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Master's Thesis

***“The risk of statelessness arising among minors born within  
Syrian female-headed refugee households”***

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## **ABSTRACT**

This Master's Thesis discusses the risk of statelessness arising among minors born within Syrian refugee female-headed households in host countries and tries to provide an answer on how international law can be improved in order to address statelessness issues and provide maximum protection against this phenomenon to the minors born in exile to Syrian women. It begins in Chapter 1 by referring to the right to a nationality, explaining what is statelessness, presenting the exact problem and the research questions that will be answered. It continues in Chapter 2 by assessing the current relevant international legal framework and the work of UNHCR and, later on, in Chapter 3 it focuses on the analysis of the nationality law in Syria and the current situation, the domestic and regional legal framework and problems arising in major refugee hosting countries (Turkey, Lebanon, EU Member States), concerning nationality and statelessness matters. After this analysis, it continues with Chapter 4 where it presents possible approaches to the topic by recommending what more can be done through international law to better prevent statelessness and to protect stateless refugee minors in case the host countries and Syria fail to prevent such cases from arising.

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## **Abbreviations**

1. ACHR = Arab Charter on Human Rights
2. ComEDAW = Committee on the Elimination of All Forms of Discrimination against Women
3. ComRC = Committee on the Rights of the Child
4. CEDAW = Convention on the Elimination of All Forms of Discrimination against Women
5. CERD = Convention on the Elimination of all Forms of Racial Discrimination
6. CJEU = Court of Justice of the European Union
7. CoE = Council of Europe
8. CRC = United Nations Convention on the Rights of the Child
9. CRCI = Covenant on the Rights of the Child in Islam
10. ECHR = European Convention on Human Rights
11. ECtHR = European Court of Human Rights
12. ECN = European Convention on Nationality
13. EU = European Union
14. EUDO = European Union Observatory on Democracy
15. HRC = Human Rights Committee
16. ICCPR = United Nations International Covenant on Civil and Political Rights
17. ISI = Institute on Statelessness and Inclusion
18. MENA= Middle East-North Africa
19. MS = Member States
20. NGOs = Non-governmental Organisations
21. SDP = Statelessness Determination Procedure
22. UDHR = Universal Declaration of Human Rights
23. UNGA = United Nations General Assembly
24. UNHCR = United Nations High Commissioner for Refugees

## CHAPTER 1

### 1.1 Introduction

Statelessness has been termed as a “forgotten human rights issue”.<sup>1</sup> However, the fact<sup>2</sup> that more than ten million people are, nowadays, stateless, highlights the urgency to make this a “remembered human rights issue”. Stateless is a legal status acquired by a person who is not recognized as a citizen by any country.<sup>3</sup> According to the Institute on Statelessness and Inclusion (ISI), there are many different circumstances that can lead to statelessness, such as conflict of laws, discrimination, state succession.<sup>4</sup> This status, the absence of a nationality, restricts a person from enjoying fundamental human rights, such as freedom of movement, access to education, health care, work, right to vote. It can also lead to fear of living under constant threat of arbitrary arrest or/and deportation and separation of families.<sup>5</sup> The existing different legal instruments that aim to prevent statelessness and protect stateless persons, already make efforts to address all these issues. This Master’s Thesis focuses on a specific cause of statelessness among refugees which is the gender-based nationality law in Syria. Not only it affects the rights of refugee women in the most obvious way, it also hinders the rights of refugee children under very special, but very frequently-appearing circumstances. Below, an introduction to the right to a nationality and statelessness, the research problem and topic, the goal, questions, relevance and restrictions to the topic, and methods used for this research will be elaborated upon.

### 1.2 Right to a Nationality

The right to a nationality is one of the most fundamental human rights also connected with the realization of other human rights. A person who possesses a nationality may enjoy diplomatic protection of the country of his/her nationality and exercise fundamental rights to which nationality is often a legal or practical requirement. These are some of the reasons why the right to a nationality is characterized as the “right to have rights”.<sup>6</sup> The right to acquire a nationality relates to the

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<sup>1</sup> Bill Frelick & Maureen Lynch, *Statelessness: a forgotten human rights crisis*, Forced Migration Review, 2005, p. 24, available at: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR24/FMR2439.pdf>

<sup>2</sup> United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement 2015*, p. 46

<sup>3</sup> *Convention Relating to the Status of Stateless Persons 1954*, Art. 1(1)

<sup>4</sup> ISI, *Causes of Statelessness*, available at: <http://www.institutesi.org/world/causes.php>

<sup>5</sup> Women’s Refugee Commission and Statelessness Programme at Tilburg University report, *Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa*, p. 5

<sup>6</sup> *Trop v. Dulles*, 356 U.S. 86 1958, par. 101-102

prohibition of arbitrary deprivation of nationality. Such a deprivation can place the affected individuals under a very disadvantaged situation concerning the enjoyment and access to their basic human rights.

To highlight the importance of the right to a nationality, many regional and international human rights instruments include the right to a nationality. For example, Article 15 of the Universal Declaration of Human Rights (UDHR) states that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”. The United Nations General Assembly (UNGA) also recognizes the fundamental need for prohibition of arbitrary deprivation of nationality.<sup>7</sup> Article 7 of the Convention on the Rights of the Child states the right of every child to acquire a nationality and article 5 of the Convention on the Elimination of all Forms of Racial Discrimination (CERD) requires States to “prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights...the right to nationality”.<sup>8</sup>

Despite the recognition of the right to a nationality by domestic, regional, and international legal instruments, millions of people do not have a nationality or are deprived of their nationality and therefore are rendered and treated as stateless.

### **1.3. Statelessness**

Before proceeding with the presentation of the specific problem that this Master’s Thesis is going to address, it is necessary to get acquainted with the notion of statelessness, its causes, and its impacts. According to article 1 of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) a stateless person is “a person who is not considered a national by any state under the operation of its law”. People falling within the scope of this article are usually referred to as *de jure* stateless persons, although there is no such term included in the 1954 Convention.

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<sup>7</sup> UNGA, *Office of the United Nations High Commissioner for Refugees: resolution / adopted by the General Assembly*, 9 February 1996, A/RES/50/152, operative clause No.16, available at: <http://www.refworld.org/docid/3b00f31d24.html>

<sup>8</sup> See also, article 24 ICCPR; article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; article 9 CEDAW; article 6 of the African Charter on the Rights and Welfare of the Child; article 20 of the American Convention on Human Rights; article 4 ECN; and article 7 CRI.

This term is used simply to prove that the determination of statelessness is a matter of law, meaning that there needs to be an absence of legal connection between a person and a state, that of nationality, as presented in the previous section. However, in the Final Act of the 1961 Convention on the Reduction of Statelessness (1961 Convention) reference is also made to *de facto* stateless persons, a term not addressed by any international legal instrument. In an expert meeting of UNHCR on the concept of stateless persons under international law, there was an attempt to include in the summary conclusions a definition for a *de facto* stateless person which suggested that “*de facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country”.<sup>9</sup> UNHCR avoids qualifying stateless persons as *de jure* since there is no such provision anywhere, but also highlights the importance of not using the term *de facto* stateless, as there are chances for the individuals of failing to receive the protection provided by the 1954 Convention.<sup>10</sup>

Statelessness can entail the inability to effectuate a wide range of fundamental human rights and can expose individuals to an abusive pattern both in public and private sectors. As explained by UNHCR, if a person is stateless, he/she might not be able to: “go to university; get a job; get medical care; own property; travel; register the birth of his/her children; marry and found a family; enjoy legal protection; have a sense of identity and belonging; [or] participate fully in developments in a world composed of states, in which nationality is the key to membership”.<sup>11</sup> Moreover, the stateless individuals, excluded from legal regime and societal norms, often face long-term detention, because they lack documentation or because States cannot return them to their country of origin.<sup>12</sup> This situation causes indefinite insecurity and uncertainty to the stateless persons when dealing with state authorities and might also result to family separation. Other consequences of statelessness are forced labor, extortion, persecution, stigmatization,

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<sup>9</sup> UNHCR, *Expert Meeting on the Concept of Stateless Persons under International Law (Summary Conclusions)*, 2010, Section II.A

<sup>10</sup> UNHCR, *Guidelines on Statelessness No.1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, 2012, par. 8 (hereinafter: UNHCR Guidelines on Statelessness: No1)

<sup>11</sup> UNHCR, *What would life be like if you had no nationality?* Information booklet, March 1999, p. 3

<sup>12</sup> D. Weissbrodt, C. Collins, *The Human Rights of Stateless Persons*, Human Rights Quarterly, Vol. 28, 2006, p. 267

displacement.<sup>13</sup> The list of consequences proves to be endless and the lack of one right leads to the lack of another right, causing a domino effect and, therefore, calling for the immediate attention of the international community.

#### 1.4 The problem and topic

According to a preliminary assessment undertaken by UNHCR more than sixty countries maintain nationality laws that are gender-based.<sup>14</sup> Twenty-seven of these countries deny women the right to confer their nationality to their own children on an equal basis with men.<sup>15</sup> The Middle East-North Africa (MENA) and Sub-Saharan Africa regions are considered to have the highest concentration of gender-based nationality laws, since almost half of the countries in the MENA region do not allow women to confer nationality to their children, and a third of nationality laws that discriminate against women is found in Sub-Saharan region.<sup>16</sup>

This type of gender discrimination in nationality laws, not only constitutes a major violation of basic human rights of women that are internationally recognized,<sup>17</sup> but also is considered to be<sup>18</sup> one of the primary causes of statelessness. Some of the situations in which statelessness can occur are when children cannot acquire their parents' nationality or when a woman loses her nationality because of her gender and marital status. Moreover, these laws, being the leading cause of statelessness, result in other human rights abuses such as domestic violence, human trafficking, and child marriage.<sup>19</sup>

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<sup>13</sup> Institute on Statelessness and Inclusion, *Impact of Statelessness*, available at:

<http://www.institutesi.org/world/impact.php>

<sup>14</sup> UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2016*, 8 March 2016, p. 1, available at: <http://www.refworld.org/docid/56de83ca4.html>

<sup>15</sup> *Ibid.*, p. 3, See also for the specific list of countries: Global Campaign for Equal Nationality Rights, *The problem*, available at: <http://equalnationalityrights.org/the-issue/the-problem>

<sup>16</sup> Global Campaign for Equal Nationality Rights, *Global Overview*, available at:

<http://equalnationalityrights.org/index.php/countries/global-overview>

<sup>17</sup> See for example Art. 9, *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), that requires State Parties to “grant women equal right with men: 1. to acquire, change or retain their nationality, 2. With respect to the nationality of their children”

