

UNIVERSITÀ DEGLI STUDI DI PADOVA

DEPARTMENT OF POLITICAL SCIENCE, LAW,  
AND INTERNATIONAL STUDIES

**Master's degree in  
Human Rights and Multi-level Governance**



CHILDHOOD STATELESSNESS AND FORCED  
DISPLACEMENT

A STUDY ON SYRIAN REFUGEES BORN IN HOST  
COUNTRIES

*Supervisor:* Prof. ANTOINE PIERRE GEORGES MEYER

*Candidate:* LUIZA SARTORI COSTA

Matriculation No. 2005561

A.Y. 2020/2021

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To all stateless children around the world.  
You are important. You are seen.

## Acknowledgments

It is with great pleasure that I conclude another milestone in my academic and professional career. A two-year master's program in the middle of a pandemic. It was a period filled with formative experiences, in which many people and institutions have been really important.

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There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.

*– Kofi Annan (1938-2018)*

## **Abstract**

This study focuses on the vulnerability of refugee children who find themselves at increased risk of becoming stateless. It aims at uncovering the intersections between childhood, statelessness and displacement, evidencing how being born in host countries increases children's vulnerability to be left stateless. This master's thesis shows how children under these conditions are exposed to multiple violations of their human rights, facing serious impairments in their growth and development. A practical view on this issue is provided through the case study of Syrian refugee children who are more vulnerable to statelessness due to not being registered after birth. The methodology applied was based on international standards that aim at protecting children from statelessness, binding States to grant their nationality to every child who would otherwise be stateless. Nationality laws and birth registration procedures of Syria, Türkiye, Jordan, Iraq, Lebanon and Egypt were reviewed and compared, demonstrating how such an increased vulnerability is linked to the inability or even impossibility of parents to register their children with the competent authorities both in host country and in Syria, thus not obtaining their recognition as Syrian nationals. This work found out that nationality laws and birth registration systems are designed in a way that actively causes childhood statelessness, due to gender discrimination in laws and the complexity of procedures for issuing a birth certificate.

**Key words:** statelessness, human rights, children, refugees, nationality, Syria

## **Resumo**

Este estudo se concentra na vulnerabilidade das crianças refugiadas que se encontram em maior risco de se tornarem apátridas. O objetivo é revelar as interseções entre infância, apatridia e deslocamento, evidenciando como o fato de nascer em países de acolhimento aumenta a vulnerabilidade das crianças de se tornarem apátridas. Esta tese de mestrado mostra como as crianças nestas condições são expostas a múltiplas violações de seus direitos humanos, sofrendo sérios impedimentos ao seu crescimento e desenvolvimento. Uma visão prática sobre esta questão é fornecida pelo estudo de caso das crianças refugiadas sírias, mais vulneráveis à apatridia devido ao fato de não serem registradas após seu nascimento. A metodologia aplicada foi baseada em normas internacionais que visam a proteger as crianças da apatridia, obrigando os Estados a conceder sua nacionalidade a toda criança que, de outra forma, seria apátrida. As leis de nacionalidade e os procedimentos de registro de nascimento da Síria, Turquia, Jordânia, Iraque, Líbano e Egito foram revistos e comparados, demonstrando como essa maior vulnerabilidade das crianças está ligada à incapacidade ou mesmo impossibilidade dos pais de registrarem seus filhos junto às autoridades competentes tanto no país de acolhimento quanto na Síria, não conseguindo seu reconhecimento como nacionais sírios. Este trabalho evidenciou como que as leis de nacionalidade e os sistemas de registro de nascimento são desenhados de forma a causar ativamente a apatridia infantil, devido à discriminação de gênero das leis e à complexidade dos procedimentos para emitir uma certidão de nascimento.

**Palavras-chave:** apatridia, direitos humanos, crianças, refugiados, nacionalidade, Síria



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## Abbreviations

1951 Convention	Convention relating to the Status of Refugees
1954 Convention	Convention relating to the Status of Stateless Persons
1961 Convention	Convention on the Reduction of Statelessness
1967 Protocol	Protocol relating to the Status of Refugees
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACEs	Adverse Childhood Experiences
ACRWC	African Charter on the Rights and Welfare of the Child
Art.	Article
Artt.	Articles
CCPR	Human Rights Committee
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
Conv.	Convention
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRC OPAC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
DESA	United Nations Department of Economic and Social Affairs
ECD	Early Childhood Development
ECOSOC	United Nations Economic and Social Council
ESCWA	Economic and Social Commission for Western Asia
EXCOM	Executive Committee of the High Commissioner's Programme

HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICMW Committee	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
IDPs	Internally displaced persons
ILC	International Law Commission
ILO	International Labor Organization
Intl.	International
ISI	Institute on Statelessness and Inclusion
KRI	Kurdistan Region of Iraq
LBP	Lebanese Pound
MENA region	Middle East and North Africa region
NRC	Norwegian Refugee Council
OHCHR	United Nations Office of the High Commissioner for Human Rights
PTSD	Post-Traumatic Stress Disorder
STJ	Syrians for Truth and Justice
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFPA	United Nations Population Fund

UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNTC	United Nations Treaty Collection
WFP	World Food Programme
WHO	World Health Organization

## Introduction

Statelessness is a blemish of international law.<sup>1</sup> Not being a national of any State is a condition that has been leaving millions of persons around the world deprived of protection, of their fundamental rights, of a dignified life. Legally, stateless persons do not exist. They are invisible to every State. For children, statelessness is even more harmful, hampering not only their childhood but also their future, due to its life-long consequences that limit who they could become, their prospects and perspectives of a better life. Children left stateless in refugee contexts are the most vulnerable individuals in such settings. It is thus of utmost relevance to investigate the intersections between childhood, statelessness and forced displacement, which have been subjecting children to an inferior stand in the societies.

A refugee child who is born in host countries faces increased risk of becoming stateless, as nationality laws and birth registration systems may prevent them from fully exercising, accessing and enjoying their basic human rights. They are exposed to multiple violations of their human rights, and are often deprived of fundamental services and basic necessities for the protection of their childhood, healthy growth, development and well-being. In the specific context of the Syrian displacement crisis, case study carried out in this thesis, eleven years of war and displacement have been subjecting families to intergenerational statelessness, trapping future generations in a life of discrimination, denials and poverty.

Despite its dreadful consequences, it was only in 2014, with the United Nations High Commissioner for Refugees (UNHCR) campaign #IBelong, that the issue of statelessness gathered more attention, being “rediscovered” and conquering its place in the international agenda of human rights.<sup>2</sup> The human rights treaties aimed at the protection of children, stateless persons and refugees unfortunately have significant gaps where abuses, exploitation and violation of rights are perpetuated.<sup>3</sup> Some provisions of international law even condone and foresee such violations. With

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<sup>1</sup> Lassa F. L. Oppenheim [original author], *International Law. A Treatise* (Harlow: Longmans, Green, 1912) quoted in Amal de Chickera, Laura van Waas, “Unpacking statelessness,” in *Understanding statelessness*, eds. Tendayi Bloom, Katherine Tonkiss, and Phillip Cole (Abingdon, Oxon: Routledge, 2017), 54.

<sup>2</sup> Institute on Statelessness and Inclusion (ISI), *The World’s Stateless: Children* (Oisterwijk: Wolf Legal Publishers (WLP), 2017), 9-10.

<sup>3</sup> See, for example, the 1961 Convention on the Reduction of Statelessness articles 5 to 9.

the overlap of gaps existing in different conventions, children's vulnerability increases and is then greater when in contexts of forced displacement and risk of statelessness. Thus, researching on childhood statelessness is relevant not only to protect children as the future of our societies, but mainly because children are right-holders and subjects of international law today and must be protected now.

Bearing in mind these preliminary considerations, this master's thesis aims at answering two main questions: 1) How do refugee conditions and statelessness negatively impact each other, increasing the risks for and vulnerability of children? and 2) What is the role played by birth registration systems and nationality laws of host countries in the prevention of childhood statelessness of refugee children? In order to do so, the present work is divided in three chapters, besides this introduction and the final considerations. It aims at providing a common understanding of the problem proposed herein: the increase of children's vulnerability to statelessness in context of forced displacement and refuge in host countries.

The first chapter focuses on the definition of statelessness and on the international framework for the protection of stateless persons' rights. It presents a non-exhaustive list of causes of childhood statelessness, evidencing what will be discussed in the second and third chapters regarding the importance of birth registration and the right to a nationality. The second chapter investigates the specific situation of *stateless refugee children*, who face compounded vulnerability due to being a child, a refugee and at risk of statelessness. This chapter covers the drastic consequences of statelessness for children and makes special remarks for the condition of invisibility of stateless children, demonstrating the importance of addressing the problematic proposed in this master's thesis.

Lastly, the third chapter explores the Syrian displacement crisis and the specificities of Syrians who find themselves at risk of statelessness. It analyzes the specific situation of Syrian children being born in Türkiye, Jordan, Iraq, Lebanon and Egypt, countries that together host more than 80% of all Syrian refugees.<sup>4</sup> It looks into their nationality laws and procedures for birth registration, as they may be important safeguards against statelessness ensuring access to fundamental human rights.

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<sup>4</sup> "Ranking of the largest Syrian refugee-hosting countries in 2020," Statista, accessed November 9, 2022, <https://www.statista.com/statistics/740233/major-syrian-refugee-hosting-countries-worldwide/>; "Operational data portal: Syria regional refugee response," United Nations High Commissioner for Refugees (UNHCR), last modified November 3, 2022, accessed November 9, 2022, <https://data.unhcr.org/en/situations/syria>.



All analyses were based on legal instruments of international human rights law; publications from human rights' bodies, international and non-governmental organizations which specifically deal with children, refugees and stateless persons' human rights and protection; national legislations; statistical data; and articles from scholars and researchers who are references in the study of statelessness. It is recognized that the main sources of information found herein are from Western international organizations and institutions, as one of the main limitations faced regards language barriers, which prevented the consideration of works in Arabic and an analysis of the problem through a more geographic-specific lens. Language limitations also regarded the reading and interpretation of national legislations which are not always available in English or whose translations considered were unofficial.

It is noted with concern that data available regarding stateless persons and populations within contexts of forced displacement is highly limited, thus being extremely difficult to propose the size of the stateless refugee children's population. By November 2022, no data was found with more specific data on the number of children potentially concerned by issues of statelessness in the host countries considered in this thesis. It is a fact, though, that this is an exponential problem, extending to future generations, especially if considering the protracted condition of the Syrian crisis. Children born in the first years of the displacement crisis are now around ten years old and all they have known is displacement, want and a life of deprivation of rights.

Despite its limitations, this work found out that nationality laws and birth registration systems are designed in a way that actively causes childhood statelessness, due to gender discrimination and the complexity of procedures for registering vital life events. Lack of documentation is a substantial problem for forcibly displaced populations directly related to the non-registration of children immediately after their birth. Financial costs also limit the possibility of refugee families completing all steps to ensure birth registration and the emission of birth certificates, the first and foremost important document in proving everyone's links and attachment to their country of nationality.

It is hoped that this work will contribute to bringing into light the increased vulnerability of stateless refugee children, not only in the specific context of the Syrian displacement crisis and for Syrian refugees living in neighboring countries, but also worldwide, as statelessness is not an issue confined to any specific region of the world. The present work has the intention to evince how harmful statelessness can be for children, contributing to the reflections on how to protect

them from this serious human rights violation that is the gateway for a series of other violations of their fundamental and basic rights.

## Chapter I – On stateless persons, children and refugees

In the short time that children get to be children, statelessness can set in stone grave problems that will haunt them throughout their childhoods and sentence them to a life of discrimination, frustration and despair.

– António Guterres, 2015

The concepts addressed in this chapter relate to the three building blocks of this work, namely the stateless, children<sup>5</sup> and refugees. It is expected that this initial discussion will start to delineate the problematic of the research, by making more evident the correlation between these three groups of populations, evidencing the existing gaps in the current international framework for their protection that allow the perpetuation of human rights violations against stateless refugee children.

Going through some definitions as agreed upon by the international community is essential to understand why the countries related to the proposed case study are violating fundamental human rights. States, as the sole responsible for their national legislations, are to be acknowledged as the responsible for rendering the most vulnerable even more vulnerable: stateless refugee children are in urgent need of special protection and attention. due to the condition of being stateless, be them legal (*de jure*) or effective (*de facto*) stateless.

There is an ambivalence on States' behavior towards stateless refugee children, as States are perceived “as having a protective obligation toward vulnerable children in its role as *parens patriae*, parent of the nation; but [also expecting] the State to protect us from threatening, unruly, and uncontrolled outsiders, even if they are children.”<sup>6</sup> As a consequence, children's rights are violated, exposing “the tension between one's identification with others (e.g., the sentiments that motivate human rights principles) and one's self-interest (the sentiments that drive nativism and xenophobia).”<sup>7</sup>

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<sup>5</sup> The international framework of human rights recognizes as children every human being below the age of 18 years of age, in accordance with article 1 of the CRC.

<sup>6</sup> Jacqueline Bhabha, *Child migration & human rights in a global age*, (Princeton: Princeton University Press, 2014), 11.

<sup>7</sup> *Ibid.*, 12.

While violating children's human rights is everywhere regarded as a serious threat to their lives, many actions and measures demanded and implemented to protect States' integrity and territories are tolerated despite subjecting children to suffering. "The approach to 'otherness' in our societies is ambivalent – caught between an identification of the other as 'human like me' and a hostility or indifference toward the other as separate or dispensable or threatening," revealing the coalescence of the perceptions of children as vulnerable and of their "otherness", not being "*really* like *our* children,"<sup>8</sup> irrespective of their status. Within this ambivalence of expectations regarding States' responsibilities, roles and obligations, being a refugee child at risk of statelessness or already stateless assembles the vulnerabilities, needs and deprivations of each situation.

Refuge, childhood and statelessness, when coupled together, negatively reinforce one another by aggregating upon the risks and vulnerabilities of each specific situation. Refugee children may find themselves at increased risk of statelessness when born in host countries. Nationality laws and birth registration systems play a fundamental role in driving or preventing the risk of statelessness for children, as it will be demonstrated throughout this thesis. This first chapter, then, presents the international framework relating to statelessness, that is composed of the specific conventions on statelessness, but also of a variety of important provisions recalled by several other human rights treaties.

Besides covering the most important provisions of the conventions presented herein, it is also addressed the right to a nationality and the different causes of statelessness, such as deprivation of nationality, gender discriminatory nationality laws and the conflicts between the laws of different countries. In the context of forced migration and displacement, where refugee populations find themselves in the territory of host countries, the right to acquire a nationality after birth is often at risk of being violated. And this may be appointed as the first step in a long staircase of different causes of childhood statelessness.

More than that, factors causing a child to find herself stateless may overlap, compounding the vulnerability of children, who are already recognized as vulnerable due to their dependency on adults for their full development, growth and well-being.<sup>9</sup> The section on the causes of

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<sup>8</sup> Bhabha, *Child migration & human rights in a global age*, 13.

<sup>9</sup> Children's well-being is understood by the Committee on the Rights of the Child (CRC Committee) in a broad sense, as to include "their basic material, physical, educational, and emotional needs, as well as needs for affection and safety." (Committee on the Rights of the Child (CRC Committee), *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)*, CRC/C/GC/14 (New York: UN, May 29, 2013), para. 71.)

statelessness will start to draw attention to the importance of birth registration and birth certificates to reduce the risk of children becoming stateless.

The chapter is divided in 3 sections, covering first the meaning and categories of statelessness, then the international framework for the protection of stateless persons, and lastly the main causes of childhood statelessness. Depriving children of their fundamental human rights due to lack of nationality and identity documents is a serious violation of their basic right to acquire a nationality immediately after birth, to preserve their identity, to have their best interests taken as a primary consideration, and to live a fulfilled life. All of these rights are unfortunately and undoubtedly violated by the condition of being stateless, everywhere in the world.

## **1. Statelessness: the state of belonging nowhere**

Being said ‘No’ to by the country where I live; being said ‘No’ to by the country where I was born; being said ‘No’ to by the country where my parents are from; hearing ‘you do not belong to us’ continuously! I feel I am nobody and don’t even know why I’m living. Being stateless, you are always surrounded by a sense of worthlessness.

– *Lara, who was formerly stateless, quoted by the UNHCR in the Handbook for Parliamentarians n° 11, 2005*

Every inch of our world is divided into States. States, which you all represent. But where do those people go who don’t belong anywhere? Who are stateless? The stateless people that I have had the privilege to meet tell me that they feel invisible. They are a human void, like this empty chair. All of us who occupy chairs here have the right to a nationality. We exist, we belong. Stateless persons are unseen, and unheard.

– *Cate Blanchet, UNHCR Goodwill Ambassador, during the High-Level Segment on Statelessness, 2019*

Statelessness, as the word itself reveals, is the condition of not having a State to call it yours, to not belonging to any country. This phenomenon emerged as a direct consequence of the development of the modern system of nation-States, when parameters for participation, inclusion

and exclusion were defined through the adoption of national laws regulating access to nationality.<sup>10</sup> This was done in accordance with each State's own conceptions and wills, because “nationality is essentially a matter of domestic law, but it is one with international consequences.”<sup>11</sup> As a result of internally made decisions with international repercussions, its “by-product [was] that some people gained dual nationality while others were left with none.”<sup>12</sup> Yet, being deprived of nationality or prevented from acquiring one has been described as inhumane and a “blemish of international law.”<sup>13</sup> It is undoubtedly a violation of basic human rights.

The notion of nation-States is not only defied by the condition of statelessness, but also by that of being a refugee, as both are “*limit-concept[s]*,” revealing the contrasting principles that coexist within societies.<sup>14</sup> The construction of nation-States and the delimitation of borders, requiring States to develop laws regulating entrance and permanence in their territories, are on the basis of what came to be considered as “irregular” or “illegal” migration. The same can be said of the laws regulating who will be regarded as a national of a State, thus creating the blemish of international law called statelessness.

Even though statelessness has been a topic on the international agenda for almost a century now, it remains as a slippery term, not being fully understood by the general public. It tends to be associated with images of exclusion, dislocation and marginalization, without proper acknowledgement of its human impacts. More than just a legal concept, statelessness refers to the lack of belonging and a situation of rightlessness. This first section attempts to present definitions of what it means to be stateless and its diametral opposition to the condition of being a national. It will also discuss some safeguards against statelessness as covered by the 1961 Convention on the Reduction of Statelessness.

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<sup>10</sup> In this thesis, the terms “nationality” and “citizenship” are interpreted as synonyms and used interchangeably, despite the recognition that they technically do not mean the same thing. Discussing and defining their similarities and differences is beyond the scope of this work.

<sup>11</sup> Alice Edwards, “The meaning of nationality in international law in an era of human rights,” in *Nationality and statelessness under international law*, eds. Alice Edwards and Laura van Waas (Cambridge: Cambridge University Press, 2014), 12.

<sup>12</sup> Amal de Chickera, Laura van Waas, “Unpacking statelessness,” in *Understanding statelessness*, eds. Tendayi Bloom, Katherine Tonkiss, and Phillip Cole (Abingdon, Oxon: Routledge, 2017), 54.

<sup>13</sup> Lassa F. L. Oppenheim [original author], *International Law. A Treatise* (Harlow: Longmans, Green, 1912) quoted in de Chickera, van Waas, “Unpacking statelessness,” 54.

<sup>14</sup> Giorgio Agamben [original author], *Homo sacer: sovereign power and bare life* (Stanford University Press, 1998), 22, quoted in Bhabha, *Child migration & human rights in a global age*, 12.

### *1.1 Defining statelessness: de jure and de facto categories*

Legally, a stateless person is defined by the 1954 Convention Relating to the Status of Stateless Persons as anyone who is “not considered as a national by any State under operation of its law.”<sup>15</sup> Falling within the definition of the 1954 Convention qualifies someone as *de jure* stateless, meaning someone who “all States to which he or she has a factual link fail to consider the person as a national.”<sup>16</sup> This definition, however, does not cover cases of *de facto* statelessness, of persons who “without having been deprived of their nationality (...) no longer enjoy the protection and assistance of their national authorities.”<sup>17</sup> In other words, *de facto* stateless persons are those who hold a nationality, but “whose situation and needs are analogous to that of a person without a nationality.”<sup>18</sup>

This brief opposition between two categories of statelessness evinces a significant limitation of the definition of the 1954 Convention, as it “establishes on international status, that of ‘stateless person’, which hinges solely on whether a person enjoys the legal bond of nationality.”<sup>19</sup> This definition, in accordance with van Waas and de Chickera, is problematic in four regards: that of doctrinal development, of proving one’s nationality, of in fact connecting or belonging to the State of nationality, and of accessing rights.

The first shortcoming of the definition relates to the fact that statelessness was for a long time neglected under international law, therefore going through “little doctrinal development or guidance on the interpretation of statelessness,” leading to a narrow and legalistic view of the statelessness problem.<sup>20</sup> The second shortcoming regards the many persons around the world who are nationals of different States, but are in practice unable to prove their nationality, lacking proof of their nationality, and at the same time, unable to establish statelessness.<sup>21</sup> The international agreed definition did not address this situation, leaving persons who follow under these conditions

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<sup>15</sup> Convention relating to the Status of Stateless Persons, September 28, 1954, *United Nations Treaty Series*, vol. 360, p. 117, article 1. [hereinafter 1954 Convention]

<sup>16</sup> Open Society Justice Initiative, *De jure statelessness in the real world: applying the Prato Summary Conclusions* (New York: Open Society Institute, 2011), 4.

<sup>17</sup> United Nations (UN), *A Study of Statelessness* (New York: United Nations, August 1949), 8.

<sup>18</sup> de Chickera, van Waas, “Unpacking statelessness,” 56-57.

<sup>19</sup> *Ibid.*, 55.

<sup>20</sup> *Ibid.*, 57.

<sup>21</sup> *Ibid.*

outside the framework for international and national protection as defined in both statelessness conventions (the 1954 Convention and the Convention on the Reduction of Statelessness of 1961).

The third shortcoming of the 1954 definition relates to the fact that being a national does not mean having real connections to the State of nationality, rendering this nationality meaningless without reflecting “the true (experience of) belonging or associated rights.”<sup>22</sup> Lastly, the fourth identified shortcoming is that of accessing rights, as the definition focused only on the *status* of statelessness, thus lacking any consideration of “the quality of that status or the nexus between status and protection.”<sup>23</sup> Due to these shortcomings, the definition of *de jure* statelessness limits the coverage of the Convention, being thus insufficient to tackle different conditions of statelessness lived by many populations around the world. As a result, the use of *de facto* statelessness has been the way to overcome the limitations of the 1954 definition, even though it still lacks an agreed definition and is applied in a variety of different contexts, leading also to different analysis and interpretations.

On the other hand, it is worth noting that as it is the only text defining statelessness within the international law framework, it has attained the status of customary international law, thus binding States irrespective of their ratification and accession to the 1954 Convention.<sup>24,25</sup> As stated by the International Law Commission (ILC), the definition of a stateless person “should be adhered to by all States when dealing with the question of statelessness, even if they have not acceded to the convention.”<sup>26</sup> Thus, even though highly limited on who is actually covered and protected by it, the Convention is an extremely important landmark for the enforcement of stateless persons’ rights, not only for the *de jure* stateless, but also for *de facto* stateless populations.

Causes of *de facto* statelessness in many cases are the same as those of *de jure* statelessness. The present work highlights statelessness within the context of forced displacement and refugee situations, as both phenomena reinforce each other, increasing the vulnerability of stateless persons

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<sup>22</sup> de Chickera, van Waas, “Unpacking statelessness,” 57.

<sup>23</sup> Ibid.

<sup>24</sup> Customary laws derive from general and consistent practices that are internationally accepted as laws and set obligations to States. They are binding upon States irrespective of them being Parties to treaties or other international documents that may recall such norms. (“Customary Law”, International Committee of the Red Cross (ICRC), accessed September 02, 2022, <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>.

<sup>25</sup> United Nations General Assembly (UNGA), Report of the International Law Commission, Fifty-eighth session, 2006, A/61/10, para. 49.)

<sup>26</sup> Laura van Waas, “The UN statelessness conventions,” in *Nationality and Statelessness under International Law*, eds. Alice Edwards and Laura van Waas (Cambridge: Cambridge University Press, 2014), 72.



and refugees. As de Chickera and van Waas put, *de facto* statelessness is a “catch-all solution” for different situations where statelessness would not be recognized by the definition of the 1954 Convention. It covers, for example, cases of ineffective nationality or where the person cannot prove her legal stateless status, and of not being able to enjoy benefits of nationality despite having a legal claim to it. It also refers to situations of being an undocumented or irregular migrant unable to avail from the protection of the country of residence as well as part of internally displaced populations, oppressed minorities or marginalized social groups unable to avail themselves of the protection of their own State.<sup>27</sup>

It is worth mentioning that there is also a third category of statelessness that is used by scholars: that of *effective* statelessness. However, it may be difficult to differentiate between the two categories not covered by the 1954 definition – *de facto* and effective statelessness. For example, Professor Jacqueline Bhabha defines an *effective* stateless person as someone who is unable to prove their legal identity, as “legal citizens [that] lack the documents necessary to assert their legitimate claim to State services. These are people whose birth, family affiliation, or connection to society is not registered or otherwise provable.”<sup>28</sup>

Due to the overlapping nature of both categories and to the fact that digging into the particularities of each one of them is beyond the scope of this thesis, they will be regarded as synonyms. Specifically regarding the case study proposed in this thesis, it is important to have a glimpse on the existence of at least two categories of statelessness, as refugees may find themselves as *de facto* stateless persons in many cases, unable to prove or establish their connections with and/or unable to avail themselves of the protection of their country of origin. By not being considered by the Conventions on statelessness, *de facto* stateless persons find themselves in a limbo, not being able to rely on any State nor on international law for their protection.<sup>29</sup>

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<sup>27</sup> de Chickera, van Waas, “Unpacking statelessness,” 57-58.

<sup>28</sup> Jacqueline Bhabha, “From citizen to migrant: the scope of child statelessness in the twenty-first century,” in *Children without a State: a global human rights challenge*, ed. Jacqueline Bhabha (Massachusetts: The MIT Press, 2011), 1-2.

<sup>29</sup> Lindsey N. Kingston, “Worthy of rights: statelessness as a cause and symptom of marginalisation,” in *Understanding statelessness*, eds. Tendayi Bloom, Katherine Tonkiss, and Phillip Cole (Abingdon, Oxon: Routledge, 2017), 17-18.

Irrespective of statelessness categories, there are at least 10 million stateless persons in the world, as the UNHCR has been reporting for the last decade,<sup>30</sup> while the Institute on Statelessness and Inclusion (ISI) reported, in its first publication *The World's Stateless* of 2014, that it is “likely to be more than 15 million stateless persons worldwide.”<sup>31</sup> One fundamental statistics regarding childhood statelessness is that reported by the UNHCR in 2015 that *one stateless child is born every 10 minutes in the world*. The High Commissioner goes further and evinces that considering the “countries hosting the 20 largest stateless populations, at least 70,000 stateless children are born each year.”<sup>32</sup> From this data follows that one third of the total stateless population in the world is of children.<sup>33</sup> This is the dimension of the problem being addressed in this research.

In its last report *Global Trends: forced displacement in 2021*, the UNHCR estimated that by the end of that year, more than 4.3 million people were stateless or of undetermined nationality. This number demonstrates an increase compared to the previous estimates, that was of 3.5 million of stateless persons.<sup>34</sup> However, “the global figure remains an undercount as data on stateless populations or those of undetermined nationality is missing or incomplete for many countries, including some with known stateless populations,” also because statistics from the UNHCR gathered data from only 96 countries.<sup>35</sup> Data gaps in counting the stateless have always been an important indicator of the fact that the real number of stateless persons is significantly higher.<sup>36</sup>

Another noteworthy issue interfering with the estimates of stateless populations around the world is the lack of an unified methodology in assessing the number of stateless persons, with data deriving from a combination of sources from different actors, such as national statistics, statelessness registration and determination procedures, census, household surveys, UNHCR

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<sup>30</sup> United Nations Economic and Social Council (ECOSOC), Report of the Expert Group on Refugee, Internally Displaced Persons and Statelessness Statistics on statelessness statistics, Statistical Commission, Fifty-third sess., December 8, 2021, E/CN.3/2022/10, para. 9.

<sup>31</sup> Institute on Statelessness and Inclusion (ISI), *The World's Stateless* (Oisterwijk: Wolf Legal Publishers (WLP), 2014), 10-11.

<sup>32</sup> United Nations High Commissioner for Refugees (UNHCR), *I am here, I belong: the urgent need to end childhood statelessness* (New York: UNHCR, November 2015), 1.

<sup>33</sup> “Statelessness Around the World,” United Nations High Commissioner for Refugees (UNHCR), accessed September 12, 2022, <https://www.unhcr.org/statelessness-around-the-world.html>.

<sup>34</sup> United Nations High Commissioner for Refugees (UNHCR), *Global Trends: forced displacement in 2021*, June 2022, 42. <https://egrisstats.org/resource/unhcr-global-trends-report-2021/>.

<sup>35</sup> Ibid.

<sup>36</sup> ISI, *The World's Stateless*, 11.

estimates and sources from non-governmental organizations (NGOs).<sup>37</sup> Moreover, as almost 100 countries in the world today do not report on their stateless populations,<sup>38</sup> it is reasonable to infer that the real stateless population in the world amounts to way more than 10 or 15 million people.

While unreliability, precariousness and gaps of available data pose a great obstacle in the evaluation of the current situation, it is in any case possible to note that unfortunately the situation has not improved as it should in the last decade in order to meet the goal of ending statelessness by 2024.<sup>39,40</sup> Problems in data collection coupled with new and varying challenges and risks of today's world, such as increase in migration flows, the perpetuation of national policies of persecution, ethnic cleansing and exclusion of minorities, and the Covid-19 pandemic,<sup>41</sup> have been not only posing extra and higher obstacles to reduce and prevent statelessness in the world but have also been contributing to an increase in conditions of *de jure* and *de facto* statelessness.

Stateless people are deprived of their basic human rights, living an everyday life of insecurity, increased vulnerabilities and denials. They “suffer from a lack of inclusion in the social, economic and political spheres of society,” being in fact excluded and marginalized, prevented

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<sup>37</sup> ECOSOC, Report on Refugee, Internally Displaced Persons and Stateless Statistics (2021), para. 9-10; ISI, *The World's Stateless* (2014), 7.

