, p.16.

<sup>90</sup> Ibid, p.16.

<sup>91</sup> Institute on Statelessness and Inclusion, 2017b, p. 219; UNHRC, Resolution on the right to a nationality: women’s equal nationality rights in law and in practice, 18 July 2016, A/HRC/RES/32/7.

<sup>92</sup> M. Lynch and M. Teff, p.32.

<sup>93</sup> Ibid, p.32.

<sup>94</sup> UNHR, 2012a, p.35-36.

<sup>95</sup> Ibid, p.35-36.



life expectancy has been transforming Europe's population, resulting in decrease in actively working population and a rapid increase of elderly people. Population aging is considered one of the greatest social and economic challenges facing the EU.<sup>96</sup> Therefore, promoting the active participation of young populations and not marginalising them and rendering them incapable in participating in the production process can be highly beneficial for European states.

In conclusion, stateless children are often held back and prevented from fulfilling their potential, from leading normal lives and contributing to the formation of just and equal societies.

### **1.7 The link between statelessness and displacement**

With nearly 2 million Syrian refugees seeking shelter in Europe<sup>97</sup> and 5 million seeking shelter in neighbouring countries<sup>98</sup>, the world is facing an unprecedented humanitarian crisis. The risk of statelessness represents yet another by-product of the ongoing conflicts and a further consequence faced by millions of displaced people.<sup>99</sup>

Until now, there has been limited analysis of this link between statelessness and forced displacement, both in terms of academic literature and policy reporting. This is a surprise as the stateless and the refugee status have common legal roots and share many similarities. The status set out for stateless persons is modeled on that established for refugees -as set in the 1951 Convention.<sup>100</sup> This is largely because of the shared drafting history of the 1951 and 1954 Conventions which both emerged from the work of the Ad Hoc Committee on Statelessness and Related Problems in 1949.<sup>101</sup> As this chapter will

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<sup>96</sup> Eurostat, *People in the EU: Statistics on an ageing society*, [website], 2017, [http://ec.europa.eu/eurostat/statistics-explained/index.php?title=People\\_in\\_the\\_EU\\_-\\_statistics\\_on\\_an\\_ageing\\_society](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=People_in_the_EU_-_statistics_on_an_ageing_society), (accessed 18 April 2018).

<sup>97</sup> UNHCR, *Operational Portal Refugee Situation- Mediterranean Situation*, [website], 2018, [http://data2.unhcr.org/en/situations/mediterranean#\\_ga=2.123556235.1838562262.1525085370-2018591132.1524342895](http://data2.unhcr.org/en/situations/mediterranean#_ga=2.123556235.1838562262.1525085370-2018591132.1524342895), (25 April 2018).

<sup>98</sup> UNHCR, *Operational Portal Refugee Situation-Syria Regional Refugee Response*, [website], 2018, <https://data2.unhcr.org/en/situations/syria>, (accessed 25 April 2018).

<sup>99</sup> UNHCR, 'The future of Syria: Refugee children in Crisis', 2013, <https://s3-eu-west-1.amazonaws.com/unhcr-campaigns/childrensreport/Future-of-Syria-UNHCR-v13.pdf>, (accessed 12 March 2018).

<sup>100</sup> UNHCR, 'Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level', 2012d, <http://www.refworld.org/docid/5005520f2.html>, (accessed 23 April 2018), p.2.

<sup>101</sup> Ibid, p.2-3.

demonstrate, the acquisition and retention of nationality by migrant and refugee children can pose a real challenge.

Most of the previous research, so far, has focused on the nexus between statelessness and irregular migration.<sup>102</sup> As Sophie Nonnenmacher and Ryszard Cholewinski explain, statelessness can be a consequence and a cause of migration and vice versa; migration can prolong and also create new cases of statelessness.<sup>103</sup> In particular, Laura van Waas argues that children born to irregular migrants, who are unable to access birth registration, can have no means to prove their connection to their states, thus contributing to the creation of a stateless generation of migrant children.<sup>104</sup>

Most existing references on forced displacement have focused on the relationship between forced displacement and statelessness on a general level; identifying that statelessness can be both a driving force and consequence of forced displacement. Indeed, the UN New York Declaration for Refugees and Migrants in 2016 has recognised the link of displacement with statelessness stating that ‘statelessness can be a root cause of forced displacement and that forced displacement, in turn, can lead to statelessness’.<sup>105</sup> One attempt to start discussions on the topic is a Scoping paper, requested by the Norwegian Refugee Council and the Institute on Statelessness, which examines the link between statelessness and forced displacement, without, however, offering concrete recommendations or guidelines.<sup>106</sup> As the Institute on Statelessness and Inclusion points out, the unstable and uncertain circumstances that

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<sup>102</sup> See for example: L. Van Waas, ‘The children of Irregular migrant: a stateless generation?’, *Netherlands Quarterly of Human Rights*, vol.25, no 3, 2007; B. Blitz, and M. Lynch, *Statelessness and Citizenship: A comparative study on the benefits of nationality*, Edward Elgar Publishing, 2011; R. Cholewinski, and S. Nonnenmacher, ‘The nexus between statelessness and migration’, in Edwards, A. and van Waas, L. (ed.), *Nationality and Statelessness under International Law*, Cambridge University Press, 2014.

<sup>103</sup> R. Cholewinski, and S. Nonnenmacher, p.247.

<sup>104</sup> L. Van Waas, ‘The children of Irregular migrant: a stateless generation?’, *Netherlands Quarterly of Human Rights*, vol.25, no.3, 2007, <http://journals.sagepub.com/doi/abs/10.1177/016934410702500303>, (accessed 26 April 2018).

<sup>105</sup> UN General Assembly, New York Declaration for Refugees and Migrants, 3 October 2016, A/RES/71/1, [http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_71\\_1.pdf](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf), (accessed 14 April 2018).

<sup>106</sup> Z. Albarazi and L. Van Waas, ‘Statelessness and Displacement: Scoping Paper’, *Norwegian Refugee Council*, 2016a, <https://www.nrc.no/globalassets/pdf/reports/statelessness-and-displacement.pdf>, (accessed 14 April 2018).

come along with forced displacement can increase the risk of statelessness, even for those who held a nationality prior to displacement.<sup>107</sup>

There are at least three ways that have been identified to portray the link between forced displacement and statelessness. First of all, stateless populations due to their vulnerability are at high risk of forced displacement; so statelessness is viewed as a cause of forced displacement. Secondly, forced displacement may contribute to new cases of statelessness; in this way displacement is viewed as a cause of statelessness. And thirdly, existing statelessness can increase the vulnerability in forced displacement contexts; which is closely related to the first point raised, but still needs to be independently addressed. The link between refugees and statelessness has also been brought into light due to two different humanitarian situations: the Rohingya and the Syrian refugees. In both cases, the significant overlaps over the refugee and the stateless status have been identified. The current refugee flows in Europe, have reheated the discussions on the topic after 2015. As the refugee situation in Europe was evolving, the issue of statelessness came back to the fore in the international press and the academic research, which expressed concerns about the risk of a “stateless generation” being born in Europe.<sup>108</sup>

However, among academia and human rights organisations the issue of the heightened vulnerability of stateless persons among displaced population or the risks of new cases of statelessness arising amongst those displaced has gathered relatively little attention. The main focus of the academic research and political discussion remained on the different asylum and immigration policies that need to be put into place. Zahra Albarazi and Laura van Waas have tried to further examine statelessness in the Syrian

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<sup>107</sup> Norwegian Refugee Council and Institute on Statelessness and Inclusion, *Toolkit: Understanding statelessness in the Syria refugee context*, [website], <http://www.syrianationality.org/>, (accessed 29 March 2018).

<sup>108</sup> For instance: L. Osborne and R. Russel, ‘Refugee crisis creates ‘stateless generation’ of children in limbo’, *The Guardian*, 27 December 2015, <http://www.theguardian.com/world/2015/dec/27/refugee-crisis-creating-stateless-generation-children-experts-warn>, (accessed 29 January 2018); I. Sturkenboom and L. Van Waas, ‘How Real Is the Risk of a ‘Stateless Generation’ in Europe?: Reflections on How to Fulfil the Right to a Nationality for Children Born to Refugee and Migrant Parents in the European Union’, *SSRN*, 2016, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2877368](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2877368), (accessed 1 February 2018); S. Reynolds and T. Duoos, ‘A Generation of Syrians Born in Exile Risk a Future of Statelessness’, *European Network on Statelessness*, 15 July 2015, <https://www.statelessness.eu/blog/generation-syrians-born-exile-risk-future-statelessness>, (accessed 29 January 2018); K. Berenyi, ‘Statelessness and the refugee crisis in Europe’, *Forced Migration Review*, 2016, issue 53, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/community-protection/berenyi.pdf>, (accessed 25 April 2018).

context, especially in cases where refugees were already stateless or where children are born in exile.<sup>109</sup> Most of the research, however, has focused on the neighbouring countries which are hosting the greatest numbers of refugees, such as Lebanon, Jordan, Iraq, Turkey and Egypt.<sup>110</sup>

Therefore, there is a gap in research about the risk of new cases of statelessness arising among refugees and their children in Europe. As there is a bigger caseload nowadays in Europe, due to the increased refugee and migration flows in 2015-2016, gaps and deficiencies of national legislation and practice regarding childhood statelessness, which would otherwise affect a smaller proportion of the population, are now creating more pressure on the European Union Member States. This paper will explore this topic more closely with a view to identify challenges, collect information that can assist the European response to statelessness and highlight good practices that can improve the existing protection and prevention system in Europe.

## 1.8 Concluding remarks

As explained in this chapter, a stateless person is defined as a person who is not considered a national under any state's law. However, the definition of statelessness presents in itself critical questions, without even progressing to the consideration of the consequences -of statelessness- or the international legal framework of protection against statelessness. The division between *de jure* and *de facto* statelessness has long been debated among the academic community. In the case of the current research, there are concerns about *de jure* as well as *de facto* statelessness for children born to refugees and asylum seekers in EU.<sup>111</sup> In both cases, it would be more productive and protection-oriented for academics and practitioners to raise questions about how to effectively identify children who are unable to acquire a nationality, instead of questions about the definition of statelessness itself. In fact, some research has even suggested that *'the use of the term "de facto statelessness" may be counterproductive since it has no legal significance'*, as *"de facto stateless" 'are either the victims of (multiple) human rights violations and should be able to assert their rights under that regime or may actually*

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<sup>109</sup> Z. Albarazi and L. Van Waas, 'Understanding statelessness in the Syria refugee context', *Norwegian Refugee Council*, 2016b, <https://www.nrc.no/globalassets/pdf/reports/understanding-statelessness-in-the-syria-refugee-context.pdf>, (accessed 15 April 2018).

<sup>110</sup> Z. Albarazi and L. Van Waas, 2016b; UNHCR, 2013.

<sup>111</sup> These concerns are going to be analysed in Part 3 of the research.

*qualify for protection as stateless persons (de jure) if the rules of evidence were clarified and implemented effectively’.*<sup>112</sup> In fact, it has been illustrated in this chapter that the identification of stateless persons lies at the heart of an effective response to statelessness. One of the main questions still remains; namely how the definition of statelessness should be interpreted in practice and what requirements can be put by states and what factors should be taken into account to prove the absence of nationality.

Of course, the lack of concrete statistical data on childhood statelessness, as well as the fact that UNHCR’s data on statelessness do not include stateless refugees, increases the invisibility of the phenomenon. Not collecting the necessary data to have the full picture available, decreases opportunities for awareness raising and establishing appropriate preventive strategies. Children should not be deprived their right to a nationality, as protected by International and European human rights law, as nationality can be a key to grant access to various other rights. But what does the children’s right to a nationality entail and which factors should states take into account for its full realisation? The following chapter is going to analyse the exact legal framework connected to children’s right to a nationality and give answers to these questions.

## **Part 2 – Legal Framework of Childhood Statelessness**

### **2.1 Introduction**

The discussions on childhood statelessness and its impact on children in the previous chapter has exposed the necessity for the international community to address childhood statelessness and establish rules and standards for the protection of the affected population and the prevention of the phenomenon. Across all of the international and regional instruments which touch upon the regulation of nationality, states have shown a particular interest in ensuring that children have access to a nationality.<sup>113</sup> Both international and regional human rights instruments in Europe have recognised the right to a nationality, and in particular children’s right to a nationality.

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<sup>112</sup> Van Waas L., 2008, p.27.

<sup>113</sup> G. De Groot, ‘Children, their right to a nationality and child statelessness’, in A. Edwards and L. Van Waas (eds), *Nationality and Statelessness under International Law*, Cambridge University Press, 2014, p. 145.

In this chapter the current International and European legal framework on childhood statelessness will be analysed, combined with the response of International and European supervisory mechanisms on the topic. This chapter analyses the legal basis of childhood statelessness that is applicable in Europe, which will further enhance a deeper understanding of the current protection system. This will contribute later to the identification of gaps and the formulation of recommendations to the full realisation of the right to a nationality. The chapter begins with a brief description of the historic development of the international response against statelessness and an explanation of the legal link between refugee and stateless status. Finally, UNHCR's global mandate on statelessness will be examined due its significant impact on the topic.

## 2.2 Historical overview

The international community first began to take an active interest in statelessness and the regulation of nationality in the early 20<sup>th</sup> century. In the aftermath of World War I, there was a series of agreements to respond to the immediate practical needs of the masses of people who found themselves displaced or stateless. Moreover, in 1923 the Permanent Court of International Justice made clear that the state sovereignty to regulate citizenship is not absolute, but rather subject to developments in international law.<sup>114</sup> In particular, the Court<sup>115</sup> acknowledged that:

*The question of whether a certain matter is or is not solely within the domestic jurisdiction of a state is an essentially relevant question; it depends on the development of international relations.*

Later on, in the era of League of Nations this principle was affirmed in the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930 Hague Convention).<sup>116</sup> This was the first time states agreed on rules for dealing with conflicts of nationality laws. In particular, it was Article 1 of the 1930 Hague Convention<sup>117</sup> that affirmed this principle:

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<sup>114</sup> Batchelor C. and Leclerc P., p.8.

<sup>115</sup> Permanent Court of International Justice, Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion, 8 November 1922, Series B, No. 4, para.40.

<sup>116</sup> Convention on Certain Questions Relating to the Conflict of Nationality Laws, (adopted 12 April 1930, entered into force 1 July 1937), 179 LNTS 89, Article 1-4.

<sup>117</sup> Convention on Certain Questions Relating to the Conflict of Nationality Laws, (adopted 12 April 1930, entered into force 1 July 1937), 179 LNTS 89, Article 1.

*It is for each State to determine under its own laws who are its nationals. This 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.*

The 1930 Hague Convention was, however, not comprehensive enough to really achieve the avoidance of statelessness, but presents a first international attempt to ensure that all persons have a nationality. In this regard, it foreshadowed article 15 of the Universal Declaration of Human Rights 1948 (UDHR) in pronouncing for the first time that ‘*it is in the general interest of the international community to secure that all its members should recognise that every person should have a nationality*’.<sup>118</sup>

After World War II, the international community was again faced with the pressing needs of millions of newly displaced and stateless persons. The events of the World War II renewed the international community’s interest in protecting stateless persons and refugees.<sup>119</sup> The UDHR, therefore, set the scene by including the right to a nationality among its provisions.<sup>120</sup> Although, many of the rights contained in the UDHR have been further elaborated into binding international human rights instruments, the right to a nationality has gathered less attention and developed slower.<sup>121</sup> As a response to the aftermath of the World War II, the United Nations established an Ad hoc Committee on Statelessness and Related Problems to work out the details of a new international instrument dealing with such persons, who were in need of protection.<sup>122</sup> It is at this stage that the terms “refugee” and “stateless person” truly took on autonomous meanings. The work of the Committee eventually resulted in the adoption of two separate conventions, the 1951 Convention relating to the Status of Refugees (1951 Convention) and the 1954 Convention relating to the Status of Stateless Persons (1954 Convention).<sup>123</sup> The two Conventions establish the legal status of refugee and stateless persons and adopt minimum standards for the treatment of each category.

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<sup>118</sup> Convention on Certain Questions Relating to the Conflict of Nationality Laws, (adopted 12 April 1930, entered into force 1 July 1937), 179 LNTS 89, Preamble.

<sup>119</sup> M. Adjami and J. Harrington, The Scope and Content of Article 15 of the Universal Declaration of Human Rights, *Refugee Survey Quarterly*, vol. 27, issue 3, 2008, p. 93-109, <https://doi.org/10.1093/rsq/hdn047>, (accessed 14 April 2018).

<sup>120</sup> Universal Declaration of Human Rights, (adopted 10 December 1948), General Assembly Resolution 217 A, Article 15.

<sup>121</sup> M. Adjami and J. Harrington, p. 93-109.

<sup>122</sup> UNHCR, 2012a, p.39.

<sup>123</sup> UNHCR, 2012a, p.39.

The 1954 Convention was originally conceived as a draft protocol to the refugee treaty with the intention to reflect the link between refugees and stateless persons.<sup>124</sup> However, when the 1951 Convention was adopted, the protocol was left in draft form and referred to a separate negotiating conference where it was transformed into a self-standing treaty concerning stateless persons.<sup>125</sup> After lengthy debates, the 1961 Convention on the Reduction of Statelessness (1961 Convention) was also adopted, which is an instrument devoted in its entirety to limiting, as far as possible, the number of cases of statelessness worldwide.

International Law on statelessness has developed since then along two paths. On the one hand, it tries to protect and assist individuals that are already stateless and on the other hand, tries to eliminate or at least reduce the incidents of statelessness.

### **2.3 Understanding the link between refugee and stateless legal status**

Before looking into the analysis of the legal framework on childhood statelessness, it is deemed necessary to explore the legal link between the refugee and stateless status. As the research question focuses on childhood statelessness in the context of refugees and asylum seekers, the connection of the two statuses must be briefly elaborated. A non-refugee stateless person enjoys protection under the 1954 Convention, while a stateless refugee qualifies for protection under both the 1954 Convention and the 1951 Convention.<sup>126</sup> Under the 1951 Convention, a stateless refugee receives protection as a refugee, since the arbitrary denial of citizenship because of a person's race, religion, nationality, membership in a particular social group, or political opinion can indicate that the individual should be recognised as a refugee.<sup>127</sup> In the case of stateless refugees, they are, most of the times, classified and primarily treated as refugees. However, according to UNHCR, it is crucial that both claims are being raised -a refugee and a stateless claim-; and that these claims are assessed independently in order for both types of status to be explicitly recognised.<sup>128</sup> This is because Protection under the 1951 Convention generally gives rise to a greater set of rights at the national

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<sup>124</sup> Batchelor C. and Leclerc P., p.11.

<sup>125</sup> UNHCR, 2012b, p.2.

<sup>126</sup> UNHCR, 2014b, p.31

<sup>127</sup> Batchelor C. and Leclerc P., p.11.

<sup>128</sup> UNHCR, 2014b, p.31.



level than that under the 1954 Convention. This is partly because the 1951 Convention provides a more comprehensive protection, including the non-penalisation of unlawful entry and the prohibition of refoulement.<sup>129</sup> Nevertheless, there may be instances where refugee status ceases without the person having acquired a nationality, necessitating then international protection as a stateless person.<sup>130</sup>

In the context of the current research the specific protection bestowed by 1951 Convention to refugees will not be further analysed. Rather the research will focus on the right to a nationality in the context of children born to refugees and asylum seekers in Europe. However, the need to identify stateless refugees as a separate group and coordinate refugee status and statelessness determination and protection is strongly connected to the research question and, therefore, are further examined in the research.<sup>131</sup>

## 2.4 International Legal Framework

Today the right to acquire a nationality is firmly established as a universal right of every child, due to its inclusion in numerous human rights instruments. The full spectrum of international law on childhood statelessness comprises of a multitude of treaties, soft law standards and customary law norms that establish the right to a nationality and adopt standards on the issue. Since as early as the 1930, governments have tried to ensure that no child is left stateless by concluding international agreements. In particular, the 1930 Hague Convention deals also with nationality issues related to children.<sup>132</sup> It provides that *‘a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State’*.<sup>133</sup> The UDHR also establishes, although more generally, that everyone has the right to a nationality. Article 15 of the UDHR<sup>134</sup> declares: *“Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied*

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<sup>129</sup> Ibid, p.46.

<sup>130</sup> Ibid, p.31.

<sup>131</sup> The first topic is examined in Part 1 and the second in Part 4.

<sup>132</sup> Convention on Certain Questions Relating to the Conflict of Nationality Laws, (adopted 12 April 1930, entered into force 1 July 1937), 179 LNTS 89, Article 12-16.

<sup>133</sup> Convention on Certain Questions Relating to the Conflict of Nationality Laws, (adopted 12 April 1930, entered into force 1 July 1937), 179 LNTS 89, Article 15.

<sup>134</sup> Universal Declaration of Human Rights, (adopted 10 December 1948), General Assembly Resolution 217 A, Article 15.

*the right to change his nationality*". Even though UDHR does not have binding character, nowadays it belongs to one of the most respected human rights treaties. This fundamental provision has been established in order to fulfill two objectives: to provide people with a sense of identity and with entitlements to an array of basic rights.<sup>135</sup> Although UDHR does not mention specifically the right to a nationality for children, several other UN human rights treaties affirm nationality to be a human right specifically for children.

#### **2.4.1 UN Human Rights instruments**

This sub-chapter will examine the UN Human Rights instruments, which either include in their provisions the right to a nationality or are strongly related to childhood statelessness. The UN Statelessness Convention, namely the 1954 and 1961 Conventions, although they belong to the UN treaty system, are going to be analysed in a separate sub-chapter. This was deemed more efficient due to their interconnectedness and their special character as explicitly tailor made conventions to address statelessness. To begin with, the International Covenant on Civil and Political Rights 1966 (ICCPR) in Article 24 affirms that every child has the right to acquire a nationality.<sup>136</sup> ICCPR even recognises the right to birth registration acknowledging that every child should be registered immediately after birth,<sup>137</sup> thereby preempting many problems relating to the inability to establish an entitlement to a particular nationality. According to the UN Human Rights Committee, the purpose of this provision is to prevent a stateless child from being afforded less protection by society and the state, but it does not obligate states to give their nationality to every child born in their territory.<sup>138</sup> However, states should adopt appropriate measures in their domestic legislation, as well as in cooperation with other states, to ensure that children have a nationality at birth and that

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<sup>135</sup> H. Lambert, 'Refugee Status, Arbitrary Deprivation of Nationality, and Statelessness within the Context of Article 1A(2) of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees', *UNHCR*, 2014, p. 5, <http://www.refworld.org/docid/543525834.html>, (accessed 24 April 2018).

<sup>136</sup> International Covenant on Civil and Political Rights, (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171, Article 24.3.

<sup>137</sup> International Covenant on Civil and Political Rights, (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171, Article 24.2.

<sup>138</sup> UNHRC, CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, U.N. Doc. HRI/GEN/1/Rev.1 at 23, par. 8.

domestic law does not discriminate in relation to acquisition of nationality among children based on the nationality status of their parents.<sup>139</sup>

More detailed provisions for children's rights are found in the Convention on the Rights of the Child 1989 (CRC). Children are the only group of human rights holders that have received such a high universal recognition. The CRC has an unprecedented high number of ratifications, currently counting 196 parties, including all the European Union states.<sup>140</sup> To begin with, it is important to point out that CRC defines as a child every human being below the age of 18.<sup>141</sup> In addition, CRC affirms the right of every child to acquire a nationality and provides that states should ensure the implementation of this right, in particular where the child would otherwise be stateless. In particular, Article 7<sup>142</sup> provides:

- 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
- 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

As it is the case with ICCPR, the fulfillment of this right does not require states to grant nationality to every child born on their territory, regardless of the circumstances. Rather, it is about ensuring that every child has a right to acquire a nationality and thus avoid statelessness.<sup>143</sup> There are four elements in this article relevant to statelessness: 1. the right to birth registration; 2. the right to acquire a nationality; and the implementation of these rights by states 3. in accordance with their national law and their obligations under the relevant international instruments in this field; and 4. where the child would otherwise be stateless. The inclusion of birth registration, in both the ICCPR and the CRC, illustrate its importance. Registration is the state's first official acknowledgement

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<sup>139</sup> UNHRC, CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, U.N. Doc. HRI/GEN/1/Rev.1 at 23, par. 8.

<sup>140</sup> United Nations Treaty Collection, *Status of the Convention on the Rights of the Child*, [website], 2018, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en), (accessed 13 March 2018).

<sup>141</sup> Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3, Article 1.

<sup>142</sup> Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3, Article 7.

<sup>143</sup> Jansen S. and Van Waas L, p.5.

of the child's existence; it represents recognition of each child's individual importance to the state and of the child's status under the law.<sup>144</sup>

Article 8 of the CRC further protects the right of children to preserve their identity, including nationality.<sup>145</sup> This provision not only ensures the protection of a child's identity, including nationality, but also obliges states to make efforts to ensure the re-establishment of a child's identity in case this is denied to them or taken away.<sup>146</sup> At this point, it is essential to mention that the enjoyment of rights contained within the CRC is not limited to children who are citizens of a state party, but they must be also applied to all children irrespective of their nationality, immigration status or statelessness.<sup>147</sup> In addition, the obligations imposed by the CRC to states '*are not only directed to the State of birth of a child, but to all countries with which a child has a relevant link, such as through parentage or residence*'.<sup>148</sup>

There are also four general principles contained in CRC that are instrumental in interpreting and protecting the rights of the child. These are: 1. the right to life, survival and development; 2. best interests of the child; 3. respect for the views of the child and 4. non-discrimination.<sup>149</sup> These principles must be taken into account when applying any child's right standards, including those relating to the avoidance of statelessness.<sup>150</sup>

The right to life, survival and development aims to ensure that all children have opportunities to develop fully in all areas of life.<sup>151</sup> Statelessness can, for instance, impede a child's development and even survival due to limited access to healthcare. Moreover, the principle of the best interests of the child gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all

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<sup>144</sup> UNICEF, Implementation Handbook for the CRC, 2007, p. 98, [https://www.unicef.org/publications/files/Implementation\\_Handbook\\_for\\_the\\_Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child.pdf](https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf), (accessed 21 April 2018).

<sup>145</sup> Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3, Article 8.1.

<sup>146</sup> Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3, Article 8.2.

<sup>147</sup> UNHRC, General Comment No. 31: The nature of the General Legal Obligation Imposed on State Parties to the Covenant, 29 March 2004, CCPR/C/21/Rev.1/Add.13, para.3.

<sup>148</sup> UNHCR, 2012c, para.11.

<sup>149</sup> Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3, Article 6, 3, 12 and 2 accordingly.

<sup>150</sup> Jansen S. and Van Waas L., p.5.