<sup>18</sup> International Law Association, Committee on Feminism and International Law (ILA, Committee on Feminism and IL), C. Chinkin and K. Knop, *Final Report on Women's Equality and Nationality in International Law (2000)*, pp. 25, available at: <http://www.unhcr.org/protection/statelessness/3dc7cccf4/london-conference-2000-committee-feminism-international-law-final-report.html>

<sup>19</sup> Global Campaign for Equal Nationality Rights, *The violence of gender discrimination in nationality laws*, available at: <http://equalnationalityrights.org/news/76-gender-violence-discrimination-nationality-laws>

Almost half of the twenty-seven countries that do not allow women to confer their nationality to their own children are situated in the MENA region. In addition to that, many of the MENA countries are not State parties to conventions that assure crucial rights for women and children, such as the 1954 Convention Relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, the CEDAW and the Convention on the Rights of the Child (CRC). Even though there have been several reforms in MENA countries such as Egypt, Mauritania, Iraq, Tunisia and Yemen, full equal status in nationality matters has not been granted yet to women. Lebanon, Kuwait, and Qatar still deny women the right to pass on their nationality to their children in all cases. The rest of the MENA countries deny this right in most circumstances.<sup>20</sup> This situation increases the chances that the children of women coming from the MENA countries lack a legal status and are likely to become stateless, something that opens the gate to further disadvantages, such as limited access to health care, education, and employment in the future. The results are similar when a woman is married to a non-national, something that leads to the treatment of the children as foreigners who must have a residence permit, which is not always feasible for many families.<sup>21</sup> This kind of circumstances result to the injury of the integrity of the family, since they face stigmatization and they lack a sense of belonging. Therefore, besides the direct impact that these nationality laws have on the children of women married to non-nationals or whose fathers are unknown, have abandoned them or have deceased, these laws contribute to the expansion of wider patterns of discrimination and societal prejudice against women. Some women decide to divorce their husbands, in order to try to secure nationality for their children or they even choose not to have children at all as they are aware of the grave obstacles they are going to face in their lives since the moment they are born, all posing a great threat to family unit. This has been expressed in numerous statements of women coming from the MENA countries.<sup>22</sup>

Although the matter of gender-based nationality laws is an issue that existed and caused major obstacles for decades, it has been brought to the spotlight recently when the civil war broke out in Syria in 2011 and caused a major influx of Syrian refugees<sup>23</sup> in MENA and European countries.

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<sup>20</sup> *Supra* no14, UNHCR *Background Note on Gender Equality*, p. 4

<sup>21</sup> If the situation is reversed, meaning that a man is married to a non-national woman, there is no problem with conferring nationality to their children.

<sup>22</sup> See for statements: Women's Refugee Commission and Statelessness Programme at Tilburg University report, *Our Motherland, Our Country. Gender Discrimination and Statelessness in the Middle East and North Africa*

<sup>23</sup> Around 4.8 million UNHCR registered refugees, Registered Syrian refugees as of 31 May 2016. See *3RP, Mid-Year Report*, 2016, available at: <http://data.unhcr.org/syrianrefugees/download.php?id=11804> ; See further: Syria

These discriminatory nationality laws in combination with nationality law gaps in these countries have been driving many children born in exile to Syrian refugees into statelessness, proving that refugeehood and statelessness, although distinct issues, can lead to one another.<sup>24</sup> According to Syrian law only the father can pass on his nationality to his children when they are born abroad.<sup>25</sup> Therefore, with the woman unable to confer nationality to her children, if the father has died, is unknown, stateless for several reasons, or unwilling or unable to pass on his nationality to his children, the children are likely to be rendered stateless, since they will be unable to secure Syrian nationality.<sup>26</sup> In addition, since the woman's nationality also depends on her husband's, if he changes or is deprived of his nationality, this can result to render his wife stateless. According to a statement made by Zahra Albarazi, senior researcher of the Institute on Statelessness and Inclusion, to the Guardian, "a lot of those who are resettled to Europe are women whose husband or partner was killed or lost and are being resettled with their kids or are pregnant at the time, so that is becoming a bigger problem".<sup>27</sup>

But the problem does not only exist during the stay of Syrian women and children refugees in the host countries. It will continue existing and even start deteriorating the moment when these people would want to return to their home country when the conflicts cease. "Right now, the issue of statelessness is clouded by the fact that these people are in the asylum system. The problem will emerge in a few years, when hopefully the war eases off but also governments start to decide that people are able to return. Then we will have cases of people whose residence permits will not be extended but, because they are stateless, cannot be sent back", said Karel Hendriks of the Amsterdam-based refugee support organization ASKV at the Guardian.<sup>2829</sup> In this crucial period,

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Refugee Response Inter-Agency Information Sharing Portal for up-to-date statistics, available at:

<http://data.unhcr.org/syrianrefugees/regional.php>

<sup>24</sup> See further Norwegian Refugee Council (NRC) and Tilburg University, *Statelessness and Displacement: Scoping Paper*, 2015, available at <https://www.nrc.no/resources/reports/statelessness-and-displacement>

<sup>25</sup> Paternal *jus sanguinis*. There are specific circumstances under which a female can confer her nationality when the father is unknown, but this is rarely applied and the child must have been born on Syrian territory.

<sup>26</sup> *Supra* no14, UNHCR *Background Note on Gender Equality*, p 1; See also: Rachael Reilly, *Equal Nationality Rights: It's Time to End Gender Discrimination in Nationality Laws*, European Network on Statelessness, 20 June 2014

<sup>27</sup> L. Osborne, R. Russell, *Refugee crisis creates 'stateless generation' of children in limbo*, 2015, The Guardian, available at: <https://www.theguardian.com/world/2015/dec/27/refugee-crisis-creating-stateless-generation-children-experts-warn>

<sup>28</sup> *Ibid*

<sup>29</sup> Currently in Jordan and Turkey the authorities are making efforts to ameliorate the registration of refugee births. But even when every effort is made, if children do not fulfill the Syrian nationality requirements, they will be left in limbo unless the host countries take the responsibility to identify children born stateless and grant them nationality.

where we witness the most severe displacement since World War II, and where families are forced to flee conflicts occurring in their home countries that support gender-discriminatory nationality laws, the amount of damage caused by these laws is increasing rapidly, mainly causing even greater violations of women's rights and threatening to create a new generation of stateless children.

However, the problem does not only derive from these gender-based nationality laws of the MENA countries. Another factor that worsens this problem is that many of the host countries follow the *jus sanguinis* when it comes to nationality and not the *jus soli*. The *jus sanguinis* is a legal rule that a person's nationality is determined by that of his or her parents (by 'blood'), whereas the *jus soli* indicates that a person's nationality is determined by his or her place of birth. The combination of the fact that Syria follows the *jus sanguinis* rule and so do the host countries, increases the risk of statelessness, because the child born in a Syrian refugee female-headed household cannot be protected by any nationality doctrine, since the *jus sanguinis* in Syria recognizes that only the father passes the nationality, and the *jus sanguinis* of the host countries focuses on determination of nationality by blood and not by place of birth. For this reason, many scholars have suggested the adoption by all States of the *jus soli* doctrine in order to combat more effectively the rise of statelessness, since the place of birth remains intact, not affected by the parents' nationality or lack of nationality and whether the child is legitimate or illegitimate.<sup>30</sup>

## 1.5 Research goal

The general aim of this Master's Thesis is to contribute to the existing knowledge and approach towards statelessness arising among minor refugees because of gender-based laws in Syria concerning nationality aspects. It will also take a step further by establishing a nexus between gender-based nationality laws and refugeehood that can lead to the creation of a stateless generation of children. The analysis of this topic is divided into three parts. The first part (Chapter 2) focuses on the international legal instruments that address the issue of statelessness, the rights

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<sup>30</sup> The Independent Commission on International Humanitarian Issues has called for the adoption of an instrument that prescribes the *jus soli* doctrine for all states; UNHCR, "Statelessness and Citizenship" in *The State of the World's Refugees - A Humanitarian Agenda*, Oxford University Press, Oxford: 1997, page 256.; For more details see International Union for Child Welfare, *Stateless Children - A Comparative Study of National Legislation and Suggested Solutions to the Problem of Statelessness of Children*, Geneva: 1947

of the children and women, and the work of UNHCR. The second part (Chapter 3) focuses on the current nationality law in Syria and on the analysis of case studies on the influx of Syrian refugees in Lebanon, Turkey and EU Member States (MS), the current domestic and regional framework, and the problems arising concerning the birth of minors in Syrian refugee female-headed households. Relevant existing legal framework, acts and decisions of several legal instruments are reviewed and evaluated, and conclusions are made as to whether the current international legal framework is contributing enough. In the third part (Chapter 4) of this Master's Thesis, recommendations are provided for the possible improvement of the way international law addresses statelessness in order to enhance protection of women's and children's rights both in Syria and in host countries, with an ultimate aim to diminish and avoid statelessness in the future. At the end (Chapter 5) conclusions from this analysis will be provided.

### **1.6 Central research question and sub-questions**

In view of the problem and topic, and of the research goal presented above, the central research question that this Master's Thesis will answer is: "How can the way international law addresses statelessness arising from gender-based nationality laws be improved so as to ensure maximum protection against statelessness for minor refugees in Syrian refugee female-headed households?".

To research this question, this Master's Thesis focuses on several specific conventions and international legal instruments that address this aspect of statelessness that will be explained further in the next section and on the case study of minor refugees born in Syrian female-headed household in the host countries and more specifically in Lebanon, Turkey, and EU-MS. The sub-questions therefore consider the aforementioned elements and try to provide effective solutions for this specific cause of statelessness. The following sub-questions will be addressed to provide a more detailed and concrete answer to the central research question:

- i) Which is the current international legal framework addressing the issue of stateless minors, nationality and gender equality matters, and does it contribute to the prevention of this phenomenon and the protection of the affected ones? (Chapter 2)
- ii) How has UNHCR contributed to statelessness matters? (Chapter 2)
- iii) How is the nationality law regulated in Syria and which are its consequences? (Chapter 3)

iv) What is the current legal framework and situation in major Syrian-refugee hosting countries, as Turkey, Lebanon and EU-MS? (Chapter 3)

v) What more can be done through international law for the better prevention of statelessness cases arising in host countries and Syria? (Chapter 4)

vi) How can international law increase the guarantees for the optimal protection of the rights of stateless refugee minors and their Syrian mothers: a) in the host countries, and b) in case of return to Syria? (Chapter 4)

## **1.7 Relevance**

The issue of statelessness has only recently come into the spotlight of (academic) attention. Statelessness in correlation with gender discrimination in nationality laws, women's and children's rights have therefore not been extensively studied, and a possible relation between those topics and refugeehood is not very often traced as a subject of academic research so far, as it is an emerging new phenomenon. The theoretical relevance of this project is that it could cover this gap and provide new insights on aspects of statelessness, the connection with refugeehood, gender discrimination and unequal treatment of women and children, specifically coming from Syria. Concerning the social relevance, it is necessary to keep in mind the fact that around ten million people worldwide are currently stateless, with a considerable amount of these people coming from the twenty-seven countries that discriminate against women in nationality matters, including Syria. The fact that such a vast number of people are not being recognized at all and are deprived of basic human rights, and that women are still considered subordinate to men, is not only unacceptable from a legal and human rights perspective, but also can be characterized as an issue of human security, since it is a situation that affects the integration of people in the society and can even lead to greater conflicts. By having the States adopt the appropriate changes and reforms, statelessness can be prevented, people already stateless will be able to finally have a legal status and women will be able to have equal rights with men.