<sup>38</sup> The UNHCR *Global Trends* report of 2021, published in June 2022, puts together the data available from 96 countries.

<sup>39</sup> The UNHCR launched in 2014 the *#IBelong Campaign to End Statelessness by 2024* and developed the *Global Action Plan to End Statelessness: 2014-2024*, establishing a guiding framework of 10 actions to resolve major situations of statelessness, prevent the emergence of new cases and to better identify and protect stateless populations. Both the campaign and the action plan were designed in response to the calling from the High Commissioner for the “total commitment of the international community to end statelessness” in October 2013, during the 64th session of the UNHCR's Executive Committee. (United Nations High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness: 2014-2024*, (Geneva: UNHCR, 2014); António Guterres, *High Commissioner's closing remarks to the 64th session of UNHCR's Executive Committee*, October 4, 2013, <https://www.unhcr.org/525539159.html>.)

<sup>40</sup> An indicative of the non-attainment of the goal to end statelessness by 2024 is the creation of a new *Global Alliance to End Statelessness* by 2030, aimed at “[accelerating] solutions to statelessness through a collective multistakeholder approach.” It is composed of stateless and formerly stateless people, civil society organizations, academic institutions, faith-based organizations, and UN and other international entities. (“The new Global Alliance to End Statelessness: Convene. Catalyse. Change,” United Nations High Commissioner for Refugees (UNHCR), accessed November 3, 2022. <https://www.unhcr.org/ibelong/the-new-global-alliance-to-end-statelessness/>.)

<sup>41</sup> The Covid-19 pandemic has had disproportionate impacts on marginalized groups. Stateless populations, having been barred from social services, vaccination campaigns, and economic reliefs provided by governments. Loss of livelihoods, limited access to health care and education have worsened the marginalization and existing inequalities experienced by stateless persons. A drastic consequence of the pandemic for the fight against childhood statelessness has been the decrease in birth registrations, “due to the partial or complete suspension of birth registration services as part of mitigation efforts.” (United Nations High Commissioner for Refugees (UNHCR), *The impact of Covid-19 on stateless populations: policy recommendations and good practices on vaccine access and civil registration*, June 3, 2021, 1.)

from fully participating in and contributing to their communities.<sup>42</sup> As the UNHCR affirmed “the statelessness experienced by certain groups is both a symptom and a cause of their exclusion: it stems from discrimination based on difference, and it reinforces their lack of full membership in the societies they live.”<sup>43</sup> Marginalization, exclusion and discrimination are fundamental features of the statelessness problem, defining how stateless persons are perceived by the societies where they live and how States treat them.<sup>44</sup>

The next section discusses the role played by States in the perpetuation of statelessness, as they not only allow but also create the conditions rendering persons stateless. It attempts to evince the complexity of international human rights law when the requirement to respect States’ sovereignty leads to gaps in law and in practice causing the perpetuation of human rights violations and of statelessness. Understanding the relation between States’ sovereignty and the right to a nationality is fundamental to then discuss the causes and consequences of statelessness, and to focus on the importance of ensuring every child is registered immediately after birth as the first step to prevent and eliminate statelessness.

### *1.2 Acquiring a nationality: States’ sovereignty v. the imperative of human rights*

In a world comprised of States, the problem of statelessness remains a glaring anomaly with devastating impacts on the lives of millions of people around the world who live without any nationality.

– *United Nations High Commissioner for Refugees, Closing Remarks to the 64th Session of UNHCR’s Executive Committee, 2013*

The only definition of a stateless person in international instruments of human rights indicates that statelessness is regarded under international law as an opposition to the condition of being a national of a country. From this initial consideration, an important point should be raised regarding a possible solution to the problem of statelessness, that has been the focus of the majority

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<sup>42</sup> ECOSOC, Report on Refugee, Internally Displaced Persons and Statelessness Statistics (2021), para. 13.

<sup>43</sup> United Nations High Commissioner for Refugees (UNHCR), “*This is our home*”. *Stateless minorities and their search for citizenship*, (New York: UNHCR, November 2017), 8.

<sup>44</sup> Kingston, “Worthy of rights,” 17-18.

of the studies and research on this issue: on the granting of nationality as a solution for this human rights violation. Even though acquiring nationality is of the utmost importance to tackle the issues and problems of statelessness, being the first step to *start* solving it, one has to bear in mind that nationality is not enough to guarantee the access to and enjoyment of fundamental rights for stateless persons.<sup>45</sup>

It is a two-folded consideration: acquiring a nationality solves the legal issue of being stateless, but it does not ensure a dignified and fulfilled life, with inclusion, integration and participation in societies. This results from the fact that accessing and enjoying human rights depends on how the person is actually integrated in the society and is able to take an active and participatory role in its daily life. In this sense, having a nationality while suffering from marginalization and social exclusion, both symptoms as well as causes of statelessness, will not assure a person all the protections she should be entitled to. As Kingston stated, “legal status is *only one* step in a long journey towards full rights protection.”<sup>46</sup> These symptoms of statelessness will be further discussed in the third part of this chapter, which tackles how marginalization, exclusion and discrimination pose greatest challenges for proper access to and enjoyment of human rights for stateless persons.

Nationality, as defined by the International Court of Justice (ICJ), “is a legal bond [that has] as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments,”<sup>47</sup> being thus determined by social ties to the country of nationality, and differentiating between and classifying those who are regarded as nationals and have a series of rights and duties towards their States and those who do not have such rights and duties, thus being ‘outsiders’, ‘foreigners’, ‘aliens’.<sup>48</sup> Being a national of a State, under the scope of the 1954 Convention, was understood as “a formal link, of political and legal character, between the individual and a particular State.”<sup>49</sup> The United Nations High Commissioner for Refugees (UNHCR) further explained that “nationality, by its nature, reflects a linkage between the State and the individual,

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<sup>45</sup> Kingston, “Worthy of rights,” 17-18.

<sup>46</sup> *Ibid.*, emphasis added.

<sup>47</sup> International Court of Justice (ICJ), *Nottebohm Case (Liechtenstein v. Guatemala)*, *Second phase*, April 6, 1955 [original source] quoted in Edwards, “The meaning of nationality,” 12.

<sup>48</sup> Edwards, “The meaning of nationality,” 12.

<sup>49</sup> United Nations Rights Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons* (Geneva: UNHCR, 2014), para. 52.

often on the basis of birth on the territory or descent from a national and this is often evident in the criteria for acquisition of nationality in most countries.”<sup>50</sup>

The focus of scholars on the granting of nationality as the first (and often main) solution to statelessness has as one of its main causes the nationalization of human rights and the fact that States have the discretion to define and decide who will be regarded as their nationals. This nationalization of rights means that an individual must hold a State's nationality in order to access and enjoy human rights and services provided by it. Ultimately, being able to prove the relationship one has with the country she or he claims to belong to is fundamental for the protection of human dignity and basic rights, such as the right to education, health care, formal and gainful employment, social security, freedom of movement, religion, political and social participation, among others.

However, as the United Nations Office of the High Commissioner for Human Rights (OHCHR) explains, human rights are universal and “inherent to us all, regardless of *nationality*, sex, national or ethnic origin, color, religion, language or any other status.”<sup>51</sup> Based on this, it is possible to infer that the access to and enjoyment of fundamental rights should not be bound to belonging to a country, to being considered as a national by the State and possessing a nationality, as they should be guaranteed to everyone on an equal basis, without discrimination of any kind. As affirmed by Amal de Chickera and Laura van Waas, “nationality should be less fundamental to the enjoyment of protection and rights [as] States have obligations – which are no longer based on reciprocity – to promote and protect the human rights of all persons subject to their jurisdiction, be they stateless or otherwise.”<sup>52</sup>

On the other hand, the respect for States’ sovereignty and for States’ discretion in the elaboration, determination and enactment of their domestic laws opened up gaps where access to and enjoyment of human rights are severely violated and undermined. States are the sole actors deciding on their national legislations and on the measures in place to prevent human rights violations and protect human dignity.<sup>53</sup> In this sense, the existence of statelessness is “an inevitable by-product of the freedom of States to set the rules for acquisition and loss of nationality.”<sup>54</sup> The

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<sup>50</sup> UNHCR, *Handbook on Protection of Stateless Persons*, para. 54.

<sup>51</sup> “What are human rights,” United Nations Office of the High Commissioner for Human Rights (OHCHR), accessed August 8, 2022, <https://www.ohchr.org/en/what-are-human-rights>.

<sup>52</sup> de Chickera, van Waas, “Unpacking statelessness,” 58.

<sup>53</sup> ISI, *The World’s Stateless*, 20; van Waas, “The UN statelessness conventions,” 65, 69.

<sup>54</sup> van Waas, “The UN statelessness conventions,” 65.

UNHCR, in its *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, made it clear that States and their authorities have the decision-making power to grant nationality to people who are born, live or reside in their territories, to children born abroad from national parents and to foreign spouses married to their nationals.<sup>55</sup> Being left stateless is a direct violation of fundamental human rights perpetrated by States, as they are the sole responsible for determining the conditions and procedures for nationality acquisition.

International treaties do provide minimum standards that delineate the boundaries of States' freedom in writing new legislations, with many of them binding the States to the international norms. In many cases, ratifying a Convention demands that States adjust their national laws in order to meet international obligations and standards of human rights protection. Some international provisions binding States to prevent statelessness will be covered in the second part of this chapter. It is worth recalling, thus, that domestic procedures to adjust national legislation in accordance with international law often are complicated, require approval from different instances of government and take time. Moreover, there are also significant compromises that allow States to place reservations and declarations to specific articles and provisions of conventions "by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that State. A reservation enables a State to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply."<sup>56</sup>

The complexity of international relations with regards to human rights provides a fragile balance between international obligations and States sovereignty, out of which access to health care, education, safe work, social security and to many other fundamental, yet basic, rights are bound to individual choices of States on how to protect, guarantee and make them available to people. The nationalization of human rights, and requirements to provide individual documents proving one's identity<sup>57</sup> and nationality in order to go to hospitals, enroll in school or university,

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<sup>55</sup> UNHCR, *Handbook on Protection of Stateless Persons* (2014), para. 52.

<sup>56</sup> *United Nations Treaty Collection*, s.v. "Reservation", accessed August 8, 2022, [https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1\\_en.xml](https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml).

<sup>57</sup> The Convention on the Rights of the Child, under article 8, specifically includes nationality as part of one's identity, besides one's name and family relations. Being the most ratified international convention on human rights, many of its provisions can be regarded as universally accepted by States. In this sense, providing identity documents implies one possessing a nationality and not having a nationality directly interferes with one's personal identity. (Convention on the Rights of the Child, November 20, 1989, *United Nations Treaty Series*, vol 1577, p. 3, article 8. [hereinafter

get hired, receive State's welfare benefits and participate fully in the society, could be regarded as a violation of the universal and inherent characters of human rights, owing to the fact that it excludes millions of people all around the world from the fundamental spheres of a dignified and secure life. By doing so, States severely impair stateless persons' well-being, subjecting them to dire living conditions and violating their human dignity. With regards to children, such impairments and violations are even more harmful and detrimental to their well-being, growth and development due to their specific vulnerability and dependency towards adults.

In face of the discussion regarding the nationalization of human rights, which may be appointed as an important factor when dealing with stateless persons' access to and enjoyment of a series of basic rights, and of the international agreed definition of statelessness which excludes millions of people from the frameworks designed to protect such persons, one may feel in a hopeless crossroads, with no feasible solution to protect stateless persons' dignity or even to eradicate the problem. However, there are several safeguards against statelessness, which will be further covered in this thesis, spread in a high number of international and regional treaties that create a net for statelessness' avoidance and the protection of people who find themselves stateless, be them *de jure* or *de facto* stateless. Such safeguards, well established under the 1961 Convention on the Reduction of Statelessness, focus on the acquisition and granting of nationality.

Despite the fact that acquiring a nationality is not in itself the solution for ensuring a just and dignified access to and enjoyment of human rights for stateless persons, it is of vital importance to legally solve the issue of statelessness, because being a national is the antithesis of being stateless. In the views of the Human Rights Committee (CCPR), the purpose the provision ensuring children acquire a nationality is "to prevent a child from being afforded less protection by society and the State because he [*sic*] is stateless, [however] it does not necessarily make it an obligation for States to give their nationality to every child born in their territory."<sup>58</sup> International law on the acquisition of nationality at birth does not correspond to an obligation of States to grant their nationality, but it is one extremely relevant safeguard against childhood statelessness.

The right to acquire a nationality is in fact part of the right "to be registered immediately after birth," as worded by the CRC's article 7, paragraph 1, which will be specifically addressed

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CRC]; "Convention on the Rights of the Child," United Nations Children's Fund (UNICEF), accessed August 13, 2022, <https://www.unicef.org/child-rights-convention>.)

<sup>58</sup> Human Rights Committee (CCPR), *General Comment No. 17: Article 24 (Rights of the Child)*, HRI/GEN/1/Rev.9 (Vol. I) p.193, April 7, 1989, paragraph 8.



in the second chapter of this thesis. The Human Rights Council (HRC) recalled that birth registration has

an important function in helping children to assert their right to a nationality. In some cases, the lack of access to birth registration directly hampers recognition by a State of a child as a national. The groups found to be most vulnerable to non-registration of birth due to structural discrimination – including undocumented migrants, indigenous, minority and nomadic groups, refugees, internally displaced persons, and stateless persons – also face a greater risk of having their nationality disputed where birth registration cannot be completed.<sup>59</sup>

Therefore, when coupled together, both children's rights ensure their recognition as nationals of a State, enabling them to access a series of other fundamental human rights, and form a net for the protection of their personal identity, all vital aspects for the protection of children from statelessness itself as well as of the dire consequences of statelessness. As it will be demonstrated, ensuring every child is registered immediately after birth and acquires a nationality is of utmost importance in the struggle to end statelessness, to break intergenerational poverty and statelessness cycles, and to ensure the first and foremost step required to tackle statelessness.

The next section discusses the international framework developed in the second half of the twentieth century to deal with statelessness, aiming at protecting stateless populations as well as attempting to reduce and prevent new cases from emerging. It is important to review such human rights instruments in order to understand States' obligations and responsibility towards statelessness. The negotiations and processes of adoption of both statelessness Conventions reveal States' perceptions regarding the problem and are able to demonstrate their willingness and limitations to look for sustainable and durable solutions to statelessness. Moreover, some other international human rights treaties that provide safeguards against statelessness will also be presented, as they directly relate to the specific situation of stateless children.

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<sup>59</sup> United Nations Human Rights Council (HRC), *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*, December 16, 2015, A/HRC/31/29, paragraph 15.

## 2. International framework on statelessness

There are two Conventions related to statelessness. One is more about protecting people that are stateless. The other one is more about working to eliminate statelessness. That is why we are campaigning so hard for States to accede to these Conventions. (...) This is highly significant. It is symbolic, and it is also very practical because once you sign a Convention, then you have to develop legislation that matches that Convention and brings your work on statelessness in line with international standards.

– *Filippo Grandi, United Nations High Commissioner for Refugees, during the High-Level Segment on Statelessness 2019*

### 2.1 UN Conventions on statelessness: rights protected and safeguards

The international framework on statelessness is composed of two main conventions, the Convention relating to the Status of Stateless Persons (adopted in September 1954 and entered into force in June 1960), which defines a protection framework for stateless persons, and the Convention on the Reduction of Statelessness (adopted in 1961 and entered into force in December 1975), that defines international standards to reduce statelessness. It is worth noting, though that the effort of the international community to deal with statelessness started in the first half of the twentieth century with the adoption of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws and its Protocol relating to a Certain Case of Statelessness, which aimed at preventing statelessness from happening.<sup>60</sup>

Since then, States Parties have been obliged to confer nationality to “a person born in its territory of a mother possessing the nationality of that State and of a father without nationality or of unknown nationality,” therefore applying the *jus soli* system and facing gender-discriminatory nationality laws.<sup>61</sup> Despite these initial efforts and the inclusion of the right to a nationality in the Universal Declaration of Human Rights (UDHR), it was only with the 1954 Convention that an international framework against statelessness started to take proper form, with the works of the Ad

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<sup>60</sup> The Protocol was adopted following the 1930 League of Nations’ Hague Convention on Certain Questions relating to the Conflict of Nationality Laws. Together, they were the first set of international rules put in place with the objective to avoid statelessness, especially when it would be a result of States’ nationality laws. (van Waas, “The UN statelessness conventions,” 69-70.)

<sup>61</sup> Protocol relating to a Certain Case of Statelessness, April 12, 1930, *League of Nations Treaty Series* vol 179, No. 4138, p. 115, article 1.

Hoc Committee on Statelessness and Related Problems, convened following the analysis of the UN's *Study of Statelessness*, published in 1949.

The study envisaged the adoption of a “general convention” that was further developed by the Committee.<sup>62</sup> Two draft conventions were compiled, one on the status of refugees and the other on the status of stateless persons. In 1951, the Convention relating to the Status of Refugees (1951 Convention) was adopted, protecting not only refugees but also stateless persons who were also refugees.<sup>63</sup> However, “the non-refugee stateless were left unprotected by either a national government or by international law.”<sup>64</sup> This was further remedied by the drafting and adoption of the 1954 Convention, which in its origin was conceived as a protocol to the refugee convention.

With the decision of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons to have an independent instrument for the protection of stateless persons, the final convention approved and adopted ended up being almost identical to that of 1951, with the same structure and similar provisions. The 1951 Convention has only 4 articles more than the 1954 Convention, from which it is noticeable the principle of non-refoulement.<sup>65,66</sup> Deciding on a separate instrument was important to “allow States to become parties to this statelessness instrument without having to first ratify the Refugee Convention.” The result, however, was of great disparity in ratification of both conventions, as the 1951 Convention “quickly drew dozens

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<sup>62</sup> UN, *A Study of Statelessness*, 51; van Waas, “The UN statelessness conventions,” 67.

<sup>63</sup> A refugee, as defined by article 1 of the Convention relating to the Status of Refugees (1951 Convention) and by the Protocol relating to the Status of Refugees (1967 Protocol), is any person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [*sic*] nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.” (Convention relating to the Status of Refugees. *United Nations Treaty Series*, vol. 189, p. 137 (Geneva: UN, July 28, 1951), article 1(A)(2). [hereinafter 1951 Convention])

<sup>64</sup> van Waas, “The UN statelessness conventions,” 68.

<sup>65</sup> The 1951 Convention was a landmark in the protection of refugees’ human rights. It protects, for example, the right to freedom of religion (art. 4), the right to property (artt. 13 and 14), the right of association (art. 15), the right to have free access to courts (art. 16), the right to work (artt. 17-19), the right to public education (art. 22), to social security (art. 24), to freedom of movement (art. 26) and to identity papers and travel documents (artt. 27 and 28). The convention also recognized and established as a non-derogable right of refugees the protection from refoulement, meaning that States Parties are forbidden to “expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of the territories where his [*sic*] life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” (1951 Convention, *supra* note 63, article 33(1)).

<sup>66</sup> Besides the right to non-refoulement, the provisions of article 31 (on refugees unlawfully in the country of refuge), 35 (cooperation of the national authorities with the UN) and 37 (relation to previous conventions) are the extra articles of the 1951 Convention when compared to the 1954 Convention.

of States Parties, while [the 1954 Convention] attracted relatively few and continues to lag behind its sister convention in accessions.”<sup>67</sup> As of September 2022, the 1951 Convention has 146 Parties, while the 1954 Convention has 96 Parties.<sup>68</sup> Irrespective of that, both conventions are cornerstone documents in the protection of refugees’ and stateless persons’ rights.

The 1954 Convention shall be regarded as the most comprehensive document relating to the rights of stateless persons at the international level approved and adopted up to now, as it establishes minimum standards of treatment and aims at ensuring rights’ enjoyment and a dignified life to these persons. It was developed following the advancements on the human rights framework in the aftermath of World War II and the fact that hundreds of thousands of people were left without the protection of any government,<sup>69</sup> having as its *raison d’etre* to “ensure that those who lacked nationality were protected internationally,”<sup>70</sup> as urged by the UN in its *A Study of Statelessness* of 1949.<sup>71</sup>

The Convention defined minimum standards of treatment, guaranteeing to stateless persons the enjoyment of some basic civil, economic, social and cultural human rights.<sup>72</sup> It provides thus not only the parameters for recognition of *de jure* statelessness, but also sets the rights and conditions attached to such recognition. It protects, for example, the right to religious freedom, personal status, property, the right of association, access to courts, gainful employment, housing, public education,<sup>73</sup> social security, freedom of movement, the right to be issued identity papers and travel documents, among others.<sup>74</sup> Some rights are guaranteed to all stateless persons, without

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<sup>67</sup> van Waas, “The UN statelessness conventions,” 68.

<sup>68</sup> “Convention relating to the Status of Refugees,” United Nations Treaty Collection (UNTC), accessed September 13, 2022. [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en); “Convention relating to the Status of Stateless Persons,” United Nations Treaty Collection (UNTC), accessed September 13, 2022. [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-3&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en).

<sup>69</sup> van Waas, “The UN statelessness conventions,” 66.

<sup>70</sup> de Chickera, van Waas, “Unpacking statelessness,” 56.

<sup>71</sup> As stated in the document, ensuring international protection to stateless persons was directly related to and dependent on the adoption of a “general convention [as] a lasting international structure.” (UN, *A Study of Statelessness*, 51.)

<sup>72</sup> van Waas, “The UN statelessness conventions,” 72.

<sup>73</sup> Article 22 of the 1954 Convention states that stateless persons shall be accorded the same treatment as that accorded to nationals “with respect to elementary education”. Regarding education other than elementary, stateless persons shall be accorded the “treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances”. (1954 Convention, *supra* note 15, article 22.)

<sup>74</sup> 1954 Convention, *supra* note 15, articles 4, 12-19, 21, 22, 24, 26-28.

requirement of any condition, while some others are dependent on the legal situation of the person or of having residence in the country. Another differentiation in the provision of such rights relates to the standards of treatment one may receive, through the phrasings “at least as favorable as accorded to nationals”, “as favorable as possible and, in any event, no less favorable than accorded to aliens generally”, or with the crystal-clear statement that a stateless person shall receive the same treatment as a national.<sup>75</sup>

The combination of “the degree of attachment required between the stateless person and the State” with different standards of treatment “creates a complex picture in terms of the exact benefits stateless people are entitled to enjoy under the 1954 Convention.”<sup>76</sup> Such complexities that arise from the choice of wording of international conventions’ texts leave a wider space for States’ interpretation, as well as for some levels of States’ inactivity, where despite having had ratified the Convention, they do not properly implement its provisions. Table 1 provides a synthetic overview of “the degree of attachment” between the stateless person and the State in order for a person to be accorded with the rights protected by the Convention.

In the case of the 1954 Convention, the ‘inactivity’ or lack of implementation of its provisions by States are further fostered by the lack of instructions on how to implement the definition of a stateless person and by the absence of any mechanism to oversee States’ practices in the original text.<sup>77</sup> The broadening of the UNHCR mandate in 1974,<sup>78</sup> with Resolution 3274 XXIX of the United Nations General Assembly (UNGA),<sup>79</sup> made the UN agency also responsible for the protection of stateless persons and was an important movement of the UN in order to overcome part of this absence of instructions and guidelines. This was an important movement of the UN in order to cover some gaps in the protection of stateless persons’ rights, as the new mandate of the UNHCR, with the expansions provided for in 1974 and 1976, gave it a new

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<sup>75</sup> See Table 1 for examples of rights referring to each one of the standards of treatment mentioned in the 1954 Convention.

<sup>76</sup> van Waas, “The UN statelessness conventions,” 73-74.

<sup>77</sup> *Ibid.*, 74.

<sup>78</sup> Initiated, reinforced and assured by UNGA resolutions 3274 XXIX of 1974; 31/36 of 1976; 50/152 of 1995; and 61/137 of 2006.

<sup>79</sup> The resolution was a direct result of the 1961 Convention, that clearly calls for “the establishment within the framework of the United Nations (...) of a body to which a person claiming the benefit of [the 1961 Convention] may apply for the examination of his [*sic*] claim and for assistance in presenting it to the appropriate authority.” (Convention on the Reduction of Statelessness, *United Nations Treaty Series*, vol. 989, p. 175 (New York: UN, August 30, 1961), article 11. [hereinafter 1961 Convention])

role in relation to States' compliance with their international obligations towards refugees, asylum-seekers and stateless persons, (...) directly linked to ensuring a principled application of the international protection regime. The rationale behind this role is that strengthened oversight by an international organization is indispensable for a predictable framework of international cooperation and to ensure proper functioning of such a system.<sup>80</sup>

The international regime for the protection of stateless persons is also composed of the 1961 Convention on the Reduction of Statelessness, that set the safeguards for avoidance and reduction of statelessness. It was developed facing the tricky challenge of dealing with “the ever-present tension between a State’s freedom to set the conditions for acquisition and loss of nationality and the need to address anomalies like statelessness that result precisely from that freedom,” in an attempt to eliminate past and future cases of statelessness.<sup>81</sup> The initial draft proposed by the ILC in 1954 was truly about eliminating statelessness, however the absolute safeguards necessary to do so “deemed [the Draft Convention on the Elimination of Future Statelessness] a step too far.”<sup>82</sup> It was then quickly discarded, and the proposal of a Convention on the *Reduction* of Future Statelessness was preferred and accepted. Choosing to *reduce* rather than to *eliminate* statelessness was the compromise in order to “better balance States’ sovereign interests in the realm of nationality and the common interest of agreeing some restrictions to this discretion with a view to avoiding statelessness.”<sup>83</sup>

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<sup>80</sup> “Mandate of the High Commissioner for Refugees and his Office: Executive Summary,” United Nations High Commissioner for Refugees (UNHCR), accessed August 31, 2022, 1-2. <https://www.unhcr.org/publications/legal/5a1b53607>.

<sup>81</sup> van Waas, “The UN statelessness conventions,” 69.

<sup>82</sup> Ibid., 70; United Nations High Commissioner for Refugees (UNHCR) and the Inter-Parliamentary Union (IPU), *Nationality and Statelessness: a Handbook for Parliamentarians*, (Geneva: IPU, 2005), 12.

<sup>83</sup> van Waas, “The UN statelessness conventions,” 71.

Table 1. *Extension of benefits in accordance with the degree of attachment between a stateless person and a State*

Standard of treatment	Degree of attachment	Right protected
No specification	No defined degree	Non-discrimination (art. 3)
		Right to access to courts (art. 16 (1))
		Right to have identity papers (art. 27)
	“Lawfully in the territory”	Freedom of movement (art. 26)
		Right not to be expelled (art. 31)
“Lawfully staying in the territory”	Right to be issued travel documents (art. 28)	
“As favorable as possible and, in any event, no less favorable than accorded to aliens generally”	No defined degree	Right to movable and immovable property (art. 13)
		Right to public education (art. 22 (2))
	“Lawfully staying in the territory”	Right of association (art. 15)
		Right to wage-employment (art. 17)
		Right to self-employment (art. 18)
		Right to housing (art. 21)
“Habitual residence”	Right to liberal professions (art. 19)	
“At least as favorable as accorded to nationals”	No defined degree	Religious freedom (art. 4)
Same as accorded to nationals	No defined degree	Rationing (art. 20)
		Right to public education (art. 22 (1))
	“Lawfully staying in the territory”	Right to public relief and assistance (art. 23)
		Right to labor legislation and social security (art. 24)
	“Habitual residence”	Artistic rights and rights to industrial property (art. 14)
		Right to legal assistance (art. 16 (2))

*Source:* 1954 Convention. Own elaboration.

The safeguards established in the 1961 Convention could be separated into three broad groups of rights and contexts.<sup>84</sup> The first one relates to acquisition of nationality and to the obligations of States to grant their nationality considering different situations (articles 1 to 4), for example in the case of foundlings (article 2) and of births on ships or in aircrafts (article 3). The second context regards loss, deprivation or renunciation of the nationality of a Contracting State,

<sup>84</sup> van Waas, “The UN statelessness conventions,” 74-75.

giving the terms for these situations to take place at the same time that some safeguards against statelessness are defined (articles 5 to 9). The last context to avoid statelessness, less relevant for the present work, but fundamental for the international debate regarding statelessness, relates to the specific situations of succession of States (article 10).

In all of these matters, the 1961 Convention “respects the overall freedom of States to legislate as they see fit in the area of nationality and does not attempt to create an international law on nationality.”<sup>85</sup> This respect is precisely where the gaps in the international framework for the protection of stateless persons emerge from, with the Convention in fact expecting and tolerating several cases of statelessness.<sup>86</sup> At the same time, this respect is what made it possible for the Convention to be accepted and adopted by States. The compromise to keep States’ freedom with regards to who is able to access their nationality led to the adoption of a long text that

although (...) [asserting] the general rule that nationality may not be lost or deprived where it would leave an individual stateless, it also accepts that States may nevertheless render a person stateless in this manner, in a limited set of exceptional circumstances (...), [undercutting] its primary objective by admitting that some people will be rendered or left stateless without this amounting to a violation of the Convention’s terms.<sup>87</sup>

The 1961 Convention, then, has serious gaps upon which human rights violations and marginalization of stateless persons have been perpetuated since its entering into force in 1975.<sup>88</sup> With regards to the topic proposed in this thesis, these gaps are highly detrimental to the specific case of children being left stateless, as one of the main causes affecting them is discriminatory nationality laws against women on the passing of their nationality on to their children, an issue

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<sup>85</sup> van Waas, “The UN statelessness conventions,” 75.

<sup>86</sup> The drafting of a convention addressing the issue of avoidance of statelessness followed the proposal of two different texts by the ILC in 1954, one on the elimination and the other on the reduction of future statelessness. Significantly different on the safeguards proposed, the first, if adopted, would be able to guarantee that no new cases of statelessness would arise, while the second, then adopted by States, recognized the prescription of preconditions by States to be met by persons who wish to benefit from the safeguards against statelessness. (International Law Commission (ILC), Report of the International Law Commission Covering the Work of its Sixth Session, July 28, 1954, *Official Records of the General Assembly*, Ninth Session, A/CN.4/88, para. 10; van Waas, “The UN statelessness conventions,” 70.)

<sup>87</sup> van Waas, “The UN statelessness conventions,” 76-77.