<sup>151</sup> Institute on Statelessness and Inclusion, 'Addressing the right to a nationality through the Convention on the Rights of the Child', 2016, p. 9, [http://www.institutesi.org/CRC\\_Toolkit\\_Final.pdf](http://www.institutesi.org/CRC_Toolkit_Final.pdf), (accessed 29 March 2018).

actions or decisions that concern him or her, in both the public and the private spheres.<sup>152</sup> Regarding statelessness, this principle entails not letting children stateless long after birth. In addition, considering a child's vulnerability of any sort is always in the best interests of the child.<sup>153</sup> Respect for the views of the child involves a child's right to express his or her views freely in all matters affecting the child, and for those views to be given due weight in accordance with the age and maturity of the child.<sup>154</sup> Where children's nationality may be affected by the actions of their parents or of the state, there should be appropriate procedures for the child to express its opinion.<sup>155</sup> Furthermore, states should respect this principle when dealing with stateless children outside their country of origin to ensure that such particularly vulnerable children are included in decision-making processes within the territories where they reside.<sup>156</sup> The principle of non-discrimination also implies that stateless children may not be discriminated on the basis of the child's or his or her parents' or legal guardians' race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.<sup>157</sup>

In regards to non-discrimination, there are other human rights treaties that include important provisions. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) prohibits discrimination in the enjoyment of the right to a nationality on the grounds of race, colour, or national or ethnic origin.<sup>158</sup> Moreover, ICERD highlights that everyone is entitled to civil rights,

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<sup>152</sup> UN Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, para.1.

<sup>153</sup> European Council for Refugees and Exiles, 'The right to a nationality of refugee children born in the EU and the relevance of the EU Charter of Fundamental Rights', 2017, p.3, <https://www.ecre.org/wp-content/uploads/2016/12/refugee-children-nationality-LEAP-leaflet.pdf>, (accessed 25 April 2018).

<sup>154</sup> Institute on Statelessness and Inclusion, 2016, p.10.

<sup>155</sup> Van Waas L., 'No child should be stateless', *European Network on Statelessness*, 2015, p. 7, [https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_NoChildStateless\\_final.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf), (accessed 3 February 2018).

<sup>156</sup> UN Committee on the Rights of the Child, General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12; UN Committee on the Rights of the Child, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6.

<sup>157</sup> Convention on the Rights of the Child, (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3, Article 2.1.

<sup>158</sup> International Convention on the Elimination of All Forms of Racial Discrimination, (adopted 7 March 1966, entered into force 4 January 1969), 660 UNTS 195, Article 5.d.iii.

including stateless people.<sup>159</sup> In addition, Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) establishes equal nationality rights for men and women, including with respect to the transmission of nationality to their children;<sup>160</sup> echoing the obligation contained in Articles 2 and 7 of the CRC.<sup>161</sup> Women should also be able to transmit their nationality to their children under the same conditions as their husbands, whether they are in their own country or abroad.<sup>162</sup> The CEDAW Committee recognises Article 9 to be one of the central articles to the objects and purpose of the Committee.<sup>163</sup>

Another UN human rights treaty that explicitly recognises children's right to nationality is the Convention on the Rights of All Persons with Disabilities 2006. This Convention stipulates that children with disabilities have the right to a nationality and that they should be registered immediately after birth.<sup>164</sup> In this regard, the Committee on the Rights of Persons with Disabilities noted in its first General Comment the importance of birth registration in protecting the right to life of children. Lack of birth registration not only denies children access to citizenship, but often also denies them access to health care and education, and can even lead to their death due to the fact that there is no official record of their existence and, therefore, their death can occur with relative impunity.<sup>165</sup> This is, of course, not only true for children with disabilities, but rather any child whose birth is not registered is placed in a more vulnerable position.

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<sup>159</sup> UNHCR, 'ICERD Quick Reference Guide: Statelessness and Human Rights Treaties', 2017b, p.2, <http://www.refworld.org/docid/5983305e4.html>, (accessed 25 April 2018).

<sup>160</sup> Convention on the Elimination of All Forms of Discrimination against Women, (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS 13, Article 9.

<sup>161</sup> United Nations General Assembly, 'Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless', Report of the Secretary-General, A/HRC/31/29, 2015, par.8, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/286/02/PDF/G1528602.pdf?OpenElement>, (accessed 22 April 2018).

<sup>162</sup> UN Committee on the Elimination of Discrimination Against Women, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 5 November 2014, CEDAW/C/GC/32, p.17.

<sup>163</sup> Ibid, p.17.

<sup>164</sup> Convention on the Rights of Persons with Disabilities, (adopted 13 December 2006, entered into force 3 May 2008), 2515 UNTS 3, Article 18.2.

<sup>165</sup> UN Committee on the Rights of Persons with Disabilities, General Comment No. 1(2014): Equal Recognition before the Law, 19 May 2014, CRPD/C/GC/1, para.43.

## 2.4.2 Statelessness Conventions

The two tailor-made Conventions to address statelessness, namely the 1954 Convention and the 1961 Convention are crucial legal sources of guidance for addressing matters of statelessness. These two documents do reflect the dual development of international law, as mentioned above, since their focus lies on the protection of stateless persons and the prevention and reduction of statelessness. While, for many years, UNHCR and other organisations have been encouraging states to accede to these conventions, to date the number of state parties remains relatively low<sup>166</sup>. The 1954 Convention is the primary international instrument that aims to regulate and improve the status of stateless persons and to ensure that stateless persons are accorded their fundamental rights and freedoms without discrimination. As indicated in its preamble, the object and purpose of the 1954 Convention is to ensure that stateless persons enjoy the widest possible exercise of their human rights.<sup>167</sup> Therefore, as a general rule, possession of a nationality is preferable to recognition and protection as a stateless person.<sup>168</sup> For this research, the relevance of the 1954 Convention is limited to the definition of statelessness, which has been already discussed in Part 1.

The 1961 Convention prescribes certain limits on the freedom of states to attribute and withdraw nationality, but only where statelessness would otherwise arise. Of particular interest, for this research, are Articles 1-4 that concern acquisition of nationality by children. As explained by UNHCR, the scope of the 1961 Convention obligations to prevent statelessness among children must therefore be interpreted in light of the provisions of the CRC.<sup>169</sup> Keeping in mind the fact that all states parties to the 1961 Convention are also parties to the CRC, the CRC main principles must be taken into account when interpreting and applying the 1961 Convention.<sup>170</sup> What the 1961 Convention does not include, is compelling states to confer nationality to all children born on their soil (*jus soli* doctrine) or to all children born to one of their nationals (*jus sanguinis* doctrine), rather it recognises the legitimacy of both doctrines

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<sup>166</sup> See Annex 1.

<sup>167</sup> Convention Relating to the Status of Stateless Persons, (adopted 28 September 1954, entered into force 6 June 1960), 360 UNTS 117, Preamble para. 2 and 4.

<sup>168</sup> UNHCR, 2012b, p.3.

<sup>169</sup> UNHCR, 2012c, p. 3.

<sup>170</sup> *Ibid*, p.3.

for acquisition of nationality.<sup>171</sup> The cornerstone of efforts to prevent statelessness among children can be found in Article 1 of the 1961 Convention, which obliges states to grant their nationality to children born on their territory who would otherwise be stateless.<sup>172</sup> States can, however, decide whether to grant nationality at birth automatically, by operation of law (*ex lege*), or establish a system in which nationality can be acquired following an application procedure.<sup>173</sup> A combination of these methods is also possible.<sup>174</sup> If states decide to grant nationality by an application procedure, they have to adhere to one or more of the following four conditions, as set in Article 2<sup>175</sup>, and are not allowed to reject an application on any other grounds. The conditions are:

- the ability to lodge an application within a prescribed period after the end of childhood (Article 2.a);
- habitual residence in the contracting state for a fixed period (Article 2.b);
- restrictions on criminal history (Article 2.c); and
- the condition that an individual has always been stateless (Article 2.d).<sup>176</sup>

The provision in Article 2.a makes sure that states need to accept applications lodged at a time beginning before the child becomes 18 and ending not earlier than the age of 21.<sup>177</sup> This will ensure not only that these individuals will have at least 3 years after majority to apply for nationality, but also that there is always a window of opportunity for adults to apply for nationality, giving them options in cases where parents or legal guardians have not applied for nationality on their behalf.<sup>178</sup> However, when considering the principle of the best interests of the child, applications should be possible at birth or as soon as possible after birth, so that a child is left stateless for the shortest time possible. Article 2.b introduces the criteria of habitual residence in the territory of the state in order to acquire the nationality.<sup>179</sup> Habitual residence is to be

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<sup>171</sup> UNHCR, 2014d, p. 5

<sup>172</sup> Convention on the reduction of statelessness, (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175, Article 1.

<sup>173</sup> Convention on the reduction of statelessness, (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175, Article 1a and 1b.

<sup>174</sup> Jansen S. and Van Waas L., p.8.

<sup>175</sup> Convention on the reduction of statelessness, (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175, Article 2.

<sup>176</sup> UNHCR, 2012c, p. 9-10.

<sup>177</sup> Convention on the reduction of statelessness, (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175, Article 2a.

<sup>178</sup> Jansen S. and Van Waas L., p. 9.

<sup>179</sup> Convention on the reduction of statelessness, (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175, Article 2b.



understood as stable, factual residence; not implying a legal or formal qualification.<sup>180</sup> This period can not exceed five years immediately preceding an application nor ten years in total.<sup>181</sup> However, even the period of 5 years is a long time when taking into account the best interests of the child. As set out in Article 2.c, a person concerned should have never been convicted for an offence against national security and has never been imprisoned for a term of 5 years or more on criminal charges.<sup>182</sup> This requirement is applicable to the individual concerned and not to the parents of the child.<sup>183</sup> The final permissible condition for granting citizenship through an application procedure allows states to require that an applicant has always been stateless, since birth.<sup>184</sup> If a states implements such a condition the burden of proof should lay with the state.<sup>185</sup>

States have to determine whether a child would otherwise be stateless by examining the individual case of every child. This inquiry into the nationality status of a child should keep into consideration the best interests of the child and, therefore, be conducted as soon as possible. During this inquiry the child often receives the status of “unknown” or “undetermined” nationality, with which children do not enjoy all the rights a stateless person’s status bestows them.<sup>186</sup> Therefore, such an ambiguous status should be applied only as a temporary measure and for the shortest possible time.

#### **2.4.3 International supervisory mechanisms**

The growing number of human rights treaties and soft law standards related to statelessness has led to the involvement of a number of judicial and semi-judicial institutions. Each major universal human rights convention has its own “treaty body” that pronounces on the interpretation of the treaty’s norms and monitors states’ compliance with their commitments.<sup>187</sup> Two functions of these bodies are of particular interest. On the one hand, the documents produced by and for treaty bodies can be an

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<sup>180</sup> UNHCR, 2012c, p. 10.

<sup>181</sup> Convention on the reduction of statelessness, (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175, Article 2b.

<sup>182</sup> Convention on the reduction of statelessness, (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175, Article 2c.

<sup>183</sup> UNHCR, 2012c, p.10.

<sup>184</sup> Convention on the reduction of statelessness, (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175, Article 2d.

<sup>185</sup> UNHCR, 2012c, p.10.

<sup>186</sup> Jansen S. and Van Waas L., p.11.

<sup>187</sup> UNHCR, 2012a, p.42.

important source of information on the situation in a specific state, in particular the periodic reports by each state party and the accompanying recommendations by the committee to the country, the Concluding Observations.<sup>188</sup> On the other hand, the treaty bodies offer guidance as to the interpretation of human rights standards in their General Comments.

The Committee on the Rights of the Child (CRC Committee) provides authoritative guidance on and monitors the implementation of the CRC. The CRC Committee has consistently expressed the importance of birth registration for the development of children's personal identity.<sup>189</sup> In particular, the CRC Committee has explained that '*the lack of birth registration may have many negative impacts on the enjoyment of children's rights, such as child marriage, trafficking, forced recruitment and child labour*'.<sup>190</sup> However, since the Committee has not dedicated yet a Day of General Discussion –which is a public annual expert forum- on the topic of children's right to a nationality;<sup>191</sup> combined with the absence of specific interpretation, namely General Comments on Article 7, there is still room for the Committee to give more guidance and interpretations on this Article.

Another UN Committee that plays a role in the formation of the legal framework on childhood statelessness is the CEDAW Committee. The Committee has supported many times the importance of the Convention in preventing and reducing statelessness, due to its influence on nationality rights among women and girls.<sup>192</sup> The CEDAW Committee highlights the importance of the CEDAW not only to the equal conferral of nationality, but also to birth registration. Birth registration is closely linked to the enjoyment by women and their children of the right to a nationality due to the fact that

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<sup>188</sup> Ibid, p.42.

<sup>189</sup> UN Committee on the Rights of the Child, General comment No. 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1, para.25.

<sup>190</sup> UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and UN Committee on the Rights of the Child, Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, par.21.

<sup>191</sup> OHCHR, *Committee of the Rights of the Child- Days of General Discussion*, [website], <http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx>, (accessed 21 April 2018).

<sup>192</sup> UN Committee on the Elimination of Discrimination Against Women, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 5 November 2014, CEDAW/C/GC/32, p.17.

*‘in practice, indirect discrimination, cultural practices and poverty often make it impossible for mothers, especially unmarried mothers, to register their children on an equal basis as fathers’.*<sup>193</sup> In regards to the topic of discrimination, the ICERD Committee has urged states to reduce childhood statelessness *‘by, for example encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children’.*<sup>194</sup>

Another instrument that has contributed to the information available about childhood statelessness is the former UN Commission in Human Rights, which has adopted various resolutions on arbitrary deprivation of nationality and the avoidance of statelessness over the years.<sup>195</sup> The Human Rights Council, which has replaced the Commission in 2006, adopted resolutions on the same issue in 2008, 2009, 2010, 2012, 2014 and 2016.<sup>196</sup> In particular, in 2012, the UN Human Rights Council encouraged *‘states to facilitate the acquisition of nationality by children born on their territories who would otherwise be stateless’* and urged them *‘to reform nationality laws that discriminate against women by granting equal rights to men and women to confer nationality to their children’.*<sup>197</sup> Moreover, it is important to mention the function of the Universal Periodic Review (UPR), which is a mechanism of the Human Rights Council through which the human rights situation of each member state is periodically reviewed. Statelessness issues are increasingly being raised within the UPR, with issues such as the causes and consequences of statelessness being included in the recommendations towards the states.<sup>198</sup> Moreover, resolutions adopted by the UN General Assembly (UNGA) may be relevant. In addition there are a number of UNGA resolutions of

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<sup>193</sup> UN Committee on the Elimination of Discrimination Against Women, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 5 November 2014, CEDAW/C/GC/32, p.18.

<sup>194</sup> UN Committee on the Elimination of Racial Discrimination, CERD General Recommendation No. 30 on Discrimination Against Non Citizens, 1 October 2002, HRI/GEN/1/Rev.7/Add.1, para.16.

<sup>195</sup> UN Human Rights Commission, Resolutions on Human rights and arbitrary deprivation of nationality, 1997/36, 11 April 1997; 1998/48, 17 April 1998; 1999/28, 26 April 1999; 2005/45, 19 April 2005.

<sup>196</sup> UN Human Rights Council, Resolutions on Human rights and arbitrary deprivation of nationality, 7/10, 27 March 2008; 10/13, 29 March 2009; and 13/2, 14 April 2010; 20/4, 16 July 2012; 20/5, 16 July 2012; 26/14, 11 July 2014; 32/5, 15 July 2016.

OHCHR, Right to Nationality and Statelessness, [website],

<http://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>, (accesses 7 April 2018).

<sup>197</sup> UN Human Rights Council, Resolution 20/4: The right to a nationality: women and children, 5 July 2012, A/HRC/20/2, para.4 and 6.

<sup>198</sup> Institute on Statelessness and Inclusion, ‘Statelessness and Human Rights: The Universal Periodic Review’, 2017a, p.9-12, <http://www.institutesi.org/Statelessness-and-UPR.pdf>, (accessed 16 April 2018).

particular relevance to children's right that include references on statelessness and nationality.<sup>199</sup> For instance, the UNGA declared that, coupled to the birth registration process, there must be a system in place that is designed to fulfill children's right to acquire a nationality.<sup>200</sup>

All of the aforementioned resolutions, reports, comments and other relevant documents assist the identification of the problems that need to be tackled and provide guidance for the proper course of action.

## **2.5 European Legal Framework**

International human rights instruments are not the only tool available when it comes to promoting the right of every child to a nationality in Europe. States have also concluded regional agreements which set out rules on how statelessness needs to be tackled. This sub-chapter examines the legal framework set by the Council of Europe (CoE) and the European Union (EU).

### **2.5.1 Council of Europe**

While the EU is more active in the field of human rights in its external relations, the CoE plays a crucial role in the promotion and protection of human rights in Europe, and particular in establishing rules on nationality issues. The 47 countries comprising the CoE cover the majority of Europe, including all the European Union member states. At the core of CoE lies the European Convention on Human Rights (ECHR), adopted in 1950. Member states are required to ratify the ECHR, which has a unique enforceability, the European Court of Human Rights (ECtHR) in Strasbourg, which is the responsible supervisory mechanism of the ECHR and its Protocols.

The ECHR guarantees basic human rights and fundamental freedoms of everyone within the jurisdiction of its member state, including stateless persons.<sup>201</sup> Although the ECHR does not explicitly recognise a right to a nationality, or mention the prevention of childhood statelessness, nationality has been recognised in the case law of

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<sup>199</sup> United Nations General Assembly, 'Resolutions of particular relevance to statelessness and nationality', 2014, <http://www.refworld.org/topic,50ffbce524d,50ffbce5268,4c49a02c2,0,UNGA,RESOLUTION,.html>, (accessed 8 April 2018).

<sup>200</sup> UN General Assembly, Resolution 27/2: A world fit for children, 10 May 2002, A/RES/S-27/2, para.44.1.

<sup>201</sup> Institute on Statelessness and Inclusion, 2017b, p.75.

the ECtHR.<sup>202</sup> The Court has dealt with cases, in which stateless persons have complained on human rights violations; thus playing a crucial role in protecting human rights of stateless people in Europe.<sup>203</sup> In particular, the ECtHR has discussed nationality and statelessness when the circumstances or consequences of the denial of nationality violated a separate provision under the ECHR.<sup>204</sup> In addition, it has been accepted by the ECtHR that a right to a nationality follows as an element of a person's social identity, which forms part of private life as protected by Article 8 of the ECHR.<sup>205</sup>

In 1997, the CoE adopted the European Convention on Nationality (ECN), which includes in one document a variety of international legal norms on nationality.<sup>206</sup> The ECN contains important safeguards for the avoidance of statelessness, similar to the ones in the 1961 Convention. Among the general principles included in this Convention are the right to a nationality, the avoidance of statelessness, the prohibition of arbitrary deprivation of nationality and non-discrimination in nationality matters.<sup>207</sup> These principles guide the overall implementation and interpretation of the ECN. As the CoE recognised in its explanatory note, the obligation to avoid statelessness has become part of the customary international law.<sup>208</sup>

The children's right to a nationality is specifically mentioned in Article 6. In particular, Article 6.2 regulates the access to nationality for otherwise stateless children, which has many similarities with the regime of the 1961 Convention. Both oblige states to grant their nationality to children born on their territory who would otherwise be stateless and allow states to decide whether to grant nationality at birth automatically,

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<sup>202</sup> More analysis on the case law of ECtHR can be found in sub-chapter 2.5.3; Van Waas L., 2015, p.8.

<sup>203</sup> See for instance: *Auad v Bulgaria* App No 46390/10 (ECtHR 11 October 2011); *Al-Nashif and others v Bulgaria* App No 50963/99 (ECtHR 20 June 2002); *Andrejeva v Latvia* App No 55707/00 (ECtHR 18 February 2009); *Slivenko v Latvia* App No 48321/99 (ECtHR 9 October 2003).

European Network on Statelessness, 'Strategic Litigation: An obligation for statelessness determination under the European Convention on Human Rights?', 2014, p.1, [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS%20Discussion%20Paper\\_September%202014.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS%20Discussion%20Paper_September%202014.pdf), (accessed 18 April 2018).

<sup>204</sup> These cases include, for example: *Andrejeva v Latvia* App No 55707/00 (ECtHR 2009); *Kim v Russia* App No 44260/13 (ECtHR 2014).

Institute on Statelessness and Inclusion, 2017b, p.76.

<sup>205</sup> See, for example: *Genovese v Malta* App No 53124/09 (ECtHR 2012). More analysis on this case in sub-chapter 2.5.3.

<sup>206</sup> Institute on Statelessness and Inclusion, 2017b, p.76.

<sup>207</sup> European Convention on Nationality, (ECN), European Treaty Series No. 166, (1997), Article 4.

<sup>208</sup> Council of Europe, 'Explanatory Report to the European Convention on Nationality', 1997, <https://rm.coe.int/16800ccde7>, (accessed 29 April 2018), para.33.

by operation of law (ex lege), or by establishing an application procedure.<sup>209</sup> The difference between the two treaties lies on the fact that the 1961 Convention allows a state to postpone the access to nationality to the moment the stateless person involved reaches the age of 18 years, whereas according to the ECN the access has to be given after five years of lawful and habitual residence while a child is still a minor.<sup>210</sup> Moreover, the 1961 Convention allows states to establish more conditions for rejecting an application, for instance because of conviction for a crime against national security.<sup>211</sup> In this regard, ECN has a stricter approach, since it does not contain these grounds as reason for the rejection of an application. However, the ECN allows states to require a period of not only “habitual”, but also “lawful residence”.<sup>212</sup> This was avoided in the 1961 Convention, which only allows as condition the “habitual” residence, as mentioning “lawful” residence could lead to states avoiding their obligations by refusing a stateless person a residence permit.<sup>213</sup> ECN also explicitly requires that states facilitate the acquisition of nationality ‘*for stateless persons and recognised refugees lawfully and habitually resident on its territory*’.<sup>214</sup> In general, it is important to highlight that states parties to the 1961 Convention and the ECN have to abide by the highest standard, which means that provisions in the ECN can not be invoked to justify restrictions set in the 1961 Convention.<sup>215</sup> The following table explains the obligations of the states regarding the conditions in the application procedure for children born on their territory who would otherwise be stateless according to the ratification of either the 1961 Convention and the ECN or both.

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<sup>209</sup> European Convention on Nationality, (ECN), European Treaty Series No. 166, (1997), Article 6; Convention on the Reduction of Statelessness, (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175, Article 1.

<sup>210</sup> European Convention on Nationality, (ECN), European Treaty Series No. 166, (1997), Article 6.2.a and 6.2.b.

G. De Groot, K. Swider and O. Vonk, ‘Practices and Approaches in EU Member States to Prevent and End Statelessness’, *European Parliament LIBE Committee*, 2015, p.22, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536476/IPOL\\_STU\(2015\)536476\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536476/IPOL_STU(2015)536476_EN.pdf), (accessed 29 April 2018).

<sup>211</sup> Convention on the Reduction of Statelessness, (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175, Article 2.c.

<sup>212</sup> European Convention on Nationality, (ECN), European Treaty Series No. 166, (1997), Article 6.2.b.

<sup>213</sup> G. De Groot, K. Swider and O. Vonk, p.22.

<sup>214</sup> European Convention on Nationality, (ECN), European Treaty Series No. 166, (1997), Article 6.4.g.

<sup>215</sup> G. De Groot, K. Swider and O. Vonk, p.22.

**Table 1: Obligations of states in relation to the application procedure<sup>216</sup>**

Types of conditions states may stipulate	Obligations for states that only ratified the 1961 Convention	Obligations for states that only ratified the ECN	Obligations for states that ratified both Conventions
<b>Timeframe to lodge application for nationality</b>	A period that starts before the applicant's 18th birthday and ends after 21st birthday	Any time after the child has met the residence requirement	Any time after the child has met the residence requirement, in case of an upper age limit, it cannot be before 21 <sup>st</sup> birthday
<b>Residence requirement</b>	Max. 5 years of <i>habitual</i> residence before applying, max. 10 years of <i>habitual</i> residence in total	Max. 5 years of <i>habitual</i> and <i>lawful</i> residence	Max. 5 years of <i>habitual</i> residence
<b>Other possible conditions</b>	No conviction for national security reasons or serious crime; The applicant has always been stateless	None	Not possible

Although there have been no new developments in recent years in setting new standards for statelessness, the CoE continues to demonstrate an interest in nationality issues. In 2009, the CoE adopted Recommendation 2009/13 on the Nationality of Children. This document contains 23 principles related to reducing statelessness for children, facilitating their access to a nationality and ensuring their right to a nationality. In addition, it reaffirms that registering children as being of “unknown” or “undetermined nationality”, while their stateless status is being processed, should last only for a short period.<sup>217</sup> Moreover, in 2016 the Parliamentary Assembly of the Council of Europe adopted a Resolution on the need to eradicate statelessness of children; calling states to ratify the ECN and recognising that the current refugee flows ‘bring a new statelessness challenge’ for Europe.<sup>218</sup>

<sup>216</sup> Sources: European Council on Refugees and Exiles, ‘The right to a nationality of refugee children born in the EU and the relevance of the EU Charter of Fundamental Rights’, 2017, p.5, <https://www.ecre.org/wp-content/uploads/2016/12/refugee-children-nationality-LEAP-leaflet.pdf>, (accessed 30 April 2018).

<sup>217</sup> Council of Europe, ‘Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children’, 2009, p.10, <http://www.refworld.org/docid/4dc7bf1c2.html>, (accessed 2 May 2018).

<sup>218</sup> Council of Europe Parliamentary Assembly, Resolution 2099 (2016): The need to eradicate statelessness of children, 4 March 2016.



## 2.5.2 European Union Law and Policy

Although the EU refers to stateless persons in its laws and policies, its involvement in addressing the problem of statelessness has so far been limited.<sup>219</sup> Indeed, EU member states maintain competence in the field of nationality law and can set their own rules for acquisition and loss of nationality.<sup>220</sup> The Lisbon Treaty was the first EU treaty to mention statelessness, by stating that ‘*stateless persons shall be treated as third country nationals*’.<sup>221</sup> This provision reflects one of the basic requirements of 1954 Convention, namely that stateless persons should be accorded the ‘*same treatment as is accorded to aliens generally*’, except from the occasions that the 1954 Convention ‘*contains more favorable provisions*’.<sup>222</sup>

At the heart of EU human rights policy lies the Charter of Fundamental Rights of the EU (CFR-EU), adopted in 2000. The CFR-EU does not contain a provision guaranteeing the right to a nationality, nor mentions childhood statelessness. However, it prescribes that ‘*children shall have the right to such protection and care that is necessary for their well-being*’ and that the best interests of the child must be a primary consideration in all actions relating to children, echoing this way the CRC.<sup>223</sup>

Moreover, stateless persons are addressed in some of the EU legislation on immigration and asylum, but only in so far as they fall within the scope of that legislation. This illustrates that the status of a stateless person is already acknowledged in the EU laws. For example, Directive 2011/95/EU includes standards for the qualification of stateless persons as beneficiaries of international protection.<sup>224</sup> Moreover, in the implementation of the EU Return Directive the best interests of the child principle again plays an essential role, acknowledging that consideration to the

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<sup>219</sup> K. Swider, ‘Protection and Identification of Stateless Persons Through EU Law’, *Amsterdam Centre for European Law and Governance Research Paper No. 2014-05, SSRN*, 2014a, p. 8, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2464009](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2464009), (accessed 2 May 2018).

