



**NO CHILD  
SHOULD BE  
STATELESS**



European  
Network on  
Statelessness



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# EXECUTIVE SUMMARY

The Convention on the Rights of the Child, universally ratified by European countries, obliges governments to fulfil the right of every child to acquire a nationality. Yet, childhood statelessness persists. States are failing to take adequate steps to ensure that all children born within Europe's borders or to European citizen parents acquire a nationality. For those affected, statelessness can mean lack of access to other rights and services, denied opportunities, unfulfilled potential and a sense of never quite belonging. It brings hardship and anguish to children and their parents alike.

The European Network on Statelessness (ENS) is campaigning for an end to childhood statelessness in Europe. This goal is very relevant in a region in which over 600,000 people are stateless today, where intergenerational statelessness remains a problem and where stateless children can be found throughout the continent (section 1 of the report). It is also an aim that is central to the *#ibelong* campaign, spearheaded by UNHCR, to end all statelessness globally by 2024. This report maps out the task ahead by highlighting why some of "Europe's children" – children born in the region or to European citizen parents – remain without access to any nationality. It offers a synthesis of the findings of eight country studies, carried out by ENS members, on the scope and implementation of domestic laws and policies designed to prevent childhood statelessness. Drawing on other sources of data, it also offers a detailed comparative analysis of legislative safeguards designed to ensure that stateless children born in Europe acquire a nationality.

As this report reaffirms, childhood statelessness is a solvable issue: realising every child's right to a nationality is neither complicated nor arduous. Simple, legislative safeguards that address the situation of children who would otherwise be left stateless are key in this regard, and are directly prescribed by relevant international norms (section 2 of the report). Currently, far too many children are falling through the cracks – denied a nationality due to either gaps in the formulation of nationality laws, or a failure in their implementation. While almost all countries in the region have some law provisions designed to protect against childhood statelessness, remarkably few provide *all* children born in their territory who would otherwise be stateless the opportunity to acquire nationality *immediately upon or as soon as possible after birth* – a provision that is clearly in the best interests of the child. In particular, procedural requirements and additional stipulations in the law nullify relevant safeguards for some of the children who should benefit from them (section 3 of the report). Moreover, in a worrying number of cases, these deficiencies in the law are overtly in violation of the international obligations undertaken by the state in question. Law reform is urgently needed to prevent the creation of new cases of childhood statelessness in Europe and should be introduced with retroactive effect so as to cover children left stateless under the previous law.

The establishment of inclusive legislative safeguards must go hand-in-hand with measures to remove practical and administrative hurdles in accessing or confirming nationality. This means adopting special measures to actively facilitate access to nationality where statelessness arises, including the enhanced identification of

relevant cases, in order to avoid such scenarios as where a child is labelled as being of "unknown nationality" for a prolonged period of time. Improving the provision of information on applicable nationality procedures to those affected constitutes an important complement to identifying stateless children, where the remedy is not automatic under the law (section 3 of the report). It is also crucial to resolve structural problems that have the effect of inhibiting the enjoyment of nationality, in particular through the identification and elimination of barriers that restrict access to birth registration for vulnerable groups – especially those who face a significant risk of statelessness if left without official evidence of the facts of their birth (section 6 of the report).

These solutions are relatively straightforward to achieve, but ENS's research also unveiled other emerging, and sometimes more challenging, contexts where children are vulnerable to statelessness but which European states have not adequately identified or addressed. These include: stateless children born to irregular migrants or to refugees, children of same-sex couples, children commissioned by European parents through international commercial surrogacy and children who have been abandoned (sections 3-5 of the report). In any and all such cases, it is vital to recall that the right to acquire a nationality is a right of every child. Even if the circumstances of the child's conception or birth are complex (even perceivably controversial), the best interest of the child to be protected from statelessness must prevail over any questions which may arise from his or her parents' status or choices. Similarly, a child's right to preserve his or her identity, including nationality, must be assured – including where the parents' action is what jeopardises this. States must do more to defend children's right to a nationality, whatever the circumstance, and ensure that their laws and practice reflect this commitment.

Improved data collection on children's access to nationality by relevant stakeholders, as well as closer monitoring by human rights bodies, are important complements to measures which strengthen law and practice around the avoidance of childhood statelessness as they can help to track and encourage progress towards this goal. For those contexts in which children's enjoyment of the right to acquire a nationality continues to pose particular challenges, further research and additional standard-setting or doctrinal guidance – as needed – can help states to identify and implement effective solutions.

Having discussed the most significant gaps and obstacles, and drawing lessons from existing trends, developments, challenges and good practices, the report offers a series of recommendations designed to guide action to more effectively address – and ultimately end – childhood statelessness in Europe. These recommendations are targeted towards those stakeholders whose engagement will be most critical: governments, regional actors, UN human rights bodies, UN agencies and civil society, including academia. It is hoped that the recommendations and report will also serve as a basis for the development of more targeted strategies for action at the national level, in accordance with the specific context and challenges encountered.

# INTRODUCTION



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“ I want them to have what I did not have. I don't want them to live my life [...] I am nobody. If I disappeared from the face of the Earth, nobody would have known.

IONELA, ROMANIA

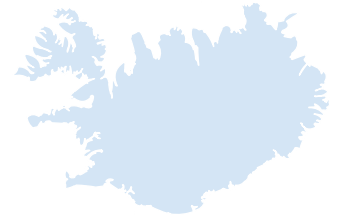
Just like any other parent, 30-year old Ionela from Romania wants the best for her children. She has experienced first-hand what life is like if you have no identification documents, cannot prove who you are or assert your claim to a nationality. This is a situation you would not wish on any child, let alone your own, which is why Ionela has been battling for over a decade to get documentation of her identity. Only then will she be able to register her children's births and ensure that they are recognized as Romanian citizens.<sup>1</sup> “*It is so difficult!*” she says, clearly frustrated by the process. Nevertheless, she has persevered, “*for the children... my children*” – and the end is now finally in sight as the Court has ordered the authorities to register her birth, which will unlock access to birth registration for her children. Her 12 year old daughter and two younger sons, who all currently lack any form of recognition from the Romanian state, may not yet appreciate the importance of their mother's actions, but she has taken an important step towards securing for them one of the most fundamental of children's rights: the right to a nationality.<sup>2</sup>

The Convention on the Rights of the Child, universally ratified by European countries, obliges governments to fulfil the right of every child to acquire a nationality.<sup>3</sup> Yet, childhood statelessness persists.<sup>4</sup> States are failing to take adequate steps to ensure that all children born within Europe's borders or to European citizen parents acquire a nationality. For those affected, statelessness can mean lack of access to other rights and services, denied opportunities, unfulfilled potential and a sense of never quite belonging.<sup>5</sup> It brings hardship and anguish to children and their parents alike. Indeed, as Council of Europe Commissioner for Human Rights, Nils Muižnieks, explains, statelessness can have “*particularly negative consequences for children, whose future can irremediably be harmed by long-lasting lack of*

*nationality*”.<sup>6</sup> Thus, whether the problem lies in a lack of adequate safeguards to provide a nationality to otherwise stateless children when a conflict of laws arises, or in practical obstacles to the enjoyment of a nationality – such as the structural inability of certain groups to access birth registration: more must be done to protect children from statelessness. This is, after all, an entirely preventable problem. Moreover, even a year is a long time in the life of a child, so “*a sense of urgency must drive our work*”.<sup>7</sup>

The European Network on Statelessness (ENS) is campaigning for an end to childhood statelessness in Europe. This goal is very relevant in a region in which over 600,000 people are stateless today,<sup>8</sup> and where intergenerational statelessness remains a problem. It is also an aim that is central to the #ibelong campaign,<sup>9</sup> spearheaded by UNHCR, to end all statelessness globally by 2024.<sup>10</sup> This report aims to map out the task ahead by discussing the different reasons why some of Europe's children – children born in the region or to European citizen parents – remain without access to any nationality.<sup>11</sup> It offers a synthesis of the findings of eight country studies, carried out by ENS members, on the scope and implementation of domestic laws and policies designed to prevent childhood statelessness.<sup>12</sup> The report also draws on other sources of data relating to children's right to a nationality in Europe and presents the main conclusions of a detailed comparative analysis of legislative safeguards designed to ensure that otherwise stateless children born in Europe acquire a nationality.<sup>13</sup> Having identified the most significant gaps and obstacles, and drawing lessons from existing good practices, the report offers a series of recommendations designed to guide states and other actors in taking action to more effectively address – and ultimately end – childhood statelessness.

# I. EUROPE'S #STATELESSKIDS



## IS CHILDHOOD STATELESSNESS A REAL PROBLEM?

Based on data relating to five of the largest statelessness situations in the world, where there are no measures in place to ensure that children do not inherit their parents' plight, **UNHCR estimates that globally, a baby is born stateless every 10 minutes.**<sup>14</sup> In Europe however, new cases of childhood statelessness are emerging at a far lower rate than this, since statelessness exists on a smaller scale and partial or full safeguards in place in most countries in the region are helping to prevent the inheritance or emergence of statelessness. Nevertheless, as will be explained in this report, new cases of childhood statelessness do continue to arise in all sorts of different circumstances in Europe too. Whether it affects a few dozen or several thousand people in any given European country, the impact on the individual must not be ignored. For a child, the inability to secure any nationality can have severely detrimental consequences and amounts to a violation of his or her right to a nationality as protected by international human rights law.

## HOW MANY CHILDREN ARE STATELESS IN EUROPE TODAY?

This is a question to which no-one, regrettably, has a firm answer. Statistics on statelessness are notoriously hard to come by<sup>15</sup> and across Europe, there is a scarcity of reliable – or indeed any – statistics on the number of stateless children. Where some data is available on the number of persons affected by statelessness, this is often not disaggregated by age, so it is impossible to distil how many among them are children.<sup>16</sup> Of the eight country studies on childhood statelessness carried out by ENS during 2015, only two were able to report that the government maintained relatively comprehensive figures of the number of children affected.<sup>17</sup>

**The lack of adequate data on the scale of childhood statelessness in Europe is serving to further compound the problem by reducing its visibility and impairing stakeholders' ability to take necessary action.** The need for improved data on children's access to nationality, as well as on the scale and impact of childhood statelessness, is an area of engagement that must be further prioritised.<sup>18</sup> To achieve this means, among others, encouraging relevant government bodies *"to review which of their data collection systems capture data relating to childhood statelessness – including on birth registration rates – and make improvements, as necessary to the data collection methods concerned"*, as well as making better use of *"such frameworks as the state party reporting to the Committee on the Rights of the Child and other human rights bodies, as well as mechanisms within the EU framework, to promote systematic generation and dissemination of reliable data on children's access to nationality"*.<sup>19</sup>

UNHCR estimates that globally,

**A BABY IS BORN STATELESS EVERY 10 MINUTES**

## OTHER EUROPEAN COUNTRIES

In the rest of Europe it is also very difficult to pinpoint how many children are affected by statelessness. **What data there is confirms that childhood statelessness is a challenge shared by countries throughout Europe, but there are considerable variations in the apparent scale of the issue, making it difficult to extrapolate towards any general trends.** In Sweden, for instance, the statistics bureau's data for 2014 shows a total of 8,974 children listed as stateless – suggesting that this country hosts one of the largest numbers of stateless children in Europe.<sup>26</sup> In Iceland, on the other hand, only 32 children are listed as stateless in the national population register.<sup>27</sup> In several countries, the scale of the problem is obscured behind registration practices that fail to clearly differentiate between stateless children and those of "unknown nationality", many of whom may actually also be stateless but not identified as such.<sup>28</sup> In Germany, where stateless and "unknown nationality" are not separated in published population statistics, there are over 9,000 people in this category under the age of 20, suggesting that there are a considerable number of stateless children in the country.<sup>29</sup> In the Netherlands, more than 800 children who were born in the country are recorded in the population registration system as stateless but there is an even larger population of children of "unknown nationality".<sup>30</sup> In Hungary, over 200 children each year have their nationality registered as "unknown" when their birth is recorded.<sup>31</sup> Elsewhere, only a partial picture of the scale of the problem can also be constructed from related data. For instance, in Poland, 35 stateless children lodged asylum applications between 2004 and 2014; while 71 stateless children acquired Polish nationality in the same period.<sup>32</sup> And in the United Kingdom, over the space of a decade (from 2001-2010), some 350 stateless children received British nationality through one of several different routes.<sup>33</sup>