<sup>88</sup> *Ibid.*, 84.



that was poorly addressed by the Convention.<sup>89,90</sup> The 1961 Convention ended up fostering children's vulnerability to statelessness, a situation that reinforces the importance of the Convention on the Rights of the Child on the prevention and elimination of childhood statelessness, as its article 7 states the right to acquire a nationality at birth.<sup>91</sup>

It is worth mentioning, on the other hand, that the 1961 Convention, even with its flaws and gaps, is one of its kind – there is no other similar universal treaty with detailed safeguards against statelessness that are readily implementable by States. This derives from the fact that much of it was built on “fundamental principles upon which all States’ nationality policy is ultimately based: family ties (*jus sanguinis*) and a territorial connection (*jus soli* and *jus domicilli*).”<sup>92</sup> Ultimately, considering the negotiations and debates to approve any treaty of international human rights law, having a convention like the 1961 Convention is of utmost importance and it deserves recognition as a comprehensive document in as much as it was possible to be. More than that, it is also highly relevant that the Convention became the concrete guidance to the new mandate of the UNHCR, thus being directly implemented and fostered by the UN agency.<sup>93</sup>

The international framework for the protection of stateless persons, composed of both conventions, could be thus regarded as comprehensive in itself, as it binds States to implement important safeguards against statelessness. However, it still has a long way to go on widening its ratification status as well as on the closing of significant gaps and including under its framework of protection *de facto* stateless persons. In order to widen this framework, it is fundamental to consider together with these conventions the provisions relating to statelessness of other international human rights law instruments. The next section provides a brief overview of some

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<sup>89</sup> United Nations High Commissioner for Refugees (UNHCR). *I am here, I belong: the urgent need to end childhood statelessness* (New York: UNHCR, November 2015), 6-8.

<sup>90</sup> See articles 1 to 4 of the 1961 Convention. Article 1(3) does state that “a child born *in wedlock* in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless,” being a provision against gender discriminatory nationality laws. However, it has two important limitations: it discriminates against children born out of wedlock and it provides no protection to children born abroad. (1961 Convention, *supra* note 79, article 1(3), emphasis added.)

<sup>91</sup> “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.” (CRC, *supra* note 57, article 7.)

<sup>92</sup> van Waas, “The UN statelessness conventions,” 82-83.

<sup>93</sup> UNGA Res 3274 (XXIX), *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*, (December 10, 1974), article 1.

international conventions that contribute to the protection of stateless persons, with special focus on the international provisions and norms that relate to children.

## *2.2 International human rights conventions and the right to a nationality*

Besides the two Conventions on statelessness, several international documents contain important standards for the protection of stateless persons' human rights and for the reduction and elimination of this anomaly of international law. The most important provision in this sense is the right to a nationality, well established, reinforced and repeated in subsequent conventions and declarations. The starting point of this thesis to look into the right to a nationality is the **Universal Declaration of Human Rights (UDHR)**, adopted in 1948 and whose article 15 reads: "1. Everyone has the right to a nationality; 2. No one should be arbitrarily deprived of his nationality nor denied the right to change his nationality."<sup>94</sup> It is worth noting that, despite being an important provision for the international bill of human rights, it lacks specification on which nationality people have the right to.

The right to *a* nationality, with "no corresponding obligation on States to grant [their] nationality,"<sup>95</sup> is a right to *any* nationality, as well as it can be to no nationality at all. It is exactly from this vacuum of *which* nationality the law refers to that emerges the giant abyss where millions of people around the world are left stateless. Because nationality manifests a country's sovereignty and identity, it has always been a highly sensitive issue, over which significant international compromises have been made. One of them is exactly the absence in international law of obligations regarding the granting of States' nationality to any person born in their territories. The obligations on the granting of nationality are often followed by concessions, worded in the forms of "by operation of law," "in the manner prescribed by the national law," "in accordance with [the State's] national law,"<sup>96</sup> or if/where the person "would otherwise be stateless."<sup>97</sup>

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<sup>94</sup> UNGA Res 217 (III), Universal Declaration of Human Rights (December 10, 1948), article 15.

<sup>95</sup> Edwards, "The meaning of nationality," 14.

<sup>96</sup> See, for example, article 1(a), 1(b), 4(a) and 4(b) of the 1961 Convention on the Reduction of Statelessness, and article 7(2) of the CRC, where it reads "States Parties shall ensure the implementation of these rights *in accordance with their national law*."

<sup>97</sup> See, for example, CRC's article 7(2) and the 1961 Convention's article 1.

On the other hand, nationality is one of the most important safeguards against statelessness,<sup>98</sup> as appointed and defended by many scholars and international and non-governmental organizations and institutions, including the UNHCR, regarding solutions to statelessness. As mentioned earlier in this thesis, “nationality defines the legal relationship or ‘legal bond’ between the citizen/national and her State, based on social facts of attachment, and which gives rise to rights and duties on the part of both sides of that relationship.”<sup>99</sup> Possessing a nationality and thus being a member of a society and belonging to a State grant to all individuals entitlements to a variety of rights and services, such as the right to take up residence, to vote and to participate in public life, to have consular assistance when abroad, to freedom of movement and to participate in the formal economy.<sup>100</sup> As such, the right to a nationality is an *enabling* right, because it makes it possible for anyone with a nationality to access and enjoy many other rights.<sup>101</sup> Figure 1 draws on the relation between the right to a nationality with many other fundamental human rights, evidencing the enabling character of possessing a nationality.

Many human rights instruments that were adopted following the UDHR, answering to the permanent and constant necessity to further protect human rights of specific groups, such as children and women, also reinforced the basic right to a nationality, bringing into light specific regards and concerns on its protection. All provisions relating to nationality are relevant for the prevention and elimination of statelessness and for the protection of the rights of stateless persons, even if the conventions do not explicitly mention statelessness. Their relevance relates to the fact that ensuring nationality, as explained in section 1.2 of this chapter, is regarded as one of the main solutions for statelessness, the first step necessary to ensure the protection of all other human rights.<sup>102</sup> The next paragraphs present some of these instruments which have provisions regarding

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<sup>98</sup> UNHCR, *Global Action Plan*, 12.

<sup>99</sup> Edwards, “The meaning of nationality,” 11.

<sup>100</sup> *Ibid.*, 13; African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *General Comment No. 2 on article 6 of the ACRWC: the right to a name, registration at birth, and to acquire a nationality*, ACERWC/GC/02 (2014), (Maseru: ACERWC, April 16, 2014), paragraph 84.

<sup>101</sup> United Nations Children’s Fund (UNICEF) and Institute on Statelessness and Inclusion (ISI), *The child’s rights to a nationality and childhood statelessness: texts and materials*, accessed September 27, 2022, 13; Institute on Statelessness and Inclusion (ISI), “International law standards pertaining to the arbitrary deprivation of nationality,” in *The world’s stateless: deprivation of nationality* (Netherlands: Institute on Statelessness and Inclusion, March 2020), 243.

<sup>102</sup> Kingston, “Worthy of rights,” 17-18.

the right to a nationality, with or without specific mentions to statelessness, following a chronological order of their adoption.

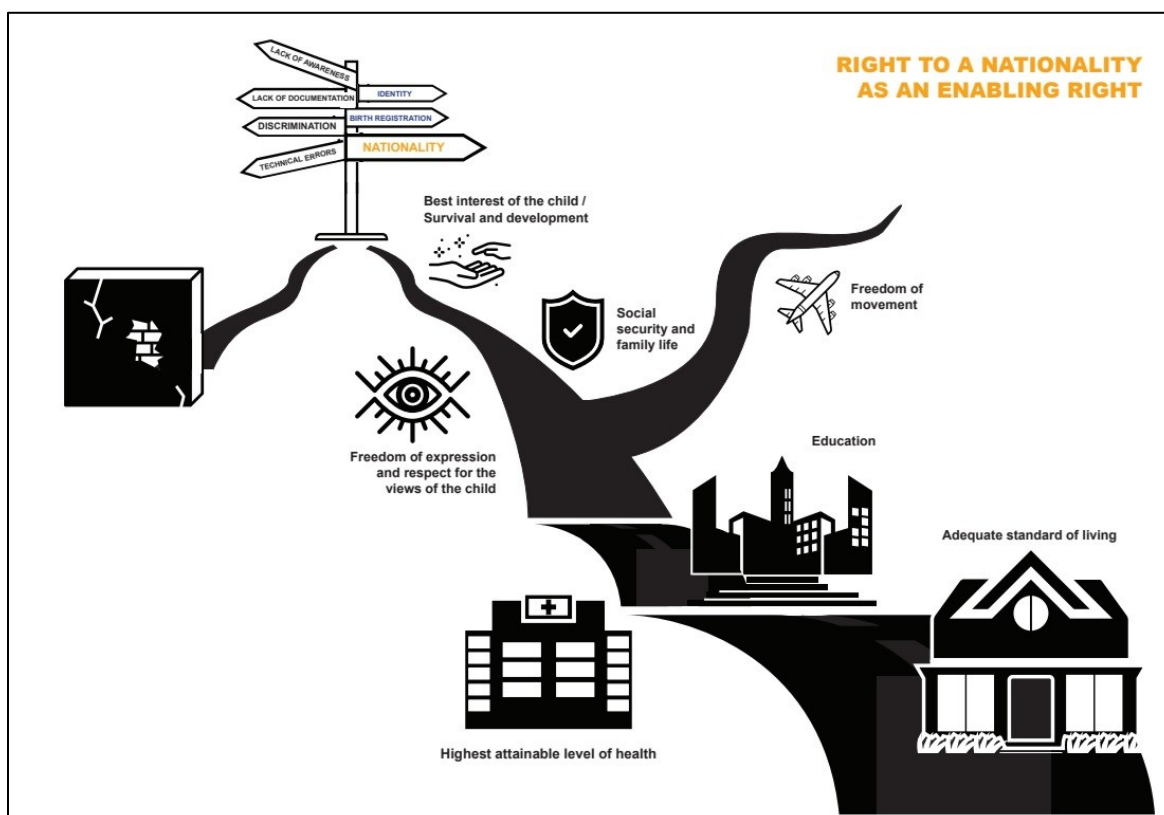


Figure 1. *Right to a nationality as an enabling right*

Source: United Nations Children’s Fund (UNICEF) and Institute on Statelessness and Inclusion (ISI), *The child’s right to a nationality and childhood statelessness: texts and materials*, accessed September 27, 2022, <https://www.institutesi.org/resources/childs-right-to-a-nationality-texts-and-materials>.

The **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**, adopted in 1965 and entered into force in January 1969, states that legal provisions of States regarding nationality, citizenship and naturalization shall not “discriminate against any particular nationality,”<sup>103</sup> and that the enjoyment of civil rights, including the right to a nationality, shall be guaranteed “without distinction as to race, color, or

<sup>103</sup> International Convention on the Elimination of All Forms of Racial Discrimination, December 21, 1965, *United Nations Treaty Series*, vol. 660, p. 195., article 1(3). [hereinafter ICERD].

national or ethnic origin.”<sup>104</sup> This is relevant especially with regards to the fact that “more than 75% of the world’s known stateless populations [are] descendants of migrants (...); nomadic populations with links to two or more countries; and groups that have experienced ongoing discrimination” and that “discrimination on the basis of ethnicity, race, religion or language is a recurrent cause of statelessness globally,” as reported by the UNHCR.<sup>105</sup>

By defining racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life,”<sup>106</sup> the ICERD became an important instrument in the struggle against statelessness. This convention binds States to eliminate any form of racial discrimination from its legislations relating to the access to and enjoyment of fundamental human rights, among which the right to a nationality.

The **International Covenant on Civil and Political Rights (ICCPR)**, adopted in 1966 and entered into force in March 1976, is part of the International Bill of Human Rights, composed also of the UDHR and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>107</sup> Among the rights protected by the ICCPR, the ones that most relate to the issue of statelessness are freedom from discrimination (article 2),<sup>108</sup> the right to equality between women and men (article 3),<sup>109</sup> and the right of every child to be registered immediately after birth and to acquire a nationality (article 24).<sup>110</sup> The only time the word nationality appears in the ICCPR is under article 24 paragraph 3.

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<sup>104</sup> ICERD, *supra* note 103, article 5(d)(iii).

<sup>105</sup> UNHRC, “*This is our home*,” 1.

<sup>106</sup> ICERD, *supra* note 103, article 1(1).

<sup>107</sup> Together, the three documents set the basic standards for human rights protection that States are expected to comply with. The two Covenants, adopted in the same year, are of fundamental importance, because they cover a range of economic, civil, social, political and cultural rights, legally binding States to respect, protect and fulfill them.

<sup>108</sup> “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” International Covenant on Civil and Political Rights, December 16, 1966, *United Nations Treaty Series*, vol 999, p.171, article 2(1). [hereinafter ICCPR]

<sup>109</sup> “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.” (ICCPR, *supra* note 108, article 3.)

<sup>110</sup> “2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality.” (ICCPR, *supra* note 108, articles 24(2) and 24(3)).

Since its entering into force, all States Parties to the Covenant are bound to respect, protect and fulfill children's rights to registration and to have a nationality.<sup>111</sup> It is important to note that by not mentioning which nationality children have the right to, the Covenant left open the same gap as the UDHR, that was tried to be solved with the conventions on statelessness. However, as previously exposed, in the attempt of solving gaps and conflicts of nationality law on the granting of nationality, the 1961 Convention created new gaps on the enforcement of its provisions by leaving a lot of margin for States' discretion on the writing of their national laws.

It is interesting to mention the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)**, adopted in 1990 and entered into force in July 2003, as it also reinforces the right of children to be registered after birth and to a nationality.<sup>112</sup> Considering the widespread problem of conflict between nationality laws that render many children stateless around the world, an international convention protecting specifically the rights of families of migrant workers provides an important safeguard against childhood statelessness in contexts of migration. As it will be further explored in this thesis, migration, especially forced displacement, and statelessness are deeply related and one can be the cause as well as consequence of the other.

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, adopted in 1979 and entered into force in September 1981, by tackling sensitive issues regarding gender equality, brought to the international framework of human rights protection important provisions that directly interferes with the emergence of new cases of statelessness. Under article 9, paragraph 1, the CEDAW calls its States Parties to “grant women equal rights with men to acquire, change or retain their nationality, [ensuring] in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change

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<sup>111</sup> Within the language of human rights, respecting human rights means that “States must refrain from interfering directly or indirectly with [individual] rights,” for example not torturing nor enslaving anyone, not forcing people to work on what they do not choose freely nor preventing people from speaking their own language. Protecting presupposes that States take all necessary measures “to make sure that others, such as businesses, political groups or other people do not interfere with [individual] rights.” For example, States must stop people from using hate speech, must ensure companies provide fair wages and do not put in place different salaries to men and women in the same job. Fulfilling human rights means the realization of rights by States, for example through the provision of interpretation during trials and of public budgets to ensure access to medicines and food. (“International Bill of Human Rights,” Office of the High Commissioner for Human Rights (OHCHR), accessed September 5, 2022. <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>.)

<sup>112</sup> “Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.” (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, December 18, 1990, *United Nations Treaty Series*, vol 2220, p. 3, article 29. [hereinafter ICMW])

the nationality of the wife, render her stateless or force upon her the nationality of the husband.”<sup>113</sup> This provision aims at protecting women from losing their nationality and becoming stateless due to marriage, thus preventing statelessness later in life.

Gender discrimination in nationality laws increases women’s vulnerability, causing for example

a woman [to] be trapped in an abusive or otherwise unhappy marriage when her or her child’s citizenship is dependent on her spouse. This applies in countries where women are stripped of citizenship acquired through marriage if that marriage dissolves, or when the citizenship of a mother’s child is tied to the status of the spouse. In addition, there are instances in which a person can lose their nationality upon their spouse’s death.<sup>114</sup>

It is fundamental to protect women’s rights regarding their nationality as a means to protect them from gender-based violence (GBV) committed within marriages, such as domestic violence, marital rape and several forms of emotional, psychological and physical abuses. Ensuring that a woman’s nationality and identity are not dependent on the husband’s nationality and identity is an important step in the long way women usually go through in order to leave abusive and unhappy relationships.

Paragraph 2 of the same CEDAW article expands its protection in terms of nationality as it is set precisely in the direction of the protection of mother’s rights to pass their nationality on to their children, by ensuring equal rights for women and men on the granting of their nationality.<sup>115</sup> In fact, in accordance with Equality Now,<sup>116</sup> 28 countries have nationality laws with discriminatory provisions, preventing mothers from conferring their nationality to their children, only some with

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<sup>113</sup> Convention on the Elimination of all Forms of Discrimination Against Women, December 18, 1979, *United Nations Treaty Series*, vol 1249, p. 13, article 9(1). [hereinafter CEDAW]

<sup>114</sup> “A quarter of countries still have nationality laws that discriminate against women,” Equality Now, July 7, 2022. [https://www.equalitynow.org/press\\_release/a-quarter-of-countries-still-have-nationality-laws-that-discriminate-against-women/](https://www.equalitynow.org/press_release/a-quarter-of-countries-still-have-nationality-laws-that-discriminate-against-women/).

<sup>115</sup> “States Parties shall grant women equal rights with men with respect to the nationality of their children.” (CEDAW, *supra* note 113, article 9(2)).

<sup>116</sup> Equality Now is a global network of lawyers, activists, and supporters working for gender equality, by holding “governments responsible for their international obligation to prohibit all forms of violence and discrimination against women.” They focus on law transformation in order to establish legal equality, end harmful practices, end sexual violence and end sexual exploitation. (“Who we are,” Equality Now, accessed September 11, 2022. <https://www.equalitynow.org/who-we-are/>.)

very limited exceptions.<sup>117</sup> This provision of the CEDAW is essential to prevent statelessness, as States' nationality laws may also differentiate between children being born within or outside the country of the mother's nationality, inside or outside wedlock, and regarding specific cases when mothers were naturalized with the country's nationality.<sup>118</sup> In this sense, ensuring mothers will be able to confer their nationality to their children is of utmost importance to prevent childhood statelessness.

The **Convention on the Rights of the Child (CRC)**, being the most ratified international convention on human rights,<sup>119</sup> deserves special attention greatly due to the fact that “statelessness is a particularly important social and political *child-rights issue* because children are peculiarly dependent on States” for basic services but also, and especially, in situations where families fail their children who will find themselves relying *only* on States.<sup>120</sup> In this sense, the CRC contains important safeguards against statelessness, not only under article 7 that addresses the right of every child to be registered immediately after birth and to acquire a nationality,<sup>121</sup> but also under article 8, that protects children's identity.<sup>122</sup> As a binding treaty, the CRC is of great importance in the prevention of childhood statelessness: it obliges its States Parties to protect children's identity, composed at least of their *name, nationality and family relations*, particularly in cases where the child would otherwise be stateless.<sup>123</sup>

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<sup>117</sup> Countries reported by Equality Now are: Brunei, Eswatini, Kuwait, Lebanon, Qatar, Somalia, Bahrain, Burundi, Iran, Jordan, Kiribati, Libya, Nepal, Oman, Saudi Arabia, Sudan, Syrian Arab Republic, Togo, United Arab Emirates, The Bahamas, Barbados, Iraq, Liberia, Malaysia, Mauritania, Madagascar, Mauritius and Yemen. (Equality Now, *The state we're in: ending sexism in nationality laws* (July 7, 2022), 19, 24-25.)

<sup>118</sup> Equality Now, *The state we're in*, 19, 24-25.

<sup>119</sup> “Convention on the Rights of the Child,” UNICEF, accessed August 13, 2022, <https://www.unicef.org/child-rights-convention>.

<sup>120</sup> Bhabha, “From citizen to migrant,” 13.

<sup>121</sup> For article 7's full text, see note 91.

<sup>122</sup> “1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.” (CRC, *supra* note 57, article 8).

<sup>123</sup> Article 7 of the CRC states that all children have the right to acquire a nationality from birth, which would be the first moment in life to ensure protection against statelessness. Paragraph 2 of this article urges States Parties to “ensure the implementation of these rights (...) in particular where the child would otherwise be stateless.” (CRC, *supra* note 57, article 7(2)). Article 8 further enhances the protection of children's right to nationality by calling States to “undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference,” and stating that in the situation “where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection.” (CRC, *supra* note 57, article 8, emphasis added).



Besides these two articles regarding the right to a nationality, the CRC also provides other important provisions and guiding principles<sup>124</sup> on the protection of children's rights that directly impacts their nationality, identity and statelessness. Non-discrimination is one of these principles and offers a continuance and reinforcement of what is stated in the ICERD, previously mentioned, as well as in the UDHR's article 2.<sup>125</sup> The principle devoting special consideration to the best interests of the child is also fundamental for the prevention of childhood statelessness,<sup>126</sup> by stating that whenever a decision or action should be taken by States that would interfere with or impact children's lives and rights, their best interests should be the first aspect to be considered by States. In doing so, human rights violations would be prevented, as nothing that violates a child's right is in her best interest.<sup>127</sup>

Guided by the interpretation of this principle of the Committee on the Rights of the Child (CRC Committee), it would never be in the best interest of children to be stateless.<sup>128</sup> More than that, childhood statelessness negatively impacts all spheres of their holistic development, by depriving children from a series of fundamental services and rights to their well-being, healthy growth and achievement of their full potential. When a State does not protect a child from statelessness, it violates several protected rights of the CRC, such as the right to health (art. 24), to education (artt. 28 and 29), to an adequate standard of living (art. 27), to participation in all matters affecting them (art. 12), and to protection from violence and from exploitation (artt. 32-36).

By leaving children stateless, States create the conditions for the perpetuation of serious abuses and exploitations, including human trafficking and worst forms of child labor. Not being

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<sup>124</sup> The four general principles of the CRC are: non-discrimination (article 2), best interest of the child (article 3), the right to survival and development (article 6), and the views of the child (article 12). Such principles should guide all States in their decision making processes regarding children, being applied with due regard to the specific context and aiming at "ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child," that embraces children's physical, mental, psychological, social, spiritual and moral development. CRC Committee, *General comment No. 14 (2013)*, paragraphs 1-4; Committee on the Rights of the Child (CRC Committee), *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5 (New York: UN, November 27, 2003), paragraph 12.

<sup>125</sup> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty." (UDHR, *supra* note 94, article 2).

<sup>126</sup> "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." CRC, *supra* note 57, article 3(1).

<sup>127</sup> CRC Committee, *General comment No. 14 (2013)*, paragraph 1.

<sup>128</sup> CRC Committee, *General comment No. 14 (2013)*.

registered, having no documents, living in the margins of the society, forgotten by and invisible to the States, stateless children are the most vulnerable to suffer from extremely harmful practices and human rights violations, as it will be further exposed in chapter II. In this sense, reinforcing and paying proper attention to different instruments that are part of the international framework of human rights is fundamental to ensure a holistic view on the protection of persons from statelessness.

Based on the provisions of selected instruments of human rights protection, it is possible to conclude that the international framework for statelessness is not only composed of the two conventions specifically referring to stateless persons, but also of many other international conventions that have provisions on reducing statelessness, ensuring the right to a nationality and reinforcing that nationality laws are non-discriminatory Annex 1 presents some international and regional documents that have provisions relating to the issue of statelessness, beyond the conventions briefly presented in this section. In general, even if these international instruments do not specifically contain the word “stateless” or “statelessness,” all of them protect the right to a nationality and prohibit discrimination, therefore directly contributing to the protection of persons who may find themselves at risk of statelessness.

As the focus of this thesis is on childhood statelessness, more attention is devoted to the issues of acquiring a nationality and being registered immediately after birth. However, statelessness can be caused by many other factors, which would not be solved by the provisions presented in this section. Unfortunately, it is not possible to cover in detail all of its causes, but the next section presents the main factors driving statelessness, focusing on causes related to migration, and specifically forced migration, leading to increased risks for children to become stateless.

### 3. Main causes of childhood statelessness

While states do have significant freedom to set out their own membership criteria, they also have a responsibility to protect against discrimination and arbitrariness, and to uphold international standards. **Statelessness most often occurs when states fail to do so.**

– *Institute on Statelessness and Inclusion, 2014*

Statelessness can be caused by a series of different circumstances, both at birth as well as later in life. Irrespective of the cause, though, “there is often an element of discrimination and/or arbitrariness at play, when individuals or entire groups become stateless. Discrimination and arbitrariness can manifest itself in an obvious, aggressive and even persecutory manner, (...) or it can be more subtle and latent.”<sup>129</sup> Different causes of statelessness impact different groups of people in different ways, depending, for example, on their age, gender, ethnicity, religion, culture, language, and links with other States or communities.

Walking hand-in-hand with discrimination, marginalization is another fundamental issue related and leading to statelessness. For example, many populations around the world are stateless because they are marginalized, facing “systematic discrimination and oppression from the start.”<sup>130</sup> European Roma, Palestinians, hill tribes in Thailand, the Nubians in Kenya, ethnic Haitian in the Dominican Republic, the Rohingya in Myanmar, are all stateless populations similarly denied their right to a nationality and therefore unable to access rights and protections reserved for nationals of the countries where they find themselves.<sup>131</sup>

In such cases, usually with government-sanctioned actions, entire populations are arbitrarily deprived of nationality, being “singled out in a discriminatory manner on the basis of characteristics such as ethnicity, language or religion.”<sup>132</sup> These populations are often minority groups in the country where they live and are perceived as having ties to another State, which may have majority populations with their same characteristics, culture, language and identity, or could even be in fact their ancestral roots and origin. As the Institute on Statelessness and Inclusion (ISI)

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<sup>129</sup> ISI, *The World's Stateless*, 23.

<sup>130</sup> Kingston, “Worthy of rights,” 17.

<sup>131</sup> *Ibid.*, 19.

<sup>132</sup> ISI, *The World's Stateless*, 25.

pointed out in its first report *The World's Stateless* (2014), States may use of “manipulation of nationality policy as a means of asserting or constructing a particular national identity to the exclusion of those who do not fit the mold,”<sup>133</sup> arbitrarily depriving a person or group of people of their nationality, in a discriminatory practice that can be closely linked to unlawful or illegal deprivation of citizenship.<sup>134</sup>

However, when considering the objectives and purposes of the 1961 Convention, it is noted with deep concern that it has provisions accepting some conditions in which a State may leave a person stateless, meaning that States would not violate the Convention but would still render people stateless.<sup>135</sup> For example, nationality can be lost if a naturalized person spends a protracted period of time abroad, without declaring to authorities her or his intention to retain the nationality.<sup>136</sup> Being born abroad can also lead to a situation of statelessness, even when nationality is acquired by descent at birth, in case the person fails to take the steps prescribed by law to retain nationality within one year after attaining majority.<sup>137</sup> Nationality obtained in deceptive ways shall also be retained by States, as well as in cases where persons commit acts that are inconsistent with their “duty of loyalty to the Contracting State.”<sup>138</sup>

Deprivation and loss of nationality, as a widespread cause of statelessness, tend to impact people later in life, not amounting to a cause leading to statelessness at birth. It is directly related to nationality laws enacted and implemented in each country, which can be “designed to restrict the access of certain groups to economic power,” or in a way to silence political opponents, as nationality is an important gateway to political rights.<sup>139</sup>

Denationalization is another cause of statelessness and, as appointed by Kingston, “serves as a stark example of statelessness as a symptom of marginalization because it constitutes stripping a citizen of their previous legal nationality, often during times of conflict, with the aim of

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<sup>133</sup> ISI, *The World's Stateless*, 25.

<sup>134</sup> Kingston, “Worthy of rights,” 21.

<sup>135</sup> van Waas, “The UN statelessness conventions,” 76.

<sup>136</sup> “A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.” (1961 Convention, *supra* note 79, article 7(4)).

<sup>137</sup> “In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.” (1961 Convention, *supra* note 79, article 7(5)).

<sup>138</sup> 1961 Convention, *supra* note 79, article 8(2)(b) and (3).

<sup>139</sup> ISI, *The World's Stateless*, 25-26.

‘purifying’ communities of minority groups.”<sup>140</sup> In extreme cases, it can lead to “stigmatization or even vilification of a group,” increasing the chances of certain groups of being involved in or targeted by conflicts. This follows the fact that often feelings of marginalization, exclusion, discrimination and humiliation are common grounds leading stateless groups to “feel forced to mobilize against authorities.”<sup>141</sup> Denial of nationality may significantly contribute to internal conflicts and thus to displacement crises.

A historical example of denationalization campaigns is the revocation of legal nationality of minority groups during the Second World War by the Nazi regime in Germany, with laws enacted in 1935 defining as citizens, thus individuals bearing full political rights, only those related by blood with Germans. Such a campaign led to profound marginalization, exclusion and statelessness of minorities from the “German” society, depriving them of many rights and subjecting them to serious human rights violations and discrimination.<sup>142</sup>

In the contexts of international migration in general and of forced displacement specifically, statelessness can emerge at birth due to nationality laws that are discriminatory or conflicting nationality laws of different States, and due to obstacles to civil registration systems. It can also happen later in life, due to lack of documentation to prove one’s nationality and links to the country of origin, and immigration policies that are designed to be suspicious and take protracted periods of time to issue necessary individual documentations.<sup>143</sup>

As this thesis focuses on the intersection between refugee conditions and statelessness that increases the risks of children becoming stateless, statelessness later in life will not be extensively discussed. In this sense, it is recalled that safeguards should be implemented to ensure that individuals born abroad acquire their parents’ nationality or, in the event it would not be possible to do so, they would be granted the nationality of the territory where they were born, as provided for in the 1961 Convention articles 1 and 4 and in the CRC under article 7, for example. Such safeguards are to be implemented through, for example, nationality laws that grant States’ nationality both on *jus sanguinis* and on *jus soli* basis, thus ensuring that foreigners born in their

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<sup>140</sup> Kingston, “Worthy of rights,” 22.

<sup>141</sup> Norwegian Refugee Council (NRC) and Tilburg University, *Statelessness and displacement: scoping paper* (Oslo: NRC, 2016), 12.

<sup>142</sup> Kingston, “Worthy of rights,” 22, footnote 7.

<sup>143</sup> *Ibid.*, 23.

territories would be able to acquire their nationality in case they would not be able to acquire the nationality of their country of origin.

However, nationality laws may conflict and lead to gaps where a person may find herself stateless. The basic situation of laws in conflict is “where State A confers nationality by descent while State B confers nationality by place of birth, but the combination of a particular individual’s birthplace and parentage is such that neither nationality is acquired.”<sup>144</sup> It does not mean that each State’s law is problematic in itself, but the combination of their different limits on *jus sanguinis* or *jus soli* rules results in a conflict where neither of them will automatically grant nationality to that newborn.