<sup>220</sup> Declaration on Nationality of a Member State, annexed to the Treaty on European Union [1992], OJ C 191, 29/07/1992 P.0098.

<sup>221</sup> Treaty of Lisbon, 2007, C 306/1, 17.12.2007 P.01, Article 61.2.

<sup>222</sup> Convention Relating to the Status of Stateless Persons, (adopted 28 September 1954, entered into force 6 June 1960), 360 UNTS 117, Article 7.1.

<sup>223</sup> Charter of Fundamental Rights, 2000, C 364, Article 24.

<sup>224</sup> Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, [2011], OJ L 337, 20.12.2011, p. 9–26.



nationality status of a child must be given also in decisions relating to the determination of an international protection status.<sup>225</sup>

There has been a lot of discussions about the fact that there might be ways to utilise EU law mechanisms to counter childhood statelessness through the progressive development of the EU law agenda.<sup>226</sup> EU law may, therefore, have some influence on the nationality policy and practice of EU member states, including in respect of the avoidance of statelessness. It is clear that more things could be done from the side of EU; for example, as far as the statelessness-related law is concerned, by establishing common standards on statelessness status determination or a regulation for residence status for stateless persons.<sup>227</sup> In addition, given the importance of protecting children in vulnerable situations and countering the social exclusion of children, there is room in the EU child protection law and policy for much greater actions to be taken to address childhood statelessness.

### 2.5.3 Regional Supervisory mechanisms

At the regional level, the development of a human rights framework often has also brought the establishment of various courts, and other institutions that supervise the implementation of human rights treaties. At this point, it's important to mention that the ECN avoids establishing an actual independent reviewing or enforcement mechanism.<sup>228</sup> Although, the CoE could have, in theory, attributed this role to the existing ECtHR, no such steps were taken creating, thus, a gap in enforcing the principles related to the prevention and protection of statelessness. However, there are some cases that have tried to broaden the European jurisprudence and these cases will be analysed in this sub-chapter.

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<sup>225</sup> Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, [2008], OJ L 348, 24.12.2008, p. 98–107; Van Waas L., 2015, p.9.

<sup>226</sup> See for example: G. Gyulai, 'Statelessness in the EU Framework for International protection', *European Journal of Migration and Law*, issue 14, 2012, p. 284.; T. Molnar, 'Stateless Persons under International Law and EU Law: a Comparative Analysis Concerning their Legal Status, with Particular Attention to the Added Value of the EU Legal Order', *Acta Juridica Hungarica*, Issue 51, No 4, 2010, p. 303; L. Van Waas, 'EU Citizenship for Stateless People?', *European Network on Statelessness Blog*, 2013, <https://www.statelessness.eu/blog/eu-citizenship-stateless-people>, (accessed 2 May 2018).

<sup>227</sup> Institute on Statelessness and Inclusion, 2017b, p.78.

<sup>228</sup> The same is the case with the 1961 Convention, although an international human rights treaty.

As mentioned before, while ECHR does not explicitly recognise a right to a nationality, or prescribe the prevention of childhood statelessness, nationality has been recognised as an element of a person's social identity in the case law of the ECtHR.<sup>229</sup> The court first explicitly addressed this issue in the 1997 Karashev judgment, pointing out that *'the Court does not exclude that an arbitrary denial of a citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual'*.<sup>230</sup> After that, most of the cases relating to the link between nationality and the right to private life were cases of stateless persons, who were denied access to nationality.<sup>231</sup> In its landmark case *Genovese v. Malta* the ECtHR dealt with denial of access to the country's nationality at birth. In this case the court acknowledged that denial of nationality<sup>232</sup> may raise an issue under Article 8, *'because of its impact on the private life of an individual, which concept is wide enough to embrace aspects of a person's social identity'*.<sup>233</sup> By evoking the concept of social identity in its reasoning, the ECtHR opened the path for a more broad interpretation of the link between right to private life and nationality.<sup>234</sup> Although the court did not find a violation of Article 8 per se, concluded that there was a violation of Article 14 (non-discrimination).<sup>235</sup> This case may have far-reaching consequences for the content and application of nationality laws across Europe, where safeguards against statelessness are not always inadequately implemented.<sup>236</sup> In the *Kurić* case, the ECtHR confirmed that non-discrimination obligation in conjunction with the violation of the right to private life can be used to argue nationality related cases.<sup>237</sup> This case also affirmed the applicability of Article 13 of the ECHR, the right to an effective remedy, as

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<sup>229</sup> L. Van Waas, 2015, p. 8.

<sup>230</sup> *Karashev v Finland* App No 31414/96 (ECtHR 1999).

<sup>231</sup> European Council for Refugees and Exiles, 'The right to a nationality of refugee children born in the EU and the relevance of the EU Charter of Fundamental Rights', 2017, p.6, <https://www.ecre.org/wp-content/uploads/2016/12/refugee-children-nationality-LEAP-leaflet.pdf>, (accessed 25 April 2018).

<sup>232</sup> This is also the case in situations of uncertainty of recognition of citizenship. See for example: *Mennesson v France* App No 65192/11 (ECtHR 26 June 2014).

<sup>233</sup> *Genovese v Malta* App No 53124/09 (ECtHR 11 October 2011) para.33.

<sup>234</sup> European Council for Refugees and Exiles, 2015, p.5.

<sup>235</sup> *Ibid*, p.5.

<sup>236</sup> L. Van Waas, 'Fighting statelessness and discriminatory nationality law in Europe', *European Journal of Migration and Law*, Issue 3, Vol 14, 2012, p.254, [https://pure.uvt.nl/ws/files/1459239/EJML\\_article.pdf](https://pure.uvt.nl/ws/files/1459239/EJML_article.pdf), (accessed 29 April 2018).

<sup>237</sup> *Kurić and Others v. Slovenia* App No 26828/06 (ECtHR 26 July 2012), para.369-372.

long as it can present an arguable claim of the violation of a Convention right.<sup>238</sup> In addition, although the best interests of the child principle is not explicitly included in the ECHR, the ECtHR has repeatedly referred to this principle in relation to Article 8 of the Convention.<sup>239</sup>

In addition, a set of cases by the ECtHR demonstrated that the regulation of nationality may, given the circumstances, raise issues under a number of different provisions in the ECHR.<sup>240</sup> In particular, states obligation vis-à-vis stateless persons can be implicitly founded in five relevant articles: the prohibition of torture and inhuman or degrading treatment (Article 3), the right to liberty and security of person (Article 5), the right to respect for private and family life (Article 8), the right to an effective remedy (Article 13), and the prohibition of discrimination (Article 14).<sup>241</sup> In practice, however, the ECtHR has in only few cases dealt with statelessness as such; there is room to argue for the prevention from statelessness and protection of stateless persons through other legal norms. The following table demonstrates ECHR provisions that can be applicable to the acquisition of nationality at birth based on the relevant jurisprudence of the ECtHR.

**Table 2: ECHR provisions related to acquisition of nationality based on the relevant ECtHR cases<sup>242</sup>**

Right applicable	ECHR	Relevant Case
Right to private life	Article 8	ECtHR <i>Genovese Case</i>
Prohibition of Discrimination	Article 14	ECtHR <i>Kurić and Genovese Case</i>
Right to an effective remedy	Article 13	ECtHR <i>Kurić</i>

As far as the EU is concerned, although the CFR-EU does not contain a provision guaranteeing the right to a nationality, the case law of the Court of Justice of

<sup>238</sup> European Council for Refugees and Exiles, 2015, p.7.

<sup>239</sup> See for example: *Mennesson v France* App No 65192/11 (ECtHR 26 June 2014), para.99; European Council for Refugees and Exiles, 2015, p.5.

<sup>240</sup> L. Van Waas, 2012, p.251.

<sup>241</sup> C. Vlieks, 'Strategic Litigation: An Obligation for Statelessness Determination under the European Convention on Human Rights?', *European Network on Statelessness*, 2014, [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS%20Discussion%20Paper\\_September%202014.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS%20Discussion%20Paper_September%202014.pdf), (accessed 29 April 2018).

<sup>242</sup> Source: European Council for Refugees and Exiles, 2017, p.9.

the European Union (CJEU) in Luxemburg is of particular significance. In particular it has demonstrated a similar approach towards active scrutiny of nationality policies of member states as the ECtHR in its *Genovese* case.<sup>243</sup> EU citizenship is established by the Treaty on the Functioning of the European Union.<sup>244</sup> Whenever states deal with matters related to EU citizenship they are implementing EU law, which consequently means that the CFR-EU is applicable.<sup>245</sup> In 2010, the CJEU issued its opinion in the *Rottmann* case, after this was requested by a German court. The CJEU affirmed that setting nationality rules was in principle a sovereign matter for each state, yet that EU member states should have ‘*due regard to Community law [when laying down] the conditions for the acquisition and loss of nationality*’.<sup>246</sup> Although the *Rottman* judgement only deals with the loss of EU citizenship, it acknowledged that deprivation of nationality resulting in statelessness is only allowed after checking the legality and proportionality of such a measure.<sup>247</sup> In addition, it demonstrated that there is room for the CJEU to scrutinise member states’ nationality policy through other EU principles, such as the prohibition of discrimination.<sup>248</sup> This case highlights the importance of the EU citizenship, which is tightly connected to the nationality of member states, to argue for loss or deprivation of nationality. The *Rottman* case scenario is comparable to the situation of refugee children born in the EU who acquire no nationality at birth. These children are entitled to nationality of a member state –due to the fact of being born otherwise stateless- and consequently to EU citizenship, which they might be denied in practice, if the national legislation is insufficient or not properly implemented.<sup>249</sup> Therefore, it seems that EU law could be invoked in addressing childhood statelessness,

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<sup>243</sup> L. Van Waas, 2012, p.254.

<sup>244</sup> Treaty on the Functioning of the European Union, (as amended by Treaty of Lisbon), 2007, C 326, Article 20.

<sup>245</sup> According to Article 51 CFR-EU, member states are obliged to apply the rights in CFR-EU ‘*only when they are implementing Union law*’. Charter of Fundamental Rights, (CFR-EU), 2000, C 364, Article 51.1.

<sup>246</sup> *Rottmann v Freistaat Bayern* Case C-135/08 (CJEU 2 March 2010), para. 32, 39.

<sup>247</sup> European Council for Refugees and Exiles, 2017, p.8; G. De Groot, K. Swider and O. Vonk, 2015, p.15.

<sup>248</sup> L. Van Waas, 2012, p.257.

<sup>249</sup> European Council for Refugees and Exiles, 2017, p.8; K. Swider, ‘Litigating Strategically: Stateless children born in the EU’, *ENS Blog*, 2014b, <https://www.statelessness.eu/blog/litigating-strategically-stateless-children-born-eu>, (accessed 3 May 2018).

including for refugees and asylum seekers, due to its consequences for the enjoyment of the EU citizenship.<sup>250</sup>

Taking these cases into account, in the future there is an opportunity for both ECtHR and CJEU to further develop their jurisprudence to deal with statelessness issues, also in the case of refugee and asylum seeking children through new paths of litigation.

## **2.6 UNHCR's global mandate**

UNHCR has a specific and global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons, bestowed by the UN General Assembly.<sup>251</sup> UNHCR responsibilities for statelessness started with refugees who are stateless under the Statute of the Office of the United Nations High Commissioner for Refugees, paragraph 6.A.II, and Article 1.A.2 of the 1951 Convention relating to the Status of Refugees, both of which refer to stateless persons who meet the criteria of the refugee definition.<sup>252</sup> With the adoption of the 1954 Convention and the 1961 Convention this mandate was expanded and UNHCR was designated to examine the cases of persons who claim the benefit of the 1961 Convention, and to assist such persons in presenting their claims to the appropriate national authorities.<sup>253</sup> This mandate has been evolving since the UNGA issued Conclusion No. 106 (2006) on “Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons”.<sup>254</sup>

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<sup>250</sup> L. Van Waas., 2015, p.9.

<sup>251</sup> UN General Assembly, Resolution 49/169: Office of the United Nations High Commissioner for Refugees, 23 December 1994, A/RES/49/169; UN General Assembly, Resolution 50/152: Office of the United Nations High Commissioner for Refugees, 9 February 1996, A/RES/50/152.

<sup>252</sup> UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), para.6.A.II; Convention relating to the Status of Refugees, (adopted 28 July 1951, entered into force 22 April 1954), 189 UNTS 137, Article 1.A.2; OSCE and UNHCR, 2017, p.22.

<sup>253</sup> UN General Assembly, Resolution 3274: Question of the establishment, in accordance with the convention on the reduction of statelessness, of a body to which persons claiming the benefit of the Convention may apply, 9 December 1974, 3274 (XXIX); UN General Assembly, Resolution 31/36: Question of the establishment, in accordance with the convention on the reduction of statelessness, of a body to which persons claiming the benefit of the Convention may apply, 30 November 1976, A/RES/31/36.

<sup>254</sup> UNHCR Executive Committee of the High Commissioner's Programme, ‘Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) – 2006’, A/AC.96/1035, 2006, <http://www.refworld.org/docid/453497302.html>, (accessed 10 February 2018).

According to UNHCR's mandate, UNHCR has a global mandate and is not limited to state parties to the 1954 and 1961 Conventions.<sup>255</sup> Moreover, due to the fact that UNHCR works towards the prevention of statelessness, it is mandated to identify new cases of statelessness that may rise and not only address the already existing ones.<sup>256</sup> As mentioned above, there might be an overlap on UNHCR's different mandates when stateless person are also protected as refugee under the 1951 Convention; however when the refugee status ceases, individuals may remain stateless and therefore under the mandate of UNHCR.<sup>257</sup>

The reason for bestowing UNHCR with a mandate on statelessness issues, in the first place, was that the agency could draw on its crucial expertise in issues relating to nationality.<sup>258</sup> Dealing with statelessness requires, in many ways, a similar approach to dealing with refugees as many activities are effective in both situations, like developing protection strategies or public information campaigns to promote awareness<sup>259</sup>. In addition, UNHCR is accustomed to identifying and working with both the international legal framework and domestic law and cooperating with strategic and operational partners; tools for successfully addressing both refugee and stateless situations.<sup>260</sup>

There are many different kinds of activities that UNHCR undertakes in working towards solutions. UNHCR's statelessness activities revolve around four pillars: 1. identification, which includes gathering statistical data on statelessness, as well as population profiles, causes and consequences; 2. prevention, by legal aid and capacity building in the implementation of international standards in each state; 3. reduction, by supporting legislative changes and procedural improvements to allow stateless people to acquire nationality; and 4. protection, by ensuring that stateless people can exercise their human rights until they can acquire a nationality.<sup>261</sup> All of these activities play an equally important role in dealing with statelessness issues.

UNHCR has published over the years many guidelines on several issues regarding statelessness in order to assist governments but also the civil society and legal

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<sup>255</sup> OSCE and UNHCR, 2017, p.22.

<sup>256</sup> Ibid, p.22.

<sup>257</sup> Ibid, p.22.

<sup>258</sup> UNHCR, 2012a, p.46.

<sup>259</sup> Ibid, p.46.

<sup>260</sup> Ibid, p.46.

<sup>261</sup> UNHCR, *How UNHCR Helps Stateless People*, [website], <http://www.unhcr.org/how-unhcr-helps-stateless-people.html>, (accessed 29 April 2018).

practitioners to best engage in these issues. In addition, in 2014 UNHCR launched the #IBelong Campaign with the view to end statelessness by 2024, which features a Global Action Plan for 2014-2024 with the objectives to resolve existing major situations of statelessness, prevent new cases of statelessness from emerging, and better identify and protect stateless populations.<sup>262</sup> In order to achieve these objectives the Action Plan identifies 10 actions that states are encouraged to take with the assistance of UNHCR.<sup>263</sup>

## **2.7 Concluding remarks**

As demonstrated in this part of the research, the right to a nationality, and also specifically children's right to a nationality, are included in several international and regional human rights instruments. Most of these instruments encompass also provisions to regulate the prevention of statelessness and related to childhood statelessness issues, such as birth registration and statelessness status determination. The most important provisions for this specific topic are included in the CRC, which is ratified by all European states. In comparison, the 1961 Convention, as well as the ECN, which are leading documents in the prevention of statelessness and contain important provisions for stateless children, have fewer ratifications. In particular, the 1961 Convention has been ratified by only 20 European states and the ECN by 13.<sup>264</sup> Thus, promotion of ratification of relevant legal instruments remains one of the biggest challenges in the area of statelessness.

The ECHR is insofar a particularly strong human rights instrument as it is ratified by all European states and enforced by the ECtHR. In this regard, it is important that the ECtHR treats arbitrary deprivation of nationality as a very serious violation of human rights. While there has been promising jurisprudence from the ECHR and the CJEU, there is still lack of definitive guidance for state action with regard to the prevention of statelessness at birth. The current refugee flows can pose a new challenge for Europe in the topic of statelessness, as the risk of children born to refugees and asylum seekers without effective access to nationality is high. The next chapter is going to analyse the circumstances and the cases under which childhood statelessness can occur in Europe.

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<sup>262</sup> See: UNHCR, 2014c.

<sup>263</sup> See Annex 3 for the 10 Actions in UNHCR's Action Plan to end Statelessness.

<sup>264</sup> See Annex 1 for the EU states ratifications of the 1961 Convention and ECN.

## **Part 3 – The challenges of safeguarding the right to a nationality for children born to refugees and asylum seekers in Europe**

### **3.1 Introduction**

In the previous chapter, a number of concrete international and regional provisions were analysed that are in place to make sure that no child is born or remains stateless for a long time in Europe. Although, as it has been illustrated, there is a clear obligation to respect every child's right to a nationality in Europe, the actual situation on the ground is different. In various situations problems appear for effectively accessing nationality at birth, thus increasing the risk of statelessness for children born in exile in Europe.

Therefore, this part of the research will examine the challenges of safeguarding the right to a nationality for children born to refugees and asylum seekers in Europe. First of all, the chapter will start with a depiction of the current situation of childhood statelessness in Europe through statistical data. In addition, the chapter will identify the possible causes of childhood statelessness in the current refugee context. Children born to refugees and asylum seekers are particularly susceptible to problems in securing a nationality, including obstacles in birth registration and having stateless parents or parents not being able to transfer their nationality, due to discrimination in the law of the country of origin. All these different causes of possible statelessness will be thoroughly examined drawing examples from existing cases in EU states. As a final step, this part will examine the European state's performance on protecting children's right to nationality by incorporating appropriate safeguards in the domestic legislation.

### **3.2 Cases of childhood statelessness in Europe**

UNHCR estimates that globally, a baby is born stateless every 10 minutes.<sup>265</sup> In Europe, however, new cases of childhood statelessness are emerging at a far lower rate, since statelessness exists on a smaller scale and safeguards are in place in most countries in the region to prevent the inheritance or emergence of statelessness.<sup>266</sup> It is estimated by UNHCR that around 415,000 people in EU were affected by statelessness

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<sup>265</sup> UNHCR, 2014a, p.8.

<sup>266</sup> L. Van Waas, 2015, p.4.



in 2016.<sup>267</sup> In specific, Latvia has a stateless population of over 200,000 persons, Estonia of nearly 85,000 persons and Sweden of over 35,000 within their territory. Stateless populations in Germany and Poland exceed 10,000 individuals.<sup>268</sup> The following table demonstrates the EU states with over 10,000 stateless persons.

**Table 3: Countries in EU with over 10,000 stateless persons**

Countries	Stateless population in 2016 <sup>269</sup>	Stateless population in 2017 <sup>270</sup>
Latvia	242,736	233,571
Estonia	82,585	80,314
Sweden	36,036	35,101
Germany	12,017	13,458
Poland	10,825	10,825

However, as it has been analysed in Part 1, there are limited data or statistics on statelessness, even in Europe. Official data on how many stateless persons reside in each EU state are rare, and even when these are available most of the times do not include the stateless refugee population or are not disaggregated by age. This is the case also for UNHCR's data that are depicted in Table 3, which include only non-refugee stateless persons without age disaggregation.<sup>271</sup> Nevertheless, Table 3 is included to demonstrate a first picture of the existing stateless population in Europe.

Another problem occurs in relation to official childhood statelessness statistics on a national level. In several countries the magnitude of the problem is obscured by registration practices that fail to clearly differentiate between stateless children and those of "unknown nationality"; many of whom may actually also be stateless but not identified as such. In this regard, the official statistics in Sweden are a good example of how data should be collected. Not only it is possible to find statistics referring to asylum seekers that include separately "stateless persons" and "persons of unknown nationality",<sup>272</sup> but there are also statistics referring to "stateless persons" and "persons

<sup>267</sup> UNHCR, 2017a, p.66-70.

<sup>268</sup> Ibid, p.66-70; See also Annex 2 for stateless persons by EU country.

<sup>269</sup> Source: UNHCR, 2017a, p.66-70.

<sup>270</sup> UNHCR, 'Global Trends 2017, Forced Displacement in 2017', 2018c, p.64-68, <http://www.unhcr.org/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>, (accessed 19 June 2018).

<sup>271</sup> More information about the data used in UNHCR statelessness statistics in Part 1.5.

<sup>272</sup> These data are however not disaggregated by age. Statistics available in: Statistics Sweden, *Asylum-seekers during the year by country of citizenship and sex. Year 2002 – 2017*, [website],

of unknown nationality” that are disaggregated by age.<sup>273</sup> According to the statistics bureau of Sweden, there were in total 8,974 stateless children in 2014, 8,710 in 2015 and 8,434 in 2016.<sup>274</sup> This indicates that Sweden hosts one of the largest populations of stateless children in Europe.<sup>275</sup> It is also interesting that the number of children with “unknown citizenship” is increasing from 2,449 in 2013 to 3,957 in 2016;<sup>276</sup> fact that could also be linked to a limited possibility for these children to access their nationality. In comparison, in the official German population statistics “stateless” and “unknown nationality” persons are not separated. There is only one category in the foreign population statistics that refers to “stateless, unknown or not specified citizenship” persons; 104,000 people were recorded in this category for 2017.<sup>277</sup> According to the German statistics bureau, in 2017 there were 38,580 people in this category under the age of 20,<sup>278</sup> suggesting that there is a considerable number of stateless children also in Germany.

As it is illustrated, few EU countries are collecting data on statelessness, and among them there are considerable variations. Therefore, based on existing information on a national and international level, the exact number of children born to refugees and asylum seekers that are in the risk of statelessness is impossible to distill. This lack of adequate data collection on childhood statelessness in Europe, not only reduces the visibility of the phenomenon, but also minimises the chance that authorities will take the necessary measures. Consequently, it is important to bear in mind that any country specific data used in this research can only indicate the magnitude of the problem and not reflect the full scope or its complexity.

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[http://www.statistikdatabasen.scb.se/pxweb/en/ssd/START\\_BE\\_BE0101\\_BE0101P/Asylsokande/?rxid=9a7b96e2-c0de-4943-91e6-0cffc30657d5](http://www.statistikdatabasen.scb.se/pxweb/en/ssd/START_BE_BE0101_BE0101P/Asylsokande/?rxid=9a7b96e2-c0de-4943-91e6-0cffc30657d5), (accessed 3 May 2018).

<sup>273</sup> Statistics available in: Statistics Sweden, *Foreign citizens by country of citizenship, age and sex. Year 1973 - 2017*, [website],

[http://www.statistikdatabasen.scb.se/pxweb/en/ssd/START\\_BE\\_BE0101\\_BE0101F/UtlmedbR/?rxid=9a7b96e2-c0de-4943-91e6-0cffc30657d5](http://www.statistikdatabasen.scb.se/pxweb/en/ssd/START_BE_BE0101_BE0101F/UtlmedbR/?rxid=9a7b96e2-c0de-4943-91e6-0cffc30657d5), (accessed 3 May 2018).

<sup>274</sup> Ibid.

<sup>275</sup> L. Van Waas, 2015, p.4.

<sup>276</sup> Statistics Sweden, *Foreign citizens by country of citizenship, age and sex. Year 1973 - 2017*, [website], [http://www.statistikdatabasen.scb.se/pxweb/en/ssd/START\\_BE\\_BE0101\\_BE0101F/UtlmedbR/?rxid=9a7b96e2-c0de-4943-91e6-0cffc30657d5](http://www.statistikdatabasen.scb.se/pxweb/en/ssd/START_BE_BE0101_BE0101F/UtlmedbR/?rxid=9a7b96e2-c0de-4943-91e6-0cffc30657d5), (accessed 3 May 2018).

<sup>277</sup> DESTATIS Statistisches Bundesamt, *Foreign population by age groups and selected citizenships*, [website], 2017,

[https://www.destatis.de/EN/FactsFigures/SocietyState/Population/MigrationIntegration/Tables\\_ForeignPopulation/AgeGroups.html](https://www.destatis.de/EN/FactsFigures/SocietyState/Population/MigrationIntegration/Tables_ForeignPopulation/AgeGroups.html), (accessed 5 May 2018).

<sup>278</sup> Ibid.

### 3.3 Possible Causes of childhood statelessness

Although as analysed in Part 2 there are considerable safeguards against childhood statelessness in place, cases of childhood statelessness do continue to arise in Europe, especially in the refugee context. One of the biggest current humanitarian crises, the conflict in Syria, has led, since its beginning in 2011, to the displacement of millions of people in neighboring countries and in Europe. However the profiles of those reaching Europe are very diverse in terms of age, sex and citizenship. People not only from Syria, but also from Iraq and Afghanistan make up the biggest groups, followed by people from Eritrea, Iran, Nigeria and Pakistan.<sup>279</sup> Most of the children born to refugees and asylum seekers in Europe hold a nationality and, therefore, they face no immediate risk of statelessness. However, there is a particular group of children who are in a heightened risk of statelessness due to: 1. Operations in the nationality law of the country of origin or destination or 2. difficulties establishing their connection to a nationality. This chapter will look into the different possible scenarios that fall under these two categories and can lead to statelessness at birth.

#### 3.3.1 Conflict of nationality laws

As explained before, EU member states are in principle autonomous in regulating the conditions of acquisition and loss of their nationality. At the same time, they are subject to a set of International and European standards and also to supranational scrutiny and accountability by European institutions, such as the ECtHR and the EJC. In general, birth on the territory of an EU member state does not automatically lead to an entitlement to its nationality and consequently to EU citizenship. That is because in Europe *jus sanguinis* is preferred over *jus soli*.<sup>280</sup> This approach guarantees that children born to European citizens abroad get the nationality of their parents. In parallel, however, it assumes that children born in Europe to non-EU citizens are citizens of other countries, which consequently leads to considerable risks

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<sup>279</sup> Eurostat, *Asylum quarterly report*, [website], 2018, [http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum\\_quarterly\\_report](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_quarterly_report), (accessed 4 May 2018).