## **1.8 Methods of research**

The project is relying on the method of legal research and case studies. This means that specific provisions of legal documents such as the 1954 Convention, the 1961 Convention, the CEDAW,

the CRC, the International Covenant on Civil and Political Rights (ICCPR) and other legal sources are analysed and reviewed while considering legal theory. Furthermore, the work of the UNHCR and non-governmental organisations (NGOs) is used as secondary sources. As a complementary source, the work of academic authors on the topic is referenced. For the examination of the case studies, the above mentioned legal framework is highlighted in combination with national and regional laws on nationality matters of the States under consideration. In addition, many references are made to reports and researches conducted in these areas by the UNHCR and several NGOs.

### **1.9 Limitations to the topic**

This Master's Thesis only focuses on the case of Syrian refugee women, who give birth to their children in the host countries and whose husband has died, is missing, or has left. The future and the risk of statelessness for these children will be examined, during their stay in the countries of refugee and in the case of return to Syria. Therefore, this Master's Thesis will not take into consideration stateless people in or coming from Syria (e.g. Stateless Kurds-Ajanib and Maktoum, Palestinian refugees), or stateless people in or coming from different regions. The Syrian nationality of the refugee women will be taken for granted as existent, so no case of stateless refugee women will be addressed. The refugee status of Syrian women will be taken for granted as well, therefore no issues of rejected asylum applications will be examined.

## **CHAPTER 2 (Current relevant international legal framework and the work of UNHCR)**

The goal of this Chapter is to answer the first two research sub-questions by presenting the current international legal framework that addresses issues of statelessness, the right to acquire nationality, the rights of the child and gender equality matters. The focus will be on the Statelessness Conventions and on the specific articles in ICCPR, CEDAW and CRC that deal with nationality and gender equality issues. A brief assessment of these instruments will be conducted for their contribution in the prevention of statelessness and protection of the affected ones, and reference will be made to the States under concern (Syria, Turkey, Lebanon and EU-MS) and whether they are parties to these conventions. Later on, the work of UNHCR on such issues will be presented.

### **2.1. Statelessness Conventions**

To fulfil the urgent need to address the issue of statelessness, two separate, yet complimentary, legal instruments were created: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The first one attempts to offer stateless persons a series of rights and a legal status so as to try and maximize their protection against gaps in areas of the law where nationality is essential. The second one has as a purpose the reduction of the number of cases where statelessness occurs.

In this part the existing Statelessness Conventions, since they constitute the legal regime that directly deals with statelessness, are used as a point of departure and an assessment is made as to the results from the function of these conventions, whether they still meet the goal of protection of persons and contribute to the prevention of statelessness or they have become outdated due to the recent developments in international law.

Before proceeding with a short analysis and assessment of the statelessness conventions, it is necessary to keep in mind that not all EU-MS are signatories to both statelessness conventions,<sup>31</sup>

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<sup>31</sup> UNHCR, *States Party to the Statelessness Conventions - As at 1st October 2016*, 1 October 2016, p.1

Turkey ratified only the 1954 Convention on March 2015<sup>32</sup> and many MENA countries that host the largest number of Syrian refugees at the moment<sup>33</sup> (more specifically Lebanon that will be examined in Chapter 3), have not acceded to the statelessness conventions yet.

### ***2.1.1. The 1954 Convention, relation with 1951 Refugee Convention and observations***

The 1954 Convention is considered to be the “primary international instrument adopted to date to regulate and improve the legal status of stateless persons and to ensure to stateless persons fundamental rights and freedoms without discrimination”.<sup>34</sup> The Convention begins at article 1 by providing an internationally recognized definition of who is stateless, indicating that it is “a person who is not considered a national by any state under the operation of its law”. When a person fulfills this definition he/she is considered *de jure* stateless, therefore distinguishing himself/herself from a *de facto*<sup>35</sup> stateless person who is not outright protected by the 1954 Convention, but should “as far as possible be treated as stateless *de jure*”.<sup>36</sup> Under the present case the category of stateless that will be of concern is *de jure* stateless, since the minors born in the Syrian refugee households do not have or are at risk of not having a nationality due to the operation of the Syrian nationality law. The 1954 Convention after the provision of a definition of statelessness continues by designating the rights and duties that come along with the stateless legal status. The value of this Convention lies within the fact that it brought to the attention of the international community the issue of statelessness, providing a starting point of reference to identify this kind of cases and to implement the indicated measures. However, this legal instrument is said not to provide any guidance on the procedures that states need to follow in order to apply the definition and see when the criteria outlined are satisfied.<sup>37</sup> More specifically, there is no provision for the necessity of MS

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<sup>32</sup> UN, *Chapter V: Refugees and Stateless Persons, 3. Convention Relating to the Status of Stateless Persons*, Treaty Series, vol. 360, p. 117

<sup>33</sup> *Supra* no23, UNHCR 3RP, *Mid-Year Report 2016*

<sup>34</sup> UNHCR, *Information and accession package: the 1954 Convention relating to the status of stateless persons and the 1961 Convention on the reduction of statelessness*, Geneva, January 1999, p. 10

<sup>35</sup> UNHCR, *Training Package: Statelessness and Related Nationality Issues*, 1996, p. 9: “De facto statelessness refers to those who have a nationality in name but who do not have national protection”; UNHCR, *Guidelines: Field Office Activities Concerning Statelessness*, 1998, p. 4, para. 9: “people who are stateless de facto (who have a nationality in name which is not effective)”

<sup>36</sup> UNHCR and Inter-Parliamentary Union, *Nationality and Statelessness: A Handbook for Parliamentarians*, 2005, p. 11

<sup>37</sup> *Supra* no34, UNHCR, *Information and accession package*, p. 19

to establish a statelessness determination procedure (SDP) that will determine who is stateless, that will grant that person protection status and that will facilitate his/her naturalization.<sup>38</sup> Therefore, as we are going to see below with the 1961 Convention, it is under the discretion of the states what means they will use to organise the identification of statelessness cases.

It is worth mentioning for the case under examination that the legal status of stateless persons in this Convention was built on that established for refugees in the 1951 Convention, and numerous provisions in the 1954 Convention have a lot of similarities with the 1951 Convention. This happened because these two conventions were drafted through the work of the Ad Hoc Committee on Statelessness and Related Problems.<sup>39</sup> In the beginning the protection of stateless persons was to be addressed in a Protocol which would apply *mutatis mutandis* the majority of the rights outlined in the 1951 Convention, but later on it was decided to make it a separate legal instrument for statelessness.<sup>40</sup> This kind of correlation between statelessness and refugeehood, shows that the two terms/statuses are not completely separated and can overlap as happens in the case of the minors born within Syrian refugee female-headed households in host countries, who are born refugees and face the risk of statelessness because of the gender-based Syrian nationality law. More specifically, when a child is born and the parents register the birth of the child and lodge an application for refugee status to be given, the child is temporarily protected under the 1951 convention as it is considered a refugee as well, but simultaneously the child can be stateless if no nationality is granted to him/her upon birth. Once the refugee status, that prevails over the stateless one, ceases to exist, then the child will need to be protected as a stateless something that does not provide the same guarantees and safeguards as the refugee status and thus the child might be exposed to a legal limbo.<sup>41</sup>

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<sup>38</sup> Efforts to provide guidelines on SDP: UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, 5 April 2012; UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014; UNHCR, *Global Action Plan to end statelessness (2014-2024)*, November 2014, Action 6

<sup>39</sup> Appointed by the Economic and Social Council, Resolution 248 (IX) (B) of 8 August 1949

<sup>40</sup> *Travaux Préparatoires* in UNHCR, *Convention Relating to the Status of Stateless Persons: Its History and Interpretation – A Commentary by Nehemiah Robinson*, 1955, p. 3

<sup>41</sup> *Supra* no27, L. Osborne, R. Russell, *Refugee crisis creates 'stateless generation'*

### ***2.1.2 The 1961 Convention and observations***

The 1961 Convention as stated in the Introductory note of the convention by UNHCR “is the leading international instrument that sets rules for the conferral of nationality to prevent cases of statelessness from arising”. By providing a set of rules that contribute to the limitation of statelessness cases, this Convention has as a purpose to give effect to article 15 of UDHR that recognises that “everyone has the right to a nationality”.

The value of this instrument is found in its effort to address statelessness that arises from legal or administrative technicalities through creating a guide map with certain policies that States must or must not incorporate in their nationality law, so as to respond to every risk of statelessness situation arising from a conflict of laws or other technical reasons, both at birth and later in life. The rules are laid out with great clarity and detail, providing insightful guidance to States, something that is not always found in other international human rights law instruments.

What is innovative in the 1961 Statelessness Convention, is that it combines both *jus sanguinis* and *jus soli* principles<sup>42</sup> in an effort to find a compromise between them, using descent and birthplace as evidence of a genuine link.<sup>43</sup> The Convention in article 1 calls for States to prevent statelessness at birth by granting nationality to children born on their territory who would otherwise be stateless, either automatically at birth or at a later stage upon application.