## BALTICS / FORMER SOVIET UNION

Statelessness continues to affect a significant population following the break-up of the Soviet Union, although in the domestic context the persons concerned enjoy a special legal status as “non-citizens” and “persons of undetermined citizenship” respectively. **Today, a quarter of a century after dissolution and long after anyone who was already alive at the time has attained adulthood, statelessness continues to affect children in countries of the former Soviet Union.** According to the most recent figures, there are 7,846 stateless children in Latvia<sup>20</sup> and 936 in Estonia.<sup>21</sup> Neither of these figures includes stateless children in the country whose situation is separate from these long-standing “in situ” populations, the number of whom are not known. In Ukraine, the 2001 population census recorded 17,517 children as stateless, but the overall number of persons affected by statelessness in the country has since diminished and it is not clear how many children are stateless in Ukraine today.<sup>22</sup> Nor are statistics readily available for the number of children affected by statelessness in the Russian Federation – the last of the four states in Europe with the largest stateless populations.<sup>23</sup>

## SOUTHEAST EUROPE

In the countries of the former Yugoslavia, state succession also left problems of statelessness in its wake. UNHCR’s most recent statistics indicate that just over 10,000 people remain affected by or at risk of statelessness across Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia.<sup>24</sup> **The challenge in much of Southeast Europe revolves particularly around lack of access to documentation of birth and identity, leading to an inability to establish or confirm nationality, especially impacting on Roma communities.** These problems continue to be intergenerational in their effects, nevertheless the number of children currently facing statelessness in this sub-region is not known. There has also been a spill-over of this issue in particular into Italy where many Roma migrated from the former Yugoslavia and continue to face difficulties asserting a claim to any nationality, although no overall data is available.<sup>25</sup>



## 2. CHILDREN'S RIGHT TO A NATIONALITY



“ When is it in the best interests of the child to be stateless? Never!

RENATE WINTER, MEMBER OF THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD



With these 14 simple words, Renate Winter, Member of the United Nations Committee on the Rights of the Child – addressing participants at the ENS regional conference on Preventing Childhood Statelessness, held in Budapest in June 2015 – summed up why the enjoyment of a nationality is a fundamental right of every child. Children affected by statelessness did not choose this status. Nor do they somehow exist as free agents without any attachments to a family, a community, a place or a home. They have the same connections as anyone else. They have a country. They belong. Yet their country is letting them down, right from the start, by failing to ensure that this belonging translates into nationality – a legal bond that formalises their membership of the community and provides protection, rights, empowerment, a sense of acceptance and inclusion.

Under international law, the enjoyment of most human rights is not contingent on nationality.<sup>34</sup> This is also true for the enjoyment of children's rights.<sup>35</sup> Yet, in practice the lack of any nationality often severely obstructs the exercise of a wide array of human rights.<sup>36</sup> Recognising how important it is that everyone holds a nationality, since as early as the 1930s, governments have therefore sought to ensure that no child is left stateless by concluding international agreements on the matter.<sup>37</sup> This section sets out the international framework according to which states must ensure the right of every child to enjoy a nationality.

## THE CONVENTION ON THE RIGHTS OF THE CHILD AND OTHER RELEVANT HUMAN RIGHTS INSTRUMENTS

Today, the right to acquire a nationality is firmly established as a universal right of every child, thanks to its inclusion in the Convention on the Rights of the Child (CRC) and numerous other human rights instruments.<sup>38</sup> **Article 7 of the CRC** provides as follows:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, **the right to acquire a nationality** and, as far as possible, the right to know and be cared for by his or her parents.
2. **States Parties shall ensure the implementation of these rights** in accordance with their national law and their obligations under relevant international instruments in this field, **in particular where the child would otherwise be stateless.**<sup>39</sup>

Article 8 of the CRC further protects the right of children to preserve their identity, including nationality.

The general principles contained in the CRC are also instrumental in interpreting and protecting children's right to a nationality, to better understand what is demanded of states.<sup>40</sup> The four central principles are: the right to life, survival and development,<sup>41</sup> best interests of the child,<sup>42</sup> respect for the views of the child<sup>43</sup> and non-discrimination.<sup>44</sup> Statelessness can impede a child's development and even survival by obstructing access to healthcare, for instance.<sup>45</sup> Given this and the need to give primary consideration to what is in the best interests of the child whenever any decision or action is taken which involves a child, children should not be left stateless for a long

period after birth but must acquire a nationality at birth or as soon as possible after birth.<sup>46</sup> Where children's nationality may be affected by the actions of their parents or of the state, for instance in the case of renunciation or loss of nationality during childhood, there should be space – as appropriate – for the child's opinion to be factored in. The principle of non-discrimination implies, for instance, that regulations aimed at preventing statelessness may not discriminate between children on the basis of their or their parents' status.<sup>47</sup> Supplementing this latter norm are numerous other human rights provisions which explicitly outlaw discrimination in the enjoyment of the right to a nationality. These include article 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) which prohibits racial or ethnic discrimination in nationality rights; and article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which prescribes equal nationality rights for men and women – including with respect to the transmission of nationality to their children.

## ENGAGEMENT OF UN COMMITTEE ON THE RIGHTS OF THE CHILD ON CHILDREN'S RIGHT TO A NATIONALITY IN EUROPE

The Committee on the Rights of the Child provides authoritative guidance on and monitors the implementation of the CRC by states parties. Through the convening of General Days of Discussion and the adoption of General Comments, the Committee helps to deepen the understanding of states' obligations under the CRC in respect of particular themes and rights/articles. The Committee periodically reviews states' performance through a reporting process and can now also receive individual complaints against violations of the CRC in respect of those states which have acceded to the Third Optional Protocol on a communications procedure (which entered into force in April 2014).

The Committee has yet to dedicate a General Day of Discussion or General Comment to the question of children's right to nationality, which would help to further crystallise how states are to realise this right through their law and policy in accordance with the guiding principles of the CRC, including in complex cases.<sup>48</sup> However, the Committee has issued recommendations on this topic in the "Concluding Observations" it has adopted in response to state party reports. Since it began this work in 1993, a total of 128 state party reports submitted by European states have been considered. The Committee adopted Concluding Observations relating to children's right to a nationality in respect of 42 countries – a total of 62 relevant recommendations in all – equivalent to almost a third of these reviews. At the global level, 438 state party reports have been reviewed in all and 140 countries received recommendations relating to the right to nationality. Recommendations to European states on

this issue therefore account for some 30% of the total worldwide tally.

The Committee has been most active in raising this issue over the past 5 years, adopting relevant recommendations in its Concluding Observations in respect of more than 50% of European state party reports. Even so, within this period too, the Committee has missed several opportunities to provide recommendations in respect of law and practice which is problematic in terms of childhood statelessness. For instance, at the time of their latest review, Denmark and Austria maintained nationality laws that discriminate against children born out of wedlock; while Norway lacks any safeguard to grant nationality to children born stateless in the territory and numerous other countries have only partial safeguards which do not comply with their international obligations.<sup>49</sup> The lack of Concluding Observations addressing these gaps, in spite of the Committee's evident interest in promoting children's right to a nationality, demonstrates that more effort is needed to ensure that relevant information reaches the Committee and is taken into account in its work, in order to make better use of this important advocacy opportunity and to remind states of their international commitments. This is also one of the areas for increased engagement identified in the "Action Statement" adopted at the regional conference on preventing childhood statelessness in Europe, convened by ENS in June 2015.<sup>50</sup>

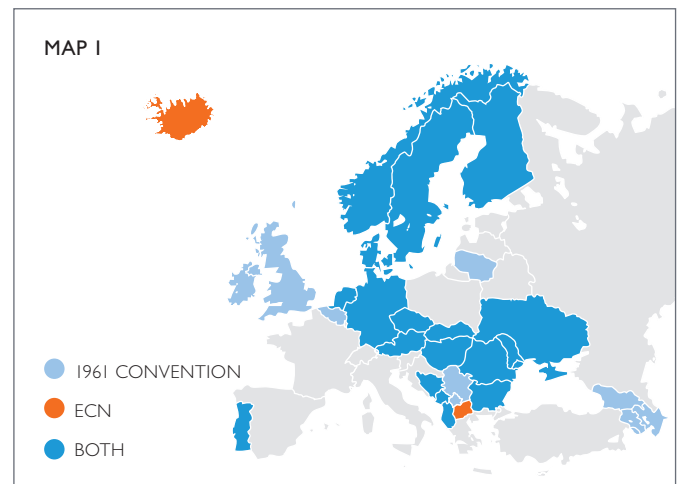
The European Convention on Human Rights (ECHR) lies at the heart of human rights protection in Europe. While this instrument does not explicitly recognize a right to a nationality, or prescribe the prevention of childhood statelessness, nationality has been recognized as an element of a person's social identity in the case law of the European Court of Human Rights. As such, in some situations, the denial of citizenship<sup>51</sup> or uncertainty as to the possibility of obtaining recognition of citizenship<sup>52</sup> can cause a violation of the right to respect for private life, which is protected under article 8 of the ECHR. In European jurisprudence, the principles of best interests of the child<sup>53</sup> and of non-discrimination<sup>54</sup> have also emerged as key interpretative tools in ascertaining when an interference with nationality rights indeed amounts to an interference with the right to private life. Case law of the European Court of Human Rights has also demonstrated that the circumstance of statelessness is significant when considering whether a state has overstepped the permissible limits of its margin of appreciation.<sup>55</sup>

## THE 1961 STATELESSNESS CONVENTION AND THE 1997 EUROPEAN CONVENTION ON NATIONALITY

Human rights and child rights frameworks are not the only tools in the arsenal when it comes to protecting the right of every child to acquire a nationality. States have also concluded international and regional agreements which set out in more detail how childhood statelessness is to be tackled. Since, in principle, it is

for each state to set the conditions for acquisition and loss of nationality under its own domestic law, different approaches to this question inevitably create conflicts of laws which could lead to statelessness.<sup>56</sup> Settling such conflicts by establishing which state, in these cases, is responsible for attributing nationality – and thus preventing statelessness – is a central aim of these more elaborate international norms. The two most important instruments in this respect are the 1961 UN Convention on the Reduction of Statelessness (1961 Convention)<sup>57</sup> and the 1997 European Convention on Nationality (ECN).<sup>58</sup>

The 1961 Convention and ECN both outline a number of concrete safeguards that states must integrate within their nationality legislation,<sup>59</sup> to ensure that children acquire a nationality in situations where they would otherwise be stateless.<sup>60</sup> Neither convention obliges state parties to adopt, as standard, a particular approach to the granting of nationality at birth – they accept both parentage or descent-based (*jus sanguinis*) and birthplace-based (*jus soli*) systems for conferral of nationality as legitimate. However, crucially, both conventions establish the duty of states to confer nationality to those children born on their territory who do not acquire any other nationality at birth. This principle is contained in article 1 of the 1961 Convention and article 6(2) of the ECN.<sup>61</sup> The 1961 Convention also prescribes the conferral of nationality by descent, from a citizen parent, to a child born abroad where that child would otherwise be stateless (for instance, where the child is born in the territory of a non-contracting state).<sup>62</sup> Both the 1961 Convention and the ECN also have specific provisions aimed at safeguarding the right to a nationality for foundlings,<sup>63</sup> as well as preventing children from being rendered stateless as a result of loss or deprivation of nationality.<sup>64</sup>