<sup>280</sup> L. Van Waas, 2015, p.11; A. Prvinšek Persoglio, 'Study For The Feasibility Of A Legal Instrument in The Field Of nationality Law And Families', *Council of Europe*, 2013, p.18, <https://rm.coe.int/1680700283>, (accessed 6 May 2018).

of statelessness.<sup>281</sup> It should be pointed out that jus soli is often viewed by experts as a method to guarantee the eradication or at least the prevention of new cases of statelessness.<sup>282</sup> In fact, the wide use of the principle of jus soli in the Americas has been deemed as a crucial factor for the relatively low incidents of statelessness in the region.<sup>283</sup>

Because states are able to set their own rules, they create co-existing but sometimes incompatible nationality systems. This means that displaced population may fall through legal gaps and risk becoming stateless.<sup>284</sup> In the context of displacement across international borders, there is a heightened probability for this to happen, because the nationality laws of at least two different states are involved.<sup>285</sup> There are several examples of how childhood statelessness can occur from these different but co-existent systems. First of all, one example that has been already used, is the one of a child born in a state, where jus sanguinis laws are dominant, such as predominately in Europe, but the parents have the nationality of a state that opts for jus soli. Of course that doesn't mean that automatically the child is stateless, but the risks of becoming stateless, if the appropriate safeguards are not in place, are higher.

Secondly, some nationality laws have restrictive approaches to residents who live abroad. For example, the Syrian nationality law prescribes the loss of nationality if a Syrian national is living in a non-Arab country for more than three years and does not return upon request.<sup>286</sup> Although, there is no record of this provision being enforced, its mere existence poses a threat for refugees outside of the country. Another example of these restrictions for citizens who live abroad is the situation where parents need to contact the consular or the embassy in order for their children to acquire the nationality.

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<sup>281</sup> C. Vlieks and K. Swider, 'The jus sanguinis bias of Europe and what it means for childhood statelessness', *European Network on Statelessness Blog*, 2015, <http://www.statelessness.eu/blog/jus-sanguinis-bias-europe-and-what-it-means-childhood-statelessness>, (accessed 1 May 2018).

<sup>282</sup> C. Becker, 'Jus Soli: A miraculous solution to prevent statelessness?', *European network on Statelessness*, 2015, <https://www.statelessness.eu/blog/jus-soli-miraculous-solution-prevent-statelessness>, (accessed 4 May 2018); UNHCR, 'Good Practices Paper – Action 2: Ensuring that no child is born stateless', 2017g, p.5, <http://www.refworld.org/docid/58cfab014.html>, (accessed 17 May 2018).

<sup>283</sup> See for example: F. Quintana and L. Gamboa, 'Four reasons why the Americas could become the first region to prevent and eradicate statelessness', *European Network on Statelessness Blog*, 2015, <https://www.statelessness.eu/blog/four-reasons-why-americas-could-become-first-region-prevent-and-eradicate-statelessness>, (accessed 1 May 2018).

<sup>284</sup> Z. Albarazi and L. Van Waas, 2016a, p.17.

<sup>285</sup> Ibid, p.17.

<sup>286</sup> Z. Albarazi and L. Van Waas, 2016a, p.17; Legislative Decree 276 - Nationality Law [Syrian Arab Republic], Legislative Decree 276, 24 November 19, Article 12.G.

Even if the requirement involves a mere registration and the country of origin has no intention to reject the claim, still refugees have well-founded reason for not contacting the authorities of their country of origin.<sup>287</sup> This can lead to further risk of persecution or serious harm.

The aforementioned scenarios demonstrate the difficulties that appear due to the use of contradicting nationality systems in guaranteeing for children access to nationality. In one way or another, elements of these difficulties are also going to be presented in the next sub-chapters.

### 3.3.2 Stateless parents

There is a group among children born in Europe to refugees and asylum seekers that run a risk of statelessness due to their parents' statelessness status. This issue is more evident in Europe due to the predominant use of *jus sanguinis*. In fact, children born to parents who are stateless themselves will not receive any nationality from a parent at birth and would be reliant on access to nationality in the host country.<sup>288</sup> Some of the countries of origin of refugees are known to host stateless populations, such as Kurds and Palestinians. Two countries of origin, Syria and Iraq, host a significant amount of stateless persons and rank consistently among the top countries of origin for people coming to Europe.<sup>289</sup>

As Eurostat statistics suggest, there is a significant number of stateless or of "unknown citizenship" asylum applicants in Europe. In fact, the number of people applying for asylum in the EU was relatively high in 2014 and 2015, with 15,680 stateless persons applying for asylum in 2014<sup>290</sup> and 18,940 in 2015<sup>291</sup>. In 2016,

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<sup>287</sup> UNHCR, 2012c, para.27.

<sup>288</sup> I. Sturkenboom and L. Van Waas, p.3.

<sup>289</sup> According to Eurostat, the most common nationalities for asylum-seekers in the EU in 2017 are: Syria, Iraq, Afghanistan, Nigeria and Pakistan. Eurostat, *Asylum quarterly report*, [website], 2018, [http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum\\_quarterly\\_report](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_quarterly_report), (accessed 4 May 2018).

<sup>290</sup> Eurostat, *Asylum applicants in the EU-28 by citizenship (including first time asylum applicants) 2013-2014*, [website], 2015, [http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Asylum\\_applicants\\_in\\_the\\_EU-28\\_by\\_citizenship\\_\(including\\_first\\_time\\_asylum\\_applicants\),\\_Q4\\_2013\\_%E2%80%93\\_Q4\\_2014.png&olidid=226235](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Asylum_applicants_in_the_EU-28_by_citizenship_(including_first_time_asylum_applicants),_Q4_2013_%E2%80%93_Q4_2014.png&olidid=226235), (accessed 5 May 2015).

<sup>291</sup> Eurostat, *Asylum applicants in the EU-28 by citizenship (including first time asylum applicants) 2014-2015*, [website], 2016, <http://ec.europa.eu/eurostat/statistics->

Eurostat statistics don't include a specific category for stateless people applying for asylum suggesting that the number of stateless persons applying for asylum was not high.<sup>292</sup> However, in 2017, 5,845 asylum applicants were registered as having "unknown citizenship",<sup>293</sup> which could indicate a shift towards registering people as of "unknown nationality" and subsequently showing that a significant amount of asylum seekers are unable to access their nationality or even the stateless status.

There are also official national statistics that demonstrate that in some EU states the number of stateless asylum seekers increases constantly. An increased number of stateless persons in Europe can indeed lead to a higher risk of statelessness, if the parent(s) pass this status to their children. For example, according to the asylum statistics published by the Ministry of Interior in Austria, stateless persons applying for asylum increased from 253 in 2013 to 1,314 in 2014 and 2,235 in 2015.<sup>294</sup> In Sweden it is clear, as well, that the number of asylum applications lodged by stateless persons has gradually increased from 2,289 in 2012 to 7,771 in 2015.<sup>295</sup> This is attributed by UNHCR to the increased number of persons coming from Syria to apply for asylum in Sweden.<sup>296</sup> Although, there are no available data about the number of stateless refugees and beneficiaries of subsidiary protection living in Austria, UNHCR estimates that 2,467 stateless refugees were living in Austria at the end of 2015.<sup>297</sup>

In general, the number of stateless persons who entered Europe in recent years is likely to be higher as stateless persons are not consistently registered as such when entering the EU or when seeking asylum.<sup>298</sup> Sometimes they are mistakenly registered

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[explained/index.php?title=File:First time asylum applicants in the EU-28 by citizenship, Q4 2014 %E2%80%93 Q4 2015.png&oldid=281297](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:First_time_asylum_applicants_in_the_EU-28_by_citizenship_Q4_2014_%E2%80%93_Q4_2015.png&oldid=281297), (accessed 5 May 2015).

<sup>292</sup> Eurostat, *Asylum applicants in the EU-28 by citizenship (including first time asylum applicants) 2015-2016*, [website], 2017, [http://ec.europa.eu/eurostat/statistics-](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:First_time_asylum_applicants_in_the_EU-28_by_citizenship_Q4_2015_%E2%80%93_Q4_2016.png&oldid=330806)

[explained/index.php?title=File:First time asylum applicants in the EU-28 by citizenship, Q4 2015 %E2%80%93 Q4 2016.png&oldid=330806](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:First_time_asylum_applicants_in_the_EU-28_by_citizenship_Q4_2015_%E2%80%93_Q4_2016.png&oldid=330806), (accessed 5 May 2015).

<sup>293</sup> Eurostat, *Asylum applicants in the EU-28 by citizenship (including first time asylum applicants) 2016-2017*, [website], 2018, [http://ec.europa.eu/eurostat/statistics-](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:First_time_asylum_applicants_in_the_EU-28_by_citizenship_Q4_2016_%E2%80%93_Q4_2017.png#filehistory)

[explained/index.php?title=File:First time asylum applicants in the EU-28 by citizenship, Q4 2016 %E2%80%93 Q4 2017.png#filehistory](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:First_time_asylum_applicants_in_the_EU-28_by_citizenship_Q4_2016_%E2%80%93_Q4_2017.png#filehistory), (accessed 5 May 2015).

<sup>294</sup> Statistics available in: Bundesministerium Inneres, *Asylstatistiken*, [website], <https://www.bmi.gv.at/301/Statistiken/start.aspx>, (accessed 6 May 2018).

<sup>295</sup> UNHCR, 'Mapping Statelessness in Sweden', 2016b, p.24 <http://www.refworld.org/docid/58526c577.html>, (accessed 12 May 2018).

<sup>296</sup> Ibid, p.24.

<sup>297</sup> UNHCR, 'Mapping Statelessness in Austria', 2017e, para.67, <http://www.refworld.org/docid/58b6e5b14.html>, (accessed 13 May 2018).

<sup>298</sup> I. Sturkenboom and L. Van Waas, p.3.

as nationals of their country of origin or as persons of “unknown nationality”. This situation points out also the need for more comprehensive statistical data in this field. Although, it is hard to estimate the exact number of stateless refugees and asylum seekers in the EU, their number is not negligible and thus the risk of statelessness for these children is imminent.

### **3.3.3 Discrimination factors in nationality laws**

A further reason for concern among children born to refugees or asylum seekers in the EU is the risk of statelessness connected to discrimination factors in the nationality laws of the countries of origin. There are children, whose parent(s) do have a nationality, but who are unable to transfer that nationality to their children due to discrimination in the law of the country of origin. Indeed, gender discrimination in nationality laws persists in over 25 states around the world.<sup>299</sup> This list of countries includes also countries of origin of refugees and asylum seekers from which people have increasingly arrived in Europe, such as Syria, Iran, Iraq, Somalia and Sudan.

The nationality laws in these countries do not grant mothers the right to transfer their nationality on their children on the same grounds as fathers, and, therefore, can lead to childhood statelessness in cases where:

- the father is stateless;
- the father has passed away;
- the father is unknown or not married to the mother at the time of birth;
- the laws of the father’s country do not permit conferral of nationality in certain circumstances, such as when the child is born abroad;
- father has been unable to fulfill administrative steps to confer his nationality or acquire proof of nationality for his children because, for example, he has been forcibly separated from his family, or cannot fulfil documentation or other requirements;
- the father has been unwilling to fulfill administrative steps to confer his nationality or acquire proof of nationality for his child, for example because he is refusing to recognise his parenthood.<sup>300</sup>

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<sup>299</sup> The list of 25 countries includes: Bahamas, Bahrain, Barbados, Brunei Darussalam, Burundi, Iran, Iraq, Jordan, Kiribati, Kuwait, Lebanon, Liberia, Libya, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Swaziland, Syria, Togo and United Arab Emirates.

UNHCR, ‘Background Note on Gender Equality, Nationality Laws and Statelessness 2018’, 2018a, p.1, <http://www.refworld.org/docid/5aa10fd94.html>, (accessed 16 May 2018).

<sup>300</sup> UNHCR, 2018a, p.2-3.



Among the countries with gender discriminatory laws different systems exist. There are countries that do not allow mothers to confer nationality to their children under no circumstances, like Iran, or allow mothers under certain conditions, such as Syria and Iraq. In Syria, for example, mothers can only confer nationality if the child was born inside of Syria and the father does not establish affiliation in relation to the child.<sup>301</sup> This means, that although mothers are allowed under this condition to transfer their nationality to the child, a child born outside of Syria can not acquire the mother's nationality. In the case of Iraq, a child of an Iraqi mother that is born abroad may apply for Iraqi nationality within one year of reaching majority, providing that the child's father is unknown or stateless and the child is residing in Iraq at the time of the application.<sup>302</sup> In the context of protracted conflicts, it is highly problematic for a child to be required to return to the country of origin in order to acquire the nationality. In both cases, the result is the same, as children born in Europe to mothers belonging to these specific nationalities will be facing increased risk of statelessness, in the case that the host country does not include the necessary safeguards. An example in this regard, is Hungary where the nationality law does not contain general safeguards that will allow to all otherwise stateless children to become Hungarian nationals. Therefore, a child born to a Syrian, Iranian or Somali mother and a stateless or unknown father will be born stateless in Hungary.<sup>303</sup>

Syria constitutes a special case due to the amount of displaced people arriving to Europe. Because of Syria's nationality law, children born abroad can only acquire nationality through their fathers. However, according to UNHCR, the conflict has left 25% Syrian refugee households without fathers to verify nationality.<sup>304</sup> The absence of the father leads to the crucial role that a birth certificate can play in registering the name of the Syrian father; as often the only way to verify a child's nationality.<sup>305</sup> Therefore, being able to establish a family link between the father and the child can be of utmost

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<sup>301</sup> Ibid, p.7.

<sup>302</sup> Ibid, p.7.

<sup>303</sup> Gyulai G., 'Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary', *Hungarian Helsinki Committee*, p. 13, <http://www.refworld.org/docid/5310640b4.html>, (accessed 14 May 2018); **See Annex 5 for the story of Stera and Mohammed in Malta.**

<sup>304</sup> UNHCR, 2015a, p.23.

<sup>305</sup> Ibid, p.23.



importance in preventing statelessness for these children. This brings us to the next topic, the importance of birth registration and the obstacles connected to it.

### **3.3.4 Importance of birth registration**

The preference over the *jus sanguinis* approach in Europe is highly connected to the establishment of the family link between the child and the parent as the basis for the transfer of nationality. In order to establish this link, it is important that the child is registered at birth and that all relevant information is recorded on the birth certificate. When children are born in the current refugee context, challenges may occur in relation to birth registration, thereby affecting a key means of establishing their link and obtaining documentation that proves their nationality.<sup>306</sup> Without official documentation proving their existence and family link, these children are, in the long term, at risk of statelessness.<sup>307</sup>

Birth registration is the official recording of a child's birth by the state and a permanent and official record of a child's existence.<sup>308</sup> Although the procedure is different from state to state, generally it involves making an official entry in the state's registry and issuing a birth certificate that usually includes the names of the parents and the birthplace of the child.<sup>309</sup> The right to be registered at birth is a fundamental right of every child, protected by, among others, article 7 of the CRC. The importance of birth registration has been repeatedly highlighted by UNHCR and is included as one of the 10 actions to end statelessness.<sup>310</sup>

#### **3.3.4.1 Barriers to birth registration**

Notwithstanding the importance of birth registration, it does not confer by itself nationality to a child. Rather it serves as a proof of the place of birth and the family link

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<sup>306</sup> I. Sturkenboom and L. Van Waas, p.2.

<sup>307</sup> C. Dunmore, 'Born in exile, Syrian children face threat of statelessness', *UNHCR*, 2014, <http://www.unhcr.org/54589fb16.html>, (accessed 13 May 2018).

<sup>308</sup> UNICER, 'A Passport to Protection: A Guide to Birth Registration Programming', 2013, p. 11, [https://www.unicef.org/protection/files/UNICEF\\_Birth\\_Registration\\_Handbook.pdf](https://www.unicef.org/protection/files/UNICEF_Birth_Registration_Handbook.pdf), (accessed 9 May 2018).

<sup>309</sup> *Ibid*, p.11.

<sup>310</sup> Action 7 of the Global UNHCR Action Plan for 2014-2024 calls on states to 'Ensure birth registration for the prevention of statelessness'; See Annex 3; UNHCR, 2014c, p.18.

between a child and its parents.<sup>311</sup> In certain categories, including refugees and asylum seekers, a birth certificate plays an essential role in claiming a nationality. For example, as mentioned above, because of the gender discriminatory law in Syria, a birth certificate that records the Syrian father's name can under certain circumstances be the most effective way for Syrian babies born abroad to secure a nationality.

According to UNICEF, only 71% of children are registered worldwide, but within Europe national birth registration rates are all reaching 100%.<sup>312</sup> This should indicate that in EU states all children are being registered. However, questions surface about what is considered as 100% registration and how this "completeness" of statistics is being defined. As UNICEF highlights, the definition for "completeness" applied by the UN Statistics Division (UNSD) is inconsistent: *'most UNSD handbooks equate complete and universal [registration]. UNSD defines the latter as 100 per cent. On the UNSD website, however, countries are shown with birth registration rates, or death registration rates, which are complete when more than 90 per cent of vital events are registered'*.<sup>313</sup> This leads to the assumption that UNDS considers all European birth registration systems complete after they reach 90%. In addition, this 100% should be examined more closely as, according to UNICEF, the estimation of 100% was *'assumed given that civil registration systems in these countries are complete and all vital events [including births] are registered'*.<sup>314</sup> While this can be accurate in statistical terms, it can lead to the cover-up of registration issues on the ground. Even if there is only a 1% margin of error, from a human rights point of view and from the best interests of the child perspective this should be recorded. Moreover, the data collected by UNICEF refer to children that are below the age of five, consequently not taking into account a child whose birth is not registered, but is already over the age of five.<sup>315</sup> The invisibility of such issues renders them harder to tackle and impedes the establishment of effective protection policies. The assumption that European countries have a complete

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<sup>311</sup> UNICEF, 2013, p.11.

<sup>312</sup> Exceptions are Croatia and Romania where there are no available data; UNICEF, *Child Protection- Birth Registration*, [website], 2018, <https://data.unicef.org/topic/child-protection/birth-registration/>, (accessed 20 April 2018).

<sup>313</sup> UNICEF, 2013, p.147.

<sup>314</sup> UNICEF, *Child Protection- Birth Registration*, [website], 2018, <https://data.unicef.org/topic/child-protection/birth-registration/>, (accessed 20 April 2018).

<sup>315</sup> L. Van Waas, 2015, p.27; UNICEF, *Child Protection- Birth Registration*, [website], 2018, <https://data.unicef.org/topic/child-protection/birth-registration/>, (accessed 20 April 2018).

registration system contributes to the lack of research in birth registration gaps in Europe, re-focusing the attention only in regions with birth registration systems that still need to be further developed, such as the MENA or Africa region.<sup>316</sup> Nevertheless, the reality on the ground is that certain categories of children born in Europe still face difficulties in getting their birth registered and that should be mirrored in statistics.

In practice, EU states have procedures in place that present obstacles for the birth registration of certain categories of children, such as stateless, asylum seeking and refugee children. In general, according to UNICEF, registration rates are lower for vulnerable and marginalised children, such as refugee, asylum seeking and stateless children.<sup>317</sup> There are a number of conditions included in the procedures of the EU states that can pose difficulties. In particular, most of the EU countries require various documents to be presented at the time of birth registration to prove the identity of the parents, such as identity papers, marriage certificates or valid residence permits.<sup>318</sup> The document requirements depend on the specific host state and on the circumstances of each individual's case. In the UK, for example, birth registration system is more flexible as all births must be registered within 42 days and is required only one form of identity proof such as a passport, birth certificate or marriage or civil partnership certificate.<sup>319</sup> In comparison, documentation and timeframe requirements are stricter in Austria. In Austria, birth should be registered within one week and parents must submit their birth certificates, marriage certificate (if they are married), passports or proof of nationality.<sup>320</sup> A lack of the necessary documents combined with ignorance about the procedures or fear to contact authorities are barriers to the birth registration of these children. In the context of forced displacement, where people flee their homes, families are fractured and identification documents get often lost or destroyed.<sup>321</sup> For instance, it

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<sup>316</sup> See for example: UNHCR, 'In Search of Solutions: Addressing Statelessness in the Middle East and North Africa', 2016c, <http://www.refworld.org/docid/57dbdaba4.html>, (accessed 16 May 2018); Norwegian Refugee Council, 'Birth registration update: The challenges of birth registration in Lebanon for Refugees from Syria', 2015, <https://www.nrc.no/globalassets/pdf/reports/the-challenges-of-birth-registration-in-lebanon-for-refugees-from-syria.pdf>, (accessed 12 May 2018).

<sup>317</sup> UNICEF, 2013, p.42.

<sup>318</sup> UNHCR, 2013, p.56.

<sup>319</sup> Gov.UK, *Register a birth*, [website], <https://www.gov.uk/register-birth>, (accessed 12 May 2018).

<sup>320</sup> Help.gv.at, *Information for foreign citizen: After the birth of a child*, [website], <https://www.help.gv.at/Portal.Node/hlpd/public/content/143/Seite.1430400.html>, (accessed 12 May 2018).

<sup>321</sup> L. Van Waas, 2015, p.26.

has been reported by UNHCR that most of the Syrian refugees did not bring their original identity documents from Syria exactly because they were destroyed or lost.<sup>322</sup> In general, parents with limited access to identity documentation may find it challenging to register the birth of a child.

Even when refugees and asylum seekers have brought documents from Syria with them, another issue emerges relating to the legitimacy and the value of documents issued in non-government controlled areas by non-state actors, such as the Kurdish Self Administrated Area, Local Councils in southern Syria and the Free Independent Judicial Council under the Interim Government in northern Syria.<sup>323</sup> The documents issued by these non-state actors, which are involved in registering birth and marriage certificates, are in some cases the only available choice to people.<sup>324</sup> This poses a challenge to host countries, where there is a lack of consistency as to which non-state documents can be accepted.<sup>325</sup>

Apart from the documentation, the expenses related to the whole process, such as fees<sup>326</sup> or official translations of documents<sup>327</sup>, are also barriers for refugees. These can become a hidden financial burden that can act as a deterrent for completing the process. Physical access to civil registration buildings can present another obstacle in the case of refugees, either because of distance and expensive transportation fees or because of limited freedom of movement in reception facilities.<sup>328</sup> Parents may also not fulfil the necessary steps to register a child's birth due to lack of awareness to the importance of birth registration or lack of available information on the procedure.<sup>329</sup> In this regard, language can become a significant obstacle for refugees and asylum seeking parents in understanding the birth registration requirements in a host country. Indeed

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<sup>322</sup> UNHCR, 2013, p.57.

<sup>323</sup> Z. Albarazi and L. Van Waas, 2016b, p.30; International Rescue Committee, 'Identity me: The documentation crisis in Northern Syria', 2016, p.4, <https://www.rescue-uk.org/sites/default/files/document/1207/identify-me-july-2016-irc.pdf>, (accessed 15 May 2018).

<sup>324</sup> Z. Albarazi and L. Van Waas, 2016b, p.30.

<sup>325</sup> Ibid, p.30.

<sup>326</sup> UNHCR, 'Good Practices Paper - Action 7: Ensuring birth registration for the prevention of statelessness', 2017f, p.5, <http://www.refworld.org/docid/5a0ac8f94.html>, (accessed 16 May 2018).

<sup>327</sup> C. E. Lee, 'Europe's Birth Registration Stumbling Blocks', European Network on Statelessness Blog, 2013, <https://www.statelessness.eu/blog/europe%E2%80%99s-birth-registration-stumbling-blocks>, (accessed 19 May 2018).

<sup>328</sup> UNHCR, 2017f, p.5.

<sup>329</sup> Ibid, p. 5.

there is a lack of awareness raising among EU states about the importance of birth registration and the relevant procedures. For example, in Germany there are no government awareness campaigns about birth registration and there are reports that children of refugees or people with unclear nationality remain unregistered.<sup>330</sup> In France, as well, there are no national campaigns or awareness raising activities to promote birth registration.<sup>331</sup>

Finally, in some EU states there is either a lack of procedures that guarantee the ability for late birth registration or there are procedures in place that establish strict time requirements or fees for late registration.<sup>332</sup> For instance, in the UK, late registration is possible, however if the birth has not be registered for over a year there is a fine (but no more than 200GBP).<sup>333</sup> Some systems are more flexible, like in Malta. Although it is obligatory in Malta to register the birth of a child within 15 days, because this might be difficult, in practice the timeframe is more flexible and there are no fees for late birth registration.<sup>334</sup> On the other hand, in the Netherlands the deadline for birth registration is 3 days and although late birth registration is allowed by law, in practice there are considerable practical obstacles, such as proof for the birthplace is required, often the court is involved, parents get fines and even sometimes a DNA test is necessary.<sup>335</sup>

Apart from the difficulties in birth registration in Europe, it is important to acknowledge that problems can also arise in relation to practices in the country of origin. For instance, the civil registration system in Syria, even before the conflict, had certain flaws. One of them is the lack of digitalization, which means that registration records were only kept in hard-copies.<sup>336</sup> There are reports of destroyed civil registries due to the conflict,<sup>337</sup> which means the loss of important documentation that can prove the family link among people or their connection to the state -e.g. marriage and birth

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<sup>330</sup> Statelessness Index, *Germany*, [website], <https://index.statelessness.eu/country/germany>, (accessed 21 May 2018).

<sup>331</sup> Statelessness Index, *France*, [website], <https://index.statelessness.eu/country/france>, (accessed 21 May 2018).

<sup>332</sup> C. E. Lee.

<sup>333</sup> Statelessness Index, *United Kingdom*, [website], <https://index.statelessness.eu/country/united-kingdom>, (accessed 21 May 2018).

<sup>334</sup> Statelessness Index, *Malta*, [website], <https://index.statelessness.eu/country/malta>, (accessed 21 May 2018).

<sup>335</sup> Statelessness Index, *Netherlands*, [website], <https://index.statelessness.eu/country/netherlands>, (accessed 21 May 2018).

<sup>336</sup> Z. Albarazi and L. Van Waas, 2016b, p.19.

<sup>337</sup> UNHCR, 2016c, p.12.

certificates. This can also be problematic for refugees when trying to re-acquire proof of identity. In particular, if there are no records in the country of origin for these individuals, there is a risk that in the future when people will try to return to the country of origin or simply when trying to re-issue documentation, the competent authority will not recognise them as nationals.<sup>338</sup> This risk of course increases as time is passing and as new generations are getting born outside of the country.