If we stop the assessment of this legal instrument at this point, then we can assume that, in the case under examination, the minor refugees born in Syrian female-headed households in the host countries, will be granted nationality either automatically at birth or later on if their parents or themselves lodge an application, and therefore will be protected against statelessness. However, the phrasing of the provisions in this Convention has been conducted carefully, giving the States a quite broad margin for actions of their own, such as setting their own additional conditions and

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<sup>42</sup> For a further explanation of these principles see Chapter 1, Section 1.4. p. 7-8

<sup>43</sup> UNHCR, "Statelessness and Citizenship" in *The State of the World's Refugees - A Humanitarian Agenda*, Oxford University Press, Oxford: 1997, page 256

requirements.<sup>44</sup> Even during the drafting of the Convention, States did not agree to use as the title of the Convention the term *elimination* of statelessness, this is why they settled for *reduction*<sup>45</sup> and why the current Convention has been criticized for its inability to achieve anything more than a *reduction* of incidents of statelessness.<sup>46</sup>

Other factors that affect the individuals in the present case is, first of all, the absence from the Convention of an outright prohibition of gender-based nationality acts. It does not even include gender as an outlawed, discriminatory ground for deprivation of nationality under article 9, thus neglecting one of the most fundamental human rights norm that is denounced in every widely-adopted human rights instrument up to date.<sup>47</sup> Especially, if we take into consideration the high percentage of countries that have adopted gender-based nationality laws, including Syria, we realize that the problem of statelessness arising from gender-sensitive nationality acts remains intact and unaddressed through the 1961 Convention, this is why minors born in Syrian refugee female-headed households, are more prone to the risk of statelessness and not directly benefited from the prevention measures of the 1961 Convention. Secondly, the Convention still contains the unlawful distinction between legitimate and illegitimate children in Article 1 paragraph 3, something that is prohibited through the overall phrasing of major human rights instruments as the UDHR and CRC, thus imposing one more obstacle to the elimination of statelessness arising in the case addressed in this Master's thesis, since there are Syrian refugee women giving birth to a child outside wedlock, due to inability of sufficient marriage registration or unlawfulness of marriage with a non-national according to Syrian law or absence or death of their husband. Lastly, since 1961 when the Convention was drafted, new sources of statelessness have been identified that the Convention could not have foreseen so many years ago, such as problems connected to the massive influx of refugees from countries with gender-based nationality laws in host countries that have similar laws or/and that follow the *jus sanguinis* principle. Therefore, with new causes

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<sup>44</sup> This can be understood by the use of language as “by operation of law”, “prescribed by the national law”, e.g. article 1 and 4 1961 Convention

<sup>45</sup> UNHCR and IPU, *Nationality and statelessness. A handbook for parliamentarians*, 2005, page 12; Carol Batchelor, 'Stateless Persons: Some Gaps in International Protection', *International Journal of Refugee Law*, Vol. 7, 1995, page 250;

<sup>46</sup> Laura Van Wass, *Nationality Matters: Statelessness under International Law*, School of Human Rights Research Series, Volume 29, 2008, p. 195

<sup>47</sup> e.g., Article 1 UNC; Article 2 UNDHR; Article 2 ICCPR; Article 2 ICESCR; Article 2 CEDAW; Article 2 CRC

of statelessness arising, even greater challenges are presented that make it difficult for the 1961 Convention to address fully these new phenomena.

## **2.2 Other International Human Rights Law instruments**

### ***2.2.1 International Covenant on Civil and Political Rights***

The ICCPR is a necessary legal tool for the present case since, firstly, it contains norms which regard the conferral of political and civil rights to men and women, and the equality of the two sexes before the law without any gender-based discrimination.<sup>48</sup> Secondly, it is the first instrument that expressly establishes a child's right to acquire a nationality.<sup>49</sup> According to the Human Rights Committee (HRC), there is no unconditional obligation of States to grant nationality, but they are still obliged to implement all necessary measures in order to ensure that no child is left stateless at birth.<sup>50</sup> Therefore, even States that are not parties to the Statelessness Conventions, but are parties to the ICCPR (Syria and Lebanon in this case) have obligations under international law to respect gender equality before the law and to protect the right of the child to have a nationality.

### ***2.2.2 Convention for the Elimination of All Forms of Discrimination Against Women***

The CEDAW, a widely-ratified Convention, to which all EU countries, Lebanon, Turkey and Syria are parties, recognises that women shall have equal rights with men concerning nationality matters, and more specifically they shall have the same rights with men in respect to the nationality of their children.<sup>51</sup> In spite of the accession in this Convention, Lebanon and Syria still hold a gender-based nationality law affecting women and contributing to the deterioration and expansion of the problem under examination.<sup>52</sup>

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<sup>48</sup> ICCPR, Article 3 and 26

<sup>49</sup> ICCPR, Article 24(3)

<sup>50</sup> HRC General Comment No. 17, par. 8

<sup>51</sup> CEDAW, Article 9

<sup>52</sup> *Supra* no14, UNHCR, *Background Note on Gender Equality*, p.1-3

### ***2.2.3 Convention on the Rights of the Child***

The CRC, also a Convention with many state-parties, including EU-MS, Syria, Turkey and Lebanon, contains a core provision that concerns the prevention of statelessness at birth, which recognises the right of a child to acquire a nationality and the obligation of states to ensure the implementation of this right “in accordance with their national law...in particular where the child would otherwise be stateless”.<sup>53</sup> Article 8 also establishes a close link with Article 7 of the Convention since it considers nationality as a part of the right of the child to preserve his/her identity without any unlawful interference. However, looking at the phrasing of these provisions for nationality, it is not clear what is the content of the right and who is responsible for granting nationality to a child, and nor has the Committee on the Rights of the Child (ComRC) presented a clear guidance for interpretation of this article, limiting itself only to a few general statements on the right to acquire a nationality.<sup>54</sup> Nevertheless, despite the ambiguity surrounding article 7 of the Convention, it is outright expressed in article 3 that any action taken by a State concerning children shall have as a “primary consideration” the “best interests of the child”, and having mentioned all the negative consequences of statelessness in Chapter 1, we can conclude that statelessness is definitely against the best interests of the child and therefore states are obliged to prevent it and protect the child.

## **2.3 The work of UNHCR**

### ***2.3.1 UNHCR’s mandate***

UNHCR’s mandate derives from the Statute that was adopted<sup>55</sup> by UNGA in 1950 that defines the material and personal scope of the activities of UNHCR. According to paragraph 1 of the Statute “the ... High Commissioner ..., acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations,

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<sup>53</sup> CRC, Article 7

<sup>54</sup> E.g. CRC General Comment No. 9, par. 34; CRC General Comment No. 11, par. 41. Even in the *Travaux Préparatoires* of the CRC, we see that the initial proposal was the adoption of the right to a nationality from birth. But because there were many arguments for conflicts with the sovereignty of states and their nationality and immigration laws, this phrasing was abandoned and the wording of the ICCPR was adopted (“right to acquire a nationality”).

<sup>55</sup> UNGA, Resolution 428 (V) of 14 December 1950

to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees ...". In 1976 the personal scope was expanded by the GA in order to include stateless persons as well. The content of the material scope for stateless persons was, later on in 2006, clarified through the Executive Committee's document about "Conclusion on the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons"<sup>56</sup> where the Committee required UNHCR to cooperate closely with States, other UN bodies and civil society, and urged governments to respond positively to this cooperation and to reconsider their nationality laws in order to address statelessness issues. Although UNHCR had a stateless mandate since 1976, only recently it became very active on the matter by issuing a number of documents that contribute significantly to the prevention of statelessness and the protection of the affected persons.

### ***2.3.2 Guidelines on statelessness and relevant initiatives***

In 2012, UNHCR issued 4 guidelines directly addressing statelessness matters. Guideline No.1: *The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, Guideline No.2: *Procedures for Determining whether an Individual is a Stateless Person*, Guideline No.3: *The Status of Stateless Persons at the National Level* and Guideline No. 4: *Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*. The purpose of these guidelines is to provide "interpretative legal guidance" to governments and other domestic, regional and international actors on how to address statelessness.<sup>57</sup> The most relevant for the present case that is worth mentioning, is Guideline No. 4, since it concerns matters of acquisition of nationality by children under the 1961 Convention. This Guideline makes an effort to assist the relevant actors on how to interpret the provisions of articles 1-4 of the 1961 Convention with respect also to international human rights norms encompassed in other international legal instruments and especially to the best interests of the child. It further gives guidance on matters of acquisition of nationality in the territory of birth of the minors either automatically at birth or through application

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<sup>56</sup> UNHCR Executive Committee, Conclusion No. 106 (LVII) 2006, available at: <http://www.unhcr.org/publ/PUBL/3d4ab3ff2.pdf>

<sup>57</sup> UNHCR, *Guideline on Statelessness No.4*, p. 1

procedures with very specific conditions. In addition, it explains mainly to the governments how they can adjust their national legislation for these issues, in order to be in compliance with their international obligations and specifically with obligations arising from the 1961 Convention.<sup>58</sup>

UNHCR, by issuing these guidelines, increasing the expenditures for statelessness matters, and organizing events/meetings in 2011 in light of the 50<sup>th</sup> anniversary since the entry into force of the 1961 Convention, managed to put statelessness into the spotlight of the international agenda.<sup>59</sup> These initiatives have had many positive results, as, not only they raised awareness to all possible actors, but also they led to increased discussions for nationality law reforms, introduction of determination procedures with respect to the 1954 Convention, closer cooperation between UNHCR, governments and NGOs.<sup>60</sup>

Later initiatives were the introduction in 2014 of the *Handbook on Protection of Stateless Persons* that provides guidance specifically for determination procedures, and the launch of the *#ibelong* Campaign to ensure and promote every child's right to nationality in collaboration with UNICEF.<sup>61</sup> Lastly, a very determinate step was taken by UNHCR by establishing a *Global Action Plan to End Statelessness (2014-2024)*, in which it presents 10 actions that will be and need to be taken in order to end statelessness. Among these actions are the elimination of cases of children born stateless, the removal of gender discriminatory clauses in nationality laws, ensuring birth registration of every child and accession to the UN Statelessness Conventions.

## 2.4 Concluding remarks

This Chapter tried firstly to provide an answer to the first research sub-question concerning the current legal framework related to the issue of stateless minors and whether it contributes to the prevention of this phenomenon and the protection of the affected ones. Focus was shifted solely to the Statelessness Conventions, ICCPR, CEDAW and CRC and specifically to the articles that

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<sup>58</sup> *Ibid*, p.7-10

<sup>59</sup> Mark Manly, *A look back at seven years at the helm of UNHCR's Statelessness Section*, European Network on Statelessness, 22 May 2015

<sup>60</sup> UNHCR, Executive Committee, *Note on Statelessness*, EC/64/SC/CRP.11, 14 June 2013, available at: <http://www.unhcr.org/51d19ba49.html>

<sup>61</sup> UNHCR, *#IBELONG*, available at: <http://www.unhcr.org/ibelong/>

refer to cases of nationality of children and equality of women before the law. Through a brief analysis and assessment of these instruments we come to the conclusion that the two Statelessness Conventions have made an effort to address the prevention of statelessness and the protection of stateless individuals, but due to the lack of clarity in many provisions, the broad margin of appreciation granted to MS, the low percent of signatories and the new emerging phenomena that the Conventions could not have foreseen when established, these Conventions prove to be inadequate in preventing statelessness cases among minors born within refugee female-headed households and in providing legal protection to them. The ICCPR, CRC and CEDAW offer provisions for the right of the child to acquire nationality and for the equal treatment of women before the law, and since they are widely accepted and ratified legal instruments they can be important tools in order to bind MS, especially the ones non-parties to the Statelessness Conventions, to engage in the prevention of statelessness and protection of the rights of stateless minors in the present case. Lastly, the work of UNHCR was presented in respect with the second research sub-question, and from this review we realize that UNHCR, although it reacted late in addressing statelessness and its documents are not binding to anyone, it has engaged into a lot of work for this topic. This work is of great value and importance as it stresses out the problem of statelessness, it contributes to the gathering of data and the work of the governments on this field and it provides detailed guidance to States on how they can better deal with statelessness prevention and protection.