Unfortunately, situations like this have been on the rise internationally due to exponential increase in international migration flows, especially within contexts of forced displacement. For example, in many nationality laws “children of irregular migrants or refugees may not qualify for nationality solely through birth on the country’s territory.”<sup>145</sup> If they also find themselves unable to acquire the nationality of their parents by descent, they will be left stateless in the absence of any safeguard against statelessness in the legislation of the country where they were born. This leads to greater expectations of responses both from the international community and States individually in order to prevent such conflicts and to propose feasible and fast solutions.

Children are the ones who suffer the most from the exclusion and invisibility caused by statelessness, as will be better discussed throughout the next chapters. For them, nationality laws are core instruments to avoid and prevent their statelessness. However, there are still at least 25 countries, as reported by the UNHCR,<sup>146</sup> that have nationality laws clearly discriminating against women, not allowing them to pass on their nationality to their children and thus causing children to be at increased risk and more vulnerable to statelessness.<sup>147</sup>

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<sup>144</sup> ISI, *The World’s Stateless*, 23.

<sup>145</sup> NRC and Tilburg University, *Statelessness and displacement*, 17.

<sup>146</sup> In difference from the Equality Now data, the UNHCR does not report Madagascar, Mauritius and Yemen as having discriminatory nationality laws. See footnote 117.

<sup>147</sup> The countries that still have discriminatory nationality laws are: Qatar, Lebanon, Jordan, Kuwait, Libya, Saudi Arabia, United Arab Emirates, Iraq, Syria, Bahrain, Oman and Mauritania in the MENA region; Burundi, Liberia, Sudan, Togo, Somalia and Eswatini in Africa; Brunei Darussalam, Kiribati, Malaysia and Nepal in Asia; and The Bahamas and Barbados in the Americas. (United Nations High Commissioner for Refugees (UNHCR), *Background note on gender equality, nationality laws and statelessness 2022*, March 4, 2022, 2, 7).

The UNHCR lists five situations under which a child would be unable to acquire the nationality of the father and, due to not acquiring the mother's nationality, would be rendered stateless:

- (a) Where the father is stateless;
- (b) Where the laws of the father's country do not permit conferral of nationality in certain circumstances, such as when the child is born abroad;
- (c) Where a father is unknown or not married to the mother at the time of birth;
- (d) Where a 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 died, has been forcibly separated from his family, or cannot fulfill onerous documentation or other requirements;
- (e) Where a father has been unwilling to fulfill administrative steps to confer his nationality or acquire proof of nationality for his children, for example if he has abandoned the family.<sup>148</sup>

From the 25 countries listed by the UNHCR, six (among which Lebanon) are classified as having “nationality laws which do not allow mothers to confer their nationality on their children with no, or very limited, exceptions,” therefore giving rise to serious and increased risks of childhood statelessness.<sup>149</sup> For example, Qatar has no exceptions in its legislation, not allowing mothers to confer their nationality on their children in any case. As an extreme of the legislations reported on by the UNHCR (being the other extreme the Mauritanian law, as it provides for safeguards against statelessness), the Qatari nationality law *condones* statelessness. It is the same case for Brunei Darussalam and Somalia, both countries where mothers “have no ability to confer their nationality to their children.”<sup>150</sup> Eighteen of them, among which Syria, establish conditions under which mothers would be able to pass on their nationality to their children,<sup>151</sup> while only one (Mauritania)

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<sup>148</sup> UNHCR, *Background note on gender equality*, 2-3.

<sup>149</sup> The six countries with no or very limited exceptions in their laws are Brunei Darussalam, Eswatini, Kuwait, Lebanon, Qatar and Somali (UNHCR, *Background note on gender equality*, 7).

<sup>150</sup> UNHCR, *Background note on gender equality*, 9.

<sup>151</sup> The eighteen countries that established some conditions allowing mothers to pass on their nationality are The Bahamas, Bahrain, Barbados, Burundi, Iraq, Iran, Jordan, Kiribati, Liberia, Libya, Malaysia, Nepal, Oman, Saudi Arabia, Sudan, Syria, Togo and United Arab Emirates (UNHCR, *Background note on gender equality*, 7).

establishes more guarantees against statelessness, despite also limiting women from passing on their nationality.<sup>152</sup>

Besides nationality laws, inequalities, excessive costs and bureaucratic procedures and requirements obstructing civil registration of newborns are another significant driver of childhood statelessness. The birth certificate issued after registration is the first identity document of a child, proving her official legal recognition by the State where she was born, “[establishing] the existence of a person under law, and [laying] the foundation for safeguarding civil, political, economic, social and cultural rights.”<sup>153</sup> This would be the first and most important step to prevent childhood statelessness, as through birth registration a child is legally recognized and is able to prove her link to the State where she was born as well as with the State of nationality, in the case she was born abroad.

The fulfillment of the right to birth registration, recognized both in the ICCPR<sup>154</sup> as well as in the CRC,<sup>155</sup> is directly linked to the realization and enjoyment of many, if not all, other rights, being therefore a “gateway right,”<sup>156</sup> as the right to a nationality. For example, the right to health and to education “are at particular risk where birth registration is not systematically carried out,” leading to serious impairments in the protection of children.<sup>157</sup> The Human Rights Committee (CCPR), in its General Comment No. 17 (1989), stated that the right of every child to be registered after birth “should be interpreted as being closely linked to the provision concerning the right to special measures of protection (...) [with] the main purpose of the obligation to register children after birth [being] to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the

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<sup>152</sup> Mauritanian mothers can confer their nationality on their children when the father is stateless or unknown. In case they are born abroad, to a Mauritanian mother and foreign father, children can opt for Mauritanian nationality one year before reaching majority. (UNHCR, *Background note on gender equality*, 8).

<sup>153</sup> United Nations Human Rights Council (HRC), *Birth registration and the right of everyone to recognition everywhere as a person before the law: Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/27/22, (June 17, 2014), paragraphs 3-5.

<sup>154</sup> Article 24, paragraph 2 reads “Every child shall be registered immediately after birth and shall have a name.” (ICCPR, *supra* note 108, article 24(2)).

<sup>155</sup> Article 7, paragraph 1 reads “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.” (CRC, *supra* note 57, article 7(1)).

<sup>156</sup> Benyam Dawit Mezmur, “An interview with Benyam Dawit Mezmur, Chairperson of the United Nations Committee on the Rights of the Child,” interview by Recalde Vela, Maria Jose, in *The World’s Stateless: children*, Institute on Statelessness and Inclusion (ISI), (Oisterwijk: Wolf Legal Publishers (WLP), 2017), 131.

<sup>157</sup> HRC, *Birth registration report*, paragraph 3.



Covenant.”<sup>158</sup> Yet, still at least a quarter of children born today are not registered, therefore not ‘officially’ existing and being invisible to governments.<sup>159</sup> The right to birth registration as well as the importance of being registered in order to prevent and eliminate statelessness will be further discussed in chapter II, section 1.

Another issue leading to childhood statelessness is the passing of the stateless condition from one generation to the other, “like a genetic disorder.”<sup>160</sup> Being born in a family already affected by statelessness, that is most likely to be marginalized in society and therefore lacking access to basic services, such as civil and birth registrations, is in many parts of the world a life sentence for children. More than that, being born in statelessness leads to the perpetuation of poverty cycles and marginalization, which will subject children and young people to a life of deprivations and limited possibilities and opportunities, discussed in the next chapter.<sup>161</sup>

Deeply related to discrimination and marginalization, causes of statelessness often overlap, leading to similar consequences across countries and identity groups.<sup>162</sup> Human rights violations, lack of access to and enjoyment of rights, and reinforcement of poverty, in which stateless persons find themselves trapped, are faced by stateless persons everywhere in the world. As appointed by Kingston, there are “three key obstacles for stateless individuals: inequalities related to recognition and membership, denied educational opportunities, and serious impediments to employment and livelihoods,” which will determine their living conditions, human rights realization and respect for their human dignity.<sup>163</sup>

Children may be appointed as the most vulnerable individuals to statelessness, especially if born in migration contexts or belonging to minorities who are comprehensively discriminated against. Loss and deprivation of nationality as well as denationalization in adulthood can be the starting point of a cycle of in-family statelessness, bounding future generations to a life of deprivations. Refused schooling, denied health care, child labor (including in its worst forms),

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<sup>158</sup> CCPR, *General Comment No. 17*, paragraph 7.

<sup>159</sup> “Birth registration,” United Nations Children’s Fund (UNICEF), accessed September 11, 2022. <https://www.unicef.org/protection/birth-registration>.

<sup>160</sup> “The hidden world of stateless people,” António Guterres, and Louise Arbour, Open Editorial, United Nations Office of the High Commissioner for Human Rights, November 28, 2007, <https://www.ohchr.org/en/opinion-editorial/2009/10/hidden-world-stateless-people-antonio-guterres-and-louise-arbour>.

<sup>161</sup> UNHRC, *I am here, I belong*, 2.

<sup>162</sup> Kingston, “Worthy of rights,” 25.

<sup>163</sup> *Ibid.*, 20.

early and forced marriages, human trafficking, recruitment into armed groups, are a some of the drastic human rights violations suffered by stateless children. All of them will lead to long-standing life consequences with regards to their physical, mental, psychological, social, spiritual and moral development.<sup>164</sup>

Forced displacement and migration pose extra challenges and obstacles for access to and enjoyment of fundamental human rights and basic services and necessities. When coupled with statelessness, conditions of being a refugee or asylum seeker lead to a significant increase in families and especially children's vulnerability to human rights violations. Consequences of childhood statelessness are life-long, impairing children's present and future opportunities, reinforcing poverty cycles and being able to lead to the transmission of future intergenerational statelessness. The next chapter deals exactly with the special place of children within the discussions of statelessness, discussing the importance of birth registration systems for them and presenting the specific consequences they suffer, highlighting among them their invisibility.

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<sup>164</sup> CRC Committee, *General comment no. 5 (2003)*, paragraph 12; Kingston, "Worthy of rights," 18.

## Chapter II - Stateless refugee children

Many of the world's stateless persons are children. In fact, in every region of the world, children continue to be born into statelessness and grow up never knowing the protection and recognition that comes with nationality. (...) Without nationality, children can have difficulty exercising their rights, become outcasts in their own country, struggle to feel like they belong and grow up to be disenfranchised and excluded adults.

**So, if children matter, statelessness matters.**

– *Institute on Statelessness and Inclusion, 2014*

I don't know, I can't explain the feeling because the feeling is like you are less than everyone. Less. I am still someone, but less.

– *A stateless woman from Ukraine who grew up without a nationality in the Netherlands*<sup>165</sup>

Statelessness and displacement are closely interrelated, as both can mutually drive each other. Statelessness can be a cause as well as a consequence of migration, as well as “patterns of migration contribute to the creation and prolongation of cases of statelessness,”<sup>166</sup> especially in the context of irregular migration and forced displacement. Lack of travel and identity documents, common situation among people migrating through irregular routes, leads to lack of protection *en route*, in transit and host countries. A journey of crossing borders under such conditions exposes displaced persons to several serious human rights violations, which may lead to life-long consequences in accordance with the level of vulnerability and the characteristics of the person migrating.

While the link between statelessness and forced displacement has been widely recognized, “there has been little debate about how best to actually address and respond to statelessness in the specific context of forced displacement.”<sup>167</sup> The Norwegian Refugee Council (NRC), in a report published in 2016, recognized that stateless persons who have been forcibly displaced have specific and unique needs. Being stateless in this context compounds with already high

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<sup>165</sup> Quote by the ISI, 2016, <http://crc.statelessnessandhumanrights.org/about>.

<sup>166</sup> Sophie Nonnenmacher and Ryszard Cholewinski, “The nexus between statelessness and migration,” in *Nationality and Statelessness under International Law*, eds. Alice Edwards and Laura van Waas, (Cambridge: Cambridge University Press, 2014), 247.

<sup>167</sup> NRC, and Tilburg University, *Statelessness and displacement*, 10.

vulnerabilities, leading to reduced capacities to cope with, resist and recover from the impacts caused by the conflicts and disasters forcing people to move.<sup>168</sup>

This chapter is divided in 3 subsections, which will address the issues pertaining the importance of birth registration for children, the consequences of statelessness for them and the concept of children's invisibility, as a life-long consequence with drastic impacts on their development, well-being and notion of self. The next section discusses the importance of identity documents as fundamental to address and tackle statelessness in the world, with special focus on children and the eradication of childhood statelessness. In the next chapter, it will then be presented birth registration systems and procedures in Jordan, Lebanon, Türkiye, Egypt and Iraq, and the relation between their procedures and the increased risk of Syrian refugee children becoming stateless when born in their territories.

## **1. Birth registration: the first chance in life to prevent statelessness**

Sometimes as a mother I try to understand. The minute my child was born, she was brought into this nightmare that is being a 'stateless person'. How is it possible a child can be born and at the same time, the most basic right that any human being is entitled to is denied to her?

– *Mother of Maria, a stateless girl born to Cuban parents who emigrated and cannot acquire Cuban citizenship.*

Birth registration is part of civil registration systems and documentation of all countries. It is “an act of legal recognition of [refugee children and children born to asylum seekers] by the host country which enables them to have a legal identity.”<sup>169</sup> The Executive Committee of the Office of the United Nations High Commissioner for Refugees recognized, in 2013, that such systems and “especially birth registration as a proof of birth of a person, contribute to enhancing protection (...), including by documenting links with countries of origin,”<sup>170</sup> and it is the way “society first

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<sup>168</sup> NRC, and Tilburg University, *Statelessness and displacement*, 10.

<sup>169</sup> ACERWC, *General Comment No. 2*, paragraph 61.

<sup>170</sup> Executive Committee of the High Commissioner's Programme (EXCOM), *Conclusion on civil registration*, No. 111 (LXIV)-2013, 17 October 2013, preamble paragraph 2.

acknowledges a child's existence and identity,"<sup>171</sup> thus "[establishing] the existence of a person under the law, and [laying] the foundation for safeguarding civil, political, economic, social and cultural rights."<sup>172</sup> Unfortunately, however, the United Nations Children's Fund (UNICEF) reports that "1 in 4 children under the age of 5 do not officially exist," simply because they were not registered when born.<sup>173</sup>

Being registered after birth is critical to ensure lifelong protection to children and a prerequisite for the exercise of all other human rights. Because it is an important step in the acquisition of nationality, it can have direct impacts on the vulnerability and risks to childhood statelessness.<sup>174</sup> As stated by the Executive Committee of the High Commissioner for Refugees in 2010, "while nationality is normally acquired independently and birth registration in and of itself does not normally confer nationality upon the child concerned, birth registration does constitute a key form of proof of the link between an individual and a State and thereby serves to prevent statelessness."<sup>175</sup> In other words, lacking a birth certificate does not automatically render a child stateless, but for children whose parents are asylum seekers, refugees or international migrants, lack of documents proving family relations and place of birth is most likely to result in statelessness.<sup>176</sup>

Increased risks to statelessness due to being born in displacement situations may be also the result, for example, of weak civil registration systems available for refugee communities living in temporary settlements and in camps, as well as of discrimination at registration proceedings that prevent them from accessing such services. It is widely recognized that children of migrants "are more prone to falling victim to a conflict of nationality laws, at greater risk of having their birth unregistered and often surprisingly beyond reach of the very safeguards designed to protect them from statelessness."<sup>177</sup>

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<sup>171</sup> United Nations Children's Fund (UNICEF), *Birth registration for every child by 2030: are we on track?* (New York: UNICEF, December 2019), 6.

<sup>172</sup> HRC, *Birth registration*, paragraph 4.

<sup>173</sup> "Birth registration," United Nations Children's Fund (UNICEF), May 2022. <https://data.unicef.org/topic/child-protection/birth-registration/>; UNICEF, *Birth registration for every child by 2030*, 6.

<sup>174</sup> UNICEF, *Birth registration for every child by 2030*, 6, 8, 25; EXCOM, *Conclusion on civil registration*, preamble para. 6.

<sup>175</sup> United Nations High Commissioner for Refugees (UNHCR), "Birth Registration: A Topic Proposed for an Executive Committee Conclusion on International Protection," EC/61/SC/CRP.5, February 9, 2010, paragraph 3.

<sup>176</sup> Jyothi Kanics, "Migration, forced displacement, and childhood statelessness," in Institute on Statelessness and Inclusion, *The World's Stateless: Children* (Oisterwijk: Wolf Legal Publishers (WLP), 2017), 212.

<sup>177</sup> ISI, *The World's Stateless: Children*, 205-206.

On the other hand, the rights to be registered immediately after birth and to be recognized as a person before the law have long been recognized internationally, for example under article 6 of the UDHR,<sup>178</sup> article 24(2) of the ICCPR,<sup>179</sup> article 7 of the CRC,<sup>180</sup> and article 29 of the ICMW.<sup>181</sup> The registration of births, as well of marriages, divorces and deaths, is fundamental for a State to keep record of its population and, with the intensification of migration fluxes, to ensure everyone will have proof of their existence, no matter where they were born. Having the right to birth registration fulfilled is directly linked to the realization of many other human rights, such as the right to health and education, to political participation, to family and marriage, to formal employment, and to secure inheritance. Access to a vast range of public services requires the provision of a birth certificate, what makes it “a life-long passport for the recognition of rights.”<sup>182</sup>

Ultimately, “a child not registered at birth is invisible – nonexistent in the eyes of the government or the law. Without proof of identity, children are often excluded from education, health care and other vital services, and are more vulnerable to exploitation and abuse.”<sup>183</sup> Ensuring effective, universal and accessible birth registration services is the first step for States to ensure children’s enjoyment of their fundamental human rights.<sup>184</sup> Protection against child labor, early and forced marriage, human trafficking, sale and prostitution of children, and involvement in armed conflicts is deeply affected by lack of registration and the legal inexistence of children.<sup>185</sup> Those are all common forms of abuse and exploitation of children who are invisible and, without proof of a child’s existence, i.e. birth certificates, identity or travel documents, what happens to her is likely to be “non-existent” as well.<sup>186</sup>

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<sup>178</sup> “Everyone has the right to recognition everywhere as a person before the law.” (UDHR, *supra* note 94, article 6).

<sup>179</sup> “Every child shall be registered immediately after birth and shall have a name.” (ICCPR, *supra* note 108, article 24(2)).

<sup>180</sup> “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.” (CRC, *supra* note 57, article 7(1)).

<sup>181</sup> “Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.” (ICMW, *supra* note 112, article 29).

<sup>182</sup> HRC, *Birth registration*, paragraphs 3-4, 17-18.

<sup>183</sup> “Despite significant increase in birth registration, a quarter of the world’s children remain ‘invisible’ – UNICEF,” UNICEF, December 11, 2019.

<sup>184</sup> HRC, *Birth registration*, paragraphs 3, 18.

<sup>185</sup> *Ibid.*, paragraphs 19-35; ACERWC, *General Comment No. 2*, paragraph 18.

<sup>186</sup> See Human Rights Council, *Birth registration and the right of everyone to recognition everywhere as a person before the law: report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/27/22 (June 17, 2014).

In the context of forced displacement, having been registered and having a birth certificate serve also as proof of one's age, therefore protecting children who are in conflict with the law, as they are entitled to special protection and special rights in prosecution, court proceedings and detention, in accordance with CRC articles 40 and 37(c).<sup>187</sup> The Human Rights Council (HRC) was clear when affirming back in 2014 that "a child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice in relation to the juvenile and penal system."<sup>188</sup> Without being able to prove their ages, many children find themselves detained in immigration facilities, often reporting "receiving inadequate food and water, being denied blankets despite holding rooms being kept at frigid temperatures and having no access to bathing facilities."<sup>189</sup>

Lack of birth registration and certificates exacerbates already existing inequalities within societies, especially where there are marginalized and disadvantaged groups, such as refugee populations and minorities, and where geographical obstacles pose significant challenges for families to register their children. It subjects unregistered individuals to daily denial of fundamental rights, such as health, education, access to justice, gainful and secure employment, social security, and political participation. All of this leads to the reinforcement of poverty cycles in which people who are forced to migrate are often trapped.

There are several accessibility issues directly impacting levels of birth registration, relating for example to availability of public transport, costs of traveling, requirements of multiple visits to registrars to complete the registration, lack of information and language barriers. Direct costs are also a substantial issue preventing and jeopardizing the registration of children, as many countries may require payments to issue certificates or may charge fees or impose fines if registration is late.<sup>190</sup> As it will be further presented in the next chapter, statutory deadlines prescribed by laws are known to negatively impact levels of birth registration.

When specifically dealing with refugee populations, parents who do not enjoy legal residency or legal status, for example, usually fear approaching the authorities to register their

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<sup>187</sup> HRC, *Birth registration*, paragraphs 27-28.

<sup>188</sup> *Ibid.*, paragraph 28.

<sup>189</sup> Women's Refugee Commission [original author], *Forced from home: the lost boys and girls from Central America* (2012), 21, quoted in Bhabha, *Child migration & human rights in a global age*, 251.

<sup>190</sup> HRC, *Birth registration*, paragraphs 56-62.

children as doing so could lead to their own detection or persecutions by the authorities.<sup>191,192</sup> The perception of authorities as a threat rather than as a source of protection heightens the level of vulnerability of vulnerable populations, such as undocumented migrants, refugees and asylum seekers, and stateless persons, with drastic negative impacts on children’s lives.<sup>193</sup> Another significant issue pertaining the lack of access to birth registration systems regards also the fact that States may also refuse to register children of non-citizens or require legal residence for a certain period in the country to proceed with the registration of children, which often excludes not only irregular migrants, but also asylum seekers and refugees who might not meet such requirements.<sup>194</sup> In the words of the Institute on Statelessness and Inclusion, “legal residence status is often proxy of the very characteristics that perpetuate statelessness.”<sup>195</sup>

Lack of accessibility to, discrimination and costs related to birth registration are common sources of the heightened vulnerability of refugee, asylum seeker and irregular migrant families. The fact that often families do not reach out to registration systems is thus deeply connected with and a consequence of the way States design such systems. As the HRC briefly synthesized it, “in addition to the difficulties experienced by all children without a birth certificate, children of non-citizens, and in particular refugee and asylum seeker children, face particular challenges when they seek to acquire proof of nationality, and face a heightened risk of being left stateless.”<sup>196</sup>

Birth registration has a positive impact in preventing childhood statelessness because it is the legal record of where the child was born and of who are their parents, “providing important evidence of whether the child can acquire citizenship on the basis of place of birth (*jus soli*) or of descent (*jus sanguinis*),”<sup>197</sup> thus proving their nationality.<sup>198</sup> The birth certificate, issued after the registration of the birth, is the vital record of a person, “a passport to lifelong protection,”<sup>199</sup>

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<sup>191</sup> HRC, *Birth registration*, paragraphs 63; Kanics, “Migration, forced displacement, and childhood statelessness,” 213-214.

<sup>192</sup> For example, the risk of deportation cannot be ignored and in fact, it is a discouragement “to come into contact with officialdom for irregular migrants, including as a disincentive to register their children at birth.” (Bhabha, “From citizen to migrant,” 6).

<sup>193</sup> HRC, *Birth registration*, paragraph 18; HRC, *Impact of the arbitrary deprivation of nationality*, paragraph 15.

<sup>194</sup> Kanics, “Migration, forced displacement, and childhood statelessness,” 213.

<sup>195</sup> Institute on Statelessness and Inclusion (ISI), *Childhood statelessness*, Statelessness Essentials booklet series, 2018, 17.

<sup>196</sup> HRC, *Birth registration*, paragraph 64.

<sup>197</sup> *Ibid.*, paragraph 24.

<sup>198</sup> UNICEF, *Birth registration for every child by 2030*, 8-9.

<sup>199</sup> *Ibid.*, 34.



proving her legal identity as it is “the most visible evidence of the State’s legal recognition of the child.”<sup>200</sup>

In other words, “birth certificates are a key form of proof to confirm or acquire citizenship under a State’s domestic legislation because they contain key information to assert the child’s right to a nationality.”<sup>201</sup> However, as importantly recalled by Gábor Gyulai in his article published by the ISI in 2017, “the link between birth registration and the determination of a new-born child’s nationality may also increase confusion,” as each country has different procedures to grant nationality and because possessing a birth certificate “may give the false impression that the nationality status of refugee child is properly determined and that statelessness was effectively avoided.”<sup>202</sup>

This might be the case for nationals of countries that require the registration of birth and validation of birth certificates with diplomatic authorities. However, the condition of being a refugee or a forcibly displaced migrant forbids them from approaching such authorities, as this could cost them their status as refugees and put them at risk of continued persecution.<sup>203</sup> The result is thus of uncertain refugee children’s nationality, especially in the absence of *jus soli* provisions in the host countries.<sup>204</sup> Lacking birth registration and certificates, even if it does not subject refugee children to *de jure* statelessness, make them *de facto* stateless, as such the consequences suffered and living conditions are all the same, including deprivation of fundamental human rights, not being able to access important public services, being trapped in poverty, marginalized and excluded. Statelessness is highly detrimental to children's lives, as it is demonstrated in the next section.

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<sup>200</sup> HRC, *Birth registration*, paragraph 5; UNICEF, *Birth registration for every child by 2030*, 8-9.

<sup>201</sup> United Nations High Commissioner for Human Rights (UNHCR), *Good Practices Paper: Ensuring birth registration for the prevention of statelessness*, November 2017, 2.

<sup>202</sup> Gábor Gyulai, “The long-overlooked mystery of refugee children’s nationality,” in Institute on Statelessness and Inclusion, *The World’s Stateless: Children* (Oisterwijk: Wolf Legal Publishers (WLP), 2017), 244.

<sup>203</sup> It is worth recalling the definition of refugee under the 1951 Convention that reads: “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and *is unable or, owing to such fear, is unwilling to avail himself of the protection of that country*” (1951 Convention, *supra* note 63, article 1(A)(2)). The fact it would be possible to approach the authorities of the country of origin to proceed with the registration of children’s births could be perceived as a possibility to in fact availing from the protection of that State, thus meaning the removal of the status as a refugee.

<sup>204</sup> Gyulai, “The long-overlooked mystery of refugee children’s nationality,” 242.

## 2. Consequences of statelessness for children

One day, I was standing between the borders, and could not get into either country. It was the most unforgettable experience in my life! I could not enter the State where I had been; also I couldn't get into the State where I was born, raised and lived! Where do I belong? I still cannot forget the strong feeling of loss I experienced at the airport.

– *Chen, who was formerly stateless*

Statelessness, as well as lack of birth registration and certificate, leads to a series of human rights violations, not only for children, but *above all* for children. The United Nations, in its *Study of Statelessness*, stated that “the fact that the stateless person has no nationality places him [*sic*] in an abnormal and inferior position which reduces his social value and destroys his own self-confidence.”<sup>205</sup> This is important evidence of how destructive statelessness can be for any person. When special attention is devoted to the case of stateless *children*, this inferior status in society, the discrimination and marginalization suffered, the deprivation of fundamental rights and freedoms lead to subsequent consequences that will impact not only their childhood, but their entire lives.

Children's development can be severely impaired by statelessness, leading to life-long problems and poor outcomes in adolescence and adulthood, related to learning capabilities, behavior patterns, and physical and mental health.<sup>206</sup> The contexts of forced displacement play significant roles in compounding with the vulnerability and risks of stateless, undocumented, refugee and asylum seeker children, because they are often exposed to Adverse Childhood Experiences (ACEs), which are known to lead to chronic diseases, such as diabetes and heart disease, obesity, poor academic achievement and time out of work, substance abuse and smoking, and depression, anxiety and post-traumatic stress disorder (PTSD) later in life.<sup>207</sup>

Adverse experiences during childhood refer to adversity children face in their home environment, such as “various forms of physical and emotional abuse, neglect, and household

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<sup>205</sup> UN, *A Study of Statelessness*, 9.

<sup>206</sup> Kingston, “Worthy of rights,” 18.

<sup>207</sup> “What are ACEs? And how do they relate to toxic stress?” Center on the Developing Child at Harvard University, accessed October 15, 2022. <https://developingchild.harvard.edu/resources/aces-and-toxic-stress-frequently-asked-questions/>.

dysfunction,” all situations to which children are more likely to be exposed to in conditions of forced displacement, statelessness and poverty.<sup>208</sup> Such experiences are very stressful for children and lead to levels of toxic stress. The continuous exposure to extreme and long-lasting situations triggering toxic stress in the absence of protective relationships directly impacts the brain development of children, turning ACEs into poor outcomes and harmful behavior patterns in adulthood. Protective relationships, on the other hand, are necessary to buffer the physiological effects of stress and bring them down to baseline levels, leading to the development of healthy stress response capabilities, without disrupting the child’s development.<sup>209</sup>

Impairments during the period of Early Childhood Development (ECD),<sup>210</sup> due to ACEs, traumatic experiences, and high levels of toxic stress, subject children to a life of reduced opportunities, limiting their adulthood and future capabilities. As the UNICEF explains, the first years of life

[offer] a critical window of opportunity to shape the trajectory of a child’s holistic development and build a foundation for their future. For children to achieve their full potential, as is their human right, they need health care and nutrition, protection from harm and a sense of security, opportunities for early learning, and responsive caregiving – like talking, singing and playing – with parents and caregivers who love them.<sup>211</sup>

The importance of protecting children’s early years relates to the fact that it is the period of most rapid growth and change, “in terms of their maturing bodies and nervous systems, increasing mobility, communication skills and intellectual capacities.”<sup>212</sup> It is also the period when children form strong emotional attachments to their parents and establish important relationships

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<sup>208</sup> “What are ACEs? And how do they relate to toxic stress?” Center on the Developing Child at Harvard University, accessed October 15, 2022. <https://developingchild.harvard.edu/resources/aces-and-toxic-stress-frequently-asked-questions/>.

<sup>209</sup> “Toxic stress,” Center on the Developing Child at Harvard University, accessed October 16, 2022. <https://developingchild.harvard.edu/science/key-concepts/toxic-stress/>.

<sup>210</sup> The period of early childhood is defined by the CRC Committee, in its General Comment No. 7 (2005) as the period from birth until the age of 8 years, including the child’s preschool years, as well as the transition to school. It recalls, though, that each country and region might comprehend this period of life in different ways, in accordance with local traditions and with the way primary school systems are organized. (Committee on the Rights of the Child (CRC Committee), *General comment No. 7 (2005): implementing child rights in early childhood*, CRC/C/GC/7/Rev.1, (Geneva: UN, September 20, 2006), paragraph 4.)

<sup>211</sup> “Early childhood development,” United Nations Children’s Fund (UNICEF), accessed October 16, 2022. <https://www.unicef.org/early-childhood-development>.