At the time of writing, a total of 31 states in Europe are state parties to either, or both, the 1961 Convention and ECN. As shown on map I, the 1961 Convention has 29 states parties and the ECN 20, with significant overlap between the two.<sup>65</sup> Evidently, more needs to be done to promote accession to these two instruments in order to strengthen the framework for the prevention of childhood statelessness in the region. Nevertheless, these concrete standards already form an important complement to the more general commitment made by European states – through their human rights obligations – to fulfilling children's right to a nationality, offering



critical guidance on how this is to be achieved. Moreover, under the law of many of the European countries, international instruments of this kind are directly applicable following their ratification, such that they become part of the domestic system. This means that the safeguards they contain, even when not fully or accurately transposed into the country's citizenship law, can be invoked in individual cases – presenting, for instance, a promising avenue for strategic litigation.<sup>66</sup>

### CHILDHOOD STATELESSNESS AND THE WORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS AND OMBUDSPERSONS

National Human Rights Institutions (NHRIs) and Ombudspersons play a crucial role in promoting and monitoring the implementation of states' human rights obligations at the national level. They can also play this role with respect to children's right to a nationality and the avoidance of childhood statelessness. In Europe, the regional network of NHRI's (ENNHRI) and the European Network of Ombudspersons for Children (ENOC) have both taken up this issue. In a joint *Position Paper with Recommendations on the Eradication of Statelessness in Europe*, adopted in 2014, ENNHRI urges states to undertake a number of actions to ensure that no child is left stateless.<sup>67</sup> This provides a roadmap for further monitoring and advocacy efforts at the national level by individual NHRIs on this issue.<sup>68</sup> Meanwhile, at the June 2015 regional conference "None of Europe's children should be stateless", chairman elect of ENOC, Marc Dullaert, spoke out strongly on the need for greater engagement of Ombudspersons for children in promoting the enjoyment of the right to a nationality. He noted with astonishment "that such a huge problem gets so little attention" and pledged to encourage ENOC to play an active role in changing this status quo.<sup>69</sup>

### EUROPEAN UNION LAW AND POLICY

Finally, in considering the scope of international agreements relating to children's right to a nationality within the European context, for the 28 countries in the region which belong to the European Union, it is important to also give some thought to the role of EU law. The Charter of Fundamental Rights of the European Union does not contain a provision guaranteeing the right to a nationality. It does nevertheless provide that "children shall have the right to such protection and care that is necessary for their well-being" and that the best interests of the child "must be a primary consideration" in all actions relating to children.<sup>70</sup> Moreover, the Charter also protects a number of "Citizen's Rights" (Title V), connected to citizenship of the Union – which are dependent on access to nationality of one of the EU member states, demonstrating how important the enjoyment of a nationality is in the EU context.

Holding the nationality of an EU Member State automatically means holding Citizenship of the Union (EU Citizenship), to

which EU law attaches specific rights and duties, including free movement rights and certain political rights.<sup>71</sup> While the creation of this special status has not resulted in EU Member States surrendering their competence in the field of nationality law, case law of the Court of Justice of the European Union (CJEU) has ruled that "Member States must, when exercising their powers in the sphere of nationality, have due regard to European Union law".<sup>72</sup> The case in which this rule was affirmed by the CJEU related to loss of EU citizenship and its implications for the question of access to nationality have yet to be tested. However, the CJEU recalled "the importance which primary law attaches to the status of citizen of the Union", indicating that due regard must also be given to EU law when Member States lay down the conditions for acquisition of nationality, which may be amenable to judicial review.<sup>73</sup> Thus, as one legal scholar has rightly asked: "Does a child born in the EU, who would have been an EU citizen had the Member State of birth complied with its international obligations, but who is stateless instead, fall within the scope of EU law?"<sup>74</sup> It seems feasible that EU law could influence the manner in which childhood statelessness is addressed, given its implications for the enjoyment of EU citizenship. As the analysis presented in this report shows, there are many examples of laws and practices – including in EU Member States – which directly contradict the state's international legal obligations relating to the prevention of childhood statelessness. This may be problematic in light of certain general principles of EU law, including fundamental rights (including child rights and the best interests of the child), proportionality and legal certainty. The potential for EU actors to be engaged when challenging such situations requires further exploration and action.

Moreover, in the context of asylum and migration measures adopted by the EU, as well as in the progressive development of the EU child rights agenda, there may be other avenues for utilising EU law and mechanisms to counter childhood statelessness. For instance, the EU Trafficking Directive obliges Member States to ensure protection of and find durable solutions for trafficked children – something that would arguably include addressing the question of access to nationality if such children are also stateless.<sup>75</sup> In the implementation of EU asylum legislation or the application of the EU Return Directive,<sup>76</sup> the best interests of the child principle again plays a prominent role. This implies that Member States must give due consideration to the nationality status or statelessness of the child in their decision and actions, including in the determination of whether a claim for international protection should be granted – the provision of status also being a key first step for a stateless child along the path to realising the right to a nationality. Childhood statelessness is also emerging as an issue onto the EU child rights policy discourse, as evidenced by numerous references in, for instance, the reflection paper for the 9<sup>th</sup> European Forum on the rights of the child that was held in June 2015.<sup>77</sup> It has been pointed out that the protection rights and needs of stateless children are sometimes ignored, with detrimental consequences.<sup>78</sup> Given the importance placed on protecting children in vulnerable situations and countering the social exclusion of children,<sup>79</sup> there is scope for much greater attention to be paid to addressing childhood statelessness and its effects as the EU takes its child rights work forward.

### 3. WHY ARE CHILDREN STILL BORN STATELESS IN EUROPE?



This 25-year old woman was born in China. Her parents never registered her birth. Human traffickers brought her to Holland in 2003. She was issued a residence permit but in 2013 her permit was not extended. She now lives irregularly in Holland. She has had two children while living in Holland. Both children are registered as "nationality unknown" instead of "stateless" because she does not have any document. Dutch authorities have told her to return to China, but that is not an option for her. "If my children can be registered as "stateless", they will be able to eventually acquire Dutch nationality and have more of a settled future. My children are now registered as "nationality unknown". My children are in-between China and the Netherlands".<sup>80</sup>

“ The automatic granting of citizenship at birth to children who would otherwise be stateless, is probably the best tool to eradicate statelessness at birth and prevent its transmission from generation to generation.

NILS MUIŽNIEKS, COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS



Nils Muižnieks, Council of Europe Commissioner for Human Rights, explains here just how straightforward it is to end statelessness for children born on European soil.<sup>81</sup> Without needing to entirely overhaul the way in which European states regulate access to nationality, children could be protected from statelessness by a simple fall-back provision based on *jus soli* (place of birth).<sup>82</sup> The challenge is that Europe strongly favours a descent-based approach to the conferral of nationality to children at birth – i.e. in general, the *jus sanguinis* principle holds sway in the region. While this helps to ensure that “children born to European parents anywhere in the world are at minimal risk of statelessness, [it also] fosters the assumption that children born to non-European nationals in Europe should be citizens of elsewhere, leaving some of those children at risk of statelessness”.<sup>83</sup> As discussed in detail in this section, even where states have safeguards in place to prevent statelessness among children born in their territory, these are not always fully inclusive. In some cases, the too-narrow safeguards evidence a lack of understanding of when statelessness can arise – reflecting, indeed, the assumption that a child born to a foreign national will always be able to inherit that foreign nationality. In other cases, states impose additional requirements that stem from other, e.g. public policy concerns, that are infiltrating and impinging on the question of children’s enjoyment of the right to a nationality.

### THE IMPORTANCE OF NATIONALITY LAW SAFEGUARDS FOR OTHERWISE STATELESS CHILDREN

The most obvious scenario for which it is vital to have a provision in place to allow children to acquire nationality by *jus soli*, even if that is not the main route under the law, is **where the parents are stateless** – relevant in Europe given the existing scale of the problem of statelessness in the region. In such cases, sole reliance on *jus sanguinis* conferral of nationality would lead to the perpetuation of statelessness to the next generation and be contrary to the right of every child to acquire a nationality. Thus, already under the 1930 Hague Convention on certain questions relating to the conflict of nationality laws, states were obliged to confer nationality to children born on the territory of parents having no nationality or of unknown nationality.<sup>84</sup> However, such a safeguard fails to account for the circumstance **where the child’s parent(s) do hold a nationality themselves, but are unable to pass this on**. This is the case for mothers, for instance, who are nationals of one of the 27 countries worldwide that do not respect the right of women to confer nationality to their children on equal terms with men.<sup>85</sup> Children of single mothers from these countries face the threat of statelessness.<sup>86</sup> Under the nationality law and practice of some countries, **where children born out of wedlock** may face difficulties inheriting citizenship from either their mother or father.<sup>87</sup>

More generally, it is not uncommon for states to limit, in various ways, the transmission of nationality *jus sanguinis* **where children are born outside the country of the parents’ nationality**. Canada, for example, amended its law in 2008 and now only allows the first generation born to Canadian parents abroad to acquire Canadian nationality.<sup>88</sup> Other countries require additional

conditions to be fulfilled for access to nationality for children born overseas.<sup>89</sup> These may be registration requirements which are usually relatively straightforward to complete – except for **refugees**, who would expose themselves or their family members in the country of origin to protection risks by approaching their consulate. Or the law may stipulate that the child must return and reside in the country of the parents’ nationality in order to acquire citizenship.

### THE CHALLENGE OF SAFEGUARDING THE RIGHT TO NATIONALITY FOR CHILDREN OF REFUGEES

Children born to refugees, in exile, are particularly susceptible to problems in securing a nationality.<sup>90</sup> Some refugees are stateless prior to their flight – their statelessness may even be a factor in their displacement, as a marker of or catalyst for the persecution that they suffer.<sup>91</sup> Statelessness can also follow as a consequence of displacement, for instance due to laws that provide for loss of nationality on the basis of long-term residence abroad, even if no new nationality has been acquired.<sup>92</sup> In such cases, refugee parents have no nationality to transmit, such that their children are reliant on the country of birth to acquire a nationality at birth. It is therefore particularly important that refugee receiving states have safeguards in place to ensure that stateless children born on their territory acquire a nationality.

Yet, the vulnerability of children of refugees to statelessness is not restricted to children of *stateless* refugees. Many refugees in Europe come from countries with problematic nationality legislation. Syria, for instance, discriminates against women in its nationality law and does not allow Syrian citizen mothers to confer nationality to their children. This puts a child born to a Syrian refugee mother and unknown, absent or deceased father at risk of statelessness – even though the mother does hold a nationality herself. In other cases, additional requirements must be met by a child born outside the parents’ country of nationality in order to inherit that nationality. Colombia, for example, makes acquisition of nationality by children born abroad conditional on the completion of a consular registration process, which *refugee* parents may not be in a position to fulfil due to the protection risks that this can entail. Other states, such as Cuba, stipulate conditions relating to residence in the country by the child before nationality is acquired.<sup>93</sup> Furthermore, children born during the passage to the country of refuge and unaccompanied minors can also face the risk of statelessness.<sup>94</sup> And refugees are among the groups which have been found to face difficulties in accessing birth registration for their children, which can further complicate the task of accessing a nationality for such children.<sup>95</sup>

On the Southern perimeter of Europe, another challenge has emerged in relation to refugees arriving by sea. With conflicts flaring across the Middle East, parts of North

Africa and further afield, the number of people making the journey across the Mediterranean has increased dramatically over the past two years.<sup>96</sup> This prompts questions as to the nationality status of children born during the crossing as well as children who are found at sea in international waters. Malta has already seen a number of court cases relating to such situations, which have exposed certain shortcomings in the Maltese legislative approach to the prevention of statelessness. The Maltese Office of the Commissioner for Children has therefore recommended that the law be amended to ensure that children born in international waters, on an unregistered vessel, and brought to Malta are protected from statelessness by allowing for access to Maltese nationality.<sup>97</sup> These issues warrant a closer investigation across Southern Europe – especially given that the number of maritime arrivals in Italy, Greece and Spain far exceeds those in Malta.