## CHAPTER 3 (Case studies)

### 3.1 Introduction

After reviewing and assessing the current international legal framework and the work of UNHCR in Chapter 2, it is time to see what is implemented in practice in Syria and in Turkey, Lebanon and EU-MS which host a significant number of Syrian refugees, answering the third and fourth research sub-questions. The number of Syrian refugees in host countries has reached its highest level since the civil war in Syria broke out 6 years ago. According to UNHCR statistics the current number of refugees in neighboring countries has increased to more than 5 million, with Turkey hosting the largest number, reaching nearly 3 million and Lebanon coming second with more than 1 million Syrian refugees.<sup>62</sup> In addition, around 1 million refugees have arrived in the EU and have been relocated in several MS.<sup>63</sup> As these numbers increase, simultaneously the number of Syrian refugee women occupying the role of “head of household” increases as well,<sup>64</sup> together with the number of children<sup>65</sup> born in host countries. These figures highlight the importance of engaging in a further analysis, for the topic of this Master’s Thesis, on the policies that these countries follow, how they treat minors born without being able to acquire a Syrian nationality, what legal and non-legal tools they use, if any, to prevent statelessness issues from arising and what measures they take to protect individuals who are stateless or at risk of statelessness. The analysis of each case study will begin with a short presentation of relevant facts, it will proceed with briefly mentioning the domestic and regional legal framework under which each country is bound to follow a certain legal conduct and lastly, it will project the problems arising because of the state’s policies and practice. A more detailed presentation of how nationality law is regulated in Syria and which are its consequences, will be provided as well.

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<sup>62</sup> UNHCR, *Syria Regional Refugee Response, Inter-agency Information Sharing Portal*, available at: <http://data.unhcr.org/syrianrefugees/country.php?id=122>

<sup>63</sup> European Commission, *The EU and the Refugee Crisis*, July 2016, available at: <http://publications.europa.eu/webpub/com/factsheets/refugee-crisis/en/>

<sup>64</sup> UNHCR, *Woman Alone: The fight for survival by Syria’s refugee women*, 2016, p. 8

<sup>65</sup> More than 300,000: UNHCR, *In Search of Solutions: Addressing Statelessness in the Middle East and North Africa*, 2016, p. 10

## 3.2 Turkey

### 3.2.1 Facts

Succeeding EU-Turkey agreement,<sup>66</sup> the influx of Syrian refugees in Turkey expanded rapidly comparing to 2015, reaching officially in 2017, almost three million, which comprises the 75 percent of the overall number of registered Syrian refugees who fled their country since 2011.<sup>67</sup> More than 1,2 million of the Syrian refugees currently living in Turkey are reported<sup>68</sup> to be children and 55 percent of total are women.<sup>69</sup> Only in 2013, 60,000 children were born according to a research team from Refugee International,<sup>70</sup> but this number peaked to 180,000 new born children by January 2017.<sup>71</sup>

### 3.2.2 Domestic and regional legal framework

The Turkish government reformed the nationality law in 2009 in order to create more safeguards that will contribute to preventing statelessness cases from arising. According to the current nationality law “Turkish citizenship by birth shall be automatically acquired on the basis of descent or place of birth”.<sup>72</sup> Under article 8(1) of this law, in case a child is born in Turkish territory to parents who are not Turkish nationals, and is unable to acquire another nationality, then he/she can obtain the Turkish nationality by birth. This law finds Turkey in implementation of the *jus soli* principle, which is more clearly expressed in article 8(2) of the law that takes for given that “a child found in Turkey is deemed to have been born in Turkey unless proven otherwise”. Furthermore, to protect the rights of stateless persons, Turkey introduced the Law on Foreigners and International Protection, which provides to individuals officially recognized as stateless the

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<sup>66</sup> EU-Turkey statement, Brussels, 29 November 2015, available at: <http://www.consilium.europa.eu/en/press/press-releases/2015/11/29-eu-turkey-meeting-statement/> ; EU-Turkey Joint Action Plan, Brussels, 15 October 2015, available at: [http://europa.eu/rapid/press-release MEMO-15-5860\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm)

<sup>67</sup> *Supra* no62, UNHCR, *Syria Regional Refugee Response*

<sup>68</sup> UN Children’s Fund (UNICEF), *More than 40 per cent of Syrian refugee children in Turkey missing out on education*, 19 January 2017

<sup>69</sup> Regional Refugee Resilience Plan 2016-2017 (3RP), *Turkey*, 2016, p. 14

<sup>70</sup> Refugee International, *Birth Registration in Turkey: Protecting the Future for Syrian Children*, 29 April 2015

<sup>71</sup> Middle East Monitor, *Almost 180,000 Syrian refugee babies born in Turkey*, 20 January 2017

<sup>72</sup> Turkey, *Turkish Citizenship Law*, Law No. 5901, 29 May 2009, Art. 6, available at <http://www.refworld.org/docid/4a9d204d2.html>

Stateless Person Identification Document that is considered a residence permit requiring renewal every 2 years.<sup>73</sup>

Turkey is also a member of the Council of Europe (CoE) and a party to the European Convention on Human Rights (ECHR). In 1997 CoE adopted the European Convention on Nationality (ECN) that includes rules and principles for the prevention and reduction of statelessness. Turkey has not become yet a party to this Convention, but since it is a party to ECHR, it is bound to respect ECHR and the case law from the European Court of Human Rights (ECtHR). Although nationality is not an ECHR right *per se*, the ECtHR in the case of *Genovese v. Malta* established that nationality is under the scope of protection of ECHR as an element of an individual's social identity, which is further part of that individual's private life and therefore violations of the right to acquire nationality can raise issues under article 8 ECHR.<sup>74</sup> We can, thus, conclude that Turkey needs not only to abide by its obligations under international treaties that concern human rights, nationality and statelessness issues, but also by the rules incorporated in its domestic legal system and in regional conventions it is a MS to.

### **3.2.3 Problems arising**

Although Turkey has adopted in theory the 1954 Convention, ICCPR, CRC, CEDAW and the aforementioned regional and domestic laws in its legal system, in practice it has been said that it has applied them very rarely. The reasoning behind this is that the proof of lack of Syrian nationality by a child is not always easily feasible as well as proof that it was born in Turkish territory.<sup>75</sup> This means that the Turkish nationality is not automatically attributed to the children if their status is in an uncertain stage. Factors that might contribute to such obstacles are the administrative difficulties and deficiencies appearing in birth registration procedures that can possibly lead to the refusal of granting nationality.<sup>76</sup> Additionally, the fact that Turkey has not

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<sup>73</sup> Turkey, *Law No. 6458 on 2013 of Foreigners and International Protection*, 4 April 2013, art. 50-51 available at: <http://www.refworld.org/docid/5167fbb20.html>

<sup>74</sup> *Genovese v. Malta*, Application no. 53124/09, ECtHR, 11 October 2011, par. 33

<sup>75</sup> Refugees International, *Birth Registration in Turkey: Protecting the Future for Syrian Children*, April 2015, p. 10

<sup>76</sup> Peter Rodrigues and Jill Stein, *The prevention of child statelessness at birth: a multilevel perspective*, Ton Liefwaard & Julia Sloth-Nielsen (Eds.), *The United Nations Convention on the Rights of the Child: Taking Stock after 25 Years and Looking Ahead*, Leiden-Boston: Brill-Nijhoff 2016, p. 393

become a party to the 1961 Convention results in the absence of an international legal obligation for the government to implement measures for the reduction of statelessness cases.

### **3.3 Lebanon**

#### ***3.3.1 Facts***

Lebanon is currently hosting more than 1 million Syrian refugees who are registered with UNHCR, but the government claims that the actual total number is exceeding 1,5 million, which results in one in five people living in Lebanon being a Syrian refugee.<sup>77</sup> 52,5 percent of this population have been reported<sup>78</sup> to be females and more than half a million are children. Since 2011, 70,000 babies were born, most of which have not yet been officially registered.<sup>79</sup>

#### ***3.3.2 Domestic and regional legal framework***

Lebanese nationality law is similar to Syrian nationality law and follows the *jus sanguinis* doctrine under which a child obtains the nationality only from his/her Lebanese father.<sup>80</sup> However, there is also a provision that if a person is born in Lebanese territory and did not acquire foreign nationality upon birth, he/she is considered to be a Lebanese national.<sup>81</sup> This provision encompasses the *jus soli* principle and can be the base for the acquisition of the Lebanese nationality by children of Syrian refugees who would otherwise be stateless.

Although Lebanon is not a party to the Statelessness Conventions, it is still bound internationally by ICCPR, CEDAW and CRC as it was indicated in Chapter 2. It is worth mentioning that under its national law, there is a prevalence of international treaties over all national laws in case there is any contradiction.<sup>82</sup> In addition to its international obligations, the government has undertaken regional obligations under the Arab Charter on Human Rights (ACHR) to respect the right to

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<sup>77</sup> Human Rights Watch (HRW), *World Report 2017: Lebanon, Events of 2016*, 2016

<sup>78</sup> *Supra* no62, UNHCR, *Syria Regional Refugee Response*

<sup>79</sup> Euronews, *The plight of Syrian refugees born in Lebanon and who could become stateless*, 4 May 2016

<sup>80</sup> Lebanon, *Decree No. 15 on Lebanese Nationality*, 19 January 1925, Art. 1

<sup>81</sup> *Ibid*, Art. 1(2)

<sup>82</sup> Lebanon, Article 2 of the Code of Civil Procedures

acquire nationality,<sup>83</sup> and under the Covenant on the Rights of the Child in Islam (CRCI) to protect the right to nationality of the child and to engage in every effort to resolve any issue of statelessness arising.<sup>84</sup>

### **3.3.3 Problems arising**

The *jus soli* doctrine under article 1(2) of the Lebanese nationality law in practice is very rarely implemented and, thus, not every child born in Lebanese territory who is at risk of statelessness is granted nationality. An element that creates more obstacles is the absence of any specific human right institution or national body that addresses directly matters of nationality and statelessness.<sup>85</sup> And whereas it could be assumed that the responsibilities of Lebanon will increase due to its membership in regional legal instruments, the fact that it has only signed and not ratified the CRCI and that there is a lack of any human rights mechanism or regional court which will monitor the implementation of the ACHR,<sup>86</sup> results in an ineffective regional human rights framework that cannot bind Lebanon or held it accountable for any violations.