<sup>212</sup> CRC Committee, *General comment No. 7 (2005)*, paragraphs 7(a)-(c).

with other children, through which they learn how to negotiate and resolve conflicts, to share activities and keep agreements, and to accept responsibility for others.<sup>213</sup>

The first years of life are literally the years during which children discover themselves as human beings, “[making] sense of the physical, social and cultural dimensions of the world they inhabit.” This period marks the foundation of children’s physical and mental health, cultural and personal identity. It is the moment when they develop competencies and emotional security, being shaped and determined by cultural beliefs, their role within their families and communities, and by “gender, living conditions, family organization, care arrangements and education systems.”<sup>214</sup> All these features of early childhood, as described by the CRC Committee in its General Comment No. 7 (2005) on the implementation of children’s rights during early childhood, proves the urgent necessity to protect children, allowing them to grow and develop holistically. Leaving children stateless poses direct negative impairments to their most important developmental phase.

The rights to a nationality, to education, to health, to special protections in the case of children in conflict with the law, to protection against child labor, forced and early marriage, human trafficking, sale of children and forced conscription in armed groups are all seriously violated by the condition of being stateless, a condition that is detrimental to human development.<sup>215</sup> Lacking identity documents seriously hamper the access to these services and protections. More than that, this increases the vulnerability to all harmful practices performed and perpetuated against children,<sup>216</sup> ultimately because unregistered children do not legally exist and thus what happens to them will be nonexistent as well.<sup>217</sup> Abuses, exploitation and harmful experiences compound with ACEs that children’s experience within their homes, while on the move, and in the host communities, increasing their vulnerability and seriously impairing their development.

The negative effects over children’s development prevent them from reaching their full potential. The impairments on ECD are deeply related to the access to health services and to

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<sup>213</sup> CRC Committee, *General comment No. 7 (2005)*, paragraphs 7(a)-(c).

<sup>214</sup> *Ibid.*, paragraphs 7(d)-(g).

<sup>215</sup> ISI, *Childhood statelessness*, 15.

<sup>216</sup> Harmful practices, as explained by the UNICEF, “are discriminatory practices committed regularly over long periods of time that communities and societies begin to consider them acceptable.” (“Harmful practices,” United Nations Children’s Fund (UNICEF), accessed November 7, 2022. <https://www.unicef.org/protection/harmful-practices>).

<sup>217</sup> “Despite significant increase in birth registration, a quarter of the world’s children remain ‘invisible’ – UNICEF,” UNICEF.

education, fundamental for a healthy growth. The development of a child shall be understood in a holistic and comprehensive way, including the “physical, mental, moral, spiritual and social dimensions of his or her development.”<sup>218</sup> It is thus of fundamental importance that a child lives in a caring and protective environment, enjoying all human rights which, when assured, foster children’s development and growth towards their full potential and a life of realizations.

Birth registration, birth certificates and other personal documents make a complete difference in this process, as it ensures access to basic services and essential protections. Being protected against statelessness, having a birth certificate and being able to avail oneself from the protection of a State are all important conditions on the basis of a prosperous process of ECD. The Human Rights Council found out that, for example, “there is a confluence between children who are registered and those who are fully vaccinated, received vitamin A supplements, and/or are taken to health-care professionals when ill.”<sup>219</sup> Because stateless children often do not have documents proving their identity, their access to health services, vaccination campaigns, and healthcare when needed is severely impeded, and this can have deadly consequences for them, thus violating their right to “the enjoyment of the highest attainable standard of health,” as provided for under article 24 of the CRC.<sup>220</sup>

Lacking access to immunization and assistance of professional health-care increases children’s vulnerability to infectious diseases and malnutrition, for example.<sup>221</sup> The World Health Organization (WHO) estimates that the “leading causes of death in children under-5 years are preterm birth complications, birth asphyxia/trauma, pneumonia, congenital anomalies, diarrhea and malaria, all of which can be prevented or treated with access to simple, affordable interventions including immunization, adequate nutrition, safe water and food and quality care by trained health

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<sup>218</sup> Committee on the Rights of the Child (CRC Committee), *Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration*, CMW/C/GC/3-CRC/C/GC/22 (New York: UN, November 16, 2017), paragraph 40.

<sup>219</sup> United Nations Human Rights Council (HRC), *Report of the United Nations High Commissioner for Human Rights on the right of the child to the enjoyment of the highest attainable standard of health*, December 4, 2012, A/HRC/22/31, paragraph 81.

<sup>220</sup> CRC, *supra* note 57, article 24(1).

<sup>221</sup> HRC, *Birth registration*, paragraphs 21-22; Ruth V Reed et al. “Mental health of displaced and refugee children resettled in low-income and middle-income countries: risk and protective factors,” *The Lancet* 379, 9812 (August 10, 2011): 250, [https://doi.org/10.1016/S0140-6736\(11\)60050-0](https://doi.org/10.1016/S0140-6736(11)60050-0).

provider when needed.”<sup>222</sup> Stateless children, as well as refugees and asylum seekers, and their mothers face obstacles to accessing health services not only related to lack of documentation, but also because in many States higher medical costs are charged from non-nationals, a form of discrimination that “prevent[s] stateless children from exercising their right to health.”<sup>223</sup>

Under such conditions, accessing health services becomes a great challenge for displaced families who also struggle with statelessness. Missing healthcare can set in stone consequences that will last during children’s entire lives, negatively impacting their physical and mental health.

The mental health of children who have been forcibly displaced is of particular concern because of their experiences of insecurity at a formative stage of child development. The combined weight of socioeconomic adversity and exposure to violence in their countries of origin, followed by migration and finally resettlement into a new context, exposes them to several and cumulative risks to their physical, emotional, and social development.<sup>224</sup>

Family dynamics are essential to increase or reduce the children’s exposure to ACEs, as caregivers’ attention, response, care and mental health directly influence children’s well-being and development.<sup>225</sup> Due to the dire conditions of migration for forcibly displaced families, refugee children find themselves at increased risk of mental disorders, such as anxiety, depression and PTSD. All of these consequences are also affected by the deprivation from educational opportunities children often face in host countries.

Statelessness and lack of birth registration and certificates are known to directly impact the right to education of children. Stateless and undocumented children are often refused schooling and access to education, a direct violation of article 28 of the CRC. This article calls States to ensure compulsory and free primary education for all,<sup>226</sup> a provision that is widely enforced and

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<sup>222</sup> “Children: improving survival and well-being,” World Health Organization (WHO), September 8, 2020. <https://www.who.int/news-room/fact-sheets/detail/children-reducing-mortality>.

<sup>223</sup> Kanics, “Migration, forced displacement, and childhood statelessness,” 220-221.

<sup>224</sup> Ruth V Reed et al. “Mental health of displaced and refugee children,” 251, 253.

<sup>225</sup> “What are ACEs? And how do they relate to toxic stress?” Center on the Developing Child at Harvard University, accessed October 15, 2022. <https://developingchild.harvard.edu/resources/aces-and-toxic-stress-frequently-asked-questions/>; Ruth V Reed et al. “Mental health of displaced and refugee children,” 255.

<sup>226</sup> The Committee on Economic, Social and Cultural Rights, in its General Comment No. 11 of 1999, describes the right to education as an enabling right, because it “epitomizes the indivisibility and interdependence of all human rights” and is an economic, social and cultural right, as well as a civil and a political right. The Committee explained that “neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education,” and because of that the primary education as provided for in the International Covenant on Economic, Social and Cultural Rights (ICESCR) under article 14 is *compulsory*.

tends to allow children without evidence of birth registration to attend primary school. However, often “a birth certificate is required to be able to take the final school examinations and thus to receive relevant academic qualifications or to progress to secondary school,”<sup>227</sup> thus preventing children from continuing their educational pathways and limiting their future opportunities, including with regards to job prospects.<sup>228</sup>

The right to education must also be comprehended in accordance with article 29 of the CRC, which sets the aims of children's education, directly linking it “to the realization of the child’s human dignity and rights, taking into account the child’s special developmental needs and diverse evolving capacities.”<sup>229</sup> The CRC Committee, in its General Comment No. 1 of 2001, understands education as the way to “empower the child by developing his or her skills, learning and other capacities,” protecting and ensuring the holistic development of the child in all of its dimensions.<sup>230</sup>

An education provided by States as designed in article 29 fosters not only children’s literacy and numeracy, but also teaches them essential life skills, such as “the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents and other abilities which give children the tools needed to pursue their options in life.”<sup>231</sup> Being denied access to quality education is a discrimination against stateless and non-registered children, who find their abilities and opportunities “to participate fully and responsibly in a free society” also curtailed.<sup>232</sup>

Healthcare and education are fundamental for harmonious, prosperous and holistic growth. In this master’s thesis, it is argued that impairment to children’s development is one of two main consequences they face when living at risk of statelessness or as stateless persons. From the exposed above, it is possible to understand the pervasiveness of such conditions. The obstacles to and the denial of access to healthcare and education for stateless and non-registered children

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(Committee on Economic, Social and Cultural Rights, *General Comment 11 (1999): Plans of action for primary education (article 14 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/1999/4 (May 10, 1999), paragraphs 2, 6).

<sup>227</sup> HRC, *Birth registration*, paragraph 19.

<sup>228</sup> Kanics, “Migration, forced displacement, and childhood statelessness,” 221.

<sup>229</sup> Committee on the Rights of the Child (CRC Committee), *General comment No. 1 (2001): the aims of education*, CRC/GC/2001/1 (New York: UN, April 17, 2001), paragraph 1.

<sup>230</sup> *Ibid.*, paragraph 9.

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*, paragraphs 12, 14.

demonstrate that living without documents and not being recognized by any State as a national is harmful for children’s growth and impairs the development of their full potential, personality and abilities, commonly trapping them in poverty cycles.

Being stateless and not possessing identity documents, not being able to prove the link one’s has with a State and therefore not being able to avail oneself of this State’s protection, subject children to a life of deprivations and lack of access to and enjoyment of several basic human rights, because “their lack of legal status puts them in a precarious position within State society.”<sup>233</sup> Statelessness walks hand in hand with marginalization and stigmatization, which further hinder their sense of belonging to their communities and make them invisible to the eyes of authorities and the State. The HRC affirmed, in 2014, that “the legal invisibility of unregistered children makes it more likely that their disappearance and exploitation will go unnoticed by authorities, (...) [because] there is no proof of the child’s existence, so national authorities may be unwilling or unable to pursue the matter.”<sup>234</sup>

Invisibility, that will be briefly discussed in the next section, is the second main consequence considered in this work that children who are stateless, are at risk of statelessness and/or were not registered face. It is the condition of not being seen, perceived, noticed nor recognized.<sup>235</sup> And as such, of not being missed nor protected. This leaves an abysmal space for the perpetuation of harmful practices<sup>236</sup> against children and of grave violations of their rights, as recognized by the CRC Committee and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW Committee), in their joint general comment No. 23 and No. 4, respectively. The Committees stated that

children in the context of international migration, *in particular those who are undocumented, stateless*, unaccompanied or separated from their families, are particularly vulnerable, throughout the migratory process, to different forms of violence, including

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<sup>233</sup> Kingston, “Worthy of rights,” 18.

<sup>234</sup> HRC, *Birth registration*, paragraph 31.

<sup>235</sup> *Merriam-Webster*, s.v. “Invisible,” accessed October 22, 2022, <https://www.merriam-webster.com/dictionary/invisible>.

<sup>236</sup> The African Committee of Experts on the Rights and Welfare of the Child (ACERWC), in its General Comment No. 2 on article 6 of the African Charter on the Rights and Welfare of the Child (ACRWC), identified as “harmful practices that particularly threaten children whose identity cannot be established” the trafficking in children, sexual exploitation, early marriage, illicit adoption and enrolment in armed forces. The ACERWC found that such practices are “less likely to occur and easier to prevent, when effective birth registration systems are in place.” ACERWC, *General Comment No. 2*, paragraph 18.



neglect, abuse, kidnapping, abduction, and extortion, trafficking, sexual exploitation, economic exploitation, child labor, begging or involvement in criminal and illegal activities, in countries of origin, transit, destination and return.<sup>237</sup>

Not only the condition of being stateless or at risk of statelessness, but mainly the lack of birth certificates, proving a child's parentage, place of birth and age, make children extremely more vulnerable to the human rights violations listed by both Committees in their joint general comment. For example, both conditions (statelessness and lack of birth registration) tend to subject adults and children to the informal sector in a country's economy, "where there is less scrutiny and greater risk of exploitation and hazardous work."<sup>238,239</sup> Such forms of work are prohibited under the age of 18 years, also under article 32 of the CRC,<sup>240</sup> and many countries already enforce legislations protecting children from child labor.

However, if a child is unable to prove her age, the legislation setting minimum age for employment will have little or no effect to protect her. This leaves a fundamental gap where children's rights violations are perpetrated, especially because "employers exploit the lack of birth registration to hire children as cheap laborers, knowing that they will have little recourse before the law."<sup>241</sup> Stateless children are often left with no choice but to accept and take on hazardous and exploitative work,<sup>242</sup> as they are denied access to education, lack documents and are unprotected. Another important issue contributing to this situation is the fact that parents and caregivers, when stateless themselves or irregular migrants, are not able to obtain legal employment, therefore relying on children to be a source of income for the family.<sup>243</sup>

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<sup>237</sup> Committee on the Rights of the Child (CRC Committee), *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*, CMW/C/GC/4-CRC/C/GC/23 (New York: UN, November 16, 2017), paragraph 39. Emphasis added.

<sup>238</sup> HRC, *Birth registration*, paragraph 26.

<sup>239</sup> As defined by the International Labor Organization (ILO), hazardous works, especially hazardous child labor, are forms of work that could result in the child death, injury or illness due to poor safety and health standards, harming their health, safety and morals. ("Hazardous child labour," International Labor Organization (ILO), accessed October 22, 2022. <https://www.ilo.org/ipcc/facts/WorstFormsofChildLabour/Hazardouschildlabour/lang--en/index.htm>).

<sup>240</sup> "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." (CRC, *supra* note 57, article 32(1)).

<sup>241</sup> HRC, *Birth registration*, paragraph 25-26.

<sup>242</sup> HRC, *Impact of the arbitrary deprivation of nationality*, paragraph 39.

<sup>243</sup> Plan International and United Nations High Commissioner for Refugees (UNHCR), *Under the Radar and Underprotected: the urgent need to address stateless children's rights*, (Working: Plan, June 2012), 10.

Children, as well as their parents and caregivers, under such conditions, are unable to access social welfare programs and child protection and benefits systems. This happens also because such programs and systems “rarely extend to stateless communities,”<sup>244</sup> being inaccessible. This compounds with their vulnerability and contributes to the vicious cycle of poverty in which stateless children and their families are trapped.<sup>245</sup> Moreover, statelessness of children violates article 26 of the CRC, which states the right of every child to “benefit from social security, including social insurance,” affirming that the granting of these benefits should “[take] into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child.”<sup>246</sup>

Missing educational opportunities, being forced to engage in hazardous forms of work and not being able to access social welfare programs subject stateless children to lower standards of living and to live on the margins of society. Not rarely, poverty becomes an intergenerational problem, which gets increasingly difficult to be overcome.<sup>247</sup> By trapping stateless children and their families into poverty cycles, statelessness breaches the right of every child to “a standard of living adequate for the child’s physical, mental, spiritual, moral and social development,” exactly because it severely impairs children’s normal and healthy growth and development.<sup>248</sup>

Poverty is also a factor leading to other harmful practices perpetrated against children, such as early and forced marriages. Such unions are perceived as a means to protect the girl child, securing her a better future and better living conditions, at the same time that it produces some kind of economic relief for families, easing pressures on resources.<sup>249</sup> More than that, child marriages are seen as an attempt to secure nationality through marriage in contexts of statelessness and forced displacement, especially when marriage laws automatically grant the husband’s

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<sup>244</sup> Plan and UNHCR, *Under the Radar*, 9.

<sup>245</sup> Ibid.

<sup>246</sup> CRC, *supra* note 57, article 26.

<sup>247</sup> Kanics, “Migration, forced displacement, and childhood statelessness,” 220-221; HRC, *Impact of the arbitrary deprivation of nationality*, paragraph 38.

<sup>248</sup> CRC, *supra* note 57, article 27.

<sup>249</sup> Save the Children, *Too young to wed: the growing problem of child marriage among Syrian girls in Jordan*, (London: Save the Children, 2014), 1; Sheila Menz, “Statelessness and child marriage as intersectional phenomena: instability, inequality, and the role of the international community,” *California Law Review*, 104, No. 2 (April 2016): 500-501; Economic and Social Commission for Western Asia (ESCWA), *Child marriage in humanitarian settings in the Arab Region: dynamics, challenges and policy options*, E/ESCWA/ECW/2015/2, (New York: UN, 2015), 7.

nationality to the wife.<sup>250</sup> In the next chapter, when discussing the leading causes of statelessness within the context of Syrian displacement, the causes and consequences of child, early and forced marriages will be better presented.

Statelessness, forced migration and lack of birth registration significantly increase the vulnerability of children to sexual exploitation, trafficking and recruitment into armed forces, as already mentioned.<sup>251</sup> Regarding trafficking, the fact that children without identity documents are unable to travel through legal and safe pathways makes them more likely and prone to rely on illicit intermediaries to facilitate migration, being more vulnerable to be trafficked.<sup>252</sup> More than that, as reported by the UNHCR and by Plan International, “traffickers use statelessness to intimidate children and young people, threatening that they will be arrested if they report the traffickers.”<sup>253</sup> By doing so, stateless children find themselves completely helpless and even more vulnerable to further exploitation perpetrated by the traffickers and smugglers, such as sexual and economic abuses. They have their fundamental rights to be protected from all forms of sexual exploitation and sexual abuse,<sup>254</sup> from abduction, sale or traffic,<sup>255</sup> and to be protected “against all other forms of exploitation prejudicial to any aspects of the child’s welfare”<sup>256</sup> ruthlessly violated.

In the specific context of armed conflicts and emergency situations, as it is the case of the Syrian war and displacement crisis, stateless and non-registered children face greater vulnerability and risks of being forcibly recruited by armed forces and groups.<sup>257</sup> As mentioned earlier, the non-registration and lack of documents proving a child’s identity makes it more likely that whatever happens to them will not be noticed,<sup>258</sup> thus leading to a situation that child soldiers escape from the protection systems designed to protect them from early conscription, especially based on the provisions of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (OPAC). The OPAC, approved to amend and

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<sup>250</sup> Menz, “Statelessness and child marriage as intersectional phenomena,” 510-512, 530; Kanics, “Migration, forced displacement, and childhood statelessness,” 219.

<sup>251</sup> HRC, *Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children*, paragraph 40; Kanics, “Migration, forced displacement, and childhood statelessness,” 220-221.

<sup>252</sup> HRC, *Birth registration*, paragraphs 30-31; Plan and UNHCR, *Under the Radar*, 9.

<sup>253</sup> Plan and UNHCR, *Under the Radar*, 9.

<sup>254</sup> CRC, *supra* note 57, article 34.

<sup>255</sup> *Ibid.*, article 35.

<sup>256</sup> *Ibid.*, article 36.

<sup>257</sup> HRC, *Birth registration*, paragraphs 33-35.

<sup>258</sup> *Ibid.*, paragraph 31.

complement CRC's article 38,<sup>259</sup> prohibits the involvement of individuals under the age of 18 in armed conflicts, be it by recruitment by State or by non-State armed forces and groups.<sup>260</sup>

It is also extremely important to consider the increased vulnerability of refugee stateless children to be deprived of their liberty, being arbitrarily detained in immigration centers in conditions that harm their physical, mental and psychosocial health and well-being, impairing their development.<sup>261</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated, in 2015, that

even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder (...) [and] higher rates of suicide and self-harm, mental disorder and developmental problems.<sup>262</sup>

The Special Rapporteur reported on the conditions that migrant children are detained, which leads to such drastic consequences to their well-being, health and development. For example, child migrants are often "tied up or gagged, beaten with sticks, burned with cigarettes and given electric shocks."<sup>263</sup> Solitary confinement is also widely used against children in immigration detention and more severe levels of anxiety and mental disorders have been perceived on children after witnessing sexual abuse and violence against other detainees.<sup>264</sup>

Detention conditions are also considered inhuman due to "overcrowding, inappropriate food, insufficient access to drinking water, unsanitary conditions, lack of adequate medical attention, and irregular access to washing and sanitary facilities and to hygiene products, lack of

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<sup>259</sup> Article 38 of the CRC had set as the minimum age for involvement in armed conflicts 15 years of age. The OPAC raised the minimum age to 18 years of age, calling states to protect children from taking direct part in conflicts. It is important to note that the Protocol not only mentions the recruitment of children by State armed forces, but also by "armed groups that are distinct from the armed forces of a State," responsabilizing States to prevent, prohibit and criminalize such recruitment. (CRC, *supra* note 57, article 38; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), December 19, 2011, *United Nations Treaty Series*, vol 2173, p. 222, articles 1-4).

<sup>260</sup> HRC, *Birth registration*, paragraph 33.

<sup>261</sup> Kanics, "Migration, forced displacement, and childhood statelessness," 219.

<sup>262</sup> Human Rights Council (HRC), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, Juan E. Méndez*, Twenty-eight sess., March 5, 2015, A/HRC/28/68, paragraph 16.

<sup>263</sup> HRC, *Report of the Special Rapporteur*, paragraph 60.

<sup>264</sup> *Ibid.*

appropriate accommodation and other basic necessities.”<sup>265</sup> Depriving children of their liberty in an arbitrary and lengthy manner, under such conditions, violates children’s rights to freedom from cruel, inhuman or degrading treatment or punishment, as well as to freedom from arbitrary deprivation of liberty, both provided for by CRC’s article 37.<sup>266</sup>

The Special Rapporteur on torture and other, cruel, inhuman or degrading treatment or punishment stated that the “threshold at which treatment or punishment may be classified as torture or ill-treatment is therefore lower in the case of children,” especially under the conditions described in herein.<sup>267</sup> As such, depriving children of their liberty amounts to torture and ill-treatment: immigration detention, thus, is never in the best interests of the child.

As the HRC affirmed, “stateless children in the context of migration or forced displacement are more vulnerable to arbitrary or lengthy immigration detention because their lack of a nationality makes it impossible to remove them from the country within a reasonable period of time.”<sup>268</sup> More than that, without documents proving their age, stateless children are highly more vulnerable to be prosecuted as adults, being detained with them, which is a clear and grave violation of their fundamental human right to be separated from adults when detained.<sup>269</sup>

It is also often common for migrant children to be separated from their families, parents and caregivers, finding themselves isolated from their closest protective networks and social support groups.<sup>270</sup> Separation from family, due to unsafe migration pathways, arbitrary detention or any other reason, may hamper the process of obtaining documentary evidence for family reunification processes. Such processes are even more hampered and have higher barriers for their initiation and conclusion in the case of stateless children who lack documents to prove family links.<sup>271</sup> Statelessness and forced displacement, coupled with arbitrary detention and separation from family, thus violate article 10 of the CRC on family reunification.<sup>272</sup>

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<sup>265</sup> HRC, *Report of the Special Rapporteur*, paragraph 61.

<sup>266</sup> HRC, *Impact of the arbitrary deprivation of nationality*, paragraph 41.

<sup>267</sup> HRC, *Report of the Special Rapporteur*, paragraph 33.

<sup>268</sup> HRC, *Impact of the arbitrary deprivation of nationality*, paragraph 41.

<sup>269</sup> HRC, *Birth registration*, paragraphs 27-28; CRC, *supra* note 57, article 37(c).

<sup>270</sup> HRC, *Report of the Special Rapporteur*, paragraph 61.

<sup>271</sup> Kanics, “Migration, forced displacement, and childhood statelessness,” 220.

<sup>272</sup> Together with the right to not be separated from parents, children are also entitled to special provisions when it comes to the application for family reunification, which “should be dealt with by States Parties in a positive, humane and expeditious manner.” (CRC, *supra* note 57, article 10(1); CRC, *Joint general comment No. 23*, paragraph 32).

Yet, the family is considered “the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children,”<sup>273</sup> being fundamental for children’s development. In fact, the preamble of the CRC recognizes that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”<sup>274</sup> The absence of this environment “is a known risk factor precipitating a range of physical, psychological, and social vulnerabilities,”<sup>275</sup> leaving children in danger of diverse forms of exploitation, such as sale of children and child prostitution, of trafficking, illegal adoption, child recruitment, child labor, amongst other severe forms of violation of children’s rights. Paradoxically, States continue to perpetuate grave children’s rights violations despite having ratified the Convention.<sup>276</sup> By not enforcing safeguards against children’s statelessness and not protecting them in situations where they find themselves the most vulnerable, States seem to be deliberately violating fundamental provisions envisaged in the CRC.

All and every consequence of childhood statelessness listed in this work violate the principle of non-discrimination<sup>277</sup> and the right of every child to have their best interests taken as primary consideration in all matters affecting them,<sup>278</sup> as defended by article 2 and 3 of the CRC, respectively.<sup>279</sup> These rights are regarded as guiding principles of the Convention, being the basis for the interpretation of every other right provided for therein. They directly relate to securing the “holistic physical, psychological, moral and spiritual integrity of the child,” promoting and protecting their human dignity.<sup>280</sup> As such, not regarding for children’s best interests, especially in forced displacement and migration contexts, is a direct violation of children’s rights as well as a breach of States’ obligations under the CRC.<sup>281</sup>

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<sup>273</sup> CRC, *supra* note 57, preamble paragraph 5.

<sup>274</sup> *Ibid.*, preamble paragraph 6.

<sup>275</sup> Bhabha, *Child migration & human rights in a global age*, 247.

<sup>276</sup> The CRC is the human rights instrument most ratified in the world, with only the United States of America not being a State Party to the Convention.

<sup>277</sup> CRC, *supra* note 57, article 2.

<sup>278</sup> Kanics, “Migration, forced displacement, and childhood statelessness,” 218.

<sup>279</sup> “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (CRC, *supra* note 57, article 3(1); CRC Committee, *General comment No. 14 (2013)*, paragraph 1).

<sup>280</sup> CRC Committee, *General comment No. 14 (2013)*, paragraph 5.

<sup>281</sup> CRC Committee, *Joint general comment No. 22*, paragraph 32.

Annex 2 provides a more comprehensive, but not exhaustive, list of children's rights violated by the condition of being stateless as well as of not having their birth registered and not possessing a birth certificate. The table in annex 2 also highlights some human rights laws and instruments which are specifically violated. States shall be held accountable for children's rights violations in the context of forced migration and statelessness, as "the pervasive reality of child statelessness is the product of oversight and myopia on the part of policy makers."<sup>282</sup> Jacqueline Bhabha tragically concluded, in her book *Children without a State: a global human rights challenge*, that "children who are stateless end up without a State for a reason: they are considered dispensable, undeserving, threatening, or dangerous."<sup>283</sup> The consequences suffered by children due to their stateless condition and their invisibility are, thus, produced by States, the main actors responsible for their protection and for upholding their development.

### **3. Children's invisibility and States' responsibility: a brief consideration**

A child who is not counted does not count.

– *Saudamini Siegrist*

The discussion around children's invisibility due to statelessness divides scholars. On the one side, there are defenders of invisibility as a cause of statelessness. On the other side, invisibility is regarded as one of the worst consequences of statelessness for children. As a cause or as a consequence, being invisible is a condition to which millions of children around the world are subject. They live a life of deprivations, ignored and unseen by the State, State's authorities, social service workers, and the society and communities where they live. Invisibility is referred to as *legal* invisibility, the fact a child does not exist as a legal person before the law, before the State. An invisible child is not counted in official statistics and census, thus not being considered while public policies are developed and implemented, for example. She, while not being counted, will not count at all.

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<sup>282</sup> Bhabha, "From citizen to migrant," 19.

<sup>283</sup> *Ibid.*, 22.

The HRC, when considering the impacts of arbitrary deprivation of nationality on the enjoyment of children's rights, which has statelessness as its "most extreme consequence," affirmed that "the invisibility of stateless children to the eyes of society causes the violation of their rights to go unnoticed,"<sup>284</sup> thus subjecting them to a vicious cycle of compounded invisibility, deprivation of basic rights and protections, and a life of denials. The UNHCR, in its Special Report *Ending statelessness within 10 years*, recognized the invisibility of children as a driver of "potential abuse and rejection ranging from lack of access to life-saving immunizations to protection from early marriage" against stateless children.<sup>285</sup>

In this master's thesis, children's invisibility is understood not as a cause of statelessness, but rather a result provoked by States and their decisions and power to leave children on the margins of society, excluded from fundamental services, in violation of one of the most widely shared and agreed principles of human rights protection: non-discrimination. States "not only [fail] to protect children from harm but actively [provoke] the hardships that they are subjected to. Far from being the authority to which these children can turn for enforcement of their rights, the State is a source of oppression."<sup>286</sup> This is specifically true for children of parents who are not nationals of the State where they live – migrants, refugees, asylum seekers or stateless themselves. The condition of being an "alien" poses extra challenges to look for authorities in several situations, even in the most necessary ones, such as to register the birth of a child.

The fear to approach authorities in contexts of irregular migration, asylum seeking, refugee and statelessness, both of parents or caregivers as well as of children themselves, prevents especially children from enjoying social services needed to protect their childhood and to ensure access to other important services and basic necessities required for a healthy growth and development. Such a fear is a result of States' policies, laws and mechanisms implemented in immigration facilities and centers, towards migrants and non-national populations. It thus becomes a vicious cycle of exclusion, marginalization and fear, reinforcing the invisibility before the law.<sup>287</sup>

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<sup>284</sup> HRC, *Impact of the arbitrary deprivation of nationality*, paragraph 27-28.

<sup>285</sup> United Nations Rights Commissioner for Refugees (UNHCR), *Special Report: Ending statelessness within 10 years*, November 4, 2014, 8.

<sup>286</sup> Bhabha, "From citizen to migrant," 18.