#### **3.3.4.2 Determination of nationality during birth registration**

Having access to birth registration still does not guarantee that all obstacles are being avoided. Even in cases where parents have access to the procedure of birth registration there are challenges connected to the correct determination of a newborn child's nationality during birth registration. There are usually three scenarios that are highly problematic. In some states, authorities automatically attribute the parent's nationality to the child without investigating further into it; giving the impression that the child has an effective nationality and statelessness was avoided.<sup>339</sup> In other cases, children are registered as of "unknown nationality", until they can provide the necessary proof of acquisition of nationality. This leaves children in a limbo, unable to benefit from the rights connected to a nationality. There is a third scenario, where in some European states no information concerning nationality of the child is entered in the birth certificate.<sup>340</sup> These scenarios obscure the appropriate and timely determination of a child's nationality and can place children in situations where they don't have an effective nationality. These cases of ineffective nationality will be further examined in the next chapter.

#### **3.3.5 The hidden cases of ineffective nationality**

Apart from the aforementioned challenges that are rather apparent, there are other invisible cases that can lead to heightened risk of statelessness for a significant proportion of the children born to refugees and asylum seekers in Europe. In

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<sup>338</sup> Z. Albarazi and L. Van Waas, 2016b, p.40.

<sup>339</sup> G. Gyulai, 'The long-overlooked mystery of refugee children's nationality', *Institute on Statelessness and Inclusion*, 2017, <http://children.worldsstateless.org/3/migration-displacement-and-childhood-statelessness/the-long-overlooked-mystery-of-refugee-childrens-nationality.html>, (accessed 20 May 2018).

<sup>340</sup> G. Gyulai, 2017.

comparison to the previous situations, in this case refugee parent(s) can pass their nationality to the child and the child becomes automatically a national of that state, without the need to register with the consular authorities.<sup>341</sup> However, due to protracted conflicts these children are not able to register with the country of origin authorities, and consequently do not obtain any proof or official recognition of their acquired nationality.<sup>342</sup> According to research, this situation applies to a large proportion of children born to refugees and asylum seekers in the EU.<sup>343</sup> In the case that they are able to return to the country of origin in the near future, these children will be able to register with national authorities and resolve the issue. However, the current conflicts in most countries of origin, like Syria, Afghanistan, Iraq and Somalia, are extremely protracted and it is unlikely in the future to establish working governance that will allow many of these people to return in safety.<sup>344</sup> This means that these children will be left without access to an effective and functioning nationality. If the child is left in this limbo for many years or even decades without documentary proof and effective access to a nationality, then this raises questions if that is indeed considered to be “access to a nationality”. The idea of nationality being a legal bond based on genuine connection between these children and the states with reciprocal rights can be ‘*reduced to a mere legal fiction*’.<sup>345</sup> As the European Council on Refugees and Exiles explains in its research, a Syrian or Somali child born in Europe, who lives in Europe and has no chance to be registered with the competent authorities and has never been to his/her country of origin, nor has a realistic perspective to return there to live in the near future, hardly has any genuine connection, social attachment or benefits from any rights with this country.<sup>346</sup>

These children most of the times depend on the practices of the host country. In some EU countries, these children are registered as nationals of the parent’s country of origin.<sup>347</sup> This exacerbates the invisibility of these cases, condemning the problem to remain hidden as no effort will be made to clarify the nationality status of the child or

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<sup>341</sup> European Council for Refugees and Exiles, 2017, p.11.

<sup>342</sup> Ibid, p.11.

<sup>343</sup> Ibid, p.11.

<sup>344</sup> Ibid, p.11.

<sup>345</sup> Ibid, p.11.

<sup>346</sup> Ibid, p.11.

<sup>347</sup> Ibid, p.12.

evoke safeguards against statelessness. For example, in Romania the nationality of the child is being registered in a child's birth certificate according to the parents' statements and identity documents. However there is no procedure to actually verify this nationality and make sure that the child's nationality is recognised by the state of origin. This means in practice that any potential conflicts of laws or any other obstacles that may appear are not considered sufficiently by the host country.<sup>348</sup> There were, for example, reports, by Syrian nationals, who despite having acquired a birth certificate for their children that stated that the child is of Syrian nationality, the Syrian embassy refused to register the child; rendering the child thus in reality stateless.<sup>349</sup>

In other situations such refugee children are registered as persons with undetermined, unknown or unclear nationality.<sup>350</sup> In this case, as mentioned before, it is important to determine the nationality of the child as soon as possible and initiate a nationality or statelessness determination procedure. Hungary is one of the EU countries that now register children of refugees as being of unknown nationality.<sup>351</sup> Although it is an important step to register children according to the current nationality status and not assume they will obtain the nationality of their parent's country of origin, this practice still poses challenges. First of all it *'presupposes that non-stateless parents will as a general rule be able to obtain evidence about the child's foreign nationality in due course, and thus unknown nationality will only be a temporary entry in the civil registry'*.<sup>352</sup> Parents from states with protracted conflicts have no realistic prospect of changing this condition by voluntary returning to the country of origin, thus their children are left in limbo.<sup>353</sup>

The problem explained in this sub-chapter is one of the most challenging ones, because from a nationality law point of view (nationality laws in domestic level and strict interpretation of statelessness definition) the child has automatically acquired a nationality. However, looking at the situation from a human rights/statelessness and best interests of the child perspective there is a gap to the full realisation of the right to a

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<sup>348</sup> C. Marin, 'Ending Childhood Statelessness: A Study on Romania', *European Network on Statelessness*, 2015, p.13, <https://www.statelessness.eu/sites/www.statelessness.eu/files/Romania.pdf>, (accessed 19 May 2018).

<sup>349</sup> Ibid, p.13; **See Annex 5 for the story of Taher in Romania.**

<sup>350</sup> European Council for Refugees and Exiles, 2017, p.12.

<sup>351</sup> G. Gyulai, 2014, p.16.

<sup>352</sup> G. Gyulai, 2014, p.14.

<sup>353</sup> **See Annex 5 for the story of the Kamari family in Hungary.**



nationality. In this regard, Gábor Gyulai has posed a valid question: ‘*can a state “consider” a person in a certain manner, can it apply its law in practice in a way that is adapted to the individual circumstances of the person, if it is not aware of this person’s existence?*’<sup>354</sup> It is important to bear in mind that also the UNHCR guidelines highlight the need to look at both law and practice to establish if an individual is considered a national under the operation of a state’s law.<sup>355</sup> In fact, research on the topic suggests that the best interests of the child, which is binding for all EU states both under the CRC and the FRC-EU, supports the implementation of a more ‘*practice and protection oriented interpretation of the 1954 Statelessness Convention and the UNHCR Guidelines*’.<sup>356</sup> Although there are grounds suggesting the a practice and protection oriented interpretation of the 1954 stateless definition should apply in the case of refugee and asylum seeking children that have no realistic prospect of registering with the country of origin, more academic research and developments in the doctrine are crucial to properly clarify this issue.<sup>357</sup>

Protracted conflicts create such conditions that a population’s connection with the country of origin may be lost, especially for children born in exile. Although these children are at a clear risk of not being considered nationals by the country of origin, host countries fail to guarantee access to nationality for these children.

### **3.4 Assessing European state’s safeguards for children that would be otherwise stateless**

This part examines the European countries commitment to the full realisation of the children’s right to nationality. By using specific examples of EU states, this part will investigate if the safeguards in domestic legislation are complete and properly applied in practice. In order for EU states to respond to childhood statelessness there are specific international standards that have to be put into place. The most fundamental safeguards in this regard, are the ones that grant nationality to children who would be otherwise stateless. These safeguards can protect children born to refugees and asylum seekers against statelessness without interfering with general nationality laws of how nationality

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<sup>354</sup> G. Gyulai, 2017.

<sup>355</sup> UNHCR, 2014b, para.23; UNHCR, 2012b, para.16-17.

<sup>356</sup> European Council for Refugees and Exiles, 2017, p.12.

<sup>357</sup> G. Gyulai, 2017.

is regulated in each state. However, there are two problems that obstruct the full realisation of these safeguards: 1. Incorporating appropriate safeguards in domestic legislation and 2. implementing them in practice.

### 3.4.1 Appropriate safeguards in domestic legislation

First of all, not all EU states have integrated appropriate safeguards in their domestic legislation.<sup>358</sup> The European Network on Statelessness (ENS), a London-based NGO network, has done an extensive research in this regard, through country studies and analysis of the legislation of the European countries.<sup>359</sup> In this way, ENS was able to divide European countries into three categories according to their policy:<sup>360</sup>

- Full safeguard: the law contains safeguards that cover all otherwise stateless children born in the territory and are in compliance with international law;
- Partial safeguard: the law contains safeguards for otherwise stateless children born in the territory that fall short of the standard set by international law, in a way that not all otherwise stateless children benefit;
- No/minimal safeguard: the law does not contain safeguards specifically directed towards ensuring that otherwise stateless children born in the territory acquire a nationality.

The following map and table show details about the safeguards implemented in EU countries according to research done by ENS.

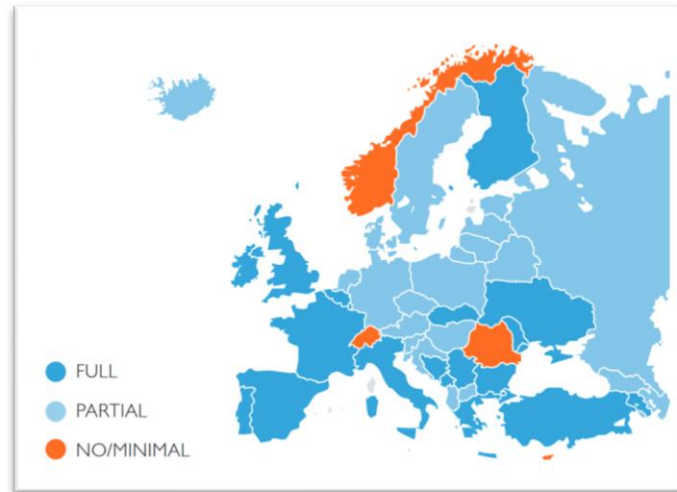
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<sup>358</sup> I. Sturkenboom and L. Van Waas, p.5.

<sup>359</sup> See for example: European Network on Statelessness, *Country Studies and Working Papers*, [website], <https://www.statelessness.eu/resources/ens-working-papers>, (accessed 10 May 2018).

<sup>360</sup> I. Verbeek, 'Ending Childhood Statelessness: A comparative study of safeguards to ensure the right to a nationality for children born in Europe', *European network on Statelessness*, 2016, <http://www.refworld.org/docid/582324954.html>, (accessed 12 May 2018).

**Table 4: Map showing the ENS research on safeguards for otherwise stateless children<sup>361</sup>**



**Table 5: Safeguards to ensure nationality to otherwise stateless children in the EU countries<sup>362</sup>** (States marked with an asterisk are in violation of their international obligations)

FULL	PARTIAL	NO/MINIMAL
<b>1. Automatic</b> Belgium Bulgaria Finland France Greece Ireland Italy Luxembourg Portugal Slovakia Spain  <b>2. Procedural</b> Malta United Kingdom	<b>1. Too limited timeframe for application</b> Austria*                      Latvia* Estonia  <b>2. Dependent on the residence status of the child</b> Denmark*                      Netherlands* Estonia                      Sweden*  <b>3. Dependent on the residence status of the parents</b> Czech Republic*                      Hungary* Estonia                      Latvia Germany*                      Lithuania*  <b>4. Dependent on the citizenship status of the parents</b> Croatia*                      Latvia Czech Republic*                      Lithuania* Estonia                      Poland Hungary*                      Slovenia	<b>1. No/minimal safeguards</b> Cyprus Romania*

<sup>361</sup> Source: L. Van Waas, 2015, p.13.

<sup>362</sup> Sources: L. Van Waas, 2015, p.34, Annex 2; I. Verbeek, 2016. See also for the analysis of EU countries nationality legislation: Global Citizenship Observatory, *Global Database on Modes of Acquisition of Citizenship*, [website], 2016, <http://globalcit.eu/acquisition-citizenship/>, (accessed 17 May 2018).

As depicted in Table 5, thirteen EU states in total have established full safeguards for otherwise stateless children that conform to their international obligations set in the ECN and 1961 the Convention. Eleven of them, namely Belgium, Bulgaria, Finland, France, Greece, Ireland, Italy, Luxembourg, Portugal, Slovakia and Spain, grant nationality automatically, at birth, *ex lege*.<sup>363</sup> This is considered to be the most effective method to ensure nationality for all children, protecting them from an unnecessary period of being without a nationality.<sup>364</sup> Malta and the UK have as well full safeguards in alignment with international standards, but safeguards can be evoked upon an application procedure.<sup>365</sup>

Although in these countries full safeguards are in place, there are potential obstacles for children to acquire a nationality, as well as concerns relating to contradicting to CRC terms.<sup>366</sup> For example, the wording of the nationality laws of Belgium, Finland, France, Greece, Italy, and Luxembourg could be a potential obstacle for otherwise stateless children trying to acquire nationality.<sup>367</sup> In Luxemburg, for instance, citizenship law requires that the parents of the child prove that the national legislation of their country of origin does not allow the transmission of nationality to the child.<sup>368</sup> This can disproportionately affect certain groups, such as refugees, who are unable or have good reasons to not register their child with the state of their own nationality. According to UNHCR, the burden of proof of whether a person will be otherwise stateless should be shared between the state and the parents/guardians.<sup>369</sup>

Similar problems, without explicitly requesting for proof, appear in Finland, France, Greece and Italy. In France and Italy, for example, citizenship law requires for the safeguards to be applied that the '*child does not [or in the case of France, is by no means allowed to] acquire the nationality of either parent according to the law of the parents' state(s) of origin*'.<sup>370</sup> In Finland, a child can acquire the Finish nationality if the child does not acquire any other nationality at birth and it does not have, what is

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<sup>363</sup> I. Verbeek, 2016, p.6.

<sup>364</sup> Ibid, p.6.

<sup>365</sup> Ibid, p.8.

<sup>366</sup> L. Van Waas, 2015, p.14.

<sup>367</sup> I. Verbeek, 2016, p.7.

<sup>368</sup> Ibid, p.7; Luxembourg Law on Nationality. Article 1.c.3.

<sup>369</sup> UNHCR, 2012c, para.20.

<sup>370</sup> L. Van Waas, 2015, p.14. French Civil Code, Article 19-1.2; Italian Citizenship Act, Article 1.1b.

referred to as “a secondary right” to acquire the nationality of any other country.<sup>371</sup> This in practice means ‘as long as the authorities of the country of nationality of the parents do not prevent or refuse the child to be registered, Finland does not have a responsibility to grant Finnish nationality to a child’.<sup>372</sup> The case of Greece is somehow more complicated, as it states that the safeguards apply to children who cannot by birth or by a declaration to the relevant foreign authorities acquire a nationality.<sup>373</sup> However, Greek citizenship law also states that the statelessness of the child should not be a consequence of the parents’ refusal to cooperate.<sup>374</sup> This is not a condition allowed in the 1961 Convention for the application procedure. Denying children nationality should never be based on their parents’ status, behavior or opinions as this would be in conflict with the non-discrimination principle in the CRC.<sup>375</sup>

In addition, the citizenship laws in Malta and the UK also present potential obstacles for conferring nationality to otherwise stateless children. In UK, for example, it is required for a child to previously submit proof of identity before it benefits from the safeguards, thus preventing the possibility of fraud.<sup>376</sup> This can be problematic in cases of refugees, asylum seekers and stateless population, who often lack the necessary documentation to prove their identity, like passports and identity cards.

The category of countries with partial safeguards consists of countries that grant nationality following an application procedure and set conditions that are not allowed following international standards set by the ECN and the 1961 Convention.<sup>377</sup> These conditions, as a consequence, reduce the amount of children that can benefit from the safeguards in place. ENS has identified 4 of these conditions that are generally applied in Europe and don’t meet international standards.<sup>378</sup>

The first type of condition is related to a limited timeframe for filling an application. To this category belong the citizenship laws of Austria, Estonia and

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<sup>371</sup> UNHCR, ‘Mapping Statelessness in Finland’, 2014f, p.47, <http://www.refworld.org/docid/546da8744.html>, (accessed 17 May 2018).

<sup>372</sup> UNHCR, 2014f, p.48.

<sup>373</sup> I. Verbeek, 2016, p.8; Greek Citizenship Code, Article 1.2.b.

<sup>374</sup> Verbeek I., 2016 p.8; Greek Citizenship Code, Article 1.2.c.

<sup>375</sup> UN Committee on the Rights of the Child, General comment No. 5 (2003): Implementing General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5, para.12.

<sup>376</sup> I. Verbeek, 2016, p.9.

<sup>377</sup> Ibid, p.11.

<sup>378</sup> See Table 5; I. Verbeek, 2016, p.11.

Latvia.<sup>379</sup> According to the 1961 Convention this period should start no later than at the age of 18 or end sooner than before the age of 21 years. Austria, which has ratified the 1961 Convention, sets a timeframe between 18 and 20 years old.<sup>380</sup> This, not only comes in violation of 1961 Convention, but also has severe implications for a child's life from a best interests of the child perspective. Letting a child stateless throughout his whole childhood can hardly be in favor of the best interests of the child. On the other hand, citizenship laws in Estonia and Latvia require children to be under 15 years old, which can be also problematic.<sup>381</sup> Limiting the window of opportunity means that a child will solely depend on its parents/guardians actions to take the necessary steps.

The second condition that does not comply with international standards is related to the residence of the child in the host country.<sup>382</sup> According to the 1961 Convention, it is allowed to set as condition a period of habitual residence (stable and factual residence) that does not exceed 5 years preceding the application and 10 years in total. In contrast, ECN also allows as condition the "lawful" residence in the state. The laws of the Netherlands and Sweden, which have ratified both conventions, demand a lawful residence. As already mentioned, countries should be bound by the highest standards, thus requesting only habitual and not lawful residence. In Sweden, the child is required to have a permanent residence permit and be lawfully and habitually residing in Sweden.<sup>383</sup> According to UNHCR, the need for a permanent residence permit coupled with: 1.the temporary restrictions on the granting of permanent residence permits to persons granted asylum in Sweden as of July 2016; 2.the increase in the number of stateless persons seeking asylum in Sweden; and 3. the corresponding increase in the number of stateless persons with temporary residence permits, is likely to leave a considerable number of children born stateless in Sweden without access to these safeguards.<sup>384</sup>

The third condition that limits the possibility of otherwise stateless children in obtaining nationality is connected to the residence status of the parents and is found in

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<sup>379</sup> I. Verbeek, 2016, p.12.

<sup>380</sup> Ibid, p.12; Federal Law on Austrian Nationality, Article 14.1.5.

<sup>381</sup> L. Van Waas, 2015, p.15.

<sup>382</sup> I. Verbeek, 2016, p.13.

<sup>383</sup> UNHCR, 2016b, p.60.

<sup>384</sup> Ibid, p.62.

the nationality laws of six European countries.<sup>385</sup> CRC explicitly prohibits the discrimination of children on the basis of their parents or guardians status.<sup>386</sup> Moreover, this condition is not included in the 1961 Convention and the ECN. The fourth condition is also relating to the status of the parents, in particular the citizenship status of the parents. There are eight European states that subject nationality to otherwise stateless children to the citizenship status of the parents.<sup>387</sup> These countries offer citizenship to children who would be otherwise stateless in cases where one or both parents are stateless or of unknown nationality.<sup>388</sup> Only granting nationality to children born to stateless or of unknown citizenship parents excludes a wide range of cases where other reasons lead to childhood stateless, thus concealing the complexity of childhood statelessness. There are even some states, namely Czech Republic, Estonia, Hungary and Lithuania that have conditions in their domestic laws that subject granting nationality to otherwise stateless children to both the parents' residence and citizenship status.<sup>389</sup> For example, in Estonia a child can benefit from the safeguards only if the parent(s) have been legally residing in Estonia for at least five years by the time of birth of the child and they are not considered as citizens by any other State.<sup>390</sup>

Finally, Cyprus and Romania are the only European states that have no or minimum safeguards. Although Romania acknowledges the issue of statelessness in its laws and has ratified both the ECN and the 1961 Convention, it hasn't established yet specific safeguards for stateless children born in its territory.<sup>391</sup> On the other hand, Cyprus has not ratified the two Conventions and also does not have a procedure for children that are born stateless in its territory.<sup>392</sup> Not ratifying the ECN or the 1961 Convention does not mean that Cyprus, or any other country, has no international binding obligations, as under the CRC, which is ratified by all EU states, states should ensure that every child enjoys the right to a nationality.<sup>393</sup>

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<sup>385</sup> I. Verbeek, 2016, p.14.

<sup>386</sup> UNHCR, 2012c, para.10.

<sup>387</sup> I. Verbeek, 2016, p.16.

<sup>388</sup> L. Van Waas, 2015, p.15.

<sup>389</sup> See Table 5.

<sup>390</sup> UNHCR, 'Mapping Statelessness in Estonia', 2016d, p.81, <http://www.refworld.org/docid/5a338b5c4.html>, (accessed 17 May 2018).

<sup>391</sup> I. Verbeek, 2016, p.18.

<sup>392</sup> Ibid, p.17.

<sup>393</sup> Ibid, p.17.

Taking everything into consideration, ENS concludes that *‘less than half of the states that are parties to the 1961 Convention and/or ECN have followed through on their international commitment by fully and correctly transporting this critical safeguard into their domestic legislation’*.<sup>394</sup> The states that are not parties to these Conventions have strikingly similar results, as *‘close to 50% of non-states parties have legislation that is compliant on this issue, in spite of their lack of accession to the conventions’*.<sup>395</sup> As it is demonstrated, the majority of European states have some form of safeguard in place to confer citizenship to children born on their territory who would otherwise be stateless. But that is not enough. For the states that have ratified one of the two legal instruments, failing to bind themselves to the obligation of granting citizenship to all of the otherwise stateless children is a direct violation of their international agreements.

### **3.4.2 Implementation of safeguards**

As mentioned in the beginning of this chapter, two problems appear regarding the safeguards against otherwise stateless children. The first problem, the appropriate safeguards in domestic legislation has been analysed in the previous sub-chapter. The second issue relates to their actual implementation and is going to be investigated in this part of the research. Domestic laws that do meet international standards are not always implemented in practice.<sup>396</sup> In this regard, the right identification of cases that otherwise will end up stateless plays a central role. National provisions are activated in exceptional cases, namely when a child would be otherwise stateless. This means that there can be insufficient knowledge or capacity to identify those cases.<sup>397</sup> It has been proven very challenging to identify children born to refugees and asylum seekers as stateless because it is not always evident that they are not able to acquire nationality from their parents. For example, in Italy, which is considered to belong to the countries with full safeguards, there are difficulties in the appropriate interpretation and

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<sup>394</sup> L. Van Waas, 2015, p.13.

<sup>395</sup> Ibid, p.13.

<sup>396</sup> Look at Table 5, the states with the asterisk are in violation of their international obligations;

I. Sturkenboom and L. Van Waas, p.6.

<sup>397</sup> I. Sturkenboom and L. Van Waas, p.6.



application of the relevant law.<sup>398</sup> In practice, it is reported that Italian authorities accept that a person is not a national of a particular state only if that is demonstrated through supporting documentation, such as a declaration of the diplomatic authority concerned that the child cannot acquire the parents' country of origin nationality.<sup>399</sup> This requirement creates in reality extra obstacles in the access to nationality for otherwise stateless children. Another reason that procedures of identification can be very challenging in the current refugee context is the lack of awareness on the topic. Local authorities involved in registration process should be aware of the possibility of dealing with persons in the refugee context that have no nationality or are unable to obtain one and should be able to record this lack of nationality.<sup>400</sup> Due to these problematic practices, a significant number of children that could benefit from the national safeguards set in European states are not identified as stateless and are thus unable to be appropriately protected.

At this point, it must be added that the absence of reliable data on childhood statelessness makes it more difficult to draw conclusions about the effectiveness of the existing safeguards on a national level.<sup>401</sup> Therefore, in cases that states improve/change their safeguards, there are no available data on the affected population to assess their effectiveness. In addition, the lack of data also means limited possibility to demonstrate the ineffectiveness of certain safeguards or the lack of their implementation in practice. Once again the importance of data collection is being highlighted as a cornerstone to the effective prevention from and protection against childhood statelessness.

### 3.5 Concluding remarks

As it was demonstrated above, childhood statelessness in the refugee context affects all European countries, however on a different scale. Available data however does not allow to establish general conclusions. However, this part made clear that new cases of childhood statelessness will continue to arise due to various circumstances in Europe. The scenarios and possible causes of childhood statelessness described in this part of the research indicate that childhood statelessness in the current refugee context is

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<sup>398</sup> European Network on Statelessness, 'Ending Childhood Statelessness: A Study on Italy', 2015a, p.7, <http://www.refworld.org/docid/582327974.html>, (accessed 18 May 2018).

<sup>399</sup> European Network on Statelessness, 2015a, p.10.

<sup>400</sup> I. Sturkenboom and L. Van Waas, p.6.

<sup>401</sup> Jansen S. and Van Waas L., p.13-14.

a real issue that affects a significant part of the population and has not been taken into account or addressed properly. Whether it affects a few dozens or several thousands of children in any European state, the truth is that the impact on the individual children must not be ignored.

Remarkably few EU states have incorporated the necessary safeguards to provide all otherwise stateless children the opportunity to acquire nationality immediately upon or as soon as possible after birth. In most of the cases in Europe, the existing safeguards are either incomplete and/or they are not properly implemented in practice. Therefore, improvements in the existing protection and prevention system in Europe should be introduced to prevent the creation of new cases of childhood statelessness. The next chapter will explore the protection and prevention mechanisms that should be in place in all EU countries to be able to fully realise the right to a nationality for children born to refugees and asylum seekers in Europe.

## **Part 4 –Policy recommendations and good practices**

### **4.1 Introduction**

As established in this research, children's right to a nationality is a fundamental human right and an essential prerequisite to the enjoyment and protection of the full range of other human rights. European states have the primary responsibility to guarantee this right for all children under their jurisdiction and take all the necessary measures to prevent and reduce statelessness at birth. Therefore this part of the paper, drawing on knowledge from analysis done in previous chapters, will collect policy recommendations with regard to the identification, prevention, and reduction of childhood statelessness. The policy recommendations will be also complemented by guidelines set by international organisations and by good practices from EU states regarding the improvement of the current system.

The fourth part of the research begins by analysing effective ways of combating statelessness, such as the incorporation of a *jus soli* approach and the accession to the UN Statelessness Conventions. In addition, this part examines methods and standards according to which safeguards in domestic legislation should be adjusted, including

proposals for recording children as of “unknown nationality” and alternatives in ensuring that appropriate conditions are set for the application procedure according to international standards. Furthermore, this chapter examines the potential of more regional involvement on the topic of childhood statelessness by the EU and the CoE. Finally, topics such as registration at birth and improving research, awareness raising and data collection are also thoroughly investigated to point out recommended policies and best practices.