## **3.4 EU Member States**

### **3.4.1 Facts**

The arrival of more than 1 million Syrian refugees in EU-MS, mainly through Greek and Italian shores, led the EU to adopt a series of decisions<sup>87</sup> for the relocation of refugees in MS and to form an agreement<sup>88</sup> with Turkey in order to reduce the influx of refugees. Currently the EU-MS that host the largest numbers are Germany, Sweden, France, Spain, following the relocation of refugees

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<sup>83</sup> Arab Charter on Human Rights (ACHR), Article 24

<sup>84</sup> Covenant on the Rights of the Child in Islam, Article 7(1), (2)

<sup>85</sup> Frontiers Ruwad Association, *Statelessness in Lebanon – Submission in View of Lebanon’s Second Periodic Review by the Human Rights Council*, March 2015, p. 4

<sup>86</sup> ISI, *The World’s Stateless: Children*, January 2017, p. 99

<sup>87</sup> European Council, Council Decision (EU) 2015/1523, 14 September 2015; Council Decision (EU) 2015/1601, 22 September 2015

<sup>88</sup> *Supra* no66, EU-Turkey Joint Action Plan

from Greece and Italy scheme.<sup>89</sup> According to reports,<sup>90</sup> two thirds of this population are women and children, with many of these women composing a high percentage as heads of households and many children born in EU-MS.

### ***3.4.2 Domestic and regional legal framework***

As was aforementioned in Chapter 2, not all EU-MS are parties to the Statelessness Conventions, but they have all ratified ICCPR, CEDAW and CRC. Moreover, all EU-MS are also members of CoE and, thus, bound by ECHR and ECtHR case law.<sup>91</sup> Two basic documents that CoE produced was ECN, but with very few ratifications from EU-MS and Recommendation 2009/13 on the Nationality of Children containing 23 principles, which aim at the reduction of statelessness cases. Concerning the EU legislation, there is no specific regulation or directive addressing issues of statelessness and granting nationality, therefore EU-MS have the discretion in the way they implement their domestic law with respect to their obligations arising from international and regional treaties they have ratified on related matters. Furthermore, none of the MS have as a default doctrine the *jus soli*, but some of them include it as a general principle in different forms or some others do not include it at all.<sup>92</sup>

### ***3.4.3 Problems arising***

Most of the difficulties arising in the situation of granting nationality to children who would otherwise be stateless, derive from the many inconsistencies existing between international, regional, and domestic laws. For example,<sup>93</sup> under article 1 of the 1961 convention and article 7 CRC, the *jus soli* has precedence over the *jus sanguinis*, but under CoE Recommendation 2009/13 the opposite is noted because the default *jus sanguinis* doctrine of Principle 1 is considered to be

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<sup>89</sup> BBC News, *Migrant crisis: Migration to Europe explained in seven charts*, 4 March 2016

<sup>90</sup> The Guardian, *UN says one-third of refugees sailing to Europe are children*, 3 February 2016; UNHCR, *Profiling of Syrian Arrivals on Greek Islands in January 2016*, 2016; Harriet Agerholm, *Germany's birth rate hits 33-year high after arrival of 900,000 refugees*, Independent, 17 October 2016;

<sup>91</sup> Same as Turkey, see Section 3.2.2

<sup>92</sup> Iseult Honohan, *Jus Soli Citizenship*, European Union Democracy Observatory on Citizenship (EUDO) Policy Brief No.1, p. 2-3

<sup>93</sup> Directorate-General for Internal Policies, *Practices and Approaches in EU Member States to End Statelessness*, Policy Department C: Citizen's rights and constitutional affairs, European Parliament, 2015

above the default *jus soli* rule of Principle 2, since in CoE-MS the *jus sanguinis* appear to be a stronger norm. Greater inconsistencies appear between the domestic legislation of MS, who, having a quite broad margin of appreciation to regulate their nationality laws, they formulate them according to their national interest. In Germany, for example, the government established some safeguards for children that are born in German territory to non-German parents,<sup>94</sup> but this law poses certain conditions to the acquisition of nationality by a child, even if the child would otherwise be stateless. Such conditions<sup>95</sup> are the need of one of the parents to have been a legal resident in Germany for eight years **and** (emphasis added) to have been granted the right to permanent residence. In Sweden all the regulations in nationality law<sup>96</sup> adopted to preclude childhood statelessness are limited to children that have been stateless since birth and that have a permanent residence permit, thus finding the government in contradiction with the 1961 Convention that Sweden is a party to, which highlights that the requirement of habitual residence is adequate.<sup>97</sup> Other countries, such as Greece, Finland, Italy, Spain that require the child to be of unknown nationality or not holding another nationality at birth, grant nationality to the child automatically at birth.<sup>98</sup> Despite this discretion that EU-MS have, the Court of Justice of the European Union (CJEU) negates<sup>99</sup> the necessity of MS to consider the EU law while exercising their competence in nationality matters and especially in *Rottman* case<sup>100</sup> it pointed that when statelessness issues arise, the MS need to prove that the measure taken concerning nationality is justified by reason of public interest and that it respects the principle of proportionality.<sup>101</sup>

### 3.5 Syria

In 2012, after 4 months of work by a committee appointed by President Assad, a new Constitution of the Syrian Arab Republic was introduced. According to it, gender equality should be respected and “citizens shall be equal in rights and duties without discrimination among them on grounds of

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<sup>94</sup> Germany, *German Nationality Law 1913 (as amended by Act of 1 June 2012)*, Section 4(3)

<sup>95</sup> EUDO Citizenship Observatory, *Country report on Citizenship Law: Germany*, January 2015, p. 16

<sup>96</sup> Sweden, *The Swedish Citizenship Act, SFS 2001:82*, March 2001, Section 6

<sup>97</sup> 1961 Convention, Article 2(b)

<sup>98</sup> EUDO Citizenship Observatory, *Protection against statelessness: Trends and Regulations in Europe*, May 2013, p. 42-44

<sup>99</sup> See indicatively: *Kaur*, C-192/99, CJEU, 20 February 2001; *Zhu and Chen*, C-200/02, CJEU, 19 October 2004

<sup>100</sup> *Rottmann*, C-135/08, CJEU, 2 March 2010

<sup>101</sup> *Ibid*, par.55

sex...”.<sup>102</sup> The government also has an obligation under the Constitution to provide women with possibilities for full participation in all aspects of life and society and to abolish any existing restrictions that impose an obstacle to this participation.<sup>103</sup> Although this new Constitution was established, there were not any legal reforms to update and conform with the Constitution the already existing laws that include discriminatory regulations for women. Therefore, the Legislative Decree 276 which is the nationality law of Syria, adopted in November 1969, is still valid and still has a gender-based approach to matters of acquisition of nationality.<sup>104</sup> More specifically, the current nationality law recognizes the Syrian father as the only one<sup>105</sup> able to pass on the Syrian nationality to his child. There is only one exception that allows the mother to confer nationality (not applicable in the present case) that requires the child to be born in the territory of Syria to a Syrian mother and the father to be unknown.<sup>106</sup> Therefore the mother when she gives birth abroad, as happens in the case under examination, she cannot confer her Syrian nationality to her child even if there is no father in the household.

It is also necessary to mention that Syria, as party to CEDAW, although it has provisions for gender equality in its new Constitution, it still maintains the reservation that it has entered in Article 9(2) of CEDAW that calls for equal rights for men and women in conferring nationality to their children. Nevertheless, it is important to keep in mind that Syria has ratified ICCPR which provides for equality before the law,<sup>107</sup> and CRC, ACHR, CROI that create the obligation of MS to secure the right of the child to acquire nationality and to be protected from statelessness.<sup>108</sup> However, if we see the current situation with thousands of minors born to Syrian mothers, being exposed to statelessness abroad and the still applicable gender-based nationality law, we understand that the implementation of these conventions and specifically of article 7 of CRC is not taking place in practice, and therefore the best interests of the child under article 3 of CRC are not respected and taken into primary consideration. This negligence towards the best interests of the child is also

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<sup>102</sup> *Syrian Arab Republic: Constitution, 2012*, 26 February 2012, Article 33(3), available at: <http://www.refworld.org/docid/5100f02a2.html>

<sup>103</sup> *Ibid*, Article 23

<sup>104</sup> *Syrian Arab Republic, Legislative Decree 276 - Nationality Law*, 24 November 1969, available at: <http://www.refworld.org/docid/4d81e7b12.html>

<sup>105</sup> *Ibid*, Article 3A

<sup>106</sup> *Ibid*, Article 3B

<sup>107</sup> ICCPR, Article 26

<sup>108</sup> Tilburg University - Statelessness Programme, *The Stateless Syrians*, May 2013, p.5-6, available at: <http://www.refworld.org/docid/52a983124.html>

deteriorating by the fact that Syria is not a party to the Statelessness Conventions that would have helped in the scenario of return of these minors in Syria in the long-term. For all these reasons, the existent nationality law in Syria finds the Syrian government in contradiction with many of its obligations under international and regional law.

### **3.6 Concluding remarks**

From this case analysis of Syria and key countries that host Syrian refugees we can conclude that in theory States are bound by international legal instruments as ICCPR, CEDAW, CRC and the Statelessness Conventions, but in practice little is implemented. Inconsistencies between domestic, regional, and international laws, gender-based nationality laws, provisions of a wide margin of discretion to MS for nationality laws, lack of accountability for MS which violate their international obligations, are the basic existent factors that deteriorate the problem of statelessness that is at risk of appearing among minors born within Syrian refugee female-headed households. Especially the Syrian gender-based nationality law, as presented above, is the primary reason why these minors are at risk of being rendered stateless when they are born in host countries. More specifically, through this brief analysis of the current factual and legal status of two Middle Eastern countries (Turkey, Lebanon) and one western region (EU) that host a great number of Syrian refugees, we manage to observe how each different area reacts to nationality and statelessness issues that are on the rise due to child births and nationality law gaps, and what type of legal guarantees it provides. The common element between these countries and many others which host Syrian refugees, is the problem of the implementation of the law, since even if there are legal rules that can actually protect the minors in the present case, States in practice apply these rules exceptionally, imposing strict conditions that make it almost impossible to be met. A possible reason for this is that they fear that opening the door for nationality for the minors, will open the door for their parents to request permanent residence in the host country even after the cessation of their refugee status, invoking the principle of the best interests of the child.