<sup>287</sup> *Ibid.*



States as a source of oppression causes children who were supposed to be noticed and seen by authorities to be ignored and marginalized, left without protection.<sup>288</sup>

Specifically looking into the statelessness of refugee children, this fear prevents families from registering their children, inevitably subjecting them to legal invisibility. Because these children are not counted in civil registration systems, national statistics and recordings, their lives go unnoticed, unseen, unperceived. If they suffer or thrive is not a concern of the State where they live, not because what happens to them is completely invisible to States, but because States are ambivalent and despite being aware of children's needs, they "are torn over how to act."<sup>289</sup> The ongoing tension between protecting vulnerable children and perceiving them as a threat, dangerous and outsiders leads to invisibility as a "*result* of State strategy toward particular groups of children."<sup>290</sup>

In this sense, stateless children's invisibility emerges from the fact that "they are considered dispensable, undeserving, threatening, or dangerous. Insofar as their rights conflicts with government priorities (whether immigration control, the enforcement of national security, majoritarian dominance, or responsiveness to xenophobic public opinion), they are placed in disenfranchised legal or *de facto* situations."<sup>291</sup> This could be regarded as a violation of the principle of the best interest of the child to be taken as a primary consideration by States, defined under article 3 of the CRC.<sup>292</sup> It is a principle that if respected and implemented would protect children from invisibility, as it is never on the best interests of children to be unregistered, undocumented and stateless. In accordance with the CRC Committee, it is a substantive right of the Convention, creating intrinsic obligations to States, among which "the obligation to ensure that the child's best interests are *appropriately integrated and consistently applied* in every action taken

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<sup>288</sup> Bhabha, "From citizen to migrant," 18, 21-22.

<sup>289</sup> Ibid., 22.

<sup>290</sup> Ibid., 22-23.

<sup>291</sup> Ibid., 22.

<sup>292</sup> "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." (CRC, *supra* note 57, article 3(1)). It is worth recalling that "primary consideration" means that "States may not exercise discretion as to whether children's best interests are to be assessed (...) in any action undertaken" and that the best interests of children "may not be considered on the same level as all other considerations." (CRC Committee, *General comment No. 14 (2013)*, paragraphs 36-37)

by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children.”<sup>293</sup>

It is important to note that such a principle should be implemented based on the principle of non-discrimination, enshrined under article 2 of the Convention on the Rights of the Child. In accordance with the CRC Committee,

the right to non-discrimination is not a passive obligation, prohibiting all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality.<sup>294</sup>

Considering both principles together, States who purposely and intentionally oversee and ignore special circumstances, needs and risks of stateless children and children at risk of statelessness are violating essential guiding principles of the CRC and of the universal framework for the protection of children’s rights.

The CRC Committee highlighted that children’s specific circumstances and their individual characteristics are fundamental for the assessment and determination of a child’s best interests. Such characteristics and circumstances include children’s age, sex, if they belong to a minority group, their social and cultural context, if they live with their parents, the quality of their relationship with their family, parents and/or caregivers, the safety of their environment, among others.<sup>295</sup> It is noted with concern that the Committee, however, does not report on nationality and registration status among the specific circumstances mentioned in its General Comment No. 14. Explicitly affirming that nationality or statelessness, being registered or lacking documentation proving one’s identity are circumstances extremely important for children’s well-being, development and protection of their best interests would be a significant safeguard against statelessness with specific connection and reference to their best interests and against discrimination. On the other hand, it is most appreciated that the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), on its decision regarding a communication

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<sup>293</sup> CRC Committee, *General comment No. 14 (2013)*, paragraph 14(a).

<sup>294</sup> *Ibid.*, paragraph 41.

<sup>295</sup> *Ibid.*, paragraph 48.

received in 2009 against the Government of Kenya,<sup>296</sup> affirmed that “being stateless as a child is generally antithesis to the best interests of children.”<sup>297</sup> In other words, being stateless is never in the best interests of any child.

Stateless children’s invisibility, as can be perceived in the decision of the ACERWC, is much related to the obstacles preventing children from being registered. This results from the fact that lacking identity documents deprives children from accessing fundamental human rights and basic services, as exposed in the previous sections of this chapter. As a consequence, refugee situations and statelessness weaken protections owed to children who find themselves deprived of their rights due to States’ purposeful actions and/or inactions, leaving them on the margins of society, trapped in a life of denials and poverty.

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<sup>296</sup> The communication was submitted to the ACERWC in 2009 on behalf of Nubian children, who are not registered as Kenyans at birth and are subjected to a life of few prospects, filled with uncertainty and deprivations. “Most Nubians live in enclaves of poverty, with no public utilities and limited access to education and healthcare,” being discriminated against by the government as well as by the society in general. The Nubians have been living in Kenya for more than 100 years, but have always been regarded as aliens, having an uncertain citizenship status. In accordance with Kenyan laws, children’s nationality is not recognized at birth, but with their attainment of majority. For Nubian children, however, this is not a legitimate expectation, as they have to “go through a long and complex vetting procedure with an uncertain result. Some will never receive ID cards. Some will get them only after a long delay.” This has been described as “institutionalized discrimination” against Nubians by the Kenyan National Commission on Human Rights, leading to serious human rights violations, marginalization and poverty. The communication submitted to the ACERWC argued that this situation is a violation of the human right to acquire a nationality at birth (article 6 of the African Charter on the Rights and Welfare of the Child), to not be discriminate against (article 3 of the Charter), and to access to education and health care (articles 11(3) and 14 of the Charter). (“Children of Nubian descent in Kenya v. Kenya,” Open Society Justice Initiative, accessed November 01, 2022. <https://www.justiceinitiative.org/litigation/children-nubian-descent-kenya-v-kenya>).

<sup>297</sup> African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *Decision on the Communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) against the Government of Kenya*, No. 002/Com/002/2009, March 22, 2011, paragraph 46.

### Chapter III - Syrian stateless children on the verge of a life of deprivations

“My entire life is a question-mark”

– *Vikash, 23 years old, interviewed by UNHCR in 2015 for the development of the report*

I am here, I belong: the urgent need to end childhood statelessness

Statelessness is not a new issue for Syria and for Syrians. The country has been home to historically stateless populations, such as Kurds, “long-staying stateless migrants from other countries in the region” and individuals who have provable links to Syria but are unable to acquire Syrian nationality due to mainly gender-discriminatory nationality law.<sup>298</sup> This chapter looks into the protracted character of the Syrian war and displacement crisis as a driver of statelessness among Syrian refugee populations in Türkiye, Egypt, Lebanon, Jordan and Iraq, countries that together host more than 80% of all Syrian refugees.<sup>299</sup>

Despite the particularities of different groups of Syrian refugees at risk of statelessness, displacement and host countries’ nationality laws and birth registration procedures are transversal factors increasing their vulnerability to find themselves with no nationality due to their refugee condition. Moreover, such laws and procedures might be decisive in initiating new cases of intergenerational statelessness, especially in a context of protracted displacement crisis. Reviewing these countries' legislations is fundamental to verify the pervasiveness of human rights violations that are the result of the condition of being deprived of a nationality. The last section of this chapter will briefly overview the requirements of the Syrian law for a person who was born abroad to be recognized as a Syrian national. This analysis evidences the graveness of higher levels of vulnerability to statelessness faced by Syrian refugee children.

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<sup>298</sup> ISI and NRC, *Understanding statelessness*, 18.

<sup>299</sup> “Ranking of the largest Syrian refugee-hosting countries in 2020,” Statista, accessed November 9, 2022, <https://www.statista.com/statistics/740233/major-syrian-refugee-hosting-countries-worldwide/>; “Operational data portal: Syria regional refugee response,” United Nations High Commissioner for Refugees (UNHCR), last modified November 3, 2022, accessed November 9, 2022, <https://data.unhcr.org/en/situations/syria>.

## 1. The Syrian conflict and displacement crisis

I am still scared of the warplanes, tanks and what I've experienced during the shelling.  
– 10-year-old, Imad, a Syrian refugee in Bardarash camp in northern Iraq who fled in  
October 2019

The Syrian civil war has turned into a grave displacement crisis ongoing since 2011 and after more than 10 years of war, there are no prospects of reaching a peaceful solution in the near future. As reported by the NRC, “there is little to indicate that the next ten years will be any different for the world’s worst displacement crisis.”<sup>300</sup> Despite its complexity and the variety of actors playing decisive roles for the continuance of the conflicts, for the present thesis it is taken for granted the reasons behind the war, and the motivations and interests of the different national and international actors. The war has been happening for the last 11 years and has been leading to drastic and dire consequences for at least 13 million Syrians, who have been forced to leave their homes, migrating both internally as well as internationally in search of safety and better living conditions.<sup>301</sup>

The actual number of persons in need of humanitarian assistance is almost double, though, as more than 23 million people find themselves relying on humanitarian organizations, both inside Syria and in refugee-hosting countries.<sup>302</sup> These figures make the Syrian crisis a protracted displacement situation, defined by the UNHCR as those situations “where more than 25,000 refugees from the same country of origin have been in exile in a given low- or middle-income host country for at least five consecutive years.”<sup>303</sup> Considering that there are 6.8 million Syrian refugees displaced today, that the conflict and displacement crisis initiated in 2011 and that only

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<sup>300</sup> Norwegian Refugee Council (NRC), *The darkest decade: what displaced Syrians face if the world continues to fail them* (N.p.: NRC, March 2021), 4.

<sup>301</sup> “Eleven years on, mounting challenges push many displaced Syrians to the brink,” United Nations High Commissioner for Refugees (UNHCR), March 15, 2022. <https://www.unhcr.org/news/briefing/2022/3/623055174/eleven-years-mounting-challenges-push-displaced-syrians-brink.html>.

<sup>302</sup> NRC, *The darkest decade*, 4.

<sup>303</sup> UNHCR, *Global Trends 2021*, 20.

in Türkiye they are almost the total refugee population being hosted by the country (3.8 million), the displacement of Syrians shall be regarded as a protracted refugee situation.<sup>304</sup>

In 2021, the UNHCR estimated that the likelihood of Syrians to remain in a protracted refugee situation after the 5 years of displacement is 56% for Syrians in Jordan, 45% in Egypt and 42% in Iraq.<sup>305</sup> The protracted displacement situation of Syrian refugees indicates that there is little sign of possibilities to return home or to fully integrate in the host communities. With worsening economic conditions and the outbreak of the Covid-19 pandemic, meeting basic needs has become even more difficult and discrimination has been on the rise against refugee populations.<sup>306</sup> This evidences why the Norwegian Refugee Council affirmed in 2021 that the prospects for the next 10 years are of continuance rather than improvement of the living conditions and displacement of Syrian families.<sup>307</sup>

Syria has been brought to the brink, with families finding themselves trapped in poverty, with no other option than to send their children to work or to marry their girls early, an utmost expression of desperation and complete absence of possibilities to meet basic needs. The crisis has “a gendered impact, with women and adolescent girls paying a high price for harmful and discriminatory gender norms, including gender-based violence, while men and boys face elevated risks linked to arbitrary detention, forced conscription and explosive ordinance.”<sup>308</sup> There is an accumulated 11 years of human rights violations, not only against children forced to work or to marry, but against all civilians, who have watched their freedom of movement, their abilities to provide for their families, their right to voice their opinions, to work and to actively participate in the society being severely restricted and impaired.<sup>309</sup>

Nowadays, there are at least 6.8 million Syrian refugees displaced in 129 host countries, with Türkiye hosting the majority of them (around 3.7 million).<sup>310</sup> It is estimated that 47% of Syrian refugees are children,<sup>311</sup> being subjected to life-long consequences and having their lives

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<sup>304</sup> UNHCR, *Global Trends 2021*, 2-3.

<sup>305</sup> *Ibid.*, 20-21.

<sup>306</sup> NRC, *The darkest decade*, 7.

<sup>307</sup> *Ibid.*, 4.

<sup>308</sup> United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), *Syrian Arab Republic: 2021 needs and response summary*, March 2021, 3.

<sup>309</sup> NRC, *The darkest decade*, 4.

<sup>310</sup> UNHCR, *Global Trends 2021*, 17.

<sup>311</sup> “Syrian Refugee Crisis Explained,” USA for UNHCR, July 8, 2022, accessed October 11, 2022. <https://www.unrefugees.org/news/syria-refugee-crisis-explained/>.

and perspectives for their futures negatively impacted, because forced displacement is admittedly and undeniably a drastic life-changing event.<sup>312</sup> Even if there was a solution for the conflicts envisaged in the near future, consequences and impacts of what has been lived so far by children of all ages are going to persist for long.

As of March 2020, the United Nations Children's Fund reported that almost 5 million children have been born into the Syrian war since the beginning of the hostilities. Another one million children have been born in the neighboring countries, in refugee-like situations.<sup>313</sup> All of them, inside or abroad, have been extremely vulnerable to a series of grave risks to their well-being, survival and development. Sadly, conflict, war, displacement, insecurity and fear is all they know, feel and see. This makes clear the necessity to address the specificities of children's experience during conflicts and displacement crises, requiring from States and the international community more incisive actions aimed at solving the disputes leading to wars and offering durable solutions for displaced persons.

Children at risk of statelessness represent a small percentage of all children displaced due to the Syrian crisis, as “the child of a Syrian man automatically acquires Syrian nationality whether born within Syria or abroad. (...) However, for refugee children born in exile, the ability to *prove* the link to Syria may be critical to ensuring that their Syrian nationality is recognized in practice.”<sup>314</sup> And exactly because it might be seen as a human rights issue of small proportions it is even more relevant to understand, address and report on the situation of children at risk of statelessness due to being born in host countries. For them, access to birth registration is vital for these children, as it is the evidence of their identity, family links and Syrian nationality.

Before addressing nationality laws and registration systems of neighboring countries hosting Syrian refugees, the next section presents the different groups of Syrian stateless populations or at risk of statelessness, highlighting the specific conditions making children more vulnerable. Because it is difficult to find specific data on stateless populations, as exposed in the first chapter, knowing who are or could be the Syrian stateless is important to have a better notion

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<sup>312</sup> Save the Children, *Anywhere but Syria: how 10 years of conflict left Syria's displaced children without sense of home*, (n.p.: Save the Children, September 2021), 8.

<sup>313</sup> “Almost 5 million children born into war in Syria, 1 million born as refugees in neighbouring countries,” United Nations Children's Fund (UNICEF), March 15, 2022. <https://www.unicef.org/press-releases/almost-5-million-children-born-war-syria-1-million-born-refugees-neighbouring>.

<sup>314</sup> ISI and NRC, *Understanding statelessness*, 6.

of the dimension of the problem for children. The countries under study in this thesis are those sharing borders with Syria and thus receiving great numbers of Syrian refugee families. Legislations of Türkiye, Jordan, Iraq, Lebanon and Egypt will be reviewed, as they are fundamental actors in the reduction or increase of Syrian children's vulnerability to statelessness.

## 2. The Syrian stateless

What we are experiencing is overwhelming, but we can do nothing about it. My children did not even complete their education. They finished elementary school only. Our neighbors finished high school but were given no diploma and were never employed.

– *Dali Muhammad, maktum stateless who lives in Qamishli in Syria*

Statelessness can be found both inside Syria as well as in the neighboring countries hosting Syrian refugees who either were stateless before fleeing the country or find themselves at risk of becoming stateless due to their forced displacement. The Institute on Statelessness and Inclusion (ISI) and the Norwegian Refugee Council (NRC), in a joint research report published in 2016 aiming at understanding statelessness in the Syrian refugee context, found out that there are six groups of persons at heightened risk of statelessness living in neighboring countries (Türkiye, Jordan, Iraq, Lebanon and Egypt). In general, the increased vulnerability of these groups relates mainly to the gender discrimination in Syria's nationality law and to the lack of identity documents.<sup>315</sup>

The gender discrimination in nationality laws, widely practiced in the MENA region, is a leading cause of even greater and more drastic impact on the risks of statelessness in the context of the Syrian war and massive displacement that has been following it. As briefly explained in the first chapter, “when combined with factors such as fathers who are missing or not able to confirm their parentage, marriages that cannot be formalized due to refugees' lack of legal status, lack of birth registration, limited access to documents and the destruction of civil documentation, there is

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<sup>315</sup> ISI and NRC, *Understanding statelessness*, 6-7.



a real danger of a new generation of stateless children being born inside Syria as well as in exile.”<sup>316</sup> Such conditions directly impact children born in the neighboring countries as well as constrain stateless populations who have fled Syria to pass on their statelessness to their children, trapping families in what is called “intergenerational statelessness.”

The six groups reported by the ISI and NRC can be divided into two subgroups, one concerning refugee populations, composed of persons of all ages, and the other concerning children specifically. Table 2. briefly presents who are the refugees and which conditions lead children to be at risk of statelessness. As the focus of this work is on childhood statelessness, a greater emphasis will be given to the last three categories of individuals facing heightened risk to be left stateless. However, understanding the specificities of the categories of persons who were already stateless or lacking documentation before fleeing Syria is also of utmost importance as parents and families’ documentation situation is essential to protect children from statelessness or to initiate a cycle of intergenerational statelessness.

Table 2. *The Syrian at increased risk of statelessness*

<b>Syrian refugees who are</b>	<b>Children born</b>
Undocumented	In host countries not registered within the statutory deadline
Not registered with the UNHCR	Within female-headed households
<i>Maktoum</i> refugees	Within child marriages

*Source:* Institute on Statelessness and Inclusion (ISI) and Norwegian Refugee Council (NRC), *Understanding statelessness in the Syria refugee context: research report* (Oisterwijk: Wolf Legal Publishers (WLP), 2016), 6. Own elaboration.

### 2.1 *Syrian refugees at risk of statelessness*

Undocumented refugees, refugees not registered with the UNHCR and the *Maktoum* refugees as different groups of persons who have fled Syria and due to difficulties to prove their bond with their country of origin, face heightened risks to be stateless in the host countries. These categories include both adults and children who find themselves in a situation where the lack of

<sup>316</sup> Zahra Al Barazi and Jason Tucker, “Challenging the disunity of statelessness in the Middle East and North Africa,” in *Understanding statelessness*, eds. Tendayi Bloom, Katherine Tonkiss, and Phillip Cole (Abingdon, Oxon: Routledge, 2017), 91.

documents from Syria creates a vicious cycle inhibiting their abilities to acquire other necessary and important documents.<sup>317</sup>

Undocumented refugees are those who have been displaced without any document to prove their identity and nationality. In the context of the Syrian civil war, the lack of digitization of civil registration documents makes it impossible for such individuals to request new documents, as many registries and civil registration offices have been destroyed by the conflict. Per se, this situation is already highly problematic. However, the fear of refugees to approach authorities and notify their lack of documents and inability to request new ones increase their risk of statelessness as there will be no record of their actual situation with regards to documentation.<sup>318</sup>

Not only adults fleeing Syria face this issue of lacking documents: in fact, many children who were born there but whose families fled the country before properly registering them or issuing them identity documentation could be regarded as undocumented refugees. The ISI and the NRC reported that “since registering a birth which took place in another country is outside of the jurisdiction of the Civil Status Departments of host countries, registration of these births is more complicated and not always possible.”<sup>319</sup> This means that these children might never be recognized as Syrian nationals, as they do not have any formal documentation to prove their place of birth and parental relations.

Another common situation perceived among undocumented refugees is the loss of documents both during their displacement journeys as well as once they arrive in the host countries. Many settlement structures for refugees are “particularly susceptible to floods and fires, leaving documents at risk of being destroyed,”<sup>320</sup> which evinces the high vulnerability of refugees to threats to their health, well-being and life, as well as with regards to their personal belongings and properties. Loss of documents due to external factors might also go unreported as it might be difficult to access the relevant offices and as the fear of approaching authorities prevents refugees from doing so.

The second group of people who often have problems with identity documents, as reported by the ISI and the NRC, is that of refugees who are not registered with the UNHCR, which plays

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<sup>317</sup> ISI and NRC, *Understanding statelessness*, 40.

<sup>318</sup> Ibid.

<sup>319</sup> Ibid.

<sup>320</sup> Ibid.

a vital role in protecting them. This registration preserves refugees' identity and helps to prove their links with their home countries. In fact, "for undocumented refugees who do not have a residence permit in their place of exile, the registration with UNHCR is often the only process through which their presence in the host State, links with their State of origin and very existence is recorded."<sup>321</sup> More than that, the UN agency provides the possibility of having digitized copies of fundamental life documents, such as birth and marriage certificates, thus offering a simple yet essential solution for the widespread problem of loss of documents among refugees.

It is also important to consider that

without UNHCR registration, refugees can face difficulties accessing humanitarian assistance. This can mean, for instance, that they may have to pay for healthcare. Unregistered families in Northern Lebanon, for example, may resort to homebirths because they cannot afford hospital care. This means that they do not necessarily receive a birth notification which is required in order to register a child's birth, thus increasing the child's risk of statelessness.<sup>322</sup>

Thus, lack of access to healthcare is not only extremely detrimental for children's well-being, growth and development as exposed in chapter II, but it is also deeply related to the provision of important documents and certificates necessary to proceed with the registration of births in host countries.

While specificities of birth registration procedures in different countries will be addressed in the next section, recognizing the links of undocumented parents to future children's statelessness is essential for the comprehension of the role played by such procedures in the prevention of childhood statelessness. Being undocumented and not registered with the UNHCR is thus found to be a driver of childhood statelessness due to the negative consequences over the registration of children's births with authorities and the subsequent lack of birth certificates proving the child's family links and Syrian nationality.

The last category of persons at heightened risk of statelessness reported by the ISI and NRC is that of individuals who were never registered in Syria, and are then ineligible for obtaining national ID cards. The majority of them are Syrian Kurds and they are referred to as the *Maktoum*. After the 1962 census, they were deprived of their Syrian nationality, giving rise to a serious

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<sup>321</sup> ISI and NRC, *Understanding statelessness*, 41.

<sup>322</sup> *Ibid.*

problem of intergenerational statelessness and of inexistence before the State in the absence of any official record about them.<sup>323</sup> This decision of the Syrian government shall be regarded as an act of arbitrary deprivation of nationality against a specific ethnic group, thus amounting also to discrimination.<sup>324</sup> The organization Syrians for Truth and Justice (STJ) estimates that since then around 50,000 *Maktumeen* (plural for *Maktoum*) “succeeded in ‘rectifying’ their legal statuses,” eventually obtaining Syrian nationality. However, there are still 150,000 Syrian Kurds deprived of their nationality, denied fundamental human rights.<sup>325</sup>

Even though some *Maktoum* possess a *taaref* card obtained from local authorities in Syria, it only serves as a basic proof of identity where it was issued, not even being accepted throughout the whole country.<sup>326</sup> It follows, then, that it is not accepted by host countries’ authorities as a document proving one’s identity, despite being an ambiguous document that does not state whether the person is a Syrian national or not. When displaced, as it is the case for undocumented and unregistered refugees, *Maktoum* children born in host countries are more likely to not be registered, besides inheriting the statelessness of their parents.<sup>327</sup>

From the exposed in this section, it is possible to note that children will always find themselves more vulnerable to statelessness, especially when their families and parents are, for different reasons, undocumented. Intergenerational statelessness is a serious problem in the MENA region, deeply affecting Syrian refugees. The next section discusses how Syrian children are also subjected to specific situations that increase their vulnerability to statelessness in the refugee context, especially with regards to the conditions under which they are born.

## 2.2 Childhood statelessness and the importance of birth and marriage registrations

Birth registration, as exposed in this work, is vital for the prevention of statelessness, as it proves who a person is, where she came from, her nationality and who her parents are. Lack of such a registration does not automatically render a child stateless, but it significantly increases its risks, as it provides the basis for States’ recognition of her legal existence, determining her legal

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<sup>323</sup> ISI and NRC, *Understanding statelessness*, 42; Syrians for Truth & Justice (STJ), *Statelessness in Syria: an enduring dilemma* (October 11, 2022), 3.

<sup>324</sup> STJ, *Statelessness in Syria*, 3, 19.

<sup>325</sup> *Ibid.*, 3-4.

<sup>326</sup> See interviews and stories reported by the STJ in their report *Statelessness in Syria: an enduring dilemma* (October 11, 2022).

<sup>327</sup> ISI and NRC, *Understanding statelessness*, 42.

links to the country of nationality. The absence of a birth certificate leaves open the way for States to “dispute a child’s nationality claim in their territory, greatly increasing the risk that the child will not have citizenship ties to any State.”<sup>328</sup> This further increases the risks of statelessness, a circumstance under which unfortunately thousands of children find themselves in the current protracted Syrian displacement crisis.<sup>329</sup>

Each country hosting Syrian refugees has their own rules regarding the registration of children’s birth within their territories, defining specific deadlines by which families have to register their new children. In all countries, not meeting these requirements leads to increased costs and often to lengthy and costly court proceedings in order to be able to register a child and acquire a birth certificate.<sup>330</sup> Complex birth registration procedures, lack of necessary documents required by law and often short deadlines are common drivers of non-registration of Syrian refugee children in host countries and thus of non-registration of these children with Syrian civil registration centers.<sup>331</sup>

The CRC Committee, in its General Comment No. 14 on the best interests of the child, stated that in all decisions affecting children appropriate consideration should be taken of the particularly adverse effects on them of delays in or prolonged decision-making. Because “the passing of time is not perceived in the same way by children and adults,” such delays or lengthy procedures can have detrimental consequences for a child’s development.<sup>332</sup> For example, being left unregistered for long periods of time, which in a child’s perception could be of a year or two, deprives them of health care and services, that are of utmost importance during early childhood. Therefore, court proceedings as well as any procedures regarding children’s identity should be completed in the shortest period of time possible.

In face of this situation, children whose birth is not registered in the host country within the defined deadlines find themselves at increased risk of statelessness, as reported by the ISI and the NRC. Both institutions pointed as a first group of children facing increased risk of statelessness those whose birth cannot be registered because statutory deadlines were not respected. And not

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<sup>328</sup> Nonnenmacher and Cholewinski, “The nexus between statelessness and migration,” 257.

<sup>329</sup> Alice Edwards and Laura van Waas, “Introduction,” in *Nationality and Statelessness under International Law*, eds. Alice Edwards and Laura van Waas (Cambridge: Cambridge University Press, 2014), 4-5; ISI and NRC, *Understanding statelessness*, 35.

<sup>330</sup> ISI and NRC, *Understanding statelessness*, 36.

<sup>331</sup> STJ, *Statelessness in Syria*, 4.

<sup>332</sup> CRC Committee, *General comment No. 14 (2013)*, paragraph 93.

respecting such deadlines poses extra obstacles for families to register their children later, especially in terms of extra expenses in conditions of poverty and deprivation of income-generating activities. Common reasons why parents do not register their children within the statutory deadlines relate to lack of information and awareness about the country's requirements and procedures.

More than that, often such deadlines are not met because families lack the required documents to do so, especially marriage certificates, and are then required to first acquire the missing documents to, only after, be able to register the birth of the child. In many cases, the inability to register a child arises from the lack of a formal marriage certificate recognized by the host country's authorities. As it will be further explained in the next sections, lack of proof of marriage is a major barrier for families to ensure the legal recognition and existence of their children, especially when they are born in refugee conditions.<sup>333</sup>

For example, as reported by the ISI and the NRC, the Syrian tradition of the *Ketb Al Katb* marriage ceremony has been leading to significant documentation gaps in the host countries, as these ceremonies tend not to have a legal standing in the States hosting Syrian refugees and families often take longer to officially register such unions. However, "the official marriage certificate plays a critical role in the registration of the birth of a child who is subsequently born within the union," being required both by host countries and Syrian registration systems.<sup>334</sup> More than that, the physical destruction of registries because of the war, as mentioned earlier, plays an additional challenge, as spouses are not even able to recover possible certificates left behind.

Across the MENA region, a court procedure is usually required in order to register the marriage in the civil registration system of the host country. However, "by the time the marriage certificate is ratified through a court process, the child is often more than 12 months old and the late birth certificate must also be obtained through [another] court process."<sup>335</sup> Combining costs of late birth registration, i.e. after the statutory deadline, with other costs necessary to register marriages, for example, a family may have to have as much as US\$1600 to cover only part of the

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<sup>333</sup> ISI and NRC, *Understanding statelessness*, 27-28.

<sup>334</sup> *Ibid.*, 19; Syrian Arab Republic, *Civil Status Law*, Legislative Decree No. 26, adopted April 12, 2007, unofficial translation.

<sup>335</sup> ISI and NRC, *Understanding statelessness*, 36.

expenses in Jordan,<sup>336</sup> a sum that is highly unlikely for a refugee family to have, considering the living conditions to which they are subjected in host countries.

The second group of children at heightened risk of statelessness regards the ones born within female-headed households. Because the Syrian nationality can only be acquired through paternal *jus sanguinis* when the child is born abroad, being born in the absence of the father significantly increases the chances of a child to be left stateless.<sup>337</sup> If a woman is forcibly displaced from Syria without her husband and gives birth in the host country, she would only be able to register the child's birth if in possession of a marriage certificate recognized and accepted by the host countries' authorities, thus proving the links of the child with a Syrian male-national. This, unfortunately, is not the norm.

As men are more likely to engage in conflicts, be killed, disappear and/or be separated from their families, more families are being left without a male head. In the context of the Syrian displacement crisis and for families that find themselves forced to move without the male head of the household, without their fathers and husbands, the Syrian nationality law “[plays] an even more active role in putting new-born children at risk of statelessness.”<sup>338</sup> When reporting on the risk of statelessness of children born in the neighboring countries, the ISI and the NRC recognized, in 2016, that around 25% of Syrian refugee households were headed by women. In 2018, a study from the UNHCR, UNICEF and the World Food Programme (WFP) reported that 18% of households of Syrian families in Lebanon were headed by women.<sup>339</sup> The STJ also reported on the situation of “children born of rape in detention facilities or at security checkpoints” as a situation increasing the risk of childhood statelessness among refugee Syrian children.<sup>340</sup> In these situations, gender-based violence, violence against women and violation of children's rights aggravate the vulnerability of both mother and child, evidencing the urgency of protecting not only children but also women within forced displacement and immigration contexts.

Syrian nationality can be obtained in accordance with the rules provided by the Legislative Decree 276 of 1989. It states, under article 3 paragraph A, that “anyone born inside or outside the

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<sup>336</sup> ISI and NRC, *Understanding statelessness*, 32-33, 36.

<sup>337</sup> Syrian Arab Republic, *Nationality Law*, Legislative Decree 276, adopted November 24, 1969, article 3(B).

<sup>338</sup> ISI and NRC, *Understanding statelessness*, 37.