#### 4.2 The jus soli approach

The principle of jus soli, namely granting nationality at birth to children born on the territory of a country, has been often referred to as an effective tool to prevent childhood statelessness.<sup>402</sup> Introducing elements of jus soli in nationality laws is considered an effective way to promote children’s right to a nationality and reduce cases of statelessness.<sup>403</sup> This happens by ensuring that children who are born in the territory of a state are granted nationality at birth avoiding the creation of new generations of stateless persons. As mentioned before, jus sanguinis is more dominant in Europe; with European states having limited or conditional jus soli provisions that have been introduced the last decades.<sup>404</sup> In comparison, states in the Americas have more provisions related to jus soli, granting almost all children born in their territory nationality and thus reducing the levels of childhood statelessness significantly.<sup>405</sup> The predominance of jus soli provisions in the Americas has even led some experts to believe that it can be the first region to achieve the total elimination of statelessness.<sup>406</sup> Even if the use of an absolute jus soli approach is no longer used in Europe – with Ireland being the last country that abolished it in 2004 – jus soli provisions can be incorporated in the legal framework of European countries to assist the eradication of

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<sup>402</sup> C. Becker, ‘Jus Soli: A miraculous solution to prevent statelessness?’, *European network on Statelessness*, 2015, <https://www.statelessness.eu/blog/jus-soli-miraculous-solution-prevent-statelessness>, (accessed 4 May 2018).

<sup>403</sup> Jansen S. and Van Waas L., p.8.

<sup>404</sup> C. Becker.

<sup>405</sup> Ibid.

<sup>406</sup> J. Vengoechea Barrios, ‘Do jus soli regimes always protect children from statelessness? Some reflection from the Americas’, *Institute on Statelessness and Inclusion*, 2016, <http://children.worldsstateless.org/3/safeguarding-against-childhood-statelessness/do-jus-soli-regimes-always-protect-children-from-statelessness-some-reflection-from-the-americas.html>, (accessed 17 May 2018).

childhood statelessness, especially in cases of children who are born otherwise stateless.<sup>407</sup> Jus soli can be an inclusive approach to confer nationality to all children and thus strengthen the prevention policies against statelessness at birth.

However, jus soli is not the only or ultimate solution. This part of the research is going to analyse different safeguards against childhood statelessness whose implementation should be considered in parallel. Solely relying on one of these safeguards can be ineffective, as safeguards might contain gaps or not be implemented in practice. Therefore, a comprehensive approach that incorporates different safeguards can be more efficient and offers higher probabilities of successful implementation.

### **4.3 Accession to the UN Statelessness Conventions**

UNHCR has recognised in its Global Action Plan that the accession to the UN Statelessness Conventions is one of the ten actions that need to be taken to end statelessness.<sup>408</sup> UNHCR supports that increasing the number of accessions in the UN Statelessness Conventions, which are as mentioned before relatively low, will have a direct impact on resolving statelessness.<sup>409</sup> The reason is that states that decide to accede usually also undertake other measures to address statelessness, such as reforming nationality laws, conducting surveys of stateless populations and creating Statelessness Determination Procedures (SDP) as required by the 1954 Convention.<sup>410</sup> Furthermore, the whole discussion of accession involves the engagement of a wide range of actors on the national level, like government officials, civil society and international organisations, which contributes to a creative dialogue and brings the topic of statelessness back to the fore. Acceding to the UN Statelessness Conventions means not only mobilising international support but also improving international relations and stability by consolidating a system of common rules.<sup>411</sup>

In this regard, UNHCR plays an essential role in assisting countries and raising awareness on the importance of accession. UNHCR undertakes a number of initiatives

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<sup>407</sup> C. Becker.

<sup>408</sup> See Annex 3 for all the 10 Actions to End Statelessness in UNHCR Global Action Plan.

<sup>409</sup> UNHCR, 'Good Practices Paper – Action 9: Acceding to the UN Statelessness Conventions', 2015b, p.1, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=553f617f4&skip=0&query=Action%209:%20Acceding%20to%20the%20UN%20Statelessness%20Conventions>, (accessed 19 May 2018).

<sup>410</sup> UNHCR, 2015b, p.2.

<sup>411</sup> UNHCR, 2014d, p.2.

to assist states in working towards accession to the Statelessness Conventions, including raising awareness, studying the compatibility of national legislation with the Statelessness Conventions and inaugurating discussions with officials and civil society.<sup>412</sup> A success story in the efforts to accede to the 1961 Convention is presented by Croatia. In 2008, UNHCR developed a dual-track strategy, campaigning for Croatia's accession to the 1961 Statelessness Convention that involved advocating on statelessness issues with the Croatian government using Croatian-language versions of UNHCR documents.<sup>413</sup> UNHCR's efforts lead to the accession of Croatia to the 1961 Convention on 22 September 2011 and also to Croatia hosting a Regional Conference on Provision of Civil Documentation and Registration in South-Eastern Europe.<sup>414</sup>

However there are still a number of EU countries that have not ratified the 1961 Convention, which is the only universal instrument that encompasses detailed and concrete safeguards to ensure the prevention and reduction of statelessness. Five of them: Estonia, France, Poland, Slovenia and Spain, have even reported that they do not intend to accede to the 1961 Convention. These are the reasons that the five states put forward:

- Estonia believes that their Citizenship Law, which incorporates *jus sanguinis* principles, is partially in conflict with the Convention that foresees *jus soli* principles;
- France wishes to retain the possibility of withdrawing French nationality if considered necessary;
- Poland supports that accession would put stateless persons in a privileged position in comparison to foreigners already legally residing;
- Slovenia has reservations about the application of article 12 of the 1961 Convention, in particular in regards with the applications of article 1 applying to persons born before and after the entry into force of the 1961 Convention;
- Spain points out that existing domestic law already protects children born stateless in the country.<sup>415</sup>

As far as these justifications are concerned, some clarifications need to be made about acceding to the UN Statelessness Conventions. First of all, the 1961 Convention recognises the legitimacy of both *jus soli* and *jus sanguinis* and offers safeguards against

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<sup>412</sup> UNHCR, 2015b, p.2.

<sup>413</sup> Ibid, p.6.

<sup>414</sup> Ibid, p.6.

<sup>415</sup> European Migration Network, 'Statelessness in the EU', 2016, p.4, <http://www.emnluxembourg.lu/wp-content/uploads/2016/11/EMN-Inform-Statelessness-in-the-EU.pdf>, (accessed 20 May 2018).

statelessness that should be implemented through a State's nationality law, without specifying any further parameters of that law.<sup>416</sup> Thus, states are not required to adopt a pure *jus soli* or *jus sanguinis* doctrine. In addition, the fact that a state has incorporated elements of the Convention in their national legislation or the fact that a state might have a well-working stateless prevention system in place do not diminish the need for accession to the Convention. As far as signatories members are concerned, like as France, these states have the obligation to comply with the "object and purpose" of the 1961 Convention according to the Vienna Convention on the Law of treaties.<sup>417</sup> Finally, the Convention does not prohibit the withdrawal of nationality; states can regulate the loss and deprivation of nationality even if this leads to statelessness, in a limited number of circumstances and in accordance with the conditions outlined in Articles 7 and 8 of the Convention.<sup>418</sup> The abovementioned arguments are presented in order to illustrate that a deeper understanding of the provisions of the Convention can clarify any reservations states might have in relation to accession and raise awareness about its importance.

#### **4.4 Comprehensive safeguards for otherwise stateless children**

An important step in realising the right to a nationality for all children is for states to incorporate appropriate safeguards in their national legislation. One of the most crucial safeguards that must be incorporated in the domestic legislation of all EU states is the safeguard of granting nationality to otherwise stateless children. States should ensure acquisition of nationality for these children, either automatically at birth or following an application procedure. The first method is preferred, because it eradicates periods of statelessness all together. However, given that some sort of assessment will be needed in both cases, there may be little difference between automatic attribution of nationality at birth and an application process.<sup>419</sup>

In general, states are encouraged to take all necessary law and policy reforms in order for their domestic legislation to mirror the international standards. For this to happen, a comprehensive review of all relevant laws, regulations and practices must

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<sup>416</sup> UNHCR, 2014d, p.3-5.

<sup>417</sup> Vienna Convention on the Law of Treaties, (adopted 23 May 1969, entered into force 27 January 1980), 1155 UNTS 331, Article 18.

<sup>418</sup> UNHCR, 2014d, p.9.

<sup>419</sup> UNHCR, 2017g, p.4.

take place to assess the compatibility with international standards and child rights principles.<sup>420</sup> Special measure must be introduced for children born in the territory that are at risk of statelessness, taking into account the need to ensure the acquisition of a nationality immediately or as soon as possible after birth.<sup>421</sup> Moreover, it is essential that these reforms are implemented with retroactive effect in order to cover children left stateless under the previous framework. Another important measure that must not be ignored is the incorporation of a definition of statelessness according to the definition set out in Article 1.1 of the 1954 Convention in the national legislation. This will ensure a more consistent implementation of policies connected to stateless persons.<sup>422</sup>

#### 4.4.1 Determination Procedure

The first step to guarantee the safeguards for otherwise stateless children is to establish a procedure of determining whether a child is “otherwise stateless”. According to UNHCR this is an inquiry of whether the child acquires the nationality of his or her parents, the nationality of the state of birth or none and not ‘*an inquiry into whether a child’s parents are stateless*’.<sup>423</sup> In fact, there are a number of different reasons, as explained in Part 3, that a child can end up stateless.

Therefore, a crucial step for the protection and reduction of childhood statelessness is to establish an effective statelessness determination procedure that will reduce the number of stateless children and those that are registered as of “unknown nationality”. In all EU member states there is no specific statelessness determination procedure adapted for children born in Europe or stateless children.<sup>424</sup> Most of the EU member states use the existing stateless determination process for adults or make the determination as part of other procedures, such as asylum or residence application.<sup>425</sup> EU states are encouraged to adopt mechanisms to determine statelessness that align with their obligations under the Statelessness Conventions and take into consideration the special needs of children.<sup>426</sup>

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<sup>420</sup> L. Van Waas, 2015, p.31.

<sup>421</sup> Ibid, p.31.

<sup>422</sup> UNHCR, 2016b, p. 76.

<sup>423</sup> UNHCR, 2012c, p.5, para.19.

<sup>424</sup> European Migration Network, 2016, p.14.

<sup>425</sup> Ibid, p.14.

<sup>426</sup> UNHCR, 2014b, p.25.

According to UNHCR, the option of establishing a dedicated Statelessness Determination Procedure (SDP) that can also determine the nationality of children who might be otherwise stateless is particularly appropriate for stateless cases that appear in the migratory context.<sup>427</sup> Establishing SDPs is not only beneficial for the affected population, but also is in the interest of the states. SDPs assist governments in assessing the size and profile of stateless populations on their territory in order to determine the government services required and also can reveal the root causes of and new trends in statelessness thus contributing to its prevention.<sup>428</sup> However, only some of the EU states have already established SDPs. For example, France, Italy, Hungary, Latvia, UK and Spain have established SDPs, in comparison to Greece and Slovakia which have provisions for the protection of stateless persons in their laws but have not yet established procedures to determine statelessness.<sup>429</sup> In fact, France is a good example by having established in law a clear and detailed SDP – the oldest mechanism in EU going back to the 1950s – with the Centralised Office for the Protection of Refugees and Stateless persons being responsible for the procedure.<sup>430</sup> UK also introduced a dedicated SDP in 2013 that is relating to its immigration rules.<sup>431</sup>

The institutional location of SDP, namely if it is within a state's legal or administrative framework, can vary from one country to another. However, states should make sure to strive for a balanced centralised department that will conduct statelessness determination within a specialised administrative or judicial unit, and also offer the opportunity for people across the country to lodge applications.<sup>432</sup> The SDP in Spain offers a good example of a system that allows individuals to submit applications through different government bodies throughout the country and still assesses the application in a centralised body that possesses expertise on the process.<sup>433</sup> Furthermore, UNHCR guidelines highlight the need for officials to be trained in identifying potential applicants for statelessness and be able to refer them to appropriate channels.<sup>434</sup> Hungary provides an example, as there are various training sessions that take place for

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<sup>427</sup> Ibid, p.25.

<sup>428</sup> OSCE and UNHCR, p. 47.

<sup>429</sup> UNHCR, 2016e, p.2.

<sup>430</sup> Ibid, p.2; Statelessness Index, *France*.

<sup>431</sup> Statelessness Index, *United Kingdom*.

<sup>432</sup> UNHCR, 2016e, p.4.

<sup>433</sup> Ibid, p.4.

<sup>434</sup> Ibid, p.4.



officials as well as discussions among the decentralised bodies, UNHCR and civil society on a regular base, in order to build capacity and exchange information and experiences.<sup>435</sup>

UNHCR has identified a number of developments that can lead to the establishment of SDP through creating the necessary political will. First of all, acceding to the UN Statelessness Conventions is a first step.<sup>436</sup> Furthermore, research into the scope and magnitude of statelessness on a national level, as well as profiling of the stateless population can highlight the need for a SDP.<sup>437</sup> A good example in this regard is the Netherlands. In 2011, UNHCR, while partnering with academia and the civil society, undertook certain initiatives to raise awareness about the implementation of the 1954 Convention and the situation of individuals who were registered as of “unknown nationality”.<sup>438</sup> The efforts of UNHCR led in 2014 to the examination of the establishment of an SDP by the authorities and eventually to its creation.<sup>439</sup>

Due to the fact that refugees and asylum seekers can also claim stateless status, UNHCR guidelines advise states to combine statelessness and refugee determination in the same procedure.<sup>440</sup> Statelessness and asylum determination procedures are separate in the French system. However, in cases where an individual raises claims for both status, their claim is assessed by the asylum authorities and they are granted a combined “stateless refugee” status.<sup>441</sup> UNHCR points out that it is important that both types of status are explicitly recognised. Although protection under the refugee status offers a wider set of rights, there are cases when the refugee status ceases without a person acquiring a nationality, necessitating then protection under the stateless status.<sup>442</sup> As far as refugees and asylum seekers are concerned, the importance of accurately recording the nationality or statelessness of refugees and asylum seekers in reception centers must be pointed out. Accurate information are not only important for the asylum claim, but also for establishing the nationality of children. Authorities that play a role in the

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<sup>435</sup> Ibid, p.4-5.

<sup>436</sup> Ibid, p.3.

<sup>437</sup> Ibid, p.3.

<sup>438</sup> Ibid, p.4.

<sup>439</sup> Ibid, p.4; Government of the Netherlands, *Dutch Nationality*, [website], <https://www.government.nl/topics/dutch-nationality/statelessness>, (accessed 25 May 2018).

<sup>440</sup> UNHCR, 2014b, p.27.

<sup>441</sup> UNHCR, 2016e, p.9.

<sup>442</sup> UNHCR, 2014b, para.78.

registration process of arrivals in Europe, such as the police, the coast guard and immigration and asylum services and Frontex should be aware of the possibility of refugees and asylum seekers without a nationality and should have the possibility to record it accordingly.<sup>443</sup>

#### **4.4.2 Assessing evidence and simplifying the process**

When assessing the evidence for determining if a child is otherwise stateless, it is essential to employ a mixture of facts and law. This means that conclusions can not be drawn only from the analysis of the respective nationality law but also from an evaluation of how this law is implemented in practice.<sup>444</sup> According to UNHCR guidelines, *“applying this approach of examining an individual’s position in practice may lead to a different conclusion than one derived from a purely formalistic analysis of the application of nationality laws of a country to an individual’s case”*.<sup>445</sup> In cases where the competent authorities treat an individual as a non-national, although this person in theory meets the criteria for automatic acquisition of nationality, then it is that position and not the law that determines whether this individual is a national or not.<sup>446</sup> There are cases that an individual has never come in contact with a state’s competent authorities, because he/she was born abroad and automatically acquired the nationality at birth and has never applied for identity or passport. That is the case for a lot of refugee and asylum seeking children born in the EU. According to UNHCR guidelines, in such cases it is helpful to assess the state’s general attitude in reacting to similar situations.<sup>447</sup> However, it might prove to be difficult in cases where there has been no similar incidents yet.

States should also not ignore cases when parents are unable or have good reasons not to register the child with the state of their own nationality, especially in cases of asylum seekers and refugees.<sup>448</sup> In these cases, even if the nationality could be acquired through registration and other procedures, this is impossible due to the nature of the refugee status. In such circumstances where the child of a refugee would

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<sup>443</sup> Sturkenboom I. and Van Waas L., p.6.

<sup>444</sup> UNHCR, 2014b, para.83.

<sup>445</sup> Ibid, para.24.

<sup>446</sup> Ibid, para.37.

<sup>447</sup> Ibid, para.38.

<sup>448</sup> UNHCR, 2012c, para. 26; I.Verbeek, 2016, p.7.

otherwise be stateless, the safeguard for otherwise stateless children should be applied.<sup>449</sup> In general, states are encouraged to come in contact with foreign authorities to request specific information about an individual's case or general guidance on a country's nationality law, in order to reach conclusions as to whether an individual is stateless.<sup>450</sup> However, the authorities of the country of origin should under no circumstances be contacted if the individual has a well founded fear of persecution, unless it has been established that he/she is not entitled to refugee status or a complementary form of protection.<sup>451</sup>

Another issue that appears is the inherent difficulties in proving statelessness. Although in most legal systems a claimant bears the burden of proof, in this case the burden of proof must be shared by the claimant, namely the parents or guardians and the state.<sup>452</sup> This is the case, for example, in France, Hungary and Spain.<sup>453</sup> Determining whether an individual has acquired a nationality can be difficult. Therefore, parents and guardians are required to provide all relevant documents and information available, while the authorities should obtain evidence and establish the facts.<sup>454</sup> Assessing this evidence is also very complex as there are no universal standards on assessing evidence of whether a child would otherwise be stateless. This means that an incorrect finding risks leaving a child without access to a nationality. Therefore, the best interests of the child and the right to a nationality as set in the CRC must be taken into account and adopt a "reasonable degree" as a standard of proof.<sup>455</sup> A higher standard of proof could undermine the object and purpose of the 1961 Convention. This makes clear that states should take into account the individual circumstances of each case, such as a refugee or a statelessness status, when determining whether a child will be otherwise stateless. In particular, when it comes to children, states must follow additional procedural and evidentiary safeguards that include "*priority processing of their claims, provision of*

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<sup>449</sup> UNHCR, 2012c, para.27.

<sup>450</sup> UNHCR, 'Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons', 2016e, p.6, <http://www.refworld.org/docid/57836cff4.html>, (accessed 25 May 2018).

<sup>451</sup> UNHCR, 2014b, para.96.

<sup>452</sup> UNHCR, 2012c, para.20.

<sup>453</sup> UNHCR, 2016e, p.6.

<sup>454</sup> UNHCR, 2012c, para.20.

<sup>455</sup> Ibid, para.21.

*appropriately trained legal representatives, interviewers and interpreters as well as the assumption of a greater share of the burden of proof by the State”.*<sup>456</sup>

The establishment of inclusive safeguards must be accompanied by measures to remove practical and administrative obstacles in accessing or confirming nationality. This means actively adopting appropriate measure to facilitate access to nationality. Improving the provision of information to the available procedures can be an important component of identifying stateless children or children in the risk of statelessness. According to UNHCR, a general information campaign – although welcomed – is not sufficient, states should provide detailed information to parents of children who would otherwise be stateless about the possibility of acquiring the nationality, how to apply and what the conditions are.<sup>457</sup> Moreover, states should make this information available in different languages; undertake targeted information campaigns as well as offer counseling and legal advice to children and their families.<sup>458</sup> Especially in the case of children, authorities should also be able to initiate the procedure *ex officio*, due to the fact that many individuals are not aware that they are stateless or at a risk of statelessness.<sup>459</sup> This is the case in Spain where the legislation foresees an *ex officio* initiation of the procedure.<sup>460</sup> Moreover, those who are identified as having a potential statelessness claim during the asylum procedure in Spain are also informed of the possibility to apply for the stateless status.<sup>461</sup> It is very important that authorities coming in contact with people that might be stateless to inform them about their rights and existing procedures.

In the same way, states should ensure the right to review and appeal administrative and judicial decisions. In addition, in cases where states grant nationality to individuals upon application, they are advised to accept the application free of charge and take into consideration indirect costs, such as authentication of documents or official translations, which should not pose an obstacle in applying for nationality.<sup>462</sup>

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<sup>456</sup> UNHCR, 2014b, para.119.

<sup>457</sup> UNHCR,2012c, para.53-54.

<sup>458</sup> UNHCR, 2014b, p.28.

<sup>459</sup> UNHCR, 2016e, p.5.

<sup>460</sup> Ibid, p.5.

<sup>461</sup> Ibid, p.5.

<sup>462</sup> UNHCR,2012c, para.54.

#### 4.4.3 Unknown or Undetermined Nationality

Another issue that appears very often in the EU states is registering a child as of “unknown or undetermined nationality”. In a number of EU states this phenomenon has been increasing, both in terms of scale and duration, with many children left in limbo.<sup>463</sup> Although as explained above, this can be a positive step towards recognizing that the child can not be registered with the nationality of the parents, states should determine the child’s nationality or stateless status as soon as possible. Registering children as of having “unknown nationality” must be a temporary measure, taken for the period needed to investigate whether or not a child is stateless. It is also important that states clearly define the criteria for registering children as of “unknown or undetermined” nationality and the rights related to this status.<sup>464</sup> Letting children without effective access to nationality is not in a child’s best interests. According to UNHCR guidelines, such a period should not exceed five years and should not deprive these children of access to other rights such as education and health.<sup>465</sup>

In this regard, Finland offers a good example by incorporating the distinct category of “pending nationality” in its Population Information System, besides the categories of “stateless” and “unknown nationality”.<sup>466</sup> According to UNHCR, 92.6% of the persons recorded as of “pending nationality” belong to the age group 0-4 years.<sup>467</sup> This suggests that steps are taken by the state to clarify the nationality status of these children as soon as possible and that this category is only a transitional phase.<sup>468</sup> However, the existence of also the category of “unknown nationality”, which contains as many persons as the “stateless” category, is worrying and suggests that the systems needs further improvements.<sup>469</sup>

#### 4.4.4 Permissible Conditions for the Acquisition of Nationality

When the risk to statelessness for an individual is determined, states have two options to grant nationality: 1. automatically at birth or 2. following an application

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<sup>463</sup> L. Van Waas, 2015, p.17.

<sup>464</sup> UNHCR, 2016b, p.76.

<sup>465</sup> UNHCR, 2012c, p.6, para.22.

<sup>466</sup> UNHCR, 2014f, p.19.

<sup>467</sup> Ibid, p.19.

<sup>468</sup> L. Van Waas, 2015, p.17.

<sup>469</sup> UNHCR, 2014f, p.19.

procedure.<sup>470</sup> In the cases that states opt for the application procedure there are a number of conditions stipulated in the 1961 Convention that are allowed. This means that states can choose from this exhaustive list of conditions or decide not to put any conditions at all.<sup>471</sup> These conditions set in 1961 Convention have been thoroughly analysed in Part 2 and the different gaps and problems relating to the implementation of the conditions have been examined in Part 3 of this paper. Therefore this part will examine some practices that can be employed by states to offer a higher level of protection for these children while align with international standards.

#### **4.4.4.1 Loss of nationality**

Many EU states, like for example the UK, require evidence of identity or proof that a child has no other nationality that sometimes refugees and asylum seekers lack due to their particular situation.<sup>472</sup> Most of the states that have strict evidence and documentation criteria use the pretext of the need to guard against possible fraud or misapplication. However there are other ways that can reasonably protect the affected individuals and at the same time offer the state the possibility to withdraw the nationality. One alternative way is to provide for loss of nationality in cases when a child is revealed to have acquired another nationality. In fact, several EU states, like Belgium and France, provide for a loss of nationality if it is revealed, before a certain age, that the child in question has another citizenship.<sup>473</sup>

The advantage of such a provision lies in the fact that children can be protected by avoiding long periods of statelessness and states can be reassured that the safeguards are not a pull factor for individuals who are not stateless. Nevertheless, there is still the need for appropriately regulating the withdrawal of nationality in a way that does not infringe the principle of the best interests of the child and that takes into account the proportionality of the withdrawal.<sup>474</sup> According to Gerard-René de Groot, the loss of citizenship should always be connected to the principle of proportionality, strong

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<sup>470</sup> UNHCR, 2012c, para.33.

<sup>471</sup> Ibid, para.37.

<sup>472</sup> I. Verbeek, 2016, p.9.

<sup>473</sup> Ibid, p.9.

<sup>474</sup> Ibid, p.10.

procedural guarantees including access to judicial review and the treatment of the individuals concerned as nationals during the entire procedure.<sup>475</sup>

#### **4.4.4.2 Dealing with the hidden cases of ineffective nationality**

Part 3.3.5 examined the specific situation of hidden cases of ineffective nationality; this scenario involves children that acquire automatically their parents' nationality, but in reality are not considered as national by any state under the operations of its law. This is a complex situation that at the moment has been examined poorly, even labelled as de facto statelessness. However as it has been analysed before, a practice and protection oriented interpretation of the 1954 Convention and UNHCR Guidelines should apply in the case of refugee and asylum seeking children that have no realistic prospect of accessing their nationality. Apart from the fact that more guidance is needed in this sector, as there is no authoritative guidance available, existing research suggests that the application of 'otherwise stateless' safeguards should not be automatic in this case.<sup>476</sup> This is also supported by the relevant UNHCR guidelines:

*[...] where the child of a refugee has acquired the nationality of the State of origin of the parents at birth, it is not desirable for host countries to provide for an automatic grant of nationality under Article 1 (1) of the 1961 Convention at birth, especially in cases where dual nationality is not allowed in one or both States. Rather, States are advised that refugee children and their parents be given the possibility to decide for themselves, whether or not these children acquire the nationality of the State of birth, taking into account any plans they may have for future durable solutions (e.g. voluntary repatriation to the State of origin).*<sup>477</sup>

UNHCR encourages states to give the possibility to the refugee children and their parents/guardians to choose for themselves whether the child should acquire the nationality of the state of birth. The situation is even more complex if a host country does not permit dual nationality, which means that choosing the nationality of the host country will exclude the child from registering later with the country of origin.

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<sup>475</sup> De Groot G. and Vink M., 'Best practices in Involuntary Loss of Nationality', *Liberty and Security in Europe*, no.73, 2014, p.1, <https://www.ceps.eu/system/files/No%2073%20Involuntary%20Loss%20of%20Citizenship%20RdG%20and%20MV.pdf>, (accessed 20 may 2018).

<sup>476</sup> European Council for Refugees and Exiles, 2017, p.13.

<sup>477</sup> UNHCR, 2012c, para.28.