This Chapter proceeded with answering the research sub-questions on how the nationality law is regulated in Syria and which are its consequences, and what is the current legal framework and situation in major Syrian-refugee hosting countries, as Turkey, Lebanon and EU-MS. Through

answering these questions, we manage to see that the most important issue concerning international law obligations is that States, although having ratified major international legal instruments, they do not abide by them and there is currently not any concrete action taken by international actors to point out this delinquent behavior. This is why, after examining these countries and reviewing how international law is implemented directly or mainly through national and regional legislations, we realize that international law as it is, does not seem to effectively engage States in addressing statelessness and nationality matters, and for this reason the next chapter will try to provide possible alternative means to improve the way international law deals with statelessness.

## **CHAPTER 4 (Possible approaches to the topic)**

### **4.1 Introduction**

After discovering the root of the problem, assessing the current relevant international legal framework, examining the situation in Syria and the difficulties faced by major refugee hosting countries, and realizing that international law is not engaging States successfully to statelessness prevention and protection, we are going to proceed, in this chapter, with the presentation of possible legal solutions that can improve the way international law addresses statelessness arising from gender-based nationality laws so as to ensure maximum protection against statelessness for minor refugees in Syrian refugee female-headed households (main research question). More specifically, this Chapter is divided into two parts:

- i) the first part of the analysis will answer the fifth research sub-question on what more can be done through international law for the better prevention of statelessness cases arising in host countries and Syria.
  
- ii) the second part takes into consideration the case in which the host states and Syria fail or refrain from adopting the suggested prevention measures. Then it will be necessary to address the last research sub-question of how international law can increase the guarantees for the optimal protection of the rights of stateless refugee minors and their Syrian mothers in the host countries, and in case of return to Syria.

The answers that will be given for these two research sub-questions will basically form the answer to the main research question as will be elaborated at the concluding remarks of this Chapter.

## 4.2 Prevention of statelessness among refugee minors

### 4.2.1 *Host countries*

To address better the issue under examination, it is necessary for international law to provide more safeguards that can directly target the increasing population of the refugee minors born within refugee female-headed households. To achieve that, we believe that it will be more productive to focus on the current international legal framework than to follow an institutionalized approach and propose the establishment of a new international legal instrument. In addition to that, the role of human rights supervisory bodies and UNHCR should be enhanced and acquire a more active role in order to substantially address the pressuring issue, something that will be analyzed further below.

#### 4.2.1.1 The 1961 Convention and the way forward

It is understood that it is necessary before anything else, for all States, which have not yet done so and which are the main hosts<sup>109</sup> of Syrian refugees, to sign and ratify the 1961 Convention that specifically aims for the prevention of statelessness. This is a way to increase the popularity and the value of this Convention, to promote a more consistent and standardized policy for MS to prevent cases of statelessness from arising and to engage MS more in addressing statelessness matters since their international legal obligations will be increased. This measure and the way to achieve it, has already been suggested by UNHCR, which also included the goal of accession to the Statelessness Conventions in its Global Action Plan to End Statelessness. A mean that is used and that will be used also in the future by UNHCR is to advocate with the relevant ministries and governmental authorities on the benefits of acceding to the 1961 Convention and how they will, thus, be in conformity with other human rights obligations under ICCPR, CEDAW, CRC. Provision of technical assistance and guidance to the governments on how they can form their national legislation in order to better implement the obligations posed by the Convention can also be a very helpful and appealing tool that will encourage States, which hesitate because of lack of

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<sup>109</sup> e.g. Lebanon has not acceded to neither of the Statelessness Conventions; Turkey and a part of EU countries have ratified only the 1954 Convention

expertise on the issue, to accede to the Convention. Also, bringing into the top of the agenda of multilateral fora the prevention of statelessness, can attract more attention from the international community and can lead to more accessions, as has already been proved to be successful, since from 2011, when UNHCR started campaigning for the accession, more than 27 States acceded to one or both Statelessness Conventions.<sup>110</sup>

Core provision of the 1961 Convention that needs to be processed is article 1(1) that sets out the obligation for MS to grant nationality to an individual born in their territory “who would otherwise be stateless” either by birth or upon application. Many MS have chosen to follow the application procedure, as it interferes less with their domestic nationality law, and with the discretionary power given to them by the Convention, they impose their own strict conditions for it,<sup>111</sup> thus increasing the threshold, something that causes prolongation of the process for granting nationality and leads to the rejection of many applications that do not fulfill the exact criteria.<sup>112</sup> However, the most concrete way to secure that the child born to a refugee woman without a husband is not exposed to statelessness at any stage, is to grant nationality automatically at birth, a practice followed by few EU countries, such as Belgium, France, Greece, Italy.<sup>113</sup> This automatic conferral of nationality at birth, if otherwise stateless, appears to be the safest way for avoiding childhood statelessness and all its negative impacts, irrespective of the refugee status of the child.

Taking into consideration the above, one can suggest that what can be done in order to achieve the best possible solution, keeping into priority the best interests of the child and also the goal of attracting more States to becoming parties to the Convention, is to amend article 1 by deleting the application method of paragraph (1)(b) and preserving only the option for the conferral of nationality automatically by birth to the otherwise stateless child under paragraph (1)(a), but by maybe establishing a few safeguards: the child at risk of statelessness will automatically acquire the nationality of the host country at birth, but he/she or his/her mother will need to provide later,

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<sup>110</sup> UNHCR, *Global Action Plan to End Statelessness (2014-2024)*, 2014, p. 23-24

<sup>111</sup> e.g. Parents of the child need to be lawful residents of the State; requirement of specific amount of years of habitual residence of the child; specific age limits need to be taken into consideration when lodging the application. For more see *infra* no102, p. 12-14

<sup>112</sup> European Network on Statelessness, *Preventing Childhood Statelessness in Europe: Issues, Gaps and Good Practices*, April 2014, p.8-9

<sup>113</sup> EUDO Citizenship Database, available at: <http://eudo-citizenship.eu/databases/modes-of-acquisition?p=&application=modesAcquisition&search=1&modeby=idmode&idmode=A05>

within a reasonable period of time, proof of birth of the child at the host country and of the mother's refugee status. However, we are aware that the procedure of amendment of an international legal instrument is not always feasible and it can take many years of negotiations, as there are many issues arising as to who is going to propose and advocate such an amendment, how the rest of the States parties will react, whether it will pass or not, and therefore many times it is avoided as a procedure. Nevertheless, what can be, more surely, achieved with the contribution of UNHCR is to promote more to the States, whether parties to the 1961 Convention or not, the solution of the adoption of an automatic conferral of nationality by birth system with the justification that such a legal safeguard can guarantee that the best interests of the child under article 3 CRC are kept into primary consideration and that the right of the child to acquire nationality under article 7 CRC is respected.

#### 4.2.1.2 Human Rights Supervisory Bodies and UNHCR

Since the procedure of convincing more States to become parties to the 1961 Convention is a long-term processes, it is necessary to highlight what can be done in the short-term to guarantee the immediate prevention of the rising of statelessness. The most effective and recognized international human rights bodies that can play a vital role is the ComRC and the HRC, since they are the supervisory bodies of two of the most widely accepted international legal instruments. The HRC has issued a General Comment<sup>114</sup> on article 24 ICCPR that includes the right of the child to acquire a nationality, but this comment was issued in 1989, something that highlights the need for the HRC to adopt a newly updated comment on article 24 to address current phenomena as the presented one, that could not have been foreseen so many years ago. The ComRC has not issued a General Comment specifically on article 7 CRC where the right of the child to acquire a nationality is protected, especially if there is the risk of statelessness,<sup>115</sup> but it has restricted itself making references to this right in other general comments.<sup>116</sup> Therefore both committees need to make maximum use of their mandate to issue General Comments<sup>117</sup> in which they can provide exact and

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<sup>114</sup> *Supra* no50, HRC General Comment No. 17

<sup>115</sup> *Supra* no76, Peter Rodrigues and Jill Stein, *The prevention of child statelessness at birth*, p.398

<sup>116</sup> *Supra* no54, CRC General Comment No. 9, No. 11

<sup>117</sup> For ComRC see: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx> ; For HRC see: <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>

precise guidelines for MS on how they can improve their national legislations in order to be found in compliance with their obligations under these articles. Such guidelines can indicate what reforms can be conducted under domestic nationality law so as to ensure the acquisition of nationality of every child who would otherwise be stateless and the respect of the best interests of the child, preferably by a system of automatic conferral of nationality by birth.

What can be of determinate role in the formation of these guidelines is the contribution of the UNHCR, which is active and present in the refugee field and is aware of the extent of the problem, the deficiencies, and causes that lead to the risk of statelessness for the refugee minors. The UNHCR has issued its own guidelines for statelessness matters and has specifically addressed the right of the child to acquire nationality.<sup>118</sup> Therefore, having an expertise on these issues can facilitate the work of the HRC, ComRC in the production of General Comments and reports that will provide a more fundamentally constructive and detailed base that the MS can use as a tool in addressing the present problem and ameliorating their national policies. Great focus, through this work and cooperation, should be given to birth registration and birth certificate acquisition procedures in the refuge countries. More specifically, these procedures need to be simplified and become more accessible and approachable for all refugee mothers, because if they secure this registration and certificate of birth of their child, they have the means to prove that the child was born into the host country, which will be a determinate factor that can lead to the conferral of the host's country nationality to the child who would otherwise be at risk of statelessness. This kind of necessity needs to be pointed out to MS in order for them to proceed with the adoption of more effective ways to secure birth registration. Such ways can be the guarantee of free access for all to birth registrations, the abolition of any excessive requirements for documents that is not feasible for a refugee person to have because of his/her situation and the establishment of more registration offices in areas where refugee camps are located and in hospitals.<sup>119</sup> An additional element that can be promoted is the establishment by States, with the contribution of the aforementioned actors, of a constant and individual assessment/evaluation of the status of the child, during all stages of the refugee period, that will secure that the newborn refugee minors in female-headed households are registered, have acquired nationality of the territory of birth according to international

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<sup>118</sup> UNHCR, *Guideline on Statelessness No.4*

<sup>119</sup> *Supra* no76, Peter Rodrigues and Jill Stein, *The prevention of child statelessness at birth*, p.400

provisions and have their rights respected and protected, with respect to the principle of the best interests of the child under CRC.<sup>120</sup> Lastly, it is worth mentioning that in 2016 the ISI produced a CRC toolkit that can serve as a guideline to assist civil society, States, and international and regional organizations to engage more the ComRC in the effort to ensure fulfillment of States' obligations under article 7 CRC.<sup>121</sup>