<sup>339</sup> United Nations High Commissioner for Refugees (UNHCR), United Nations Children's Fund (UNICEF) and World Food Programme (WFP), *Vulnerability Assessment of Syrian Refugees in Lebanon* (2018), 7. [hereinafter VASyR 2018]

<sup>340</sup> STJ, *Statelessness in Syria*, 5.

country to a Syrian *father*” shall be considered as Syrian.<sup>341</sup> If there is no link established to the father, mothers are only able to confer their Syrian nationality on their children if they are born inside Syria, in accordance with article 3(B) of the decree.<sup>342</sup> From this follows at least three scenarios of increased risk for children to be stateless. First, if the father is unknown, the child will have no access to Syrian nationality and is most likely to be stateless. Second, if the father is Syrian but there are no official documents to prove the marriage and the father is absent to proceed with the registration of the child, it will be really difficult to establish legal paternity and thus ensure Syrian nationality for the child. Third, if marriage documents existed but were lost, there will be more chances to prove paternity, for example through witness testimonies in the host countries, but it is still a very risky situation for children because it depends on host countries authorities accepting such testimonies.<sup>343</sup>

The discriminatory wording of the Legislative Decree 276 of 1989 applied to the different situations of families forcibly displaced from Syria leads to different levels of vulnerability to statelessness for children born in the neighboring countries. The combination of different family conditions and documentation status are the first determinant of the risks faced by children. Host countries’ norms for civil registration of births, marriages and deaths set then the background circumstances that may effectively leave a child stateless, or ensure her nationality. More than that, it is worth recalling that the issuance of a birth certificate by the country where the child was born is *sine qua non* condition for a family to proceed with the child’s registration with Syrian authorities, be them consular authorities in the neighboring countries or national/local authorities back in Syria.<sup>344</sup>

A story of a Syrian refugee who was living in Jordan and was unable to register her child, as reported by the ISI and the NRC, is evidence of how difficult it may be for a mother to register her children:

Amina had married unofficially in Syria and got divorced after only a few months. She then fled to Jordan where she gave birth to the child of her divorced husband. She has not registered her baby boy. She then met and married her new husband in Jordan and got the *Ketb Al Ktab* (Islamic marriage contract). She recognized the importance of registering the

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<sup>341</sup> Syrian Arab Republic, *Nationality Law*, article 3(A), emphasis added.

<sup>342</sup> *Ibid.*, article 3(B).

<sup>343</sup> ISI and NRC, *Understanding statelessness*, 37.

<sup>344</sup> Syrian Arab Republic, *Civil Status Law*, article 14, unofficial translation.



marriage, but when she tried to, she was told that she needed to prove that she was divorced. She could not do this, and could only register her new marriage after making an oath in court that she had never been married before. She has not spoken to or heard news of the father of the child for over three years and therefore because she has made an oath in court that she has never been married, legally her child is unlikely to ever establish the link to his Syrian father.<sup>345</sup>

Situations like this demonstrate the delicate situation and inhumane discrimination faced by mothers in host countries and demonstrate the urgent need of changing and ending discriminatory laws and practices against women, abiding by the provisions of the CEDAW. As mentioned in the first chapter, CEDAW's article 9, paragraph 1, states that Parties to the Convention "shall grant women equal rights with men with respect to the nationality of their children,"<sup>346</sup> a norm that, if respected and implemented, would directly prevent the issue of childhood statelessness, by removing the impossibility of mothers to pass on their nationality.

Unfortunately, the Syrian Arab Republic, when acceding to the CEDAW in 2003, made a reservation with regards to this specific provision, meaning that the country is not bound by it and therefore it is not obliged to pursue changes in its legislation in order to eliminate discrimination against women with respect to the granting of nationality to children.<sup>347</sup> It is worth noting that Syria is also a Party to the CRC and that it has made no reservations to the provisions of its articles 7 and 8.<sup>348</sup> This shines some light on the safeguards against childhood statelessness that the State should implement in its national legislations. The next section will briefly present the nationality laws of Türkiye, Egypt, Lebanon, Jordan and Iraq, allowing a more comprehensive understanding on the risk of statelessness of children born in their territories due to gender discrimination as well as to the absence of safeguards against childhood statelessness.

The third and last category of children facing increased risk of statelessness, as reported by the ISI and the NRC, refers to those children who are born within child, early and forced

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<sup>345</sup> ISI and NRC, *Understanding statelessness*, 38.

<sup>346</sup> CEDAW, *supra* note 113, article 9(1).

<sup>347</sup> "Status of Treaties: Convention on the Elimination of All Forms of Discrimination against Women," United Nations Treaty Collection (UNTC), accessed September 29, 2022. [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en).

<sup>348</sup> "Status of Treaties: Convention on the Rights of the Child," United Nations Treaty Collection (UNTC), accessed September 29, 2022. [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en).

marriages.<sup>349</sup> One of the main issues driving childhood statelessness in this situation is the fact that such unions are more likely to be unregistered, as well as of being considered illegal, thus preventing couples from registering their children.<sup>350</sup> In general, “political unrest and widespread insecurity not only pose specific threats to children’s overall safety and to their educational, economic, and human rights, but also threaten their right to postpone marriage until adulthood.”<sup>351</sup>

Humanitarian crises exacerbate the risks of child marriage by subjecting families and the girl child to worsened living conditions. Conflicts increase poverty and insecurity of displaced families, increase the risks of sexual violence and GBV against women and girls, reduce their freedom of movement and limit their access to education and health services, especially on reproductive health. All of these situations are driving factors of child marriages, as “families and parents may see child marriage as a coping mechanism to deal with increased economic hardship, to protect girls from sexual violence, and/or to protect the honor of the family in response to the disruption of social networks and routines.”<sup>352</sup>

With the Syrian war and displacement crisis, girls have been married off at younger ages than what used to be practiced in Syria. More than that, increased insecurity has been leading families to weaken the thoroughness of investigations regarding the character and background of the potential husbands, a situation that exposes the girls to even higher risks to their well-being, health and integrity.<sup>353</sup> Child marriages in humanitarian settings are a drastic consequence of the living conditions families are subjected to when displaced, completely depriving girls of any measures that could safeguard their best interests and significantly increasing the risks of children to statelessness.<sup>354</sup>

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<sup>349</sup> Child marriages are a harmful practice violating children’s rights around the world, and as such the impacts on both married girls as well as on their children are even worse and more dreadful. In terms of child pregnancy, the consequences of marrying at an early age and engaging in sexual activity, often forced, are devastating for the girls. “Becoming pregnant and giving birth increase the health risk for both mother and child – rates of stillbirths and newborn deaths are substantially higher for girls than for adult women, and girls and 15 are five times more likely to die in childbirth than a grown woman is.” (Save the Children, *Too young to wed*, 8).

<sup>350</sup> ISI and NRC, *Understanding statelessness*, 38-39.

<sup>351</sup> ESCWA, *Child marriage in humanitarian settings*, 6.

<sup>352</sup> United Nations Population Fund (UNFPA) et al., *Child marriage in humanitarian settings: spotlight on the situation in the Arab region*, (June 30, 2018), 3-4. See Annex 3 for specific legislation of countries under analysis in this thesis regarding marriage and child marriages.

<sup>353</sup> Save the Children, *Too young to wed*, 6.

<sup>354</sup> Save the Children, *Too young to wed*, 7.

Based on the research report from the ISI and the NRC, lack of birth and marriage certificates poses significant obstacles in the acquisition of nationality by children born in the territories of neighboring countries that have been hosting Syrian refugees for more than a decade now. National laws, coping mechanisms to overcome drastic living conditions in camps and traditional practices, such as the *Ketb Al Katb* and child marriages, are significant factors contributing to the increase of refugee children's vulnerability to statelessness. The next section presents an overview on the nationality laws and birth registration procedures in the neighboring countries hosting Syrian refugees, namely Jordan, Lebanon, Türkiye, Egypt and Iraq, as they are fundamental actors in the prevention of Syrian refugee children's vulnerability to statelessness.

### **3. Nationality laws and birth registration: safeguards against statelessness**

If they don't have a birth certificate, it's like they don't exist.

– *A Syrian refugee father quoted by the UNHCR in 2015*

Nationality laws, as well as status of ratification of the main international treaties relating to statelessness, of Jordan, Lebanon, Türkiye, Egypt and Iraq will be briefly reviewed, as they are the main countries impacting the risks of statelessness of Syrian refugee children, especially the ones born in their territories. Their domestic legislations and procedures to register new births are fundamental to protect Syrian refugee children living in their territories from being stateless.

A first step in the consideration of safeguards against statelessness of children is to look at the conventions ratified by the countries under analysis. Table 3 presents a visual overview on the ratification and/or accession of conventions relevant to the topic under consideration in this thesis. It is not an exhaustive list with all possible conventions which tackles the right to a nationality, but rather a selection of documents with greater impact on children's rights to a nationality in host countries. Countries marked with a "X" are Parties to the instruments and in cases reservations have been placed on relevant articles relating to nationality, it is signaled with an asterisk (\*).

As it can be noted, none of the concerned States are Party to the 1961 Convention on the Reduction of Statelessness, therefore not being bound to its provisions, especially articles 1 to 4,

which would directly impact on the avoidance of statelessness of children born within their territories.<sup>355</sup> At the same time, being Party to the CRC binds all of them to the obligation of ensuring all children are registered immediately after birth, acquiring a nationality. These rights shall be implemented “in particular where the child would otherwise be stateless.”<sup>356</sup> More than that, they also are also bound to the obligations of respecting and protecting the identity of a child, composed of her nationality, name and family relations.<sup>357</sup> Based on articles 7 and 8 of the CRC, it is expected that States Parties would provide safeguards against statelessness of children in their nationality laws, ensuring some kind of *jus soli* acquisition of their nationality in case children would otherwise be stateless.

The CEDAW, complementing provisions to protect children from statelessness, requires that its States Parties “grant women equal rights with men with respect to the nationality of their children,” tackling the discriminatory wording of many nationality laws that forbid mothers from passing on their nationality to their children,<sup>358</sup> as it is the case of the Syrian law. It is noted with concern, as mentioned in the previous section, that Syrian, Jordan and Lebanon have placed reservations specifically on the provisions of article 9, paragraph 2 of the CEDAW, releasing themselves from its obligations.<sup>359</sup> By doing so, it would not be possible to require the implementation of these provisions in their territories, for example through the amendment of current national legislations or enactment of new laws.

Table 3. *Ratification status of international Conventions relating to childhood statelessness*

	Syria	Jordan	Lebanon	Türkiye	Egypt	Iraq
<b>1954 Convention</b>				X		
<b>1961 Convention</b>						
<b>CRC</b>	X	X	X	X	X	X
<b>CEDAW</b>	X*	X*	X*	X	X	X

Source: Office of the High Commissioner for Human Rights (OHCHR), *Status of ratification: interactive dashboard*, accessed October 4, 2022; United Nations Treaty Collection (UNTC), *Convention on the Elimination of All Forms of Discrimination against Women*, accessed October 4, 2022. Own elaboration.

<sup>355</sup> 1961 Convention, *supra* note 79, articles 1-4.

<sup>356</sup> CRC, *supra* note 57, article 7.

<sup>357</sup> CRC, *supra* note 57, article 8.

<sup>358</sup> CEDAW, *supra* note 113, article 9(2).

<sup>359</sup> Jordan declared that it did not consider itself bound by the provisions of article 9, paragraph 2, while Lebanon and Syria entered reservations on this specific article. (“Status of Treaties: Convention on the Elimination of All Forms of Discrimination against Women,” UNTC, accessed October 4, 2022.)

Considering the binding nature of international conventions and based on the ratification status of these instruments by the countries under analysis, it is possible to note that childhood statelessness would be prevented under their jurisdictions mainly through the provisions of the CRC and, in some cases (Türkiye, Iraq and Egypt) also through the CEDAW obligations. Not being Parties to the 1961 Convention on the Reduction of Statelessness, however, reduces the expectations as well as the obligations of these countries to provide and ensure in their legislations important safeguards against childhood statelessness.

### *3.1 Nationality laws in Türkiye, Egypt, Lebanon, Jordan and Iraq*

It is important to go through nationality laws as well as the civil status laws in Türkiye, Egypt, Lebanon, Jordan and Iraq, as both of them have direct consequences over foreign children being born in their territories. Laws that allow the acquisition of nationality based on *jus soli* are an important first step in the prevention of childhood statelessness, as it grants the State's nationality by the simple fact of being born in its territory. On the other hand, discriminatory laws and laws based *only* on *jus sanguinis* pose greater obstacles to protect children from statelessness when they are born in from refugee, asylum seeker and migrant parents.

If children born in their territories do not acquire the nationality of their parents – which is the case especially for children born from a Syrian mother with no possible way to prove the links with a Syrian *father*, they will be left stateless if there will not be safeguards against statelessness in the host countries' legislations. More than that, looking at these laws is relevant considering that there are also a great number of refugees who marry nationals of the host countries, their children being subjected to both Syrian nationality law as well as to the law of the other spouse.<sup>360</sup>

Türkiye, under law 5901 of 2009, established that Turkish nationality can be obtained by birth or after birth, a situation that would require a request before competent authorities who are responsible for deciding on the acquisition of nationality in later moments in life. At birth, children born from Turkish parents (either the mother or the father being Turkish citizens), in Türkiye or abroad, will be considered as Turkish citizens as well.<sup>361</sup> The law also prescribes that children who

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<sup>360</sup> Such a consideration is raised to better evince the relevance of discussing nationality laws of the host countries. However, it is beyond the scope of research of the present master's thesis and will not be further developed.

<sup>361</sup> Republic of Türkiye, *Turkish Citizenship Law*, Act No. 5901, adopted June 12, 2009, articles 5-11.

cannot acquire the nationality of their parents at birth, shall be granted Turkish nationality, under article 8 of the Turkish Citizenship Law (No. 5901 of 2009), that reads “a child born in Türkiye, but acquiring no citizenship from his/her alien mother or alien father acquires Turkish citizenship by birth.”<sup>362</sup> With the provision of this article, the Turkish law prevents childhood statelessness as it ensures the granting of Turkish nationality in cases where children would otherwise be stateless.

Egypt has similar provisions as Türkiye, with respect to a non-discriminatory law. Children acquire Egyptian nationality by descent from both father and mother in accordance with law 26 of 1975, further amended by law 154 of 2004. In 2008, Egypt withdrew its reservation regarding article 9(2) of the CEDAW.<sup>363</sup> However, when it comes to the acquisition of Egyptian nationality by *jus soli* provisions, the law only refers to children born from *unknown* parents, meaning that a child whose parents are known but are unable to pass on their nationality to their children at birth could not be granted Egyptian citizenship.<sup>364</sup>

In Lebanon, decree 15 of 1925 regulates the granting of Lebanese nationality. It was further amended and considers as Lebanese citizens three categories of persons, based on their birth. First, every person born from a Lebanese father is a national.<sup>365</sup> This provision discriminates against Lebanese mothers who face obstacles to pass on their nationality to their children. The permanence of this provision under the Lebanese law, despite the State being Party of the CEDAW, regards to the reservation made upon ratification of the treaty regarding its article 9(2).<sup>366</sup> Second, children born in the territory of the country of unknown parents are also to be considered of Lebanese nationality. Such a provision may be considered as covering the situation of foundlings found in the country, for example. Lastly, children born in Lebanon that do not acquire a foreign nationality at birth, by affiliation, may also be granted the country’s nationality.<sup>367</sup> This may be regarded as a

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<sup>362</sup> Republic of Türkiye, *Turkish Citizenship Law*, article 8.

<sup>363</sup> “Status of Treaties: Convention on the Elimination of All Forms of Discrimination against Women,” UNTC, accessed September 29, 2022.

<sup>364</sup> Arab Republic of Egypt, *Law #154 for Year 2004 - Amending Some Provisions of Law No.26 of 1975 Concerning Egyptian Nationality*, adopted July 14, 2004, article 2.

<sup>365</sup> Republic of Lebanon, *Decree No. 15 on Lebanese Nationality including amendments*, adopted January 19, 1925 and amended by Regulation No. 160 of 1934, No. 122 of 1939 and Law of January 11, 1960, article 1, unofficial translation.

<sup>366</sup> “Lebanon: Discriminatory Nationality Law,” Human Rights Watch, October 3, 2018. <https://www.hrw.org/news/2018/10/03/lebanon-discriminatory-nationality-law>.

<sup>367</sup> Republic of Lebanon, *Decree No. 15*, article 1, unofficial translation.

safeguard against statelessness, allowing children to be granted Lebanese nationality if they would otherwise be stateless.

The provisions under the Jordanian nationality law are similar to those of the Lebanese law, thus recognizing as nationals of the State anyone whose father is Jordanian, those born in Jordan to Jordanian mother and father of unknown nationality or stateless, and those born to unknown parents or foundlings.<sup>368</sup> The provisions are discriminatory against Jordanian mothers who may face significant obstacles to pass on their nationality to their children, as well as they do not provide safeguards against childhood statelessness of children born in the territory of Jordan to non-national parents, as it is the case of Syrian refugees being hosted in the country.

Iraqi nationality law was first defined by law No. 46 of 1963, which was amended in 2006 by law 26. Such an amendment reduced the discrimination against women, by recognizing as Iraqi any child born to an Iraqi father or mother (the previous text recognized only those whose father was Iraqi). Paragraph (b) of the same article provides the granting of Iraqi nationality for children born in Iraq (*jus soli*) to unknown parents and for foundlings. There is no provision regarding children born to known parents that could not acquire their nationality at birth, a situation which is most likely to leave them stateless.<sup>369</sup>

As it is possible to note, “like Syria, all of the host countries favor the conferral of nationality at birth via *jus sanguinis*, i.e. by descent from a national.”<sup>370</sup> The Syrian Legislative Decree 276, as presented in the previous section,<sup>371</sup> recognizes as Syrian nationals those who are born abroad only to Syrian fathers.<sup>372</sup> When it is not possible to prove the link to a Syrian father, the child may find herself at increased risk of statelessness. Safeguards against statelessness, under the Legislative Decree 276, refer only to children born in Syria who do not acquire any other nationality at birth.<sup>373</sup>

The nationality laws of the countries hosting the majority of the Syrian refugees can set significant challenges increasing the risks of a child being left stateless when born in their

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<sup>368</sup> Hashemite Kingdom of Jordan, *Law No. 6 of 1954 on Nationality (last amended 1987)*, adopted January 1, 1954, article 3, unofficial translation.

<sup>369</sup> Republic of Iraq, *Iraqi Nationality Law*, Law 26 of 2006, adopted March 7, 2006, article 3.

<sup>370</sup> ISI and NRC, *Understanding statelessness*, 23.

<sup>371</sup> See pages 89-90 of this thesis.

<sup>372</sup> Syrian Arab Republic, *Nationality Law*, article 3(C).

<sup>373</sup> “Anyone born in the country and was not, at the time of his birth, entitled to acquire a foreign nationality by virtue of his parentage.” (Syrian Arab Republic, *Nationality Law*, article 3(D)).

territories. However, such laws alone are not enough to determine the statelessness of a child. Unfortunately, it is outside the scope of the present thesis to assess the implementation of the laws mentioned for each country under analysis. If such a link cannot be established and proven, then the child will be at increased risk of statelessness, especially if the country where she was born does not have safeguards against childhood statelessness in situations where nationality is not obtained at birth through *jus sanguinis* relations.

Besides nationality laws, access to civil registration services is also of utmost importance under refugee circumstances, as registering births is fundamental to prove a child's link to her country of nationality and who her parents are, *sine qua non* condition to obtain nationality through *jus sanguinis* norms. Without birth registration and birth certificate, children can be left stateless, due to the lack of a basic identity document proving the link between them and the State. By providing reliable information on where the child was born and, as long as possible, the nationality of both parents, the registration provides “important evidence of whether a child can acquire citizenship on the basis of place of birth (*jus soli*) or of descent (*jus sanguinis*).”<sup>374</sup> The next section overviews the procedures required by the States under analysis to register foreign children born in their territories.

### *3.2 Birth registration procedures: proving parentage to Syrian fathers*

In the MENA region, the percentage of children under 5 years whose births were registered is 92%, significantly above the world average of 75%.<sup>375</sup> It does not reflect, though, the experience and realities of refugees living in host countries, as birth registration has been long identified as a core challenge for refugee families. This results from the fact that “national statistics [on birth registration] can mask gaps in level of registration among children who are highly vulnerable,” including “undocumented nationals, refugees and migrants or other groups who are at particular risks of statelessness and of being left behind in the birth registration process.”<sup>376</sup> This is a

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<sup>374</sup> HRC, *Birth registration*, paragraph 23-24.

<sup>375</sup> “Birth registration,” UNICEF, May 2022, <https://data.unicef.org/topic/child-protection/birth-registration/>; UNICEF, *Birth registration for every child by 2030*, 39.

<sup>376</sup> UNICEF, *Birth registration for every child by 2030*, 13.



characteristic of countries plagued by protracted crises and ongoing wars and of their neighboring countries, that welcome and deal with refugees that flee conflict, insecurity and instability.<sup>377</sup>

The UNICEF identifies some barriers and disparities encountered by families to register their children, which are even more expressive in forced displacement situations. Amongst the barriers faced, the most common are “long distances to the nearest registration facility, lack of knowledge about how to register a child, and high fees required for registering a birth or obtaining a birth certificate.”<sup>378</sup> It is important to note that costs regard not only the direct expenditures with institutional fees for example, but also the indirect expenses a family may have to cover, such as those relating to travel and transport to reach the nearest civil registration office.

There is also a recurring problem regarding procedures designed to treat specific groups differently or that impose restrictions on mothers’ ability to register their children by themselves, requiring the fathers’ involvement and presence.<sup>379</sup> However, the right to birth registration is always in the best interest of the child and shall be put in place in conformity with the non-discrimination principle, which “implies that States must ensure access to registration is not undermined by discrimination of any kind, including on the basis of the child’s – or the child’s parents or legal guardian’s – race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”<sup>380</sup> In other words, birth registration should be universal, available to all children, even if they are non-nationals, refugees, asylum seekers or stateless.

The lack of parents’ documentation to fulfill all the requirements of the birth registration procedures is another significant challenge faced by refugee families to register their children. Marriage, divorce and death certificates, for example, “are often essential pieces of evidence that help to establish residency, parentage, identity and nationality.”<sup>381</sup> In the context of forced displacement, lacking documents unfortunately is the rule: many persons “either not take their documents with them or may lose them during or prior [fleeing their country of origin].”<sup>382</sup> This

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<sup>377</sup> UNICEF, *Birth registration for every child by 2030*, 13.

<sup>378</sup> *Ibid.*, 24-25.

<sup>379</sup> *Ibid.*

<sup>380</sup> HRC, *Birth registration*, paragraph 11.

<sup>381</sup> NRC and Tilburg University, *Statelessness and displacement*, 21.

<sup>382</sup> *Ibid.*

creates a vicious cycle of lack of proof of identity, making refugees, for example, unable to prove their link to their country of origin, and their children more prone to being *de facto* stateless.

In the specific context of the Syrian civil war, the fact that the Syrian civil registration system was not digitized exacerbated the loss of documentation of refugees, because they were left with no other option to acquire new documents. The conflict has destroyed entire civil registries in the country, which were the “only record of the existence of Syrian nationals,” proving their links to the country, and of their vital events (such as births, marriages, divorces and deaths).<sup>383</sup> As already discussed, the Syrian tradition of the *Ketb Al Katb* marriage ceremony has also been a factor leading to significant documentation gaps in the host countries, because these ceremonies are not recognized. However, “the official marriage certificate plays a critical role in the registration of the birth of a child who is subsequently born within the union,” and it is usually required by host countries’ registration systems.<sup>384</sup>

Specifically with regards to the neighboring countries hosting the majority of Syrian refugees, it is important to note that almost all of them offer free birth registration for every child. However, compounding with documentation barriers, the lack of services provided inside or in the outskirts of camps where the majority of refugee families reside as well as complex procedures with different statutory deadlines also lead to an increase in the vulnerability of children going unregistered and thus in their risk of becoming stateless.

In Türkiye, Syrian refugees must follow the same procedures required for Turkish citizens, envisaged in the Population Services Law (No. 5490 of April 25, 2006).<sup>385</sup> Births must be notified to the Population and Civil Registry Departments by parents or legal guardians of the child and, in their absence, by grandparents, adult siblings “or other persons accompanying the child.”<sup>386</sup> The registration must take place within thirty days from the date of birth in order to be free of charge and it is necessary to provide to the Population and Civil Registry Departments a birth report issued by the hospital or medical staff who supervised the birth. In case the birth took place without such

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<sup>383</sup> ISI and NRC, *Understanding statelessness*, 19.

<sup>384</sup> *Ibid.*

<sup>385</sup> *Ibid.*, 25.

<sup>386</sup> “Help Türkiye: Birth registration,” United Nations High Commissioner for Refugees (UNHCR), accessed October 10, 2022. <https://help.unhcr.org/turkiye/social-economic-and-civil-matters/birth-registration/>.

supervision, an oral declaration shall be done to the Registry Departments, which will be in charge of investigating the veracity of the statements.<sup>387</sup>

A complicating factor in the birth registration procedure in Türkiye regards the need to provide the marriage certificate together with other identity documents of the parents. Considering the previous situations reported in this research that lead to the absence of a marriage certificate that is accepted by the authorities of host countries, the requirement of this document may pose significant obstacles in the registration of refugee children born in the Turkish territory.

When coupled with the necessity to have a declaration from hospital or medical staff, deliveries that take place at home, without the presence of an accredited doctor or midwife, within unregistered marriages, it is most likely that the child will not be registered. And when births are not registered in Türkiye, children will not possess the International Birth Certificate issued by the Population and Civil Registry Departments, which are internationally recognized in establishing family links and links to the State of the parents' origin, to which nationality the child would be often entitled.<sup>388</sup>

In Egypt, Law No. 12 of 1996, amended by law No. 126 of 2008, promulgated the child law and established the requirements for birth registration procedures. The statutory deadline is of fifteen days from the date of birth to report the birth of a child to the health offices or health departments. The law foresees, as it is common among countries in the region, that the father is the primary responsible for registering the birth of a child. If, by any reason, the birth is not reported by the father and the mother has to do it, the marital relationship must be confirmed through a valid marriage certificate.<sup>389</sup> Once again, the requirement of marriage certificates to proceed with the registration of a child's birth poses significant obstacles to this procedure, increasing the risk of a child being unregistered, undocumented and more vulnerable to statelessness.

At the same time that Law No. 12 facilitates, in certain ways, the registration of children by their fathers, it also requires the provision of the birth notification issued by physicians and/or others licensed to exercise the obstetrical profession, which shall “[confirm] the event, the date of

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<sup>387</sup> Republic of Türkiye, *Population Services Law No. 5490*, adopted April 25, 2006, article 15; “Help Türkiye: Birth registration,” UNHCR.

<sup>388</sup> “Help Türkiye: Birth registration,” UNHCR.

<sup>389</sup> Arab Republic of Egypt, *Law No. 12 of 1996 promulgating the child law amended by Law No. 126 of 2008*, adopted March 25, 1996, articles 14-15.

birth, the name of the newborn’s mother and his [*sic*] sex.”<sup>390</sup> Paradoxically, the mother cannot register the birth by herself without a proof of marriage with the father of the child and his identity, but the birth certificate issued by medical staff who performed the delivery must contain her name, and not that of the father.

For births registered within the statutory deadline, the birth certificate will be issued free of all charges.<sup>391</sup> However, if the family fails to do so, a lengthy registration process will need to be followed by the parents, who need to go to an office of the Egyptian Ministry of Interior’s Civil Registry Committee. This leads to extra costs and the increased risk of the child ending up not registered. Extra documents are required in this procedure, such as photographs of the child and a specific form duly filled.<sup>392</sup> Having to approach other instances of the State apparatus is perceived as a threat for refugee families, irrespective of their legal status and residency in the country, as being in contact with authorities triggers fear of detention, expulsion and deprivation of documents among them.<sup>393</sup>

The situation in Lebanon is even more complex, as the procedure to register children is composed of five steps.<sup>394</sup> An assessment carried out by the NRC in 2015 found out that 92% of the refugees were not able to complete the legal and administrative steps to register the births of their children, with focus on the first three steps of the registration process, as they are “time-sensitive” and must be fulfilled within the statutory deadline of 12 months. These steps are: 1. Receiving a birth notification from the birth attendant; 2. Visiting the *Mukhtar*<sup>395</sup> and getting a birth certificate; and 3. Taking both documentations to the Personal Status Department to proceed with the registration of the birth.<sup>396</sup>

The main reasons why Syrian refugees are not able to fulfill these three steps regards, first, the lack of legal residency in Lebanon that makes them fear traveling and having contact with

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<sup>390</sup> Arab Republic of Egypt, *Law No. 12 of 1996*, article 15.

<sup>391</sup> *Ibid.*, article 17.

<sup>392</sup> ISI and NRC, *Understanding statelessness*, 36; “Help Egypt: Birth certificates for newborns,” United Nations High Commissioner for Refugees (UNHCR), accessed October 10, 2022. <https://help.unhcr.org/egypt/en/birth-certificates-for-newborns/>.

<sup>393</sup> HRC, *Birth registration*, paragraphs 63; Kanics, “Migration, forced displacement, and childhood statelessness,” 213-214.

<sup>394</sup> ISI and NRC, *Understanding statelessness*, 25; Norwegian Refugee Council (NRC), *Birth registration update: the challenges of birth registration in Lebanon for refugees from Syria* (Lebanon: NRC, 2015), 6-7.

<sup>395</sup> The *Mukhtar* is the head of the local government of a town or village in Lebanon.

<sup>396</sup> NRC, *Birth registration update*, 6.

authorities. Many families are also denied documents when they reach out to authorities, even though proof of legal residency is not required in the birth registration's process.<sup>397</sup> Another significant obstacle in the registration process, as it is in the other countries analyzed, is the lack of marriage certificate, required to obtain the birth certificate from the *Mukhtar*, for example.<sup>398</sup> Besides that, it is important to highlight that the NRC reports on the fee of LBP 30,000 to complete the second step and obtain the birth certificate. Such a fee, by itself, is capable of preventing refugee families from completing this second step and risking not finishing the first three steps of the procedure to register children within their first year.<sup>399</sup>

If this deadline is not respected, families are required to go through a court procedure in order to prove the family relationship and register the birth of their children. The ISI and the NRC, in their joint publication of 2016, reported that the costs of the *Sharia* and civil courts combined vary between LBP 500,000 and LBP 1,000,000,<sup>400</sup> depending on the request of DNA tests, for example. Moreover, court procedures could last another 9 to 12 months to be completed, meaning a child remains without a birth certificate for at least 2 years, risking being deprived from accessing basic services, especially those related to healthcare and vaccination, until a birth certificate is issued.<sup>401</sup>

In Jordan, births shall be reported to officials within 30 days from the date of birth free of charges. Once again, if families do not meet this deadline, fees will be charged, what may prevent them from registering their children at all. If one year passes from the birth, a court procedure will then be the only possibility to ensure the issuing of a birth certificate for the child.<sup>402</sup> The Jordanian requirements for birth registration are complex, as personal status regulations are governed by *Sharia* courts.<sup>403</sup> One specific challenge faced by Syrian refugee families is the necessity to provide a formal and valid marriage certificate to register the birth of their children. As already mentioned, traditional practices of marriage in Syria have been leading to the lack of such formal documents

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<sup>397</sup> NRC, *Birth registration update*, 7; "Birth Registration," United Nations High Commissioner for Refugees (UNHCR) and Refugees-lebanon.org, accessed October 10, 2022. <https://www.refugees-lebanon.org/en/section/26/birth-registration>.