## REQUIREMENTS UNDER THE 1961 CONVENTION AND ECN

Aware of the fact that statelessness can also arise among children whose parents hold a nationality, international law now prescribes safeguards to ensure the enjoyment of the right to a nationality by focusing on the situation of the child. In other words, these safeguards simply kick in where the child would otherwise be stateless, regardless of the situation of the parent(s). As already mentioned in the previous section, article 1 of the 1961 Convention and article 6(2) of the ECN are the most important of these norms for the European context. Both oblige the conferral of nationality to children born on the territory *if they would otherwise be stateless*, but allow some leeway in how states transpose this safeguard into their domestic systems.

The first, and optimal, method – as it is all-encompassing and does not tolerate even a temporary period of statelessness – is to **grant nationality to otherwise stateless children automatically, at birth**.<sup>98</sup> The second option available to states is to offer otherwise stateless children born on the territory the opportunity to acquire nationality through a simple, **non-discretionary application process** which may only be made subject to one or more of a limited set of conditions that are outlined in the 1961 Convention and the ECN. These are broadly similar, but there are some distinctions, as shown in the table below.

Under the 1961 Convention, there is also a prescription with regard to the timeframe: the application procedure must be

accessible no later than when the person attains the age of 18 and be open until at least the age of 21. Nevertheless, given the recognition of the child's right to a nationality in the CRC, which is to be read in light of the principle of best interests of the child, "it follows from articles 3 and 7 of the CRC that a child must not be left stateless for an extended period of time: a child must acquire a nationality at birth or as soon as possible after birth".<sup>99</sup> It is therefore important that where a state elects for an application procedure for the conferral of nationality to a stateless child, this procedure is accessible as soon as possible after birth and certainly long before the child reaches 18 (and is, thereby, no longer a child).

## ASSESSING HOW EUROPEAN STATES ARE PERFORMING

Below, these international standards will be used as the framework in which to assess where Europe stands in terms of guaranteeing the right to acquire a nationality for children born within European territory. Complementing the ENS country studies and to ensure a more complete picture of the status of this key safeguard in the region, a detailed analysis was conducted of the legislation in 45 countries.<sup>100</sup> The purpose of this was to identify gaps, discover patterns and assess compatibility of European legislation with states' international obligations. The findings of this analysis of states' legislative performance is interspersed with examples of state practice which highlight either further gaps or good practices, identified in the ENS country studies.

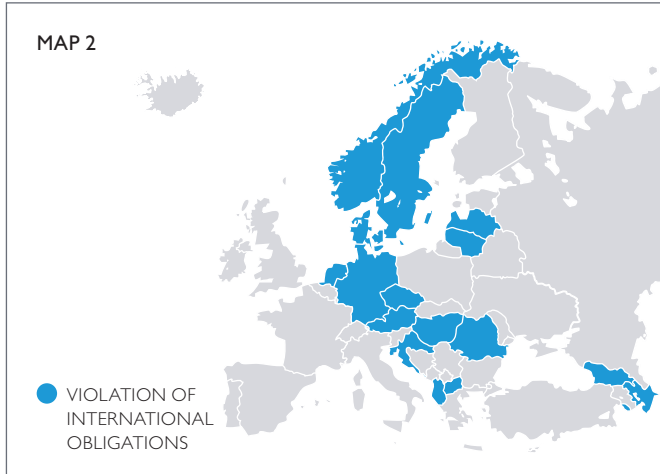
As a first step in the analysis, a broad division was made between states with a "full safeguard", "partial safeguard" and "no/minimal safeguard".<sup>101</sup> These have been defined as follows:

- **Full safeguard:** the law contains a safeguard that covers *all* otherwise stateless children born in the territory and is in compliance with international law.
- **Partial safeguard:** the law contains a safeguard for otherwise stateless children born in the territory that falls short of the standard set by international law, due to additional procedural and/or substantive requirements that do not comply with the 1961 Convention or ECN, such that not all otherwise stateless children benefit.
- **No/minimal safeguard:** the law does not contain a safeguard specifically directed towards ensuring that otherwise stateless children born in the territory acquire a nationality. There may be other provisions facilitating access to nationality (e.g. facilitated naturalisation for stateless).

As shown on **map 2**, the laws of **21 countries include a full safeguard for otherwise stateless children born in the territory**. In the two problematic categories, where the legislation falls short of the standard generally set out under international law,

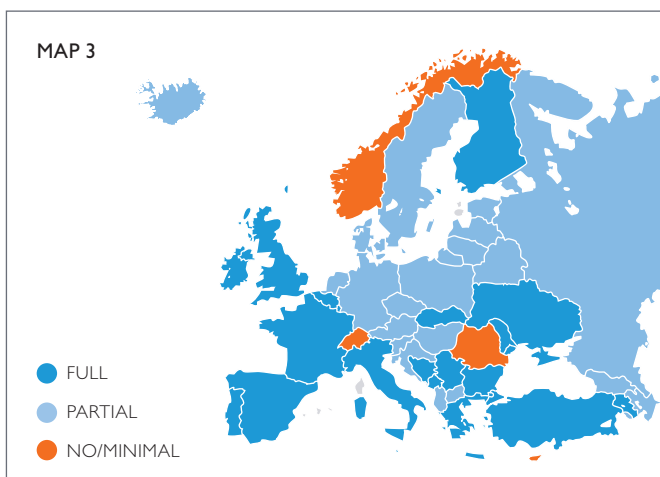
1961 Convention, Article 1(2)	ECN, Article 6(2b)
Habitual residence of not more than 10 years total, nor more than five years immediately preceding the application	Lawful and habitual residence of not more than five years immediately preceding the application
The person has always been stateless	The person has always been stateless
Not convicted of offence against national security or sentenced to five years or more imprisonment	





20 countries were found to have a partial safeguard, while four countries were identified as having no or only a minimal safeguard.

For the purposes of this general categorisation, it is important to note that all domestic legislation was assessed against the same international benchmarks, even where the state in question is not a state party to either the 1961 Convention or the ECN and has thereby yet to accept specific international obligations along these lines. All of the countries have committed to fulfilling the right of every child to acquire a nationality, as states parties to the CRC. Nevertheless, it is significant to also look at the question of individual state compliance with obligations that it has taken on as a party to the 1961 Convention and/or ECN. **Map 3** shows, for each of the states which has acceded to one or both of these instruments, whether its legislation is compliant with those standards with respect to the conferral of nationality to otherwise stateless children born on the territory. Here, 16 states emerge where the law currently falls short, in one way or another. This means that **less than 50% of states parties to the 1961 Convention and/or ECN have followed through on their international commitment by fully and correctly transposing this critical safeguard into their domestic legislation**. It is striking that the performance of states which are not a party to either instrument is actually very similar: 8 out of 15 states fail to meet the international standard set, so **close to 50% of non-states parties have legislation that is compliant on this issue, in spite of their lack of accession to the conventions**.



## PREVENTING THE INHERITANCE OF LARGE-SCALE STATELESSNESS

The dissolution of the Soviet Union left large-scale statelessness in its wake. Today, children continue to be born stateless due to the transmission of this status from parents who did not acquire a nationality following the succession of states in the early 1990s. As briefly touched upon in section 1 of this report, Latvia and Estonia are two such countries.<sup>102</sup> Both states' nationality laws exhibit flaws that have allowed children born in the territory to parents left stateless upon independence to inherit their parents' statelessness. One of the challenges is that the laws rely on the parents taking action, on behalf of their children, to secure a nationality for them – this does not occur automatically, by operation of the law. For different reasons, some parents have not made use of this opportunity. In Latvia, for instance, a 2012 survey found that 15% of “non-citizen” parents were not willing to apply for nationality for their children.<sup>103</sup> If the parents have not taken action by the time the child is 15, he or she can apply for citizenship independently, but additional criteria must be met. This not only means that some stateless children entitled to Latvian nationality nevertheless remain stateless for a significant period of their childhood, but it is possible that those whose parents have not taken action will face additional challenges in accessing nationality if they choose to subsequently apply themselves.

*Erik was born in Latvia and is 15 years old. His father was born in Ukraine, but his mother was born in the former USSR Republic of Latvia. Both of Erik's parents were Latvian non-citizens at the moment of his birth. Erik does not know the reasons why his parents did not register him as a Latvian citizen; according to him, this is most probably because the status of non-citizen is not a barrier in daily life for him or his parents. In 2011, his mother acquired Lithuanian citizenship. Since one of Erik's parents is a non-citizen, but the other is now a national of another state, Erik cannot apply for Latvian citizenship by registration (for such an option, both of the parents should be non-citizens), but must now apply for naturalisation and fulfil all of the related requirements.<sup>104</sup>*

The rules relating to access to nationality for children of stateless parents have been eased in Latvia, over the years, in order to limit the inheritance of statelessness. Prior to 2013, the consent of *both* parents was required for access to nationality, but an amendment passed that year made it possible for an application to be processed at the initiative of just one parent. This led to a considerable up-take in the acquisition of nationality by the children of “non-citizen” parents.<sup>105</sup> Nevertheless, stateless children are still reliant on their parents' views and action in order to secure their right to a nationality at or soon after birth.

In Estonia, the law currently provides for a broadly similar process for acquisition of nationality by children of stateless parents. However, things will change significantly from the beginning of 2016 when law reform that was passed by the Estonian parliament in January 2015 finally enters into force. From then on, children born in Estonia to parents with “undetermined citizenship”, and whose parents have lived in the country for at least five years, will acquire citizenship of Estonia immediately and automatically after birth. Yet, parents will still have the right to refuse such granting of citizenship during the period of one year after the child’s birth. Furthermore, even following new amendments to the Citizenship act, other cases of otherwise stateless children born in Estonia are not provided with a solution. For instance, where one or more of the child’s parents hold the citizenship of another country but are unable to confer this to the child – exposing the child to statelessness – the law does not offer a special regime for access to nationality.<sup>106</sup>

To get a better sense of where the legislation of European states exhibits strengths and what shape the problems alluded to above actually take, it is necessary to take a closer look at the laws of states in each of these assessment categories. In doing so, a number of important trends emerge.

## STATES WITH FULL SAFEGUARDS

In respect of the first category, those states with “full safeguards”, two different approaches have been taken – as indeed permitted under the relevant international norms. **17 states have a system in place that automatically provides nationality to a child who would otherwise be stateless and is born on the territory, i.e. the optimal safeguard**, as mentioned earlier.<sup>107</sup> Four countries make their nationality to such children accessible by application, with a procedure that is compliant with the standard set out in the 1961 Convention (Liechtenstein, Malta, Ukraine and the United Kingdom). Nevertheless, as mentioned above, where a child is therefore required to “wait” for a significant period after birth before acquiring any nationality, this can contradict the terms of the CRC.