It is, therefore, understood that a very close cooperation between UNHCR, HRC and ComRC, can be of vital importance for the achievement of the prevention of statelessness. HRC and ComRC with the expertise, broad range of data and knowledge of UNHCR on refugee and statelessness cases, can produce updated General Comments that will outright target matters of acquisition of nationality for the child. These Committees can also make use of their mandate to issue country reports, so as to more directly address and make publicly known the states which are not in conformity with their international obligations. Such actions, although they are non-binding for Member States, they are deriving from mechanisms that are based on two of the most widely ratified treaties (ICCPR, CRC) and for this reason they can add more pressure to the governments to follow the comments and guidelines and more importantly to abide by their international obligations as they are required to.<sup>122</sup>

#### 4.2.2 Syria and nationality law

The way forward in the case of the gender-based Syrian nationality law, as was presented in Chapter 3, is for the MS to the aforementioned international and regional legal instruments, and the supervisory bodies of these instruments, such as the Committee on the Elimination of Discrimination Against Women (ComEDAW), ComRC and HRC, to pressure the government of Syria to introduce an amendment to its nationality law and specifically in Article 3A, that will add the words *or mother*, after the phrase "Syrian Arab father". This technically small change will have a major impact as it will lead to the prevention of statelessness cases arising among refugee minors

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<sup>120</sup> ComRC, *Report of 2012 of General Discussion on the Rights of all Children in the context of International Migration*, p. 9, 15

<sup>121</sup> For more details: ISI, *Addressing the Right to a Nationality through the Convention on the Rights of the Child: A Toolkit for Civil Society*, 2016, available at: <http://www.statelessnessandhumanrights.org/>

<sup>122</sup> Vienna Convention on the Law of Treaties 1969, Article 26 ("*pacta sunt servanda*")

that are born outside the territory of Syria, especially if it is established that it will have retroactive effect which will solve the existing stateless risk for minors already born. Therefore, the Syrian mother who is the head of the household because her husband is deceased, missing or absent, will be able to confer her Syrian nationality to her child by birth or to her already born child and, thus, the child will not be stateless and will secure his/her rights as a Syrian citizen when he/she returns to Syria.

This kind of practice has been followed by many countries, especially in the MENA region and has proven to be efficient for the prevention of statelessness. For example,<sup>123</sup> the nationality law reforms in Algeria and Morocco were achieved after advocates from these countries with the support of the Arab Women's Right to Nationality Campaign, cooperated with and brought the case of domestic gender-based nationality law to the ComEDAW. This Committee in these cases issued recommendations for the implementation of the CEDAW obligations and made an effort to engage the governments in a constructive cooperation with advocates at the national level in order to achieve a law reform that will find the two governments in compliance with their international obligations. The results of this process proved to be successful since both countries withdrew their reservations in Article 9(2) of the CEDAW and introduced a bill in their parliaments that led to the reform of the nationality law by the addition of two words: *or mother*.

#### **4.3 Protection of stateless refugee minors**

When it comes to nationality matters, States are very likely to be more reluctant to any changes in their nationality law imposed by international instruments, since the issue of nationality is still within the sphere of sovereignty of States. Practice shows, as have been presented in Chapter 2 and 3, that States, although parties to international conventions that protect the rights of the child, especially to acquire nationality, continue interpreting their international legal obligations according to their own best interests, something that many times finds them in non-compliance with these obligations. For this reason, even if the measures suggested above can bring us a step closer to solving the problem of refugee minors at risk of statelessness, we must keep into

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<sup>123</sup> UNHCR, *Preventing and Reducing Statelessness: Good Practices in Promoting and Adopting Gender Equality Nationality Laws*, p. 1-3

consideration the scenario of non-compliance of States, and, therefore, we need to discover alternatives on how can international law contribute to protecting to the maximum extent the rights of the refugee minors born in the host countries and their mothers'. For this reason, the following proposals, will take for granted that States are not willing to confer their nationality to the refugee child born in their territory who will be stateless because he/she is born to a Syrian refugee mother. In addition, a necessary reminder before proceeding is that the refugee status of the Syrian mother is taken for granted as well.

#### *4.3.1 Host countries*

Currently, while the conflict in Syria is continuing and it is uncertain when peace will be restored, all refugee children born to Syrian refugee women whose husband is absent, are covered by the protection offered from their refugee status under the 1951 Convention. Even if the child or his/her mother lodge an application for statelessness, this application will most likely not be considered as the refugee status is on-going, because in many States determining the statelessness status of a person requires communication with the government of the country of origin of that individual. This kind of contact might breach confidentiality requirements imposed through the refugee status that protect the refugee from possible repercussions, because he/she fled his/her home country. What States can choose to do is to fuse the refugee and statelessness determination proceedings.<sup>124</sup> This way not only extra cost, lengthy procedures and application confusion will be avoided, but also the refugee minors will be protected at all stages of their stay in the host country: first they will be under the more favorable protection of the refugee status and then when this status ceases, they will be protected through their stateless status, leaving thus no period and no space for exposure to an uncertain situation. It is necessary to highlight here that in order to protect the individuals once their stateless status is activated, States need to immediately issue a residence permit, so they can continue living on the territory legally, since the residence permit that they had as refugees will have been de-activated with the ceasing of the refugee status. This seems to be the most

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<sup>124</sup> UNHCR, *Statelessness Determination Procedures and the Status of Stateless Persons ("Geneva Conclusions")*, December 2010, p. 3

important tool, also used by few countries,<sup>125</sup> that can guarantee the protection of the stateless minor.

For such a procedure to be implemented, States need to establish a very clear-cut and specific statelessness determination procedure that will accompany the refugee determination procedure for the cases of newborns in their territories from Syrian refugee mothers. The assistance and expertise of the UNHCR that is actively present in refuge countries could be of vital importance as it could curve the path on how such a combined procedure can become integrated and applicable in the national legislation of a State.<sup>126</sup> Of course the work of UNHCR to promote accession to the Statelessness Conventions shall also be continued and enhanced to attract more States to become parties to the 1954 Convention that regulates the status of the stateless persons.

#### *4.3.2 Return to Syria*

When the situation in Syria is restored and it is determined that refugees from host countries can return safely without being exposed to danger and persecution, the great problem that will arise is that the refugee mother who has the Syrian nationality and is the head of the household, will be able to return, but her child who does not have the Syrian nationality and is stateless will not be able to return as it will not be admitted to Syrian territory because of his/her statelessness status. To avoid separation of the mother from the child and to respect the principle of family unit,<sup>127</sup> the host states can engage in a close cooperation, if feasible, with the Syrian government and develop bilateral agreements. These agreements, after recognizing the root of the problem which is the acquisition of nationality only from the Syrian father when in a foreign country, can regulate the provision of documentation from the host states that will prove the birth of the child in the host country within Syrian refugee female-headed households and establish a special care system for the return of this vulnerable population only with the reassurance of the Syrian government that these people will not be persecuted or mistreated and that the child will be granted the Syrian

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<sup>125</sup> Kitia Bianchini, *A Comparative Analysis of Statelessness Determination Procedures in 10 EU States*, International Journal of Refugee Law, 2017, Vol29, No 1, p. 49-59

<sup>126</sup> Tools such as the Guidelines on Statelessness, the Handbook on the Protection of Stateless persons and many numerous reports with proposals issued by UNHCR should be considered by States in their effort to formulate a more concrete determination procedure for these cases.

<sup>127</sup> As envisaged in international legal instruments, e.g. UDHR, Article 16(3); ICCPR, Article 23(1)

nationality without being deprived of his/her rights as a Syrian citizen. In case any of these elements cannot be guaranteed then the host state shall not return the minor and his/her mother to Syria, but shall respect the best interests of the child and the principle of family unit, by proceeding with the provision of documents, through its national law, that can allow the lawful residence of the Syrian mother together with her stateless child, until another solution for conferral of nationality or return to Syria is found.

#### **4.4 Concluding remarks**

In this Chapter, an effort was made to present some recommendations that answer the main research question on how the way international law addresses issues of statelessness, especially arising from gender-based nationality laws, can be improved in order to guarantee the optimal protection against statelessness for minor refugees in Syrian refugee female-headed households. The recommendations focused on what more can be done through international law for the prevention of statelessness, and for the protection of the stateless refugee minors and their mothers, in case host countries fail to prevent statelessness. From this analysis, we realized that the already existing legal framework should be used as a base and be promoted in order to increase ratifications for the Statelessness Conventions. A determinate role can be played by HRC and ComRC which will be able with the constant cooperation with UNHCR to engage States more into following their General Comments and respecting their obligations under ICCPR and CRC. Another contribution by these actors can be the promotion of a combined determination procedure for refugee and statelessness status and the provision of a residence permit that can secure that at no point the minor will be left exposed to a legal limbo and to danger. However, it goes without saying that, since it comes to nationality matters which are mainly up to States to regulate, such recommendations can be fully successful only with the positive response and cooperation of States, and especially of Syria that can solve the risk of statelessness problem with a small adjustment to its nationality law.

## CHAPTER 5 (Conclusions)

In this Master's Thesis, through all the data and facts presented in Chapter 1 and 3, we realize that so far, States have not done enough to guarantee the avoidance of the creation of a stateless generation, either because, dealing with a vast number of refugees, they have not managed yet to establish a mechanism that can address these kinds of situations or because they are not willing to abide by their international obligations when there are conflicting points of national interest and sovereignty issues. The existing international legal framework that was examined in Chapter 2 appears neither to be fully covering this newly rising phenomenon nor to pressure enough States to comply with their obligations. Amendments and revisions of current legal instruments as the Statelessness Conventions and pressure to the governments to ratify them can be a step that will bring us closer to the desired solution, but since it can take months or even years of negotiations for States to reach an agreement, we need to also focus on the short-term road. As explained in Chapter 4, engaging the human rights supervisory bodies of international legal instruments that have been adopted by all host states, and the UNHCR, an internationally acknowledged agency whose work has a certain gravity in the acts of the international community and the States, can be the key to increasing the international obligations of the states and the ethical sense of duty of the governments to comply with them through changes in their nationality laws that will protect the refugee minors. However, the country of origin of all these refugees, Syria should not be left without notice. International and regional organs, States and other actors shall pressure the Syrian government to apply changes to its nationality law, because through this way the risk of statelessness for refugee minors with all the negative consequences that it entails, will be avoided once and for all. Therefore, the interplay between the governments of host countries, Syria, and international and regional organizations and bodies should be enhanced and promoted by having a constant interaction, cooperation, and consultation among these actors in order to address such instances more effectively.

The influx of Syrian refugees increasing daily, many Syrian refugee women left without a husband and giving birth to children in the host countries, gender-based nationality law in Syria that brings newborn refugee minors closer to statelessness situations, are factors that should not leave the international community and States indifferent. Letting thousands of children be left without

nationality, become citizens of nowhere, will lead to the creation of a stateless generation that will not have access to any rights and that will be exposed to constant danger, mistreatment, and an uncertain life. A generation that will be born with a restricted right to life.

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