<sup>398</sup> NRC, *Birth registration update*, 7.

<sup>399</sup> Approximately US\$ 20. (NRC, *Birth registration update*, 13).

<sup>400</sup> Approximately US\$ 300 to US\$ 700.

<sup>401</sup> ISI and NRC, *Understanding statelessness*, 32.

<sup>402</sup> ISI and NRC, *Understanding statelessness*, 36; Hashemite Kingdom of Jordan, *Civil Status Law No. 9 of 2001*, adopted March 18, 2001, article 13, unofficial translation.

<sup>403</sup> ISI and NRC, *Understanding statelessness*, 25.

and, because they are required to proceed with civil registration processes, many children go unregistered.

In fact, “a Syrian refugee who married informally in Syria in accordance with Syrian custom but who had a child born in Jordan must first have the Syrian marriage ratified through a complicated Jordanian court proceeding before they can obtain a birth certificate for the child of the marriage. If the child is 12 months or older, the parents must go to court to have the birth certificate issued and may be financially penalized for late birth registration.”<sup>404</sup> If the parents start the procedure to register their marriage after the child is born, by the time the marriage certificate will be obtained through the court proceedings, the child will for sure be older than one year, therefore being necessary to start a second court procedure to register the birth.<sup>405</sup> Going through two court proceedings significantly increases the costs families have to bear in order to ensure the registration of their children, again increasing the chances of families not concluding the procedures and leaving their children unregistered.

Finally, in the KRI there are similar rules as those of Jordan. The statutory deadline to register a birth is 45 days, after which a court procedure is necessary to obtain a birth certificate, under the costs of at least 35,000 Iraqi dinars.<sup>406</sup> However, there are specific challenges related to the fact that different governorates might apply some different norms for example with regards to the necessary documents to be delivered to start the procedure of birth registration.<sup>407</sup> The place of birth (inside or outside a health establishment, being attended by a doctor or not), in accordance with Law No. 148 of 1971, also changes the requirements of registration as only doctors or midwives are able to provide birth notifications, for example.<sup>408</sup>

Besides that, Iraqi law poses some challenges to the cases where children are born out of wedlock or when parents are not able to prove their marriage, and where mothers do not deliver their children in health facilities, therefore lacking necessary documents to proceed with their registration.<sup>409</sup> Whenever and wherever court proceedings are necessary, families find themselves

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<sup>404</sup> ISI and NRC, *Understanding statelessness*, 25.

<sup>405</sup> *Ibid.*, 36.

<sup>406</sup> Approximately US\$ 30. (ISI and NRC, *Understanding statelessness*, 32).

<sup>407</sup> “Help Iraq: Birth registration,” United Nations High Commissioner for Refugees (UNHRC), accessed October 10, 2022. <https://help.unhcr.org/iraq/en/rights-and-obligations/birth-registration/>.

<sup>408</sup> Adnan S. Al-Rabie, “Registration of vital events in Iraq,” *International Institute for Vital Registration and Statistics*, No. 10. September 1980, 2.

<sup>409</sup> ISI and NRC, *Understanding statelessness*, 25.

constrained not only by financial burdens, but also by the fear of approaching authorities and having to provide documents regarding their situation and legal residency in the country. In face of such situations, it is most likely that children will go unregistered and be, therefore, exposed to increased risks of becoming stateless.

The brief overview provided in this section on nationality laws and birth registration procedures in the countries of interest to the case study being presented in this thesis helps to verify how States' sovereignty and power to decide on the procedures according to which they will grant their nationality to children significantly increase the risks of refugee children who are born abroad to become stateless. Without safeguards in nationality laws ensuring children will acquire nationality by *jus soli* if they do not acquire their parents' nationality by *jus sanguinis* at birth, refugee children born in the territories of neighboring countries hosting Syrian refugees are for sure more vulnerable to statelessness. More than that, complicated registration systems, with different statutory deadlines and requirements, increase the chances of children of refugee families going unregistered.<sup>410</sup>

Table 4 summarizes what would be the nationality acquired at birth of children born in the host countries, in the cases where they have a Syrian father present or where they only have their Syrian mothers, and some of the requirements for birth registration in Türkiye, Egypt, Lebanon, Jordan and Iraq. Even though the registration procedures in some countries might require extra documents or steps for a child to be registered, as explained in this section, the table focuses on the common requirements among the five countries considered. Lack of documents proving parents' nationality and/or marriage negatively impacts the registration procedure of their children. Not being registered increases children's invisibility, as they will not be legally recognized by any State, what in turn will increase their risks of becoming stateless.

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<sup>410</sup> NRC and Tilburg University, *Statelessness and displacement*, 19-20.

Table 4. *Nationality acquired at birth and registration requirements in Türkiye, Egypt, Lebanon, Jordan and Iraq (KRI) of children with one or both parents of Syrian nationality*

	Nationality at birth <sup>1</sup>			Documents required		Registration procedures		
	Both Syrian parents	Only Syrian father	Only Syrian mother	Civil marriage certificate	Birth notification <sup>2</sup>	Statutory deadline	Costs	Late registration
Türkiye	SRY	SRY	TUR	YES	YES	30 days	Free	Fees
Egypt	SYR	SYR	No nationality	YES	YES	15 days	Free	Extra costs; registration with Civil Registry Committee of the Egyptian Ministry of Interior
Lebanon	SYR	SYR	LEB	YES	YES	12 months	Fees <sup>3</sup>	Extra costs, court procedures
Jordan	SYR	SYR	No nationality	YES	YES	30 days	Free	Fees before 1 year; court procedures and extra costs after 1 year
Iraq (KRI)	SYR	SYR	No nationality	YES	YES	45 days	Free	Fees; court procedures

<sup>1</sup> Nationality that should be obtained at birth.

<sup>2</sup> Issued by hospital, medical staff or authorized midwife who attended the birth

<sup>3</sup> Obtaining a birth certificate from the *Mukhtar* costs up to LBP 30,000.

Source: Institute on Statelessness and Inclusion (ISI) and Norwegian Refugee Council (NRC), *Understanding statelessness in the Syria refugee context: research report*. Oisterwijk: Wolf Legal Publishers (WLP), 2016. Own elaboration.

As it was exposed, Syrian refugee families face significant challenges to register their children in host countries, which leads to a risk of leaving their stateless and preventing future return to Syria, as it would not be possible to prove families' links and links to the Syrian State without valid identity documents, such as the birth certificate. Access to documentation plays a vital role in accessing and enjoying human rights, not only while displaced, but also in Syria, as they are needed to enroll children in school, for example. It is also fundamental to ensure the safe migration, true safe pathways.<sup>411</sup> In this sense, registering births is not only a formality of national civil systems, but a gateway to a dignified, protected and free life.

<sup>411</sup> Norwegian Refugee Council (NRC), "Syrian refugees' right to legal identity: implication for return," *Briefing Note*, January 26, 2017, 3-4.



#### 4. Securing Syrian nationality for Syrian children born abroad

My biggest fear is that my children will never see their country. If they cannot prove that they are Syrian, they may never be allowed back. I want them to be Syrian; I want them to be able to go back.

– *Syrian mother interviewed by the Institute on Statelessness and Inclusion and the Norwegian Refugee Council in 2016*

Recognition of Syrian nationality of children who were born abroad to Syrian parents is not automatic. Rather, the parents have to request at a Syrian embassy or consulate the registration of the child in the Syrian civil registry, following the norms prescribed for in the Syrian Civil Status Law adopted by the Legislative Decree No. 26 of 2007. By doing so, families should be able to acquire an updated family booklet, with the name of the new child or children, who will then be recognized as Syrian nationals.

The family booklet is of vital importance in Syria, as it records who are the members of a family, being the document asked, for example, to enroll children in schools.<sup>412</sup> Access to and enjoyment of fundamental human rights in Syria are linked to the possession of an updated family booklet containing the main information of every member of a family, thus protecting their identity. More than that, it is the most important evidence for displaced families of parental identity and marital status, as it is the basis for obtaining other civil documents and to apply for residency in host countries.<sup>413</sup>

In order for a child who was born abroad to be recognized as a Syrian national by the government of Syria, article 17 of the Legislative Decree No. 26 states that Syrian families must follow the birth registration procedures of the country where the child was born, thus not interfering with their requirements. In this sense, a birth certificate must necessarily be obtained from national authorities of host countries.<sup>414</sup> Article 14 provides that documentary evidence of the occurrence of the birth must be submitted to embassy or consulate officials within 90 days, counting from the day after the birth. Such evidence is composed of the birth notification, issued

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<sup>412</sup> NRC, “Syrian refugees’ right to legal identity,” 2-3.

<sup>413</sup> *Ibid.*, 1; Martin Clutterbuck et al., “Establishing legal identity for displaced Syrians,” *Forced Migration Review*, 57 (February 2018): 59.

<sup>414</sup> Martin Clutterbuck et al., “Establishing legal identity for displaced Syrians,” 60; Syrian Arab Republic, *Civil Status Law*, article 17, unofficial translation.

by the hospital or medical staff who attended the birth, and of the birth certificate. If registration does not take place within this statutory deadline, fines to proceed with the registration will be charged.<sup>415</sup> Article 28 further complements the requirements by stating that “in the event that a child is born of an unregistered marriage, it may not be registered until after the marriage has been duly registered.”<sup>416</sup> The submission of the family booklet, which is required, is a way to prove the parents identity and that the marriage was registered in Syria, even though it does not replace the marriage certificate within the required documentation.<sup>417</sup>

Three important considerations must be made with regard to the Syrian legislation. First, considering the complexity and obstacles exposed in the previous section concerning birth registration procedures in the host countries, it is evident that in itself it shall be a significant impediment for the recognition of the child as a Syrian national. If families cannot complete the registration in the host countries, they will not be able to proceed with the registration of the child with Syria. More than that, it is unlikely that the birth certificate will be issued by the host country before the three-months deadline imposed by the Syrian Civil Status Law, thus refugee families are doomed to pay the fines for late registration.

The second important reflection refers to the necessity to approach Syrian authorities in the host countries. This is, mentioned earlier, a recognized relevant factor preventing many families from registering their children with the Syrian government due to fear of repercussions that could lead to their own detection and put them at risk of continued persecution and even of deportation.<sup>418</sup> Once again, the fear triggered by being in contact with authorities paralyzes parents and prevents parents from guaranteeing their children’s legal existence both in the host country and in the country of origin.

Thirdly, the same obstacles to registering the birth of children with host countries’ authorities apply to the process of requesting the registration of a Syrian child in the Syrian civil registry. For example, costs related to travel until Syrian embassies and consulates might be prohibitive for refugee families. Restrictions on freedom of movement, especially considering that

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<sup>415</sup> Syrian Arab Republic, *Civil Status Law*, article 14, unofficial translation.

<sup>416</sup> *Ibid.*, article 28, unofficial translation.

<sup>417</sup> United Nations High Commissioner for Refugees (UNHRC) and the Ministry of Interior/General Directorate of Civil Affairs of the Syrian Arab Republic, *Civil Documentation and Registration in the Syrian Arab Republic*, accessed November 9, 2022, 21-22.

<sup>418</sup> HRC, *Birth registration*, paragraphs 63; Kanics, “Migration, forced displacement, and childhood statelessness,” 213-214; Martin Clutterbuck et al., “Establishing legal identity for displaced Syrians,” 60.

many families cannot leave refugee camps, risking being arrested, forbid them from going to the main cities where official diplomatic representation of countries usually are located. Unfortunately, the necessity to provide parents' marriage certificates is a serious factor that often impedes children's registration, regardless of other obstacles refugee families might face.

Additionally, the Syrian law requires that the request to register a Syrian child who was born abroad be done within three months from the date of birth, also prescribing fines for late registrations.<sup>419</sup> The complete process of registering a new child and ensuring that she will acquire Syrian nationality is thus even more complex and most likely not to take place, as in the end families have to follow two different procedures, with different statutory deadlines and documentation specificities. It may be extremely difficult for Syrian refugee families to understand, keep track and fulfill all different requirements of different documents with different statutory deadlines. As a result, the child will be left unregistered, legally invisible and stateless.

It is also worth mentioning, as pointed out by the Norwegian Refugee Council, that "Syrian families are concerned that children without a birth certificate will be unable to return to Syria, putting family unity at risk."<sup>420</sup> This is a well-founded fear of refugee families, since valid identity documentation is a precondition for safe migration, freedom of movement and for ensuring family cohesiveness while in displacement.<sup>421</sup> In the words of the NRC, "possession of civil documentation, such as national identification documents, family booklets, passports, birth certificates, and marriage certificates, are essential building blocks on the road to recovery, return, and durable solutions to displacement."<sup>422</sup>

While many Syrian families dream of going back to their home country once there will be peace, the fact that many Syrian children who have been born in host countries lack basic identity documents and cannot prove their links to the Syrian State prevents them from considering a safe return to Syria. Being at risk of statelessness by lacking minimum vital documentation to prove one's identity could become a significant obstacle to ensure durable solutions to the Syrian displacement crisis, especially because it has been going on for 11 years, being qualified as

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<sup>419</sup> UNHRC and the Ministry of Interior/General Directorate of Civil Affairs of the Syrian Arab Republic, *Civil Documentation and Registration*, 21; NRC, "Syrian refugees' right to legal identity," 2.

<sup>420</sup> NRC, "Syrian refugees' right to legal identity," 3.

<sup>421</sup> NRC, *The darkest decade*, 15.

<sup>422</sup> *Ibid.*, 14.

protracted displacement.<sup>423</sup> In the long-term, not only children's future, but also their families' futures are severely affected and impaired by childhood statelessness.

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<sup>423</sup> NRC, "Syrian refugees' right to legal identity," 4.

## Final considerations

Statelessness is self-inflicted, and it is actually man-made. Therefore, if it is man-made, the solutions are also man-made; they can actually be achieved. (...) However, unless the political discourse changes, unless political commitment is there, we are definitely not going to make much progress in terms of eradicating childhood statelessness.

– *Benyam Dawit Mezmur, Member of the UN Committee on the Rights of the Child, when interviewed by Maria Jose Recalde Vela in 2016*

This master's thesis presented the specific vulnerabilities of refugee children at risk of statelessness due to being born in host countries. It looked into the situation of Syrian refugees living in neighboring countries, namely Türkiye, Jordan, Iraq, Lebanon and Egypt, as to evince the relevance of nationality laws and birth registration procedures to prevent and eliminate childhood statelessness. Through the review of their laws and procedures, it was possible to assess how Syrian refugee children born in host countries find themselves more vulnerable to become stateless.

Children, due to their level of maturity, dependency towards adults and developmental stages, are entitled to special protections under international human rights law.<sup>424</sup> They must be taken care of, being entitled to protective public policies and measures, with respect to their specific needs in different contexts and in accordance with their best interests. Being a refugee, unfortunately, irrespective of having this status recognized, poses extra challenges to children's well-being and healthy growth. When refugee conditions are compounded by statelessness, children's human rights are faced by an abyss of possible and probable violations, abuses and exploitations.

A stateless child, be it *de jure* or *de facto* statelessness, is deprived of essential services and necessities for her holistic development, namely health care and life-saving immunization campaigns, education, adequate standards of living, caring and protective environments. She will also be highly vulnerable to harmful practices, such as child, early and forced marriages; to trafficking and sexual exploitation; to economic exploitation and child labor, including hazardous forms of work; and to deprivation of liberty and arbitrary detention, under conditions that often

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<sup>424</sup> See provisions under the UDHR, ICCPR, CRC, ICMW, ICERD, CEDAW, the 1961 Convention.

harm their physical, mental and psychosocial health, amounting to torture and ill-treatment. Statelessness worsens living conditions of refugee families and can lead to intergenerational cycles of poverty, subjecting children to standards of living that are insufficient to meet their basic needs for a full and healthy development. This not rarely results in poor academic achievement and time out of work, substance abuse and smoking, and depression, anxiety and post-traumatic stress disorder later in life.

Accessing human rights is a matter directly provided by States. When States fail, when public authorities deprive refugee and stateless children from basic services and fundamental rights, they actively harm their existence, compounding their invisibility and reinforcing life-long consequences. What is thus evident is that States are in fact active actors provoking the hardships stateless children are subjected to. This is especially the case of children who could have a citizen status but end up as *de facto* stateless due to discriminatory nationality laws and complex registration systems. States, rather than protecting children, become a source of injustice and oppression, denying children not only their fundamental human rights, but also a recognized, protected and dignified existence.

Evidencing that nationality laws in the MENA region are often gender-discriminatory and that birth registration procedures are complex raises concerns regarding the nationalization of human rights. Children's invisibility, a drastic consequence of statelessness and of being on the margins of society, for example, is a result of States' choices to leave children unprotected. In other words, invisibility is "the *result* of State strategy toward particular groups of children."<sup>425</sup> It is concluded then that nationality should be less fundamental to the enjoyment of protection and rights, especially vis-à-vis the severe violation of human rights suffered by children who are also refugee and stateless.

From the research undertaken in this master's thesis, further studies are needed to better assess, measure and address the magnitude of the problem of childhood statelessness in the context of being a refugee in host countries. It would be of great relevance to check the implementation of the nationality laws and birth registration procedures presented for each of the six countries (Syria, Türkiye, Jordan, Iraq, Lebanon and Egypt). This could evince different levels of discrimination against, exclusion and marginalization of refugee families in host countries, including when

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<sup>425</sup> Bhabha, "From citizen to migrant," 23.

perpetrated by States' authorities against what is envisaged in national legislation. It is important to reinforce, though, that granting nationality does not solve all the problems arising from statelessness, as enjoyment of human rights and protections also relates to inclusion and participation in the society, to not being discriminated against, nor excluded from social, political, cultural and economic life of the country where one lives.

In this sense, researching also the effective implementation of international law provisions to which the States taken into consideration in this work are Parties (such as the Conventions on refugees and on statelessness, the ICCPR, CRC, CEDAW, ICMW, ICERD, among others) and assessing how these international law frameworks interrelate with the real situation of children being left stateless is necessary to suggest possible ways to solve the main gaps fostering statelessness in the world. It is recalled that tackling the marginalization, exclusion and discrimination of stateless persons should be on the basis of any proposed solution to childhood statelessness, as they are the root causes of how stateless persons become stateless.

In situations of protracted refugee situation, as it is the case of Syrian families, the statelessness of children due to being born abroad and thus not acquiring a nationality can be the first step into a vicious cycle leading to intergenerational statelessness and subjecting future generations to poverty. There is a great risk of having an entire generation of Syrian children deprived of their fundamental rights, due to have been born in host countries and having even less rights than their registered counterparts who are recognized as Syrian nationals. And as recalled in this thesis, being stateless will never be in the best interest of a child and will always lead to a series of grave human rights violations and life-long harmful consequences.

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## Annex 1. International and regional documents relating to statelessness<sup>426</sup>

Document	Adoption	Relevant provisions
American Declaration of the Rights and Duties of Man	2 May 1948	Art. XIX - the right to a nationality and to change it
Universal Declaration of Human Rights (UDHR)	10 December 1948	Art. 15 - the right to a nationality
Conv. on the Nationality of Married Women	29 January 1957	Art. 1 - contraction and dissolution of marriages between nationals and aliens should not automatically affect the nationality of the wife Art. 2 - wives' nationality should not be affected by voluntary acquisition or renunciation of nationality by the husband
Convention on the Nationality of Married Women	20 February 1957	Despite not having specific provisions on the right to nationality of children, it is fundamental for the protection of women's right to a nationality, what directly impacts the acquisition of nationality of children
Intl. Conv. on the Elimination of All Forms of Racial Discrimination (ICERD)	21 December 1965	Art. 3 - provisions of States Parties regarding nationality, citizenship and naturalization should not discriminate against any particular nationality Art. 5 - elimination of racial discrimination in all its forms, guaranteeing, among others, political rights and the right to a nationality
Intl. Covenant on Civil and Political Rights (ICCPR)	19 December 1966	Art. 2 - non-discrimination Art. 3 - equality between women and men in the enjoyment of rights Art. 24 - the right of children to be registered "immediately after birth" and to acquire a nationality Art. 26 - equality before the law without any discrimination

<sup>426</sup> It is not an exhaustive list of international human rights instruments with provisions that protect children from statelessness, but it gives an important and broad overview on how many international organizations have already adopted norms that reinforce safeguards against childhood statelessness.



<b>Document</b>	<b>Adoption</b>	<b>Relevant provisions</b>
American Convention on Human Rights (ACHR)	22 November 1969	Art. 1 - non-discrimination Art. 20 - the right to a nationality and prohibition of arbitrary deprivation of nationality. <i>*the ACHR has a safeguard against statelessness by clearly stating that “every person has the right to the nationality of the state in whose territory he [sic] was born if he does not have the right to any other nationality”<sup>427</sup></i>
Conv. on the Elimination of All Forms of Discrimination Against Women (CEDAW)	18 December 1979	Art. 9 - equality of rights “to acquire, change or retain nationality”; marriage to an alien, changes of nationality by the husband should not automatically change the nationality of the wife; equality of rights with respect to the nationality of children Art. 16 - prohibition of child marriages and compulsory official registry of marriages
Intl. Conv. on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 December 1990	Art. 29 - the right of every child to be registered after birth and to acquire a nationality
African Charter on the Rights and Welfare of the Child	11 July 1990	Art. 6 - the right to a nationality and to be registered immediately after birth; States should ensure that national legislation “recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he [sic] has been born if (...) he [sic] is not granted nationality by any other State” <sup>428</sup>
European Convention on Nationality	6 November 1997	The entire document, with special regards to article 6 on the acquisition of nationality

<sup>427</sup> American Convention on Human Rights, November 22, 1969, *Organization of the American States Treaty Series No. 36*, article 20.

<sup>428</sup> African Charter on the Rights and Welfare of the Child, July 11, 1990, *Organization of African Unity, CAB/LEG/24.9/49* (1990), article 6.

Document	Adoption	Relevant provisions
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa	11 July 2003	Art. 6 - every marriage shall be registered in writing to be recognized; the right of women to retain their nationality or to acquire the husband's nationality; equality of rights regarding the nationality of children <i>*the Protocol leaves an important gap by stating that such equality should not be "contrary to a provision in national legislation or is contrary to national security interests",<sup>429</sup> meaning that States Parties could abide by their laws discriminating against women on the passing on of their nationality to their children</i>
Arab Charter on Human Rights	22 May 2004	Art. 29 - the right to a nationality; prohibition of arbitrary deprivation of nationality; allowing children to acquire their mothers' nationality
Covenant on the Rights of the Child in Islam	June 2005	Art. 7 - the right of children to be registered with authorities and to have their nationality determined; statelessness of "any child born on their territories or to any of their citizens outside their territory" shall be resolved by States Parties
Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession	19 May 2006	Art. 10 - avoiding statelessness at birth
Conv. on the Rights of Persons with Disabilities	13 December 2006	Art. 18 - the right to liberty of movement, freedom to choose residence and to a nationality (acquisition and change of nationality, prohibition of deprivation of nationality arbitrarily or based on disability); the right of children with disability to be registered immediately after birth and to acquire a nationality
Intl. Conv. for the Protection of All Persons from Enforced Disappearance	20 December 2006	Art. 25 - protection of children's right to preserve their identity, including their nationality (with specific reference to cases of adoption of children victims of enforced disappearance)
Convention on the Rights of Persons with Disabilities	30 March 2007	Art. 18 - freedom of movement and right to acquire a nationality

<sup>429</sup> Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, July 01, 2003, article 6(h).

## Annex 2. Consequences of statelessness for children and the violation of their rights<sup>430</sup>

Consequence	Violated right(s)	International human rights law document
Discrimination and exclusion	Protection against all forms of discrimination	UDHR art. 2, ICCPR art. 2 CRC art. 2, ICERD preamble §2, ICMW art. 1
Neglect of best interests of the child	Best interests of children as primary consideration in all matters affecting their lives	CRC art. 3
Obstacles to birth registration	To be registered immediately after birth	ICCPR art. 24, ICMW art. 29, CRC art. 7(1), CEDAW art. 9(2), 1961 Convention artt. 1, 3
Compromise of identity and lack of sense of belonging	To preserve the child's identity	CRC art. 8(1)
Early and forced marriages	Right to education, health care, leisure, protection from harmful practices Minimum age for marriages, needed free and full consent to marry	CRC artt. 28, 24, 3 CEDAW artt. 16(1)(b), 16(2) ICESCR art. 10
Arbitrary and lengthy immigration detention; deprivation of liberty	Detention of children as a measure of last resort and for the shortest appropriate period of time	UDHR art. 9, CRC artt. 37(b), 40, ICCPR art. 9, ICMW art. 16
Refoulement	Prohibition of return or expulsion	1951 Convention, art. 33 CRC, art. 22
Separation from family; deprivation of family environment; and obstacles to family reunification	Not be separated from parents against their will, to live in a caring environment, to family reunification	CRC, artt. 9, 20, 10
Limitations on freedom of movement	To freedom of movement	UDHR art. 13, ICCPR art. 12, ICMW art. 39
Exclusion from social welfare and child benefits	Benefit from social security	UDHR art. 22, CRC art. 26, ICMW art. 27, ICESCR art. 9

<sup>430</sup> It is not an exhaustive list of international human rights instruments with provisions that protect children's rights.

<b>Consequence</b>	<b>Violated right(s)</b>	<b>International human rights law document</b>
Lack of access to health care	Enjoyment of the highest attainable standard of health	UDHR art. 25, CRC art. 24, ICMW art. 43, ICESCR art. 12
Subjection to lower standards of life and poverty, to insecurity and injustice	To an adequate standard of living to children's physical, mental, spiritual, moral and social development	UDHR art. 25, CRC art. 27, ICESCR art. 11
Lack of access to education and limitations on pursuing higher education and vocational trainings	To education	UDHR art. 26, CRC artt. 28 and 29, ICMW art. 30, ICESCR art. 13, 1954 Convention art. 22
Reduction of/limitations to work opportunities	To higher/secondary education, vocational trainings	CRC artt. 28(b) and 29
Subjection to hazardous forms of work	Protection from economic exploitation	CRC art. 32, ICESCR art. 10
Increased vulnerability to sexual exploitation, trafficking and conscription into armed forces	Protection from exploitation, substance abuse and trafficking, from sexual exploitation, and from being recruited into armed forces	CRC artt. 33, 34, 35, 36 CRC OPAC

*Source:* international human rights instruments. Own elaboration.

### Annex 3. Nationality laws regarding minimum age for marriage

In Syria, the minimum age to marry is 17 years for girls, but with parental and judicial consent, girls as young as 13 years of age may be forced to marry.<sup>431</sup> This evinces the reality that child marriages were already a common practice in the country before the conflict.<sup>432</sup> In host countries, the minimum age for marriage varies. In Lebanon, it might be as low as 9 years of age, as there is no civil code regulating personal status and minimum age for marriage. This condition reflects upon refugee children living in the country, with a prevalence 29% of Syrian girls between 15 and 19 years of age being married off in this country.<sup>433</sup>

In accordance with the Jordanian law, the minimum age to marry is 18 years, but *Sharia* courts can approve the marriage of children between 15 and 17 years old. The realization of early and forced marriages without the approval of the courts could lead to imprisonment of the husband and father of the girl, and to the charging of fines.<sup>434</sup> In spite of that, it is a common practice in the country, what has been leaving Syrian refugee girls even more vulnerable to child marriages. During the first years of Syrian refugees' presence in the country, there was a significant increase of girls being married before completing 18 years of age. Considering that "rates [of child marriages] before the war were not low (13% in 2011), in 2015 nearly one-third of all marriages involving a Syrian bride involved a girl under the age of 18."<sup>435</sup>

In Türkiye, on the other hand, child marriages are considered illegal and the minimum age for marriage is 17 years, meaning that early and forced marriages of girls are not recorded. A common problem observed is that families tend to affirm the girl is actually older as a means to register the union. Fraudulent statements, however, "could have negative implications in the future."<sup>436</sup> Besides that, girls married against the law are often "discouraged from giving birth in

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<sup>431</sup> "Child marriage atlas: Syria," Girls Not Brides, accessed September 29, 2022. <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/syria>.

<sup>432</sup> Save the Children, *Too young to wed*, 1.

<sup>433</sup> "Child marriage atlas: Lebanon," Girls Not Brides, accessed September 29, 2022. <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/lebanon>; UNHCR, UNICEF, and WFP, VASyR 2018, 36; ISI and NRC, *Understanding statelessness*, 39.

<sup>434</sup> "Child marriage atlas: Jordan," Girls Not Brides, accessed September 29, 2022. <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/jordan>; ISI and NRC, *Understanding statelessness*, 39.

<sup>435</sup> Elizabeth Presler-Marshall, Ingrid Gercama and Nicola Jones, *Adolescent girls in Jordan: the state of the evidence*, (London: GAGE Programme Office, 2017), ii.

<sup>436</sup> ISI and NRC, *Understanding statelessness*, 39.

hospital or registering newborns, out of fear of prosecution.”<sup>437</sup> Both in Jordan and in Türkiye, for example, the chances of a child born within an early marriage being registered and having a birth certificate are low, increasing their risk of statelessness.

While condemning the practice of early and forced marriage, it is important to note that not registering children born within such unions is extremely detrimental for their future well-being and development. Child marriages should be urgently eliminated, protecting the rights, integrity and dignity of girls,<sup>438</sup> but until then all children born from child marriages shall have their rights protected, irrespective of their parents’ status.

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<sup>437</sup> ISI and NRC, *Understanding statelessness*, 39.

<sup>438</sup> The United Nations’ 2030 Agenda and the Sustainable Development Goals specifically calls States to eliminate child marriage, under goal 5 (“Achieve gender equality and empower all women and girls”), target 5.3 (“Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation”). United Nations Department of Economic and Social Affairs (DESA), “Sustainable Development: goal 5,” accessed November 8, 2022. <https://sdgs.un.org/goals/goal5>.