### Problems in practice

In both of these sub-groups, however, there are states in which the formulation of the law may cause difficulties in practice. Finland, for instance, confers nationality to “a child who is born in Finland and who does not acquire the citizenship of any foreign State at birth, *and who does not even have a secondary right to acquire the citizenship of any other foreign State*”.<sup>108</sup> Along similar lines, France and Italy both stipulate that nationality is granted where the child does not – or in the case of France, is by no means allowed to – acquire the nationality of either parent *according to the law of the parents’ state(s)*.<sup>109</sup> Since states may also apply their citizenship legislation in an arbitrary or discriminatory

manner, a child may be left stateless because the state of the parents’ nationality fails to grant nationality in evident disregard for the terms of the law,<sup>110</sup> but would then appear to fall outside the scope of the safeguard in place in France and Italy. In practice, it is likely to fall to the parents to find a way to prove, to the satisfaction of the state in which their stateless child was born, that the child lacks any nationality. This potential difficulty is also apparent in the formulation of the Maltese law which requires the stateless person seeking to benefit from the safeguard to “[satisfy] the Minister that he is and always has been stateless”. Other states adopt a similar approach in practice, even if this is not set out in the law. For instance, in Italy, research has shown that children of stateless parents can only benefit from the safeguard in the legislation if the parents have first been formally recognised as stateless through the statelessness determination procedure, which blocks access to nationality for such children in many cases, especially for Roma children whose parents have not been able to establish their stateless status.<sup>111</sup>

## ROSA’S STORY

Rosa and her husband are both nationals of Cuba. They have been living in Italy for about 9 years. In 2013, they had a daughter. When Rosa registered her daughter with the Cuban embassy, nobody told her that her daughter had no direct right to Cuban citizenship – the only way to obtain Cuban citizenship would have been to stay three months on Cuban soil with her daughter. Rosa and her husband recorded their daughter’s birth at the municipality in which they are resident, never thinking about the possibility that she could have been stateless since at the municipality, the little girl was recorded as having Cuban citizenship. It was not until many months later, when Rosa wanted to visit Cuba to deal with some family issues and approached the embassy to obtain a passport for her daughter that she was told that her daughter was not considered a Cuban citizen. The embassy explained that her daughter’s was one of the few specific cases in which children born on the Italian territory could apply for Italian citizenship. So Rosa started to gather information and went to the municipality to claim her daughter’s Italian nationality.

At first, the municipal officials said that her daughter had to wait until majority to proceed with the application for Italian citizenship. Rosa’s case was the first case known to these authorities of Cuban citizens with a daughter who was born in Italy, which is why the officials of the town did not know how to proceed. So Rosa pointed out what was specified in the Italian legislation and showed them the certificate of the Cuban embassy in order to prove that her daughter’s was a special case, according to the law. After this, the municipality forwarded the request to the Interior Ministry and after five months, Rosa’s daughter was confirmed as having Italian citizenship. Despite the lack of initial information, they were able to obtain



citizenship in a short time and since the little girl is still very young, Rosa did not experience significant problems related to her daughter's temporary lack of citizenship. The only real challenge encountered had been the lack of information. Rosa explained:

*"The lack of information is a big problem! Neither the municipality nor the embassy told me anything about the possibility of proceeding with the request for the Italian citizenship and about the fact that my daughter could not receive Cuban citizenship. That is why I always say that in my case the lack of information has involved both sides... both the Italian part and the Cuban one!"<sup>12</sup>*

Rosa's case illuminates some of the challenges in the Italian context,<sup>113</sup> but Italy can also serve as a source of inspiration when it comes to the pro-active role of the authorities in helping people to claim nationality where this is subject to an application procedure. Alongside the special safeguard for otherwise stateless children which has already been outlined, Italy has such a procedure for *all* children born on the territory and still resident there at the age of majority – whether stateless or not. The application must be made between the ages of 18 and 19, but not everyone entitled to claim citizenship in this manner is necessarily aware of the opportunity, which has led to cases where people have missed out.<sup>114</sup> In 2013, a new law was passed requiring that "Population register officers have, during the six months preceding the age of 18, to communicate to the child the possibility to exert his/her right to acquire Italian citizenship". Over a period of just 16 months after this new provision was passed, the Municipality of Rome sent letters to 639 children born in Italy to foreign parents and 499 of the children to whom the letters were sent successfully made use of the opportunity to claim Italian citizenship.<sup>115</sup> Along similar lines, in Latvia a pilot project has been initiated by the Office of Citizenship and Migration Affairs of sending letters to the parents of "non-citizens"<sup>116</sup> to inform them of the opportunity to register their children as Latvian citizens. Such initiatives can serve to ensure that where nationality can be acquired by application, this procedure is used in practice.

## STATES WITH PARTIAL SAFEGUARDS

The legislation that has been grouped together under the heading "partial safeguard" – whereby otherwise stateless children born on the territory of the state can acquire nationality, but certain restrictions are imposed that are not in compliance with international standards – contains what at first sight appears to be a diverse array of problems.<sup>117</sup> In fact, these can be divided into three types of shortcoming, although several states exhibit more than one.

### Safeguards with too limited timeframes

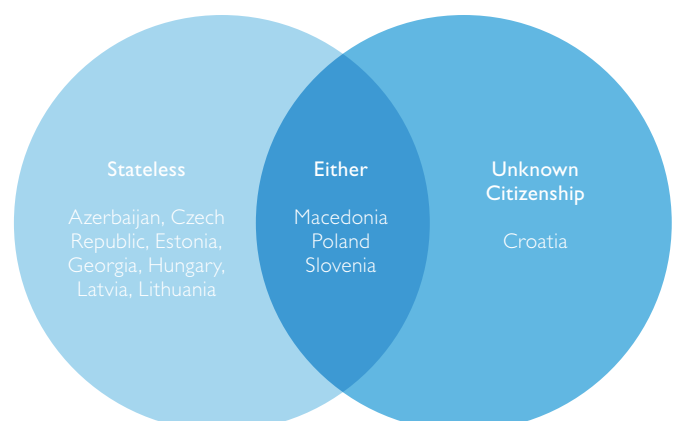
The first issue relates to the procedural modalities in place and in particular to the fact that the timeframe open to apply for nationality is too limited. The application procedures of Estonia (under 15 years), Latvia (under 15 years) and Austria

(between 18 and 20) are all problematic in this respect. Austria comes closest by only being a year "off" what is prescribed by the 1961 Convention (*at least* between 18 and 21 years). Yet, the best interests of the child also demands that children be provided with the opportunity to realise their right to a nationality at birth or as soon as possible after birth, so any application procedure which only becomes available in late childhood or even upon reaching majority is particularly problematic from the perspective of states' obligations under the CRC.<sup>118</sup> At the same time, closing the window of opportunity to apply for a nationality through such safeguards too early has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child and may mean children are left stateless due to the lack of action on the part of their parents.<sup>119</sup>

### Safeguards limited to one or both parents being of unknown nationality/citizenship or stateless

The second type of issue apparent in countries with only a "partial safeguard" is more significant because it has the effect of reducing the circle of otherwise stateless children who are entitled to benefit from the provision. As shown in **figure A**, 11 countries offer their nationality to children born on their territory who are otherwise stateless, contingent on one or both of the parents being stateless or of unknown citizenship. This signals the states' interest in the topic of statelessness, and a willingness to help children by providing them with a nationality. Still, limiting the grant of nationality to children of parents without or of unknown citizenship excludes any child who does not acquire citizenship due to other reasons and conflicts with the principle of non-discrimination.<sup>120</sup> The problem of childhood statelessness is thus more complex and affects more than just those whose parents are without a (known) nationality. Moreover, through such a system, states may require the parents to first prove their statelessness, before the child can access nationality – something which, in itself, is a challenge given the scarcity and in some cases poor functioning of statelessness determination procedures in the region.<sup>121</sup> ENS' research into the practical application of safeguards against statelessness formulated in this way has uncovered cases in which children have been unable to benefit, despite their eligibility under the law, as the following two case studies demonstrate.

FIGURE A



## EGZON'S STORY

Macedonia... Egzon was born in Macedonia to stateless parents. According to the Macedonian law on citizenship, children born on the territory whose parents hold unknown or no citizenship shall acquire citizenship<sup>122</sup>. Despite this safeguard, Egzon is still stateless while well on his way to adulthood. Without the possibility of proving his parents' statelessness, Egzon is without a nationality as well. Documents to demonstrate his parents' statelessness have recently been presented to the Macedonian Section for Citizenship. Egzon is awaiting confirmation of his acquisition of Macedonian nationality following the submitting of these documents.<sup>123</sup>

## VALENTINA'S STORY

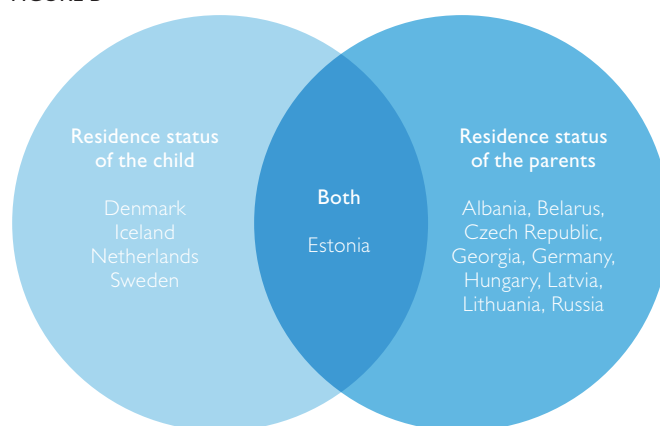
Slovenia... Valentina is a young Roma woman who was born in Slovenia, as was her child. They are both stateless. Valentina was born when the country was still a part of the Socialist Federal Republic of Yugoslavia. Her father was born in Kosovo and her mother in Serbia. She does not know why exactly she was left stateless, but believes it may be because she was born in Slovenia and Serbian authorities were either not notified of her birth or had not registered her as a Serbian national upon notification. In 1992, after Slovenia became independent, her family was forced to leave the country when Valentina was only a child, because she and her family members were illegally erased from the permanent residence register. They went to Germany where they stayed for 13 years. At that time, she did not know that she has no citizenship as her life appeared normal – her family lived in an apartment, they had social security and the children attended school. Due to long term residency in Germany, the family could have acquired German citizenship but her father decided to bring the family back to Slovenia. Many years later she acquired a permanent residence permit on the basis of being erased but even with this permit she feels that the fact that she is stateless is a great burden: *"I feel trapped and I cannot go where I want to go – to visit my sisters. I lack freedom"*. In 2012, she gave birth to her son who is also without citizenship. His father is a Serbian national but according to the information they received from the Serbian embassy, because Valentina is considered of unknown citizenship, the father cannot formally acknowledge paternity before Serbian authorities and therefore cannot pass his citizenship onto their son. Despite safeguards in the Slovenian law that should mean that her son is entitled to Slovenian nationality, he has been unable to obtain it in practice.<sup>124</sup>

Countries that already have laws in place to prevent statelessness for children born on their territory to parents of unknown or without nationality can easily remedy the gap in their nationality law. This was most recently achieved in Armenia. Article 12 of the Armenian citizenship law previously provided for the acquisition of nationality for children born on the territory only if the parents are stateless or of unknown citizenship.<sup>125</sup> Amendments to the Armenian citizenship law of May 2015, however, widened the Armenian safety net for otherwise stateless children by also including the children born in Armenia to parents that are citizens of (an)other country(ies), but who are unable to transfer this citizenship.<sup>126</sup> Indeed, this broader scope can be achieved through a simple, one-sentence provision, such as is present in Article 6(3) of the Irish Nationality and Citizenship Act, which provides: *"A person born in the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country"*.