EU states should make this option available for such cases, rather than automatically granting their nationality. In this process, states should take into account the best interests of the child as well as the right to a safe and healthy environment. Moreover, states should interpret the term of nationality as a genuine link with the state and as a key aspect of ones' identity, in the light of the consequent jurisprudence of the ECtHR and the definition of nationality provided by the International Court of Justice in the *Nottebohm* case.<sup>478</sup> In addition, corresponding authorities charged with the examination of these cases should possess the necessary expertise, information and resources to carry their duties.<sup>479</sup> Furthermore, cases should be dealt in an individual manner, taking into consideration the specific circumstances of each case such as:

- *The endurance of the circumstances that forced the parents to leave their country of origin and any prospective of return in the foreseeable future;*
- *The time the parents already spent in the host country;*
- *The parents' will;*
- *The state or non-state character of the agent behind the persecution that forced the parents to leave their home (i.e. in case of a clearly non-state agent of persecution there may be some opportunities to register the child's birth with the consular authorities of the country of origin without exposing the family to a risk of persecution or losing their status, but this possibility should be examined in an extremely careful manner and only on an exceptional basis);*
- *Whether or not the two States in question allow for multiple nationality;*
- *State failure in the country of origin;*
- *Experiences with similar cases (what happened with refugee families from the same country of origin in a comparable situation); etc.*<sup>480</sup>

In the cases of children with no effective access to nationality it would have been in the best interests of the child, after following a careful assessment of the individual case, to be identified as otherwise stateless person and be given the chance to obtain the nationality of the host country. After all, the avoidance of statelessness is always in the best interests of the child. However this dilemma is extremely complex. Gábor Gyulai explains the dilemma as follows:

*Should a host state pursue the widest possible application of the legal safeguards applicable to 'otherwise stateless' children and thus integrate as*

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<sup>478</sup> European Council for Refugees and Exiles, 2017, p.14.

<sup>479</sup> Ibid, p.14.

<sup>480</sup> Ibid, p.14.



*many refugee children as possible into its own community of nationals? Or should refugee children primarily be encouraged and helped to obtain a documentary proof of having inherited their parents' nationality (where this happens ipso facto)?*

Taking everything into consideration, this dilemma can be very complicated and needs more authoritative guidance. There is however one thing sure, which also emerges in most research done on the topic; a general agreement that these cases should be decided depending on the individual circumstances and should not be granted automatically the nationality of the host country.<sup>481</sup>

#### **4.5 Registration at birth**

Although birth registration does not confer nationality, it serves as an essential proof of descent and birthplace and therefore as an essential part of determining the nationality for most refugee and asylum seeking children. In order to combat statelessness at birth, an effective and inclusive system of birth registration plays a pivotal role. This is also confirmed by UNHCR, which included the need for birth registration in its Global Action Plan to end statelessness.<sup>482</sup> Achieving an effective and inclusive system of birth registration depends on the civil registration laws and regulations in place and the quality of civil registration systems.<sup>483</sup> Therefore, states have to take all the appropriate measures to strengthen the relevant procedures and to eliminate potential obstacles.

To begin with, states should guarantee the registration of all newborns in the territory, especially those born into vulnerable or marginalised communities. Children should be registered immediately after birth, which implies that this should take place in a period of days rather than months.<sup>484</sup> According to UNICEF, a birth registration should include, as a minimum, the child's name at birth, sex, date of birth, place of birth, parents' names and addresses and parents' nationality status.<sup>485</sup> Other information, such as the child's siblings or ethnic status, could be included as long as they protect the

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<sup>481</sup> G. Gyulai, 2017; European Council for Refugees and Exiles, 2017, p.13.

<sup>482</sup> See Annex 3 for all the 10 Actions to End Statelessness in UNHCR Global Action Plan.

<sup>483</sup> UNHCR, 2017f, p.6.

<sup>484</sup> UNICEF, 2007, p.100.

<sup>485</sup> Ibid, p.101.

right to privacy or the principle of non-discrimination.<sup>486</sup> Birth registration should be a compulsory obligation for parents and responsible administrative authorities and should be applied to all children living in the territory, irrespective of their nationality or statelessness.<sup>487</sup>

Aligning civil registration laws and regulations with international standards is a first step to guarantee a universally accessible birth registration system.<sup>488</sup> In addition, it has been proven that integrating civil registration services into other public sectors, such as health, education and social security, can be very effective; with higher registration rates in these cases.<sup>489</sup> Health professional, particularly in the maternal health sector, can play an essential role in informing parents about the importance of birth registration and the associated procedures. Moreover, in many countries the health sector is responsible for issuing birth notifications.<sup>490</sup> These notifications constitute the first step to the process of birth certificate as they provide essential information on age, identity and parentage of newborns; thereby enabling parents to initiate and complete birth registration at a later stage.<sup>491</sup> A good practice in the refugee context is to ensure that refugee women receive counseling and information when they access services such as pre-natal and post-partum care.<sup>492</sup> Since a birth notification is issued by hospitals or certified midwives, it is important for refugee women to give birth in hospitals where they are can also receive better medical care.<sup>493</sup>

Low levels of awareness about birth registration can be an obstacle for certain communities, such as refugees. Therefore, EU states should raise awareness about the importance of birth registration to effectively combat statelessness. UNHCR is assisting states to undertake information campaigns and community-based outreach programmes. In the refugee context, it is important that the distribution of information is done in different languages and involves the use of individual counselling and direct engagement with communities.<sup>494</sup> Community engagement plays an essential role and

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<sup>486</sup> Ibid, p.101.

<sup>487</sup> Ibid, p.100.

<sup>488</sup> UNHCR, 2017f, p.7.

<sup>489</sup> Ibid, p.7.

<sup>490</sup> Ibid, p.7.

<sup>491</sup> Ibid, p.7.

<sup>492</sup> Ibid, p.7.

<sup>493</sup> Ibid, p.7.

<sup>494</sup> Ibid, p.8.

can be achieved, among others, by the distribution of brochures explaining the procedures, by establishing information hot lines and help desks and by engaging field officers and legal councilors in communication with the community.<sup>495</sup> Awareness must also be raised at the governmental level by developing clear and comprehensive guidelines and regulations on birth registration for officials on a national level and conduct regular trainings.<sup>496</sup>

Furthermore, EU states should ensure that all refugee children's real nationality is properly determined in birth certificates.<sup>497</sup> Mistakenly registering a child's nationality as their parents without ensuring that this child has realistic access to this nationality can be very problematic. The same goes for registering children as of "unknown or undetermined nationality". Moreover, it is important for birth registration services to become available throughout the country, especially in cases that registration services are out of reach due to transportation costs or poverty. A good example in this regard is given by UNHCR that has assisted before in creating mobile birth registration services inside of refugee camps, thereby making services available to the population at risk.<sup>498</sup> Another issue that has been touched upon before is the need for digitization of the birth records. Technology can assist in overcoming geographic and administrative obstacles to registration and strengthen the statistical system of a state.<sup>499</sup> Similar initiatives should take into consideration the need for data protection as well as not setting further restrictions to poor and marginalised communities.

Another important measure is the possibility of late birth registration and the elimination of any obstacles by simplifying the procedure.<sup>500</sup> Imposing fines or other sanctions to parents/guardians that have failed to register a child's birth can be rather counter-productive and result in lower percentages of birth registration. In this regard, Poland possesses a good example as late birth registration is done ex officio by the

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<sup>495</sup> Ibid, p.18.

<sup>496</sup> UNICEF, 2007, p.100.

<sup>497</sup> G. Gyulai, 2017.

<sup>498</sup> UNHCR, 2017f, p.7.

<sup>499</sup> Ibid, p.8.

<sup>500</sup> Ibid, p.17.

Head of the Civil Registry Records Office if the birth is not registered before the prescribed deadline.<sup>501</sup>

In addition, EU states should facilitate the acceptance of alternative forms of evidence to assist people who lack documentation like refugees and asylum seekers. These alternatives might include witness testimonies, certificates that UNHCR issues to persons of concern -which also contain basic bio-data- or even photocopies of original identity documents. In some countries, like in Germany, it is even possible to register a child's birth without having the necessary documents.<sup>502</sup> In particular, the German system allows children without any official documents to obtain a document certifying that the child's birth was reported, which can be further used to apply for benefits and services.<sup>503</sup>

Finally, states are encouraged to improve their birth registration system through collaboration with UNHCR and also regional partnerships. In this regard, the Zagreb Declaration in 2011 is a good example.<sup>504</sup> The Zagreb Declaration, which was signed by Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia, and the Former Yugoslav Republic of Macedonia, included recommendations for adopting legislation that facilitates birth registration, waiving fees for issuing documentation and establishing national co-ordination mechanisms.<sup>505</sup> There are also important initiatives on an international level. UNHCR and UNICEF launched in 2016 a new Coalition to Ensure Every Child's Right to a Nationality, which is a group that involves civil society organisations and UN Agencies, with the purpose of improving birth registration and eliminating laws and practices that deny children nationality.<sup>506</sup> In addition, the issue of birth registration has an opportunity to be further addressed through the development agenda, namely the Sustainable Development Goals (SDGs). The 2030 Sustainable Development Agenda includes in its Target 16.9 the need for "*legal identity for all*,

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<sup>501</sup> Statelessness Index, *Poland*, [website], <https://index.statelessness.eu/country/poland>, (accessed 26 May 2018).

<sup>502</sup> German Institute for Human Rights, 'How to register your newborn', [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Weitere\\_Publikationen/Info\\_How\\_to\\_Register\\_Your\\_Newborn.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere_Publikationen/Info_How_to_Register_Your_Newborn.pdf), (accessed 19 May 2018).

<sup>503</sup> Ibid.

<sup>504</sup> Zagreb Declaration on the Provision of Civil Documentation and Registration in South Eastern Europe, 26-27 October 2011, <http://goo.gl/R6yhsG>, (accessed 20 May 2018).

<sup>505</sup> UNHCR, 2017f, p.10.

<sup>506</sup> UNHCR, *Coalition on Every Child's Right to a Nationality*, [website], <http://www.unhcr.org/ibelong/unicef-unhcr-coalition-child-right-nationality/>, (accessed 25 May 2018).

including birth registration”.<sup>507</sup> This positions the reduction of statelessness and the promotion of accessible birth registration in a state’s development agenda, which offers the chance for states, civil society and UN to partner to promote birth registration through the SDGs.

## **4.6 Expanding the Regional involvement**

### **4.6.1 The role of the Council of Europe**

As analysed in Part 3, the CoE plays an important role in the region in the protection and prevention against statelessness, mainly through the ECtHR and the ECN. However there is more to be done from the side of the CoE. First of all, the ECN must be further promoted and also ratified by all CoE member states. Therefore, the CoE should examine ways to promote ratification of the ECN and also draft recommendations and guidelines for its implementation. Ratification goes also hand in hand with an effective implementation in practice and with the incorporation of the regional standards in domestic law which the CoE should also strive to promote.<sup>508</sup>

As explained before, although the right to a nationality is not mentioned in the ECHR, the ECtHR has touched upon cases concerning nationality and statelessness when the denial of nationality violated a separate provision under the ECHR.<sup>509</sup> The Court’s position that a right to a nationality follows as an element of a person’s social identity (Article 8 ECHR) opened the path for a broader interpretation of the jurisprudence of the ECtHR for the prevention of statelessness. In addition, a set of cases by the ECtHR demonstrated that the regulation of nationality may, given the circumstances, raise issues under a number of different provisions in the ECHR.<sup>510</sup> While there is promising jurisprudence from the ECtHR, there is still lack of definitive guidance for state action with regard to the prevention of statelessness at birth. The CoE should not only strengthen and further develop this jurisprudence but also provide further normative guidance on the role of the ECHR in the context of the avoidance of

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<sup>507</sup> United Nations, *Sustainable Development Knowledge Platform*.

<sup>508</sup> L. Van Waas, 2015, p.31.

<sup>509</sup> These cases include, for example: *Andrejeva v Latvia* App No 55707/00 (ECtHR 2009); *Kim v Russia* App No 44260/13 (ECtHR 2014). Institute on Statelessness and Inclusion, 2017b, p.76.

<sup>510</sup> More analysis in Part 2.5.3.

childhood statelessness.<sup>511</sup> In addition, the CoE can act as an effective forum for further discussion on the topic of childhood statelessness. This can involve, among others, the identification of good practices and the facilitation of information exchange among member states, politicians and experts.<sup>512</sup>

Finally, some experts have also suggested the need for the re-establishment of the Committee of Experts on Nationality.<sup>513</sup> The Committee of Experts on Nationality used to be the Council of Europe intergovernmental committee specialising in matters relating to nationality and was responsible for the intergovernmental co-operation in the field of nationality.<sup>514</sup> However in 2008 it was replaced by an Ad hoc Advisory Group under the European Committee on Legal Co-operation, named Group of Specialists on Nationality.<sup>515</sup> A dedicated Committee has stronger powers and, therefore, will be more effective in following developments on nationality, exchanging views regularly and proposing solutions.

#### **4.6.2 The role of the European Union**

There is a growing demand for more EU involvement in the protection against statelessness considering the ‘relative non-existence of any targeted EU action on statelessness’.<sup>516</sup> The EU should prioritize prevention of childhood statelessness higher in the political agenda and identify areas of EU policy which provide an avenue for strengthening efforts to improve children’s enjoyment of the right to a nationality. This sub-chapter is going to investigate ways for the EU to be more involved in the topic.

To begin with, the EU has pledged in September 2012 that all EU member states will accede to the 1954 Convention and will consider acceding to the 1961 Convention.<sup>517</sup> This pledge has not yet been fulfilled and the EU should take more

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<sup>511</sup> L. Van Waas, 2015, p.31.

<sup>512</sup> Ibid, p.31.

<sup>513</sup> P. Baeyens, ‘Adding the voice of National Human Rights Institutions towards ending statelessness in Europe’, *European Network on Statelessness Blog*, 2015, <https://www.statelessness.eu/blog/adding-voice-national-human-rights-institutions-towards-ending-statelessness-europe>, (accessed 29 May 2018).

<sup>514</sup> Council of Europe, *Committee of experts on nationality*, [website], <https://www.coe.int/en/web/cdcj/completed-work/standard-setting/nationality>, (accessed 28 May 2018).

<sup>515</sup> Ibid.

<sup>516</sup> K. Swider, ‘Time to put statelessness on the EU agenda!’, *ENS Blog*, 2013, <https://www.statelessness.eu/blog/time-put-statelessness-eu-agenda>, (accessed 29 May 2018).

<sup>517</sup> European Council and Council of the European Union, ‘Council adopts conclusions on statelessness’, 2018, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>, (accessed 27 May 2018).

actions to make sure that all its member states accede to the necessary legal instruments. Nevertheless, an important step was taken in December 2015 when the Council of the European Union adopted the first ever Conclusions on Statelessness; encouraging the Commission to launch, via the European Migration Network a Platform of Statelessness to exchange good practices among member states.<sup>518</sup> This is an important initiative to counter statelessness inside the EU by raising awareness among practitioners, caseworkers and other civil servants from different countries on different methods and ways to better protect stateless people.<sup>519</sup> The initiative aims further to work on the identification and profiling of affected population, developing a common approach for improving the SDPs at a national level and developing guidelines.<sup>520</sup> Efforts to put similar issue on the European political agenda are welcomed and should be further promoted.<sup>521</sup> An effective mechanism for the exchange of information can lead to a better implementation of international obligations and a higher level of protection for the affected population. Moreover, there is room for more attention on the issue of statelessness in the child rights agenda, such as in the EU Forum on the Rights of the Child, European Commission's "Investing in Children" recommendations and in the European Parliament's Inter Group on Children's Rights.<sup>522</sup>

Another way for the EU to get more involved is to support the creation of SDPs in the member states. Building on its vast knowledge and experience in the status determination procedure for asylum seekers, the EU can support the establishment and improvement of SDPs in EU states.<sup>523</sup> Moreover, the EU should establish more efficient methods on reviewing national policies that can affect the EU citizenship and therefore the obligations of the states towards the EU.<sup>524</sup> As the lack of data constitutes one of the biggest issues in childhood statelessness prevention, the EU should promote the

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<sup>518</sup> Ibid.

<sup>519</sup> European Commission, *Platform of Statelessness*, [website], [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/expert-groups\\_en/platform-statelessness\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/expert-groups_en/platform-statelessness_en), (accessed 28 May 2018).

<sup>520</sup> Ibid.

<sup>521</sup> P. Schumacher, 'Council conclusions demonstrate the EU's commitment to address statelessness', *ENS Blog*, 2015, <https://www.statelessness.eu/blog/council-conclusions-demonstrate-eus-commitment-address-statelessness>, (accessed 17 May 2018).

<sup>522</sup> L. Van Waas, 2015, p.31.

<sup>523</sup> K. Swider, 2013.

<sup>524</sup> C. Nas, 'The EU's response to statelessness - Where next after Luxembourg?', *ENS Blog*, 2016, <https://www.statelessness.eu/blog/eu-response-statelessness-where-next-after-luxembourg>, (accessed 18 May 2018).

systematic generation and dissemination of data on children affected by statelessness in order to identify gaps, trends and good practices.<sup>525</sup> In specific, Regulation (EC) No 862/2007 of 11 July 2007 on Community statistics on migration and international protection should be amended in order to oblige Member States to collect data on stateless persons and to communicate them to Eurostat.<sup>526</sup>

As it has been mentioned before, the EU has the opportunity to address statelessness in its external relations, including through the European External Action Service. Promoting human rights is a key area in the EU's external policies and the topic of statelessness should be included in these actions. After all, this research has already established the connection between statelessness and mass displacement.<sup>527</sup> Nationality problems of children born in the EU sometimes have root causes in countries of origin, for example due to the existence of gender discrimination in nationality laws of third countries. Therefore, the EU should motivate and stimulate countries around the world to abolish discriminatory or otherwise problematic laws and practices affecting children's right to a nationality. Especially the abolition of gender discrimination in nationality laws can constitute a major step in eliminating statelessness worldwide.<sup>528</sup> Moreover, the EU can tackle statelessness in its external relations by financial support to research projects, awareness raising, promotion of birth registration, and support to local organisation.<sup>529</sup> There is evidence of the EU's involvement in the promotion of stateless issues in third countries; however a study has shown that this involvement has been rather ad hoc and lacking a cohesive vision.<sup>530</sup> Therefore, the EU should strengthen its efforts by coordinating its actions.

Finally, the EU should strive more to promote the topic of childhood statelessness in forums internally, like in the European Migration Network, as well as internationally, such as in the UN Human Rights Council. In this regard, the EU can provide political and financial support to initiatives and programs related to the

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<sup>525</sup> L. Van Waas, 2015, p.31.

<sup>526</sup> G. De Groot, K. Swider and O. Vonk, p.60.

<sup>527</sup> See Part 1.7.

<sup>528</sup> UNHCR, 'Good Practices Paper – Action 3: Removing Gender Discrimination from Nationality Laws', 2015c, p.1, <http://www.refworld.org/docid/54f8377d4.html>, (accessed 18 May 2018).

<sup>529</sup> C. Nas, 2016.

<sup>530</sup> L. Van Waas, 'Addressing the Human Rights Impact of Statelessness in the EU's External Action', *European Parliament's Subcommittee on Human Rights*, 2014, p.25-26, [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL\\_STU%282014%29534983\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU%282014%29534983_EN.pdf), (accessed 9 May 2018).



avoidance of childhood statelessness, including the various UNHCR initiatives like the “I Belong” Campaign.<sup>531</sup>

#### 4.6.3 Harmonisation of standards on statelessness

As it has been made clear in Part 3, the practices and policies relating to statelessness at birth throughout the EU states are inconsistent and lack any kind of harmonisation.<sup>532</sup> Therefore, there is a growing support on the need for a common legal framework on statelessness in the EU. Even if the EU is competent to legislate in the field of statelessness, the principle of subsidiarity<sup>533</sup> requires establishing that the EU level is more suitable for addressing relevant problems, as opposed to the national or local levels.<sup>534</sup> There are a number of arguments that support that the EU level is more appropriate to deal with the objectives of protection and prevention of statelessness.

First of all, people living in the EU have the right to be treated equally. A coordinated action in the field of statelessness will ensure that persons in a similar situation within the EU are treated in the same way.<sup>535</sup> Moreover, a coordinated action on the EU level can avoid the so called “race to the bottom” phenomenon. This means that each member state might try to offer less protection provisions in comparison to neighboring countries to avoid acting as a pull factor for stateless persons who are looking for the easiest access to the recognition of their status and the best protection policies.<sup>536</sup> This might lead to a very low level of protection in the EU, as well as a low adherence to international standards. The experience of the Common European Asylum System verifies this argument and poses a good example according to which a common system on statelessness could be modeled.<sup>537</sup> However, it is important to clarify that there is no evidence whether stateless populations actually engage in the search for the

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<sup>531</sup> L. Van Waas, 2015, p.31.

<sup>532</sup> European Council for Refugees and Exiles, 2017, p.10.

<sup>533</sup> *‘The principle of subsidiarity is defined in Article 5 of the Treaty on European Union. It aims to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at EU level is justified in light of the possibilities available at national, regional or local level. Specifically, it is the principle whereby the EU does not take action (except in the areas that fall within its exclusive competence), unless it is more effective than action taken at national, regional or local level.’* Eur-Lex, Subsidiarity, [website], <https://eur-lex.europa.eu/summary/glossary/subsidiarity.html?locale=en>, (accessed 6 May 2018).

<sup>534</sup> G. De Groot, K. Swider and O. Vonk, p.58.

<sup>535</sup> K. Swider, 2013.

<sup>536</sup> Ibid.

<sup>537</sup> G. De Groot, K. Swider and O. Vonk, p.58.

best protection provisions and whether this has an influence on the EU states' level of protection.<sup>538</sup> Nevertheless, in the context of open borders, the EU is responsible to make sure that members comply with their international obligations without being hindered by such considerations. Deriving from the same reasons as establishing a Common European Asylum Policy, the idea behind creating a common statelessness policy is to establish a standard legal framework that guarantees a minimum level of protection.<sup>539</sup>

Furthermore, the establishment of common procedures on statelessness is already suggested in the existing EU law. Since EU law treats stateless persons as third-country nationals such persons fall under the EU legislation on migration. Any national legislation regarding identification, protection or prevention of statelessness affects the rights of a group of people that are protected by the EU legislation and therefore lie within the scope of the EU.<sup>540</sup> In addition, due to the fact that EU legislation has generally higher position on a national level than international treaties, this will contribute to a more effective implementation.<sup>541</sup> Therefore, enforcing international standards through EU legislation has the potential of leading to a higher level of protection for the affected population, as well as offer better remedies against violations and non-compliance.<sup>542</sup>

Taking these arguments into consideration, one option for establishing such a common procedure could be to initiate an EU Directive on statelessness under the EU migration policy.<sup>543</sup> Such a Directive should incorporate international standards as well as the relevant UNHCR guidelines. There is already support from experts for such an initiative<sup>544</sup> as well as proposals for its creation, such as the one by the Meijers Committee, which is a standing committee of experts on international immigration, refugee, and criminal law in the Netherlands, that called for an EU Directive on the

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<sup>538</sup> Den Heijer M. and Swider K., 'Why Union Law Can and Should Protect Stateless Persons', *SSRN*, 2016, p.16, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2823627](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2823627), (accessed 12 May 2018).

<sup>539</sup> Ibid, p. 16.

<sup>540</sup> Ibid, p. 17.

<sup>541</sup> G. De Groot, K. Swider and O. Vonk, p.58.

<sup>542</sup> Ibid, p.58.

<sup>543</sup> Ibid, p.60.

<sup>544</sup> Berenyi K., 2016.

identification of statelessness and the protection of stateless persons in 2014.<sup>545</sup> The Meijers Committee proposes, among others, that such a Directive should include an obligation for all member states to establish a SDP, as a logical conclusion deriving from the 1954 Convention.<sup>546</sup> Starting with a Directive that deals with issues of identification and protection of stateless persons can be a first step to move forward towards regulating prevention.

However there are also voices who express concerns over such a harmonisation initiative. According to Gyulai:

*‘given the apparently profound difficulties in implementing the EU asylum acquis in a manner that it could reflect truly harmonised (or horrible dictucommon) standards, it is unlikely that EU institutions and the 27 member states would decide to create other harmonised statuses (e.g., enlarging the scope of community legislation to other protection categories)’.*

Indeed, member states can be very protective over nationality matters and reluctant to be regulated in such a manner by the EU. Moreover, there is a legislative fatigue concerning migration law due to the growing pressure on the EU to regulate asylum and protection matters that leads to a less favorable political environment for the adoption of more enforceable norms relating to migration.<sup>547</sup> However the EU should not ignore the importance of childhood statelessness and its far-reaching consequences for future generations living in Europe.

#### **4.7 Lack of research and awareness raising**

A major limitation in this research was the limited availability of research about actual practices related to statelessness among refugee and asylum seeking children on a national level. This is further connected to a lack of awareness on the topic. There is a number of questions about the EU national policies, according to Gyulai, that need to be answered through more research on a national level; for example, *‘how, when and by*

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<sup>545</sup> In particular, the Meijers Committee proposes common criteria to be establish in three areas: i) a fair procedure for determining whether a person is stateless; ii) the standard of treatment to be accorded to stateless persons; and iii) the conditions of residence for stateless persons. Meijers Committee, ‘A proposal for an EU directive on the identification of statelessness and the protection of stateless persons’, 2014, p.2, <http://www.statewatch.org/news/2014/oct/eu-meijers-cttee-call-for-an-EU-directive-on-the-identification-and-protection-of-stateles-persons.pdf>, (accessed 16 May 2018).

<sup>546</sup> Den Heijer M. and Swider K., p.23.

<sup>547</sup> Ibid, p.26.

*whom refugee children's nationality is determined, how and where this nationality is registered; whether there are any later reviews of the 'validity' of this nationality status; whether categories such as unknown nationality are unduly overused; how all these issues affect refugee children's human rights; and whether (and how) their best interest is properly considered'.<sup>548</sup>* Although there is progress on the field, such as the country reports of UNHCR and ESN, there is a clear need not only for more extensive mapping the situation of childhood statelessness in Europe but also for focusing on the specific issue of statelessness at birth for children born to refugees and asylum seekers. More research as well as awareness raising initiatives should be conducted by a wide range of actors such as EU states, UNHCR, civil society and academia in order to discover gaps, promote the topic of childhood statelessness and identify good practices and solutions. The current paper constitutes also an effort into this direction. In this regard, communication strategies should be developed, with the aim to promote knowledge on the topic of childhood statelessness.<sup>549</sup> Of course the use of social and digital media can also play an essential role in reaching a wider audience.

Moreover, Gyulai has further proposed the convenience of an international expert meeting to discuss specifically the topic of childhood statelessness.<sup>550</sup> Such an international expert meeting can be initiated by UHCR in cooperation with civil society. The outcome of the meeting should include recommendations on the full realisation of the right to a nationality for refugee and asylum seeking children born in the EU. More research on the topic must be encouraged, including on a regional level. For example, one suggestion has been for the European Parliament to ask the European Commission to prepare a biennial State of the Art Report on the topic of prevention and protection of statelessness in the EU.<sup>551</sup> A high level of awareness and a deeper knowledge on the topic can result in the societal and political pressure needed for improving the current system and mobilising resources. The knowledge and experience gathered from such expert meetings and initiatives should be used by actors such as UNHCR, the EU or the Council of Europe to adopt authoritative guidance and recommendations for states.