### Safeguards contingent on residence status

The third type of problem in evidence in the category of "partial safeguard" is where access to nationality for an otherwise stateless child born in the state's territory is made contingent on the child and/or the parents' residence status. As shown in **figure B, 14 European countries require some form of residency from parents and/or child that is not in line with international standards**. These countries all stipulate different forms of *legal* stay – in some cases even requiring a permanent residence status.<sup>127</sup>

FIGURE B



Demanding that the child or his/her parents reside lawfully on the territory is a problematic issue. This is prohibited by the 1961 Convention which permits only the condition of a certain period of *habitual* residence.<sup>128</sup> By allowing children to acquire citizenship, independent of the residence status they or their parents have, states not only comply with the terms of this convention and ensure respect for the child's right to a nationality, but they are also acting in accordance with the principle of non-discrimination and the best interests of the child.<sup>129</sup> The Committee on the Rights of the Child has commented on numerous occasions that *all* children should be protected from statelessness, in accordance with their right to a nationality, regardless of their parents' immigration status:



“ The Committee also recalls the provisions of the 1961 Convention on the Reduction of Statelessness which state that the outcome of an application for citizenship, legal residence or similar status by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State party where the child would otherwise be stateless”.<sup>130</sup>

Moreover, the jurisprudence of the European Court of Human Rights is also instructive. In the decision on *Mennesson v. France*, the court ruled that although the parents may have chosen to break the law (in that case, by using surrogacy to commission children even though this is prohibited under French legislation), the effects of France's denial of certain elements of the children's identity were not limited to the parents alone – they affect the children. In that context, “a serious question arises as to the compatibility of that situation with the child's best interests, respect for which must guide any decision in their regard”.<sup>131</sup>

Thus, the prevention of childhood statelessness must not to be confused with immigration control considerations. In November 2014, the Netherlands articulated their fear of abandoning the requirement of lawful stay as a condition for the acquisition of nationality by stating that “the failure [of the parents] to cooperate with departure from the country would be rewarded in this manner”.<sup>132</sup> Put more generally, governments seem apprehensive of a pull-factor for stateless migrants to come to and parent children in the country as a means to indirectly secure a right of residence themselves. The Netherlands currently require at least three years of *legal* stay from the child in order for them to be eligible for the acquisition of Dutch nationality.<sup>133</sup> However, the United Kingdom has a safeguard that requires only habitual residence.<sup>134</sup> Between 2001 and 2010, only five children acquired British nationality via this system.<sup>135</sup> The data indicates that the British safeguard without a *lawful* residence requirement does not create an influx of people seeking to make opportunistic use of the law.

## LEAVING CHILDREN IN LIMBO, WITH ‘NATIONALITY UNKNOWN’

One of the most troubling manifestations of problems in the *implementation* of safeguards to ensure the child's right to acquire a nationality is the practice of labelling children as being of unknown or undetermined nationality, rather than identifying them as (otherwise) stateless. This precludes them benefiting from the operation of the relevant safeguard. In a number of European countries, the phenomenon of registering children as “nationality unknown” has achieved worrying proportions, both in terms of scale and duration, with many thousands of children left in limbo like this and their status still not clarified even by the time they reach adulthood.<sup>136</sup> This stands at odds with the CRC, which protects the right of every child to acquire a nationality. Furthermore, it is clearly not in a child's best interests for them to languish in uncertainty with regard to their nationality – a key part of their identity – throughout their childhood.<sup>137</sup> Rather, states need to determine whether a child would otherwise be stateless as soon as possible so as to be in line with the CRC<sup>138</sup> and “not to prolong a child's status of undetermined nationality [and] for the application of Articles 1 and 4 of the 1961 Convention, it is appropriate that such a period not exceed five years”.<sup>139</sup>

Recent case law of the European Court of Human Rights may prove highly significant here. In the 2014 ruling of *Mennesson v. France*, the applicants faced “a worrying uncertainty as to the possibility of obtaining recognition of French nationality”.<sup>140</sup> The Court determined that “everyone must be able to establish the substance of his or her identity” and that the uncertainty the applicants faced in this regard “is liable to have negative repercussions on the definition of their personal identity”.<sup>141</sup> On this basis, the Court found that France had violated the applicants' right to respect for private life, protected under article 8 of the ECHR. Although such a case has yet to be brought before the Court, a similar finding may also be reached where a state fails to ascertain – within a reasonable period – whether a child born on the territory is stateless and should therefore be granted nationality under applicable domestic safeguards and instead allows the limbo of ‘nationality unknown’ to endure.<sup>142</sup>

It is noteworthy that Finland has another, distinct category in its Population Information System: besides “stateless” and “unknown nationality”, there is also the label “pending clarification”. This category is most often used, in practice, for the registration of children born in Finland whose citizenship status is pending determination and 92.6% of those registered as such in 2011 were between the age of birth and four years old. From age five onwards, the number of persons whose nationality is “pending clarification” drops away significantly, to a mere handful for each subsequent five year age bracket. This suggests that such a label is indeed transitional and further action is undertaken by the state to ensure that the nationality status of the children concerned is clarified. Nevertheless, the retention of an “unknown nationality” category alongside this, comprising a total of some 800 people aged five or over (alongside over 700 stateless persons), suggests that this system is also not watertight.<sup>143</sup> Moreover, it would be instructive to conduct a further study of the Finnish practice in this regard to discover whether there are elements of good practice that could be exported to other European states.

## NO OR MINIMAL SAFEGUARDS

The final category into which some of Europe's legislative fall is that of "no / minimal safeguard". Encouragingly, there are just four countries in this group: Cyprus, Norway, Romania and Switzerland.<sup>144</sup> Of these, Norway and Romania are directly violating specific international obligations that they have taken on by maintaining such a gap in their laws. Cyprus, however, has the most problematic legislation as it is the only European state that lacks even a safeguard to ensure that foundlings acquire a nationality.<sup>145</sup>

In Norway, stateless children born in the country must rely on a general application procedure to acquire a nationality. Positively, this procedure is facilitated for anyone who is stateless (regardless of place of birth) – e.g. they can already apply before the age of 12 and do not have to fulfil the same requirements relating to length of residence. Still, the further conditions are in conflict with international standards in respect of stateless children born in the territory and can be difficult to fulfil. These include, most notably, the requirement of lawful, permanent residence as well as the possibility for the application to be refused if granting nationality is "contrary to the interests of national security or to foreign policy considerations".<sup>146</sup> Romanian nationality law only offers an application process that is very similar to the standard naturalisation procedure, with many conditions having to be fulfilled.<sup>149</sup> Swiss nationality law similarly has what is effectively a facilitated naturalisation procedure: it allows applications only from persons under 18 years old, who are integrated in the country, who abide the law and are no threat to the State.<sup>148</sup>

In its most recent review before the Committee on the Rights of the Child, the Committee picked up on this gap and expressed "[concern] that children born in the State party, who would otherwise be stateless, are not guaranteed the right to acquire Swiss nationality".<sup>149</sup> Thus, given that all four of these countries have an obligation under the CRC to ensure that children can enjoy the right to a nationality – and two of these states have made additional commitments to this cause through their accession to *both* the 1961 Convention and ECN – these laws are in urgent need of reform. It is noteworthy that, in Romania and in Norway, international conventions to which the state is a party are directly enforceable and can be invoked before the national courts.<sup>150</sup> Moreover, a draft bill has already been forwarded to the Ministry of Justice for consideration, but if passed in its current form it would only move the country up to the category of "partial safeguard" as it would grant nationality to children "born on Romanian territory from stateless parents".<sup>151</sup>

Further education and advocacy is evidently needed to ensure that lawmakers fully understand the contexts in which childhood statelessness can arise and the obligations that international law imposes to ensure that *comprehensive* ("full") safeguards are introduced – not just in Romania, but also in the other countries identified in this section where the law only offers a partial solution.



## 4. WHEN DO CHILDREN OF EUROPEAN CITIZEN PARENTS FACE STATELESSNESS?



“ I know the law. I do not need counselling. They say the procedure is easy if you had Romanian citizenship before, but that is not true because they still ask for proof that you have a certain income. And proof that you have a place to stay. I do not have a registered lease... that is expensive. And proof of income... that is difficult to get even if you are not stateless: they ask for a legal employment contract, with a certain wage, they don't accept any less. If I had all this, I would apply tomorrow.

GEORGE, ROMANIA

George was Romanian by birth, born in Romania in 1983, to Romanian parents. When he was just seven years old, his family decided to emigrate. After spending several years in Germany, his parents renounced Romanian citizenship on behalf of all members of the family in the hope of securing German nationality. They were not, however, successful and George has remained stateless ever since, despite returning to Romania over a decade ago.<sup>152</sup> This is one example of how a child of European citizens can end up without any nationality, in circumstances entirely beyond his or her control – a problem that can then become entrenched and difficult to resolve, even when the child attains adulthood. This section explores the different circumstances in which children of European citizen parents may come to face statelessness.<sup>153</sup>

### PROBLEMS ACCESSING NATIONALITY THROUGH *JUS SANGUINIS*

Since Europe favours the transmission of nationality by descent, from parent to child (with *jus soli* provisions only playing a secondary role), it seems counterintuitive that children of European parents could also be at risk of statelessness. Yet, European *jus sanguinis* systems are not all unrestricted and in some cases, additional conditions must also be met for a child to inherit nationality.<sup>154</sup> Practical impediments may also have the effect of preventing the child from accessing his or her parents' nationality in practice.

Previous ENS research has provided an insight into some of the problematic scenarios, which include **where registration is necessary** for the acquisition of nationality by a child born abroad and **evidence of paternity requirements** are imposed for the transmission of nationality from the father in cases where a child is born out of wedlock.<sup>155</sup> In 2010, the European Court of Human Rights found the latter policy to be in violation of articles 8 and 14 of the ECHR, in the landmark ruling of *Genovese v. Malta*.<sup>156</sup> Following the delivery of this judgement, Austria, Denmark and Sweden amended their legislation – in 2013, 2014 and 2015 respectively.<sup>157</sup> In both Denmark and Sweden, a child born to a citizen father *after* the entry into force of the new law automatically acquires nationality, regardless of the place of birth or whether the parents are married.<sup>158</sup> The Austrian amendment “*upheld a differentiation between ‘legitimate’ and ‘illegitimate’ children. If born out of wedlock, the child will only be Austrian if the Austrian father recognises the child before birth or within eight weeks thereafter (art. 7a new)*”.<sup>159</sup> As such, it remains at odds with the jurisprudence of the European Court of Human Rights. Moreover, the lack of retroactive effect of these amendments means that the situation of any children rendered stateless due to the previously problematic law is not addressed through this reform.

### TWO MUMS OR TWO DADS: THE RIGHT TO A NATIONALITY FOR CHILDREN OF SAME-SEX COUPLES?

While gender discrimination seems to be on its very last legs in the nationality laws of Europe, an emerging problem that came to light in ENS' research into European practice with respect to *jus sanguinis* conferral of nationality is that children of same-sex couples can experience difficulties in inheriting nationality from their parents. The enjoyment of LGBTI rights varies across Europe, including with respect to the recognition of same-sex partnerships or marriages. The non-recognition of same-sex unions in some countries can have the knock-on effect of blocking the recognition of the maternal or paternal ties of children. The Helsinki Foundation for Human Rights is currently pursuing a court case in Poland on behalf of two men, one of whom is a Polish citizen, who are bringing up four children born via surrogacy in the United States.<sup>160</sup> Both men are registered as parents in the US-issued birth certificates of these children, however the Polish authorities have so far refused to recognise this document (instead, requiring details of the children's biological mother's identity) and by consequence the children have not been able to access their father's nationality.<sup>161</sup> Here, the European Court of Human Rights decision in *Mennesson v. France* is relevant,<sup>162</sup> as it concerned the duty of the French state to act in accordance with the best interests of the child in recognising the legal relationship with his/her parents – even when the circumstances of the child's birth are problematic from the perspective of French domestic law.<sup>163</sup> The July 2015 ruling of the Court in *Oliari and others v. Italy* that legal protection for same sex partnerships is necessary under article 8 of the ECHR should further strengthen the claim of children of same-sex couples to legal recognition of the familial ties and consequent access to nationality.<sup>164</sup> Another case that has come up through the Polish legal system and is now being taken to the European Court of Human Rights, in which a same-sex couple of two women (one British, one Polish) are fighting for both of their names to appear in their child's birth certificate in Poland may further clarify these matters when it is decided.<sup>165</sup>