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<sup>548</sup> G. Gyulai, 2017.

<sup>549</sup> L. Van Waas, 2015, p.31.

<sup>550</sup> G. Gyulai, 2017.

<sup>551</sup> G. De Groot, K. Swider and O. Vonk, p.61.

#### 4.8 Improvement of data collection

The importance of an improved qualitative and quantitative data collection has also been recognised by the UNHCR which included it in its Action Plan to end statelessness.<sup>552</sup> Mapping of the statelessness situation requires a broader approach than acquiring statistical numbers on the stateless population –which is also very important; it also requires collecting a broad range of information for the population at risk.<sup>553</sup> Refugee and asylum seeking children belong to this category of people at risk and their situation should be investigated more. According to UNHCR, quantitative data and qualitative analysis should include:

- assessing the scale of the problem (numbers, geographical spread etc.);
- establishing the profile of the population affected (demographic composition, including data disaggregated by sex, age and ethnicity, with due respect for international standards on personal data safety and protection);
- analyzing causes and impacts of statelessness, (including in terms of civil, political, economic and social rights);
- determining obstacles to solutions and potential for solutions to statelessness (gaps in legislation, administrative practice, etc.);
- uncovering any protection issues faced; and
- identifying all stakeholders (affected persons, governments, international organizations, non-governmental organizations, civil society, etc.).<sup>554</sup>

This information can be gathered by using different methods such as analyses of civil registration data, population censuses, targeted surveys and studies mapping exercises, nationality verification campaigns, and statelessness determination procedures.<sup>555</sup> As a first step states should review which system gathers data relating to childhood statelessness and make the necessary changes to improve it. States are also encouraged to make better use of frameworks, such as the international reporting mechanisms of the Committee of CRC or the mechanisms within the EU framework, to promote the systematic generation of data on children's right to nationality.<sup>556</sup> Such a comprehensive

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<sup>552</sup> See Annex 3 for all the 10 Actions to End Statelessness in UNHCR Global Action Plan.

<sup>553</sup> OSCE and UNHCR, p.42.

<sup>554</sup> UNHCR, 2014c, p. 25; OSCE and UNHCR, p.42-43; L. Van Waas, 2015, p. 31.

More information on measuring stateless population available in: UNHCR, 'Guidance document on measuring stateless populations', 2011, <http://www.refworld.org/docid/4f6887672.html>, (accessed 30 April 2018).

<sup>555</sup> UNHCR, 2014c, p. 25; OSCE and UNHCR, p.42.

<sup>556</sup> L. Van Waas, 2015, p.4.

approach in data collection can lead to deeper understanding of the issue and consequently to a more effective response.

## **Conclusions**

As it was demonstrated in this paper, childhood statelessness that occurs within the refugee context affects all European states, however on a different scale. The research conducted in this thesis aimed to bring answers to the question: How to fully realise the right to a nationality for children born to refugees and asylum seekers in Europe? By addressing this issue three points have been confirmed:

1. EU states have an obligation to protect the right to a nationality for all children under their jurisdiction.
2. There exist various issues that still jeopardize the full realisation of the right to a nationality in EU states.
3. There is a wide range of policy improvements and protection and prevention mechanisms that EU states can employ.

Provisions related to children's right to a nationality and the prevention of childhood statelessness are included in several international and regional human rights instruments. The most important provisions can be found in the CRC, the 1954 Convention, the 1961 Convention and the ECN. Although, there is a clear obligation to respect every child's right to a nationality in Europe, the situation on the ground is different. Remarkably few EU states have incorporated the necessary safeguards to provide all otherwise stateless children the opportunity to acquire nationality immediately upon or as soon as possible after birth. In most of the cases in Europe, the existing safeguards are either incomplete and/or not properly implemented in practice.

The recent refugee flows can pose a new challenge for Europe in the topic of statelessness, as the risk of children born to refugees and asylum seekers without effective access to nationality is high. The possible causes of childhood statelessness are various. First of all, birth on the territory of an EU member state does not automatically lead to an entitlement to its nationality. Due to the fact that every state sets its own nationality rules, displaced populations may fall through legal gaps and risk becoming stateless. Secondly, there is a group among children born in Europe to refugees and

asylum seekers that run a risk of statelessness due to their parents' statelessness status. Thirdly, discriminatory factors in the nationality laws of some countries of origin of refugees and asylum seekers do not grant mothers the right to transfer their nationality on their children on the same grounds as fathers. Fourthly, obstacles in birth registration can pose a barrier on claiming the nationality of the country of origin. Finally, the paper examined invisible cases that can lead to heightened risk of statelessness for children who acquire automatically their parent's nationality, but never obtain any official recognition; being, thus, left without access to effective nationality. The scenarios and possible causes of childhood statelessness described in this part of the research indicate that childhood statelessness in the current refugee context is a real issue that affects a significant part of the population and has not been taken into account or addressed properly. Irrespective of whether it affects a few dozens or several thousands of children in any European state, the truth is that the impact on the individual children must not be ignored. Cases that are related to vulnerable children, such as refugees and asylum seekers, need a more practice and protection oriented approach that has in its core the best interests of the child and is not focused on traditional approaches to nationality based on state sovereignty.

Therefore, changes and improvements in the existing protection and prevention system in Europe should be introduced to prevent the creation of new cases of childhood statelessness and protect the affected population. Some gaps have been identified and correspondingly recommendations have been presented drawing on knowledge from analysis done in the present paper. First of all, introducing elements of *jus soli* in nationality laws is considered an effective way to promote the children's right to a nationality. Secondly, accession to the UN Statelessness Conventions is equally important to improve the domestic protection and prevention standards and consolidate a system of common rules. Thirdly, a review of the existing national systems must take place in order to identify gaps and make sure appropriate safeguards are in place. One of the most crucial safeguards that must be incorporated in the domestic legislation of all EU states is the one granting nationality to otherwise stateless children. The research has also identified that what is often missing is the proper and timely determination of what the child's actual nationality is, which can allow the correct application of the safeguards applicable for 'otherwise stateless' children. In this regard, proper

Statelessness Determination Procedures should be established following international standards. In addition, registering children as of having “unknown nationality” must be a temporary measure, taken for the period needed to investigate whether or not a child is stateless. Therefore clear rules must be set to clarify the status of “unknown nationality”. Moreover, simplifying the procedure of acquiring the host state’s nationality and providing for loss of nationality in cases when a child has acquired another nationality can protect children by avoiding long periods of statelessness and reassure states that safeguards are not a pull factor. Furthermore, practices concerning acquisition of nationality at birth from children born to non-nationals in the risk of statelessness are inconsistent throughout the EU and lack any harmonisation. Therefore, there is a growing need for a common legal framework on statelessness in the EU that guarantees a minimum level of protection.

Finally, the fight against childhood statelessness requires states to use more targeted tools, such as an effective and inclusive system of birth registration, extensive mapping of the situation of affected people and persons at risk, regular and comprehensive data collection and awareness raising initiatives. The current research has identified a profound lack of concrete data on childhood statelessness, on related academic research and on general awareness about the topic. This deficiency decreases opportunities for awareness raising and of establishing appropriate preventive and protection strategies. Therefore the current paper constitutes an effort to bring the topic of childhood statelessness embedded in the current refugee flows back to the fore and identify solutions for the future.

Taking everything into consideration, there is a clear risk of statelessness at birth for refugee and asylum seeking children born in the EU. Their status as refugee, which offers a wide range of rights, protects children with no effective access to nationality. However, if the refugee status ceases, these children will be left without the protection that access to nationality offers. Leaving these children in limbo can have tremendous consequences for current and future generations. With international forced displacement reaching unprecedented levels and thousands of refugee and asylum seeking children being at risk of never acquiring access to an effective nationality, the current situation presents a timely opportunity for the EU states to push the previously hidden issue of childhood statelessness higher up on the agenda. Being fully aware that reforms of



nationality laws are sometimes difficult and that there is already an EU migration legislation fatigue, human rights advocates need to stay optimistic and push towards higher levels of protection. Statelessness at birth is after all an entirely preventable phenomenon that can be solved through simple legislative reform and the adoption of safeguards. New cases of childhood statelessness will continue to arise in Europe unless EU states take the necessary measures. Whether the problem lies in a lack of adequate safeguards in domestic law or in practical obstacles to the enjoyment of a nationality, more must be done in Europe to bring the issue of childhood statelessness to the fore. Although in the current refugee context the heightened risk of statelessness is only one of many protection challenges Europe is facing, it is one that can no longer be ignored.

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## ANNEXES

### Annex 1 - EU state parties to the 1961 Convention and ECN (as of 10 May 2018)<sup>557</sup> (s=only signatories)

Country	1961 Convention on the Reduction of Statelessness	1997 European Convention on Nationality	1989 Convention on the Rights of the Child
<b>Austria</b>	22 September 1972	17 September 1998	6 Aug 1992
<b>Belgium</b>	1 July 2014		16 Dec 1991
<b>Bulgaria</b>	22 March 2012	2 February 2006	3 Jun 1991
<b>Croatia</b>	22 September 2011	19 January 2005 s	12 Oct 1992
<b>Cyprus</b>			7 Feb 1991
<b>Czech Republic</b>	19 December 2001	19 March 2004	22 Feb 1993
<b>Denmark</b>	11 July 1977	24 July 2002	19 Jul 1991
<b>Estonia</b>			21 Oct 1991
<b>Finland</b>	7 August 2008	6 August 2008	20 Jun 1991
<b>France</b>	31 May 1962 s	4 July 2000 s	7 Aug 1990
<b>Germany</b>	31 August 1977	11 May 2005	6 Mar 1992
<b>Greece</b>		6 November 1997 s	11 May 1993
<b>Hungary</b>	12 May 2009	21 November 2001	7 Oct 1991
<b>Ireland</b>	18 January 1973		28 Sep 1992
<b>Italy</b>	1 December 2015	6 November 1997 s	5 Sep 1991
<b>Latvia</b>	14 April 1992	30 May 2001 s	14 Apr 1992
<b>Lithuania</b>	22 July 2013		31 Jan 1992
<b>Luxembourg</b>	21 September 2017	19 September 2017	7 Mar 1994
<b>Malta</b>		29 October 2003 s	30 Sep 1990
<b>Netherlands</b>	13 May 1985	21 March 2001	6 Feb 1995
<b>Poland</b>		29 April 1999 s	7 Jun 1991
<b>Portugal</b>	1 October 2012	15 October 2001	21 Sep 1990
<b>Romania</b>	27 January 2006	20 January 2005	28 Sep 1990
<b>Slovakia</b>	3 April 2000	27 May 1998	28 May 1993
<b>Slovenia</b>			6 Jul 1992
<b>Spain</b>			6 Dec 1990
<b>Sweden</b>	19 February 1969	28 June 2001	29 Jun 1990
<b>United Kingdom</b>	29 March 1966		16 Dec 1991

<sup>557</sup> Sources: Council of Europe, *Chart of signatures of ECN*, [website], 2018, [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures?p\\_auth=0IyjeRJ8](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures?p_auth=0IyjeRJ8), (accessed 10 May 2018); United Nations Treaty Collection, *Convention on the Reduction of Statelessness*, [website], 2018, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=V-4&chapter=5&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=en), (accessed 10 May 2018); United Nations Treaty Collection, *Convention on the Rights of the Child*, [website], 2018, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en), (accessed 10 May 2018).



## Annex 2 - Stateless persons in the EU by country of asylum

Country	Stateless Persons in 2016 <sup>558</sup>	Stateless Persons in 2017 <sup>559</sup>
<b>Austria</b>	937	1,003
<b>Belgium</b>	2,630	7,695
<b>Bulgaria</b>	67	48
<b>Croatia</b>	2,873	2,873
<b>Cyprus</b>	-	-
<b>Czech Republic</b>	1,502	1,502
<b>Denmark</b>	7,610	7,990
<b>Estonia</b>	82,585	80,314
<b>Finland</b>	2,672	2,749
<b>France</b>	1,370	1,425
<b>Germany</b>	12,017	13,458
<b>Greece</b>	198	198
<b>Hungary</b>	135	139
<b>Ireland</b>	99	99
<b>Italy</b>	701	715
<b>Latvia</b>	242,736	233,571
<b>Lithuania</b>	3,466	3,193
<b>Luxembourg</b>	83	83
<b>Malta</b>	-	11
<b>Netherlands</b>	1,951	1,951
<b>Poland</b>	10,825	10,825
<b>Portugal</b>	14	14
<b>Romania</b>	249	238
<b>Slovakia</b>	1,523	1,523
<b>Slovenia</b>	4	4
<b>Spain</b>	1,011	1,596
<b>Sweden</b>	36,036	35,101
<b>United Kingdom</b>	64	97

<sup>558</sup> UNHCR, 2017a, p. 60-64.

<sup>559</sup> UNHCR, 2018c, p.64-68.

### Annex 3 - UNHCR Global Action Plan for 2014-2024, 10 Actions to End Statelessness<sup>560</sup>

Action 1: Resolve existing major situations of statelessness
Action 2: Ensure that no child is born stateless
Action 3: Remove gender discrimination from nationality laws
Action 4: Prevent denial, loss or deprivation of nationality on discriminatory grounds
Action 5: Prevent statelessness in cases of State succession
Action 6: Grant protection status to stateless migrants and facilitate their naturalization
Action 7: Ensure birth registration for the prevention of statelessness
Action 8: Issue nationality documentation to those with entitlement to it
Action 9: Accede to the UN Statelessness Conventions
Action 10: Improve quantitative and qualitative data on stateless populations

### Annex 4 - Table on the safeguards for otherwise stateless children in the EU countries<sup>561</sup>

EU Countries	Procedure	Conditions
<b>Austria</b>	Automatic	Person is born in Austria with unclear citizenship and one parent was also born there (birth in wedlock), or mother was born in Austria (birth out of wedlock)
	Naturalisation (entitlement)	Person was born in Austria, has been stateless since birth and resident in Austria for 10 years. Application for citizenship at the age of 18 or 19. Other condition: not convicted for certain crimes.
<b>Belgium</b>	Automatic	Person is born in Belgium and is not entitled to citizenship of another country.
<b>Bulgaria</b>	Automatic	Person is born in Bulgaria and does not acquire citizenship of another country by descent.
<b>Croatia</b>	Automatic	Person is born in Croatia to parents of unknown citizenship.
<b>Cyprus</b>	No provision	No provision
<b>Czech Republic</b>	Automatic	Person is born in the Czech Republic to stateless parents, of whom at least one has permanent residence there.
<b>Denmark</b>	Naturalisation (discretionary)	Person is a stateless minor who is born and resides in Denmark. No language or integration requirements.
<b>Estonia</b>	Declaration	Child must be born and permanently resident in Estonia after 26 February 1992 (or before August 20, 1991 as citizen of the USSR) and "not deemed by any State to be citizens of that State on the basis of any Act in force". Until the age of 15, an application for

<sup>560</sup> UNHCR, 2014c.

<sup>561</sup> EUDO-Citizenship, *Person born in a country who would otherwise be stateless*, [website], 2016, <http://eudo-citizenship.eu/admin/?p=dataEUCIT&application=modesAcquisition&search=1&modeby=idmode&idmode=A03b>, (accessed 10 May 2018).

		citizenship can only be made by the child's parents (or single or adoptive parent) who must have been legally resident in Estonia for 5 years and are "not deemed by any State to be citizens of that State on the basis of any Act in force".
<b>Finland</b>	Automatic	Person is born in Finland to parents with unknown citizenship. If person is born out of wedlock, only if the mother is stateless.
<b>France</b>	Automatic	Person is born to stateless parents or to foreign parents and is not entitled to citizenship of another country.
<b>Germany</b>	No provision	No provision
<b>Greece</b>	Automatic	Person is born in Greece with unknown citizenship or does not acquire another citizenship at birth.
<b>Hungary</b>	Automatic	Person is born in Hungary to stateless parents resident there
	Declaration	Person is born in Hungary and legally resident, did not acquire another citizenship by operation of law, and has been resident in the country for 5 continuous years.
<b>Ireland</b>	Automatic	Person is born in Ireland and not entitled to another citizenship.
<b>Italy</b>	Automatic	Person is born in Italy to parents who are unknown or stateless, or is not entitled to citizenship of the parents' country.
<b>Latvia</b>	Declaration	Person is a minor, born in Latvia after August 21, 1991, and has been resident in Latvia and stateless (or comparable status: "non-citizen") since birth. Other condition: no prison sentence of more than 5 years. Declaration until the of age 15 by legal representative(s) who is (are) also stateless, and has been resident in Latvia for 5 years. From age of 15: declaration by person under further condition that he/she received secondary education at a Latvian school and is proficient in the language of Latvia.
<b>Lithuania</b>	Automatic	Person is born, in Lithuania or abroad, to stateless parents legally residing in Lithuania.
<b>Luxembourg</b>	Automatic	Person is born in Luxembourg to parents who are stateless or unable to transfer their citizenship.
<b>Malta</b>	Naturalisation (entitlement)	Person is born in Malta and has been stateless since birth, is habitually resident in the country for 5 years, and not convicted in any country of an offence against the security of Malta or convicted for a crime which carries a prison sentence of 5 years or more.
<b>Netherlands</b>	Declaration	Person (minor or adult) is born in the Netherlands, has been stateless since birth and resident there for 3 years.
<b>Poland</b>	Automatic	Person is born in Poland to parents who are unknown, stateless or whose citizenship cannot be determined.
<b>Portugal</b>	Automatic	Person is born in Portugal and is not entitled to citizenship of another country.
<b>Romania</b>	No provision	No provision
<b>Slovakia</b>	Automatic	Person is born in Slovakia to stateless parents or not entitled to the parents' citizenship.
<b>Slovenia</b>	Automatic	Person is born in Slovenia to parents of unknown citizenship or without citizenship.
<b>Spain</b>	Automatic	Person is born in Spain to a stateless person, or would otherwise be stateless.
<b>Sweden</b>	Declaration	Person is born in Sweden, under the age of 5, stateless since birth and resident in Sweden with a permanent residence permit.
<b>United Kingdom</b>	Registration	Person is born in the UK, under the age of 22, has been stateless since birth and resident in the UK for 5 years (maximum absence from the country for a total of 450 days).

## Annex 5 - Stateless people's Stories: How can childhood statelessness cases occur in the EU

- The story of Stera and Mohammed, born in Malta to a Syrian mother and a stateless father depicting a case of statelessness due to discrimination in nationality law.<sup>562</sup>

*The only thing that sets apart Stera, 9, and her six-year-old brother, Mohammed, from their Maltese friends at the Gżira primary school is the fact that their parents come from Syria. They were born and raised here and speak Maltese better than most, with a natural native accent. (...) You could say, they are 'normal' children, if only for the fact that on paper, they don't really exist. They were born stateless in Malta. (...) Their mother, Nessrin, has dedicated herself to the young family, while their father, Quis, 41, goes out to work. (...) Quis is a Syrian Kurd, one of many hundreds of thousands stripped of citizenship by the regime during the 1960s and 1970s. His wife Nessrin is also Kurdish but is a regular citizen, however, under Syrian law she cannot confer her citizenship to her spouse or her children born abroad. The only basic recognition that Quis and his children get is through the international protection he was granted in Malta, on the grounds of the well-documented discrimination faced by Syria-born Kurds. (...)*

- The story of Taher, a Syrian dad living in Romania who can not issue travel documents for his child depicting a case of ineffective nationality for a child.<sup>563</sup>

*Taher is a 34-year old doctor from Syria and a known opponent of the Syrian regime. In early 2014, while his family was legally residing in Romania, his wife gave birth to a baby girl. They registered the birth and acquired a Romanian birth certificate from the City hall, which indicated the child's Syrian nationality – as both parents were Syrians. Soon afterwards, as Taher wanted to register his daughter at the Syrian embassy as well, and have a passport issued for her, he was faced with a refusal. The clerk indicated that this was because of his affiliation with the Syrian community organization in Bucharest, which was opposing the Syrian regime. His wife tried to register their daughter at the Embassy as well, but her request was also rejected. According to Taher, this was a very difficult moment for the family:*

*'My baby has a birth certificate from the Romanian authorities, but we could not get a passport and we could not travel with her. After we lost everything in Syria, we could not even travel together as a family. All because they refused to acknowledge her as a citizen. So what was the point of having a Romanian document [birth certificate] which said she was Syrian, if we could not prove it and if her country did not recognize her?'*

*A few months later, both Taher's and his wife's passports also expired, and they were unable to prolong them because the Embassy refused to receive their applications. They were not even allowed in through the gate. They could not prolong their residence permits; their status was about to become that of 'illegal' residents. He claimed that, in those moments, he 'felt very much ashamed' because he had to go apply for asylum '(...) I don't know why. I though asylum meant we were helpless. We were standing there, in line, with the children... we never imagined we would be refugees, but we were.' While this problem was solved because the family were granted subsidiary protection in Romania, it demonstrates the precarious nature of*

<sup>562</sup> UNHCR, 'The faces of Statelessness in Europe', 2018b, p.7, <http://www.refworld.org/docid/5aa79f9d4.html>, (accessed 20 May 2018); M. Micallef, 'Meet Stera, Mohammed - Malta's stateless children', *Times of Malta*, 2014, <https://www.timesofmalta.com/articles/view/20140622/local/meet-sterah-mohammed-maltas-stateless-children.524446>, (accessed 21 May 2018).

<sup>563</sup> European Network on Statelessness, 'Ending Childhood Statelessness: A Study on Romania', 2015b, p.13, <https://www.statelessness.eu/sites/www.statelessness.eu/files/Romania.pdf>, (accessed 18 May 2018).

documentation for families who have come from war-torn areas and the potential knock-on effects for the enjoyment of nationality by children born in exile. It remains to be seen whether Taher or his daughter will be considered as nationals by the regime which is in power when the Syrian crisis is over.

- The story of the Kamari family from Afghanistan living with an international protection status in Hungary depicting a case of ineffective nationality.<sup>564</sup>

*Mr. Karimi is from Afghanistan and has been living in Hungary for over 15 years. Mr. Karimi is stateless. He obtained a permanent residence permit in 1997 and a stateless travel document in 1998. Ms. Karimi is a refugee of Afghan nationality. They have four children, born in 2000, 2002, 2005 and 2011. The first two children were registered at birth as Afghan citizens (automatically the mother's nationality was attributed to them without any examination of the country's nationality law and practices). This nationality is, however, ineffective, as the children have never been registered with the Afghan authorities, they have no proof or sign of recognition of their nationality (their mother, being a refugee, is unable to contact the authorities of her country of nationality – this may even result in the cancellation of her refugee status). The fact of being registered in official documents issued by Hungary with an ineffective nationality (the validity of which has never been checked) for over 13 and 11 years is not perceived as problematic by Hungarian authorities and has no impact on the children's legal status and naturalisation prospects. The youngest two children were born following the entry into force in 2002 of the provision that put an end to this practice; therefore they were registered as being of unknown nationality. At the time of writing (over 8 and 4 years after birth, respectively), both children are still registered as having an unknown nationality and again, this fact is not perceived as problematic by any state authority, nor has this fact any impact on their legal status.*

*The Karimi children, born to a stateless father and a refugee mother, are – as a minimum – at risk of statelessness. In addition, they were all born and raised in Hungary, speak Hungarian as their mother tongue, and Hungary is the only country with which they have a genuine and effective social, cultural, economic and legal tie. Finally, the family appears to fulfil all material conditions for naturalisation: Mr. Karimi is a successful entrepreneur, who employs 15 Hungarian nationals in his company, and the family has a standard of living that corresponds to (or is even higher than) the Hungarian average. Based on these facts, the three older Karimi children seem to be – at least – strong candidates for naturalisation. Nevertheless, their naturalisation claim has been rejected five times: in 2007, 2009 (twice), 2010 and 2013 (their parents also tried to acquire Hungarian nationality on several occasions without success). In line with the Hungarian regulation in force, these rejections were not motivated and it was impossible to lodge an appeal.*

*In this typical case, Hungary failed to ensure that children born on its territory have access to a nationality and avoid being registered as of unknown nationality for an unreasonably long period of several years. This indicates not only the lack of sufficiently inclusive mechanisms for the avoidance of statelessness in case of refugee children, but also a clear disregard to the children's best interests as stipulated by the country's international obligations.*

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<sup>564</sup> G. Gyulai, 2014, p.17.

## **Abstract**

While more people are forcibly displaced in the world today than at any other time since World War II, there is often limited attention on the connection between forced displacement and childhood statelessness. For instance, as the refugee situation in Europe evolved, there has been some concerns over the risk of a “stateless generation” being born in Europe. The current thesis analyses the issue of statelessness for children born to refugees and asylum seekers in member states of the European Union and examines suitable protection and prevention policies. In particular, the present paper explores childhood statelessness as a phenomenon in Europe and looks at whether statelessness poses a threat for children of refugees and asylum seekers born in Europe. In addition, it attempts a better understanding of children’s right to a nationality by examining the relevant legal framework. Moreover, the thesis analyses the current situation in Europe and highlights possible causes related to the refugee context. Finally, it examines European’s states commitment to the full realisation of the children’s right to a nationality and identifies general recommendations for future consideration.

## **Key Words**

Statelessness, Children, Nationality, Europe, EU, Refugees, Asylum Seekers, Child Rights

## **Kurzfassung**

Derzeit ist die Zahl der weltweit vertriebenen Menschen so hoch, wie es zuletzt beim Zweiten Weltkrieg es der Fall war. Dabei wird dem Zusammenhang zwischen Zwangsvertreibung und Staatenlosigkeit in Europa nur wenig Beachtung geschenkt. Während sich die Flüchtlingssituation in Europa weiterentwickelt, gibt es einige Bedenken hinsichtlich der Gefahr, dass eine "staatenlose Generation" in Europa heranwachsen wird. Die vorliegende Masterarbeit analysiert das Problem der Staatenlosigkeit bei Kindern von Flüchtlingen und Asylsuchenden in den Mitgliedsstaaten der Europäischen Union und untersucht geeignete Schutz- und Präventionsmaßnahmen. Der vorliegende Beitrag untersucht insbesondere die Staatenlosigkeit in der Kindheit als ein Phänomen in Europa und untersucht, sowie die Frage ob Staatenlosigkeit eine Bedrohung für in Europa geborene Kinder von Flüchtlingen und Asylsuchenden darstellt. Die Arbeit versucht auch das Recht von Kindern auf eine Nationalität besser verständlich zu machen, indem sie den relevanten Rechtsrahmen untersucht. Außerdem analysiert die Arbeit die aktuelle Situation in Europa und beleuchtet mögliche Ursachen für die Flüchtlingssituation. Schließlich wird das Engagement der europäischen Länder zur vollständigen Verwirklichung des Rechts von Kindern auf Staatsangehörigkeit untersucht und allgemeine Empfehlungen für künftige Überlegungen geboten.

## **Schlagwörter**

Staatenlosigkeit, Kinder, Nationalität, Europa, EU, Flüchtlinge, Asylbewerber, Kinderrechte