In a case before the District Court of Ljubljana, Slovenia, a ruling was reached along similar lines to the *Mennesson* judgement. The Slovenian same-sex couple which brought the case had married in California and subsequently been recognised by a US court as the equal and legal parents of a baby girl who was born through a surrogacy arrangement. Slovenian law does not allow for adoption by same-sex partners, nor does it permit surrogacy or adoption by more than one person unless the adopters are spouses (and, at the time, same-sex marriage was not recognised in Slovenia so the couple was not deemed to be married under Slovenian law). Nevertheless, the Slovenian District Court ruled that the foreign judicial decision must be recognised – and with it the parental link and the rights deriving from that, including acquisition of Slovenian nationality.<sup>166</sup>



## CHILDREN AND LOSS OR RENUNCIATION OF NATIONALITY

As demonstrated by George's case, presented at the opening of this section, children who have successfully inherited a nationality from their parent(s) may still be exposed to statelessness at some stage due to the actions of their parents and the failure of states to protect their right to a nationality. Research conducted in Albania unearthed a similar case:

### VASIL'S STORY

25-year old Vasil was born in Albania, to Albanian parents and acquired Albanian nationality at birth. His family migrated to Greece in 1990, when Vasil was a new-born, and after some time they renounced their Albanian citizenship in order to obtain the Greek one. However, they were unsuccessful in acquiring Greek nationality and hence, all the family members – including Vasil who was only a child at the time – were left without citizenship. Later, they returned to Albania, where they currently reside. Vasil was never aware that he did not have any citizenship. He believed that he lacked identification documents because he could not afford any. Vasil had difficulties securing access to food, welfare assistance or other public social programs provided by the government. To reacquire Albanian citizenship was a complicated and expensive procedure for which Vasil needed the help of the Tirana Legal Aid Society (TLAS), an Albanian NGO, and which took almost a year. Once Vasil got an identity card, his son was registered in the Civil Status Office and Vasil was also able to legally marry the mother of his child. After reacquiring Albanian citizenship, Vasil's family also became eligible to access public services on an equal basis with other citizens and the child was finally able to access hospitals to be vaccinated and to attend kindergarten.<sup>167</sup>

In both Vasil and George's cases, their parents took the deliberate decision to voluntarily renounce the nationality of all members of the family. At the time, the laws of Albania and Romania allowed this even though it left them stateless. Both countries have since amended their legislation and now require that a person seeking renunciation has already acquired or has assurances that he/she will acquire another nationality. This is in accordance with the rule that is prescribed by international law.<sup>168</sup> Nevertheless, the new safeguard in Romanian legislation is not watertight when it comes to the nationality of children. It is still possible for a child to lose Romanian nationality if both parents have renounced (themselves demonstrating acquisition of another nationality) and the child has left the country with them, even if the child may not have secured a foreign nationality.<sup>169</sup> A similarly small, yet critical, gap exists within the Polish legislative framework.<sup>170</sup>

The Committee on the Rights of the Child has commented on this problematic area of law, recommending in respect of Ukraine in 2011: *"that the State party amend legislation so as to guarantee by law and in practice the right of the child to a nationality and not to be deprived of it on any ground and regardless of the status of his/her parents"*.<sup>171</sup> The Macedonian system provides a good example of how to provide strong assurances against statelessness in the law for the context of renunciation. Not only does it require the submission of documents, along with the request for renunciation of nationality by parents on behalf of their child, showing that the child is guaranteed to acquire another nationality – Macedonian citizenship is also automatically restored if, within one year from the date of renunciation, the foreign nationality has not been acquired. Nationality can also be reacquired by a child where it has been lost by renunciation, if he/she has legally and continuously resided in the country for at least three years by the age of 25. This gives children the possibility of reversing actions relating to their nationality which was taken by their parents, on their behalf, and that they may ultimately not agree with.<sup>172</sup>

## 5. DEALING WITH COMPLEX CASES: FOUNDLINGS, ADOPTION, AND SURROGACY



Modern reproductive technology can raise new challenges for the enjoyment of nationality by children. This baby girl was born in the Netherlands, to a single mother who underwent IVF treatment – using an anonymous sperm donor – in order to conceive. Since the mother holds the nationality of one of the 27 countries worldwide where women do not enjoy the right to pass nationality to their children, she was unable to give her daughter a nationality at birth. Fortunately, for this little girl, once she has been living in the Netherlands for three years, she will be entitled to opt for Dutch nationality and her statelessness can be resolved.<sup>173</sup>

“ They haven’t done a thing. Nobody wanted to tell us what to do, how to fight it, where to go. Public offices should take care of the best interests of the child [...]. Instead, for them a child is a piece of paper moved between the ‘pending’ and ‘resolved’ piles. When it comes to Marysia’s case, I am ashamed of this country’s law and officials who deal with such matters.

MARYSIA’S ADOPTIVE FATHER, POLAND



Marysia's adoptive father, a Polish national, expresses his exasperation with the process of securing a nationality for her – in spite of the fact that she was born in Poland, has never left the country and has been living with her Polish foster family since she was a toddler. For all intents and purposes, Marysia was a foundling: abandoned at the hospital shortly after her birth, neither of her biological parents' identities has ever been traced. Yet, because hospital staff who assisted with the birth reported that Marysia's mother was Romanian – this unverified fact subsequently being recorded on her birth certificate – the Polish authorities assumed that she had Romanian nationality. Romania, however, also refused to recognise her as a national because there was no proof of her purported familial ties to a Romanian citizen. It was not until Marysia was 17 that her statelessness was resolved and then only thanks to a discretionary procedure at the behest of the Polish President.<sup>174</sup>

This case illuminates the challenges that can arise in securing a nationality for a child who is born or grows up in what could be described as less traditional circumstances. Children who have been abandoned and whose parentage is unknown, children who have been adopted across an international border, children who are born from international surrogacy arrangements – they may all find themselves exposed to the threat of statelessness, with legal safeguards either absent or falling short.

## FOUNDINGS

That foundlings may be left without a nationality, because of the lack of familial ties or even of evidence of birthplace, is one of the oldest statelessness problems which states have sought to address by concluding international agreements. The 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws already set out a safeguard for children of unknown parents and foundlings.<sup>175</sup> Later, a similar rule was incorporated in article 2 of the 1961 Convention. It states:

*“ A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that state”.*

In Europe, **44 out of the 45 states** whose legislation was analysed for the purpose of this report make some provision to **grant a nationality to foundlings or children of unknown parents**. Only Cyprus fails to do so. Moreover, some of Europe's foundling provisions are generously formulated, applicable to any child whose parents are unknown, without an age limit. This is the case in Latvia, for instance, where orphans left under extra-familial care in Latvia can also benefit from access to nationality.<sup>176</sup>

Yet, problems may persist in practice, also in those countries which do have a safeguard in place – as the case of Marysia demonstrates.<sup>177</sup> As noted in previous ENS research, the Hungarian experience offers one good practice example that could be replicated to deal with such scenarios: *“a new provision was adopted in the law, providing that an abandoned*

*child whose mother did not prove her identity upon giving birth, nor within 30 days following the birth, shall be considered a foundling”*.<sup>178</sup> In Italy too, the Ministry of Interior confirms that “foundlings” includes all cases where the parents are unknown from a legal point of view because the parent(s) abandoned the child without recognising him or her – even if the parent(s) are not, strictly speaking, unknown from a biological point of view (i.e. the birth has been witnessed). Italian nationality is acquired at the moment of registration at the Population register Office concerned.<sup>179</sup>

A second difficulty relating to the enjoyment of nationality by foundlings is the question of **what happens if the identity of the child's parents is later discovered**: must nationality be forfeited, even if it results in statelessness? Under some laws in Europe, the answer seems to be yes. In Romania, if either or both parents are identified before the child reaches the age of 18 and found to be non-nationals, citizenship is lost as of the date that filiation is established. The law apparently – and falsely, in some contexts – assumes that the child will necessarily have acquired a foreign nationality by virtue of the establishment of filiation and no safeguard against statelessness is offered.<sup>180</sup> The same is true in Croatia, although the cut-off date is the child's fourteenth birthday;<sup>181</sup> and in Poland, if the parents are found, within a year.<sup>182</sup>

The Committee on the Rights of the Child has expressed its concern at these policies, which undermine the child's enjoyment of the right to a nationality as protected in the CRC and are arguably against the best interests of the child concerned.<sup>183</sup> A safeguard against statelessness must therefore be built into such legislative provisions. This is easily achieved, as the example of Albania demonstrates. Article 8(1) of the Law on Albanian Nationality provides that *“if the child's parents become known before the child reaches the age of 14, and they are of foreign nationality, Albanian nationality can be relinquished at the request of the legal parents, provided that the child does not become stateless as a consequence of this action”*.<sup>184</sup>

## ADOPTION

Cases of inter-country adoption can also raise problems when it comes to children's enjoyment of the right to nationality. When a child is adopted across an international border – i.e. by adoptive parents who hold another nationality – the nationality of the child will usually follow that of the adoptive parents. If the country of the child's original nationality provides for automatic loss of nationality upon foreign adoption, however, while the country of nationality of the adoptive parents does not automatically or immediately allow for acquisition of nationality, statelessness can result. Again, international safeguards have been developed to ensure that this scenario is avoided.<sup>185</sup> Yet, a number of European countries maintain provisions in their law which could lead to loss of nationality by a child who is adopted abroad, even if this leaves him/her stateless.<sup>186</sup> Romania is one such state. If the adoption of a child is cancelled or annulled and the child is still under age and is residing abroad, he or she will be considered to have never been a Romanian citizen – even if statelessness results.<sup>187</sup> This represents a clear gap in the law which stands at odds with

Romania's international obligations as a state party to both the 1961 Convention and the ECN.

In the other countries where ENS conducted research, this issue does not appear to arise, although in both Macedonia and Slovenia the law is somewhat ambiguous because the provisions dealing with the effects of adoption do not explicitly rule out loss of nationality leading to statelessness, but this seems to be a general administrative requirement for any withdrawal of nationality under the law.<sup>188</sup> There may also still be some challenges in the country of the adoptive parents in securing a nationality for the child. It is important to keep in mind that the "sending" state in a situation of inter-country adoption may be a non-European one, so even if Europe's nationality laws were all in alignment with international standards, children may be exposed to a (temporary) risk of statelessness during the adoption process. Earlier in 2015, the Committee on the Rights of the Child, picked up on this issue and recommended that Switzerland "accelerate the assessment procedure and ensure that a child adopted from abroad is not stateless or discriminated against during the waiting period between his or her arrival in the State party and formal adoption".<sup>189</sup>

## SURROGACY

International child surrogacy is another challenging context in nationality terms. In short, the difficulty is:

"there is a risk of statelessness for a child, if the state of the surrogate mother's nationality does not attribute that nationality to the child, and the state of the commissioning mother does not attribute its nationality because the commissioning mother did not give birth to the child. In some cases the child may be able to acquire the nationality of the husband or partner of the commissioning mother following the recognition of paternity, but this is not always the case".<sup>190</sup>

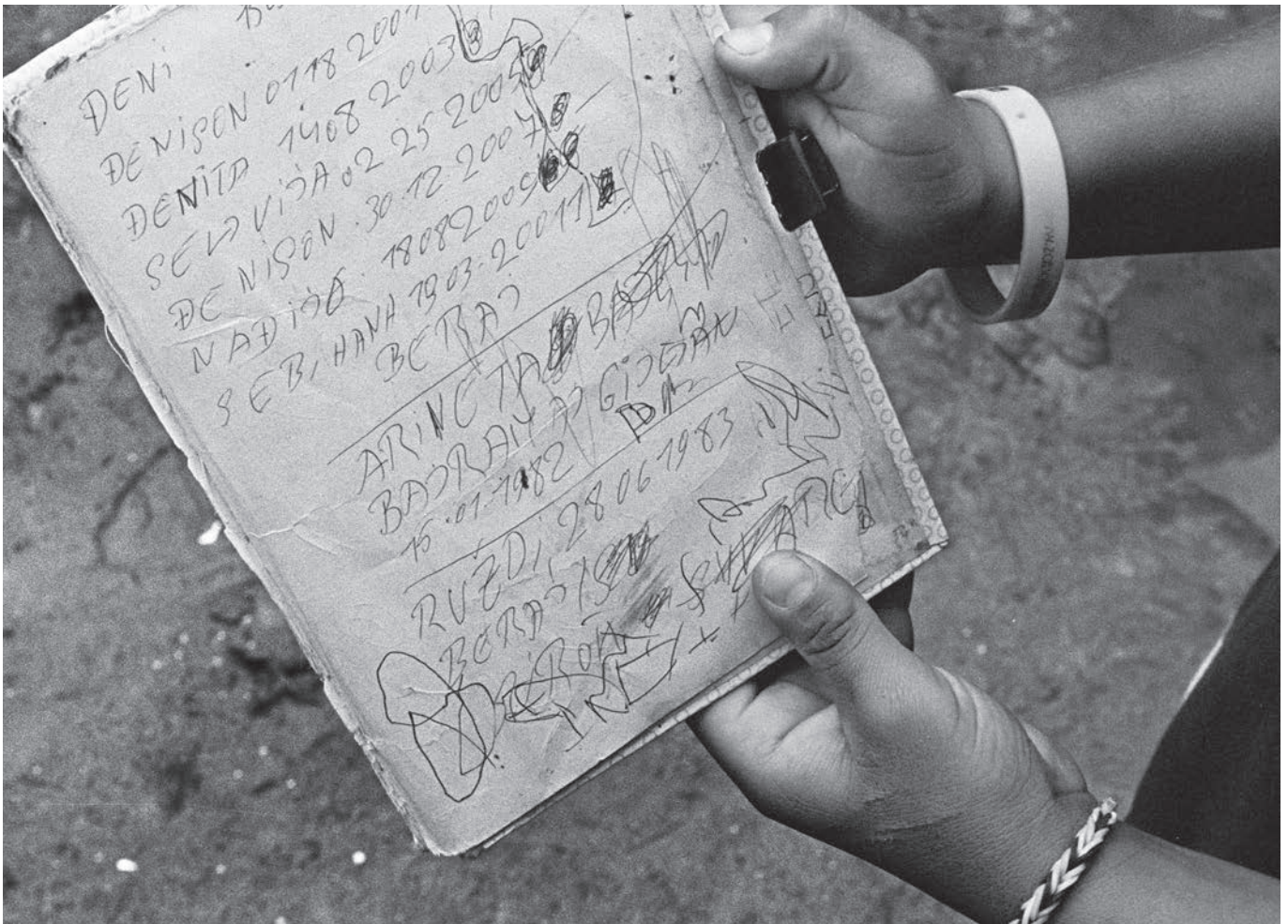
In his speech at an international event on children and human rights law in July 2015, Thorbjørn Jagland, Secretary-General of the Council of Europe, commented how "developments in technology have also created major new challenges for the law".<sup>191</sup> Indeed, unlike with respect to other causes of childhood statelessness, international law has yet to regulate questions around the nationality rights of children born out of surrogacy.<sup>192</sup> A Council of Europe Recommendation to states on the nationality of children, one of the only (soft law) standards to provide any guidance on this matter, is rather ambiguous in its demands since it seems to defer the question back to domestic law: "apply to children their provisions on acquisition of nationality by right of blood *if*, as a result of a birth conceived through medically assisted reproductive techniques, a child-parent family relationship is established or recognised by law".<sup>193</sup> However, regulatory solutions for nationality issues in surrogacy cases are largely absent across Europe<sup>194</sup> and the matter is further complicated by the fact that surrogacy is prohibited in many domestic legal systems.<sup>195</sup>

Jagland went on to explain how the European Court of Human Rights has had to confront this challenge head on in a recent case. In the ruling he was referring to, *Mennesson v. France*,<sup>196</sup> the crux of the case was the question whether France was obliged to recognise the familial ties between a French couple (commissioning parents) and their two children born in the US through a surrogate mother. Under French law, surrogacy is a method of assisted reproduction that is strictly prohibited and the government's position was that to permit the registration of the commissioning couple as the parents of the child "would have been tantamount to tacitly accepting that domestic law could be circumvented knowingly and with impunity and would have jeopardised the consistent application of the provision outlawing surrogacy".<sup>197</sup> The Court said it could accept that France may wish to deter people from using prohibited methods of assisted reproduction. However, crucially:

"The effects of non-recognition in French law of the legal parent-child relationship between children thus conceived and the intended parents are not limited to the parents alone, who have chosen a particular method of assisted reproduction prohibited by the French authorities. They also affect the children themselves, whose right to respect for private life [...] is substantially affected. Accordingly, a serious question arises as to the compatibility of that situation with the child's best interests, respect for which must guide any decision in their regard".<sup>198</sup>

Similar rulings have also been reached by the domestic courts in a number of countries, including Austria,<sup>199</sup> the United Kingdom<sup>200</sup> and Slovenia.<sup>201</sup> Thus, even where domestic law does not regulate this question, states must nevertheless act in such a way as to ensure children's right to a nationality, in line with the best interests of the child.

## 6. PROMOTING BIRTH REGISTRATION, TO PREVENT STATELESSNESS



"He walked into the house and a minute later came out with the notebook. Many pages were loose. The cover was worn and much of the notebook filled with scribbles and nothing of importance. Deni flipped to the last page. 'There', he said and pointed to his name written at the top of the page with the numbers 15031999. Deni and his six brothers and sisters may not have a shred of legal documentation proving their existence in this world, but there on the last page of that notebook, written in the handwriting of his deceased father is Deni's name and birthday as well as the names and birthdays of his brothers and sisters. The only 'proof' they have, yet unfortunately it is not enough".

“ ...written in the handwriting of his deceased father is Deni's name and birthday as well as the names and birthdays of his brothers and sisters. The only 'proof' they have, yet unfortunately it is not enough.

GREG CONSTANTINE, PHOTOGRAPHER



Photographer Greg Constantine recalls his encounter with 15-year old Deni in Serbia – the oldest of seven siblings, all without proof of their birth or identity and consequently unable to confirm or receive documentation of their Serbian citizenship.<sup>202</sup> This is a problem faced by many hundreds of children in Serbia<sup>203</sup> and many more across Europe.<sup>204</sup> It is particularly acute among Roma communities, such as Deni's, but there are other groups which also face distinct obstacles in accessing birth registration. Hidden behind the myth of "complete" registration are the stories of different populations whose prospects of achieving the registration of their child can be considerably hampered by their circumstances, be they minority groups, irregular migrants, unmarried couples or the rural poor. This section illuminates some of those challenges.

The right to be registered at birth is a fundamental right of every child, protected by – among others – article 7 of the CRC, where it sits alongside the right to acquire a nationality. In recent years, there has been a big global push by child rights organisations to achieve "Universal Birth Registration" (UBR).<sup>205</sup> It is also expected that one of the new Sustainable Development Goals which will be adopted in September 2015 will contain a target relating to legal identity and birth registration for all.<sup>206</sup> Europe has been a strong supporter of efforts to improve birth registration coverage. The EU, for instance, has provided financial and technical support for programmes to strengthen civil registration systems.<sup>207</sup> Yet, with the occasional exception,<sup>208</sup> the focus of European interest in UBR has been on improving access to birth registration *outside* Europe. The same is true of the major child rights actors: their UBR campaigning and programming has been directed towards other regions.

### COMPLETE VS UNIVERSAL BIRTH REGISTRATION?

A look at UNICEF's statistics on birth registration coverage provides an explanation as to why the focus of UBR work is on countries outside Europe. The total percentage of births registered is reported to be 100% in 39 of the 47 member states of the Council of Europe. Of the rest, there are two countries for which no data was available (Croatia and Romania) and four countries for which the birth registration rate is reported as 99% (Albania, Georgia, Montenegro and Serbia). Just two countries score relatively poorly against this European average – Azerbaijan and Turkey – both reporting registration rates of 94%. When set against the global average of 65%, it is indeed evident that far more work is needed elsewhere than in Europe to ensure that the right of all children to have their birth registered is realised.<sup>209</sup>

However, there is a critical difference between so-called registration "completeness" as statisticians would measure it and the achievement of *Universal Birth Registration*. As UNICEF has pointed out, the definitions of "completeness" used by the UN Statistics Division (UNSD) are inconsistent: "*most UNSD handbooks equate complete and universal. UNSD defines the latter as 100 per cent. On the UNSD website, however, countries are shown with birth registration rates, or death registration rates, which are complete when more than 90 per cent of vital events are registered*".<sup>210</sup> Thus, UNSD seems to consider all European birth

registration systems to have reached "completeness", even those at 94%. This is a term which suggests that no-one is left behind, but it is very much a statistical perspective on the issue and can obscure realities on the ground, as illustrated by Deni's case presented above.<sup>211</sup> UNICEF has therefore determined that, from the perspective of its mission to protect the rights of all children, "*a safe choice is to use universal and define universal as all vital events, births, etc., that is 100 per cent*".<sup>212</sup>

### BIRTH REGISTRATION IN THE CONTEXT OF THE SYRIA CONFLICT

The war in Syria has prompted forced displacement on a massive scale. In Europe, Turkey hosts by far the most Syrian refugees: at least 1.5 million people, but perhaps as many as double that number.<sup>213</sup> An issue which is now emerging in the midst of the massive humanitarian crisis is the challenge of birth registration for children born in exile to Syrian refugees – be it in Turkey or other countries of refuge. Research conducted by Refugees International in Turkey in March 2015 has shed light on the problems encountered there, as illustrated by the following story:

*"Doctor Nazir's pregnant wife arrived in Turkey with a one-year old and no documentation. They had fled the unbearable bombardment of their home town, Aleppo, while Dr. Nazir remained in Syria to work in an underground field hospital. Dr Nazir had defected from the Syrian military in 2012, and was officially declared dead the same year. Because he no longer legally existed, Dr Nazir was unable to register his 2013 marriage or the birth of his first child in Aleppo. When his second baby was born in Turkey in 2015, shortly after his wife's arrival, she could not file an application for the baby's birth certificate because Dr Nazir remained in Syria and she had no legal proof of her marriage or her husband's birth certificate".<sup>214</sup>*

Although no reliable data is available, it has been estimated that as many as 60,000 babies have been born to Syrian refugee parents in Turkey since the beginning of the crisis.<sup>215</sup> A lack of the necessary documents, ignorance about the procedures, even fear of the possible ramifications of registration – all of these factors are hampering birth registration for these children. In situations of forced displacement, with fractured families and identification documents commonly lost or destroyed, the risk is high that problems of access to birth registration will prompt difficulties in securing recognition of nationality. The backdrop of discriminatory nationality laws in the country of origin (Syrian women are not entitled under the law to pass nationality to their children) serves to further heighten this risk. As Refugees International has pointed out, "concrete steps taken now by host governments to legally record a child's birth and collect specific information about their father's name, location of birth, and family members could facilitate the ability of Syrian children to claim their citizenship and repatriate to Syria when stability there is restored".<sup>216</sup>

## ENDURING OBSTACLES TO BIRTH REGISTRATION IN EUROPE

Even taking the stricter approach of defining complete or universal birth registration as a rate of 100%, looking at this issue purely through the angle of statistics is unsatisfactory from a child rights perspective or when seeking to understand whether children in Europe are exposed to the risk of statelessness due to a lack of birth registration. Firstly, 34 countries in Europe which have reportedly reached 100% registration have a “z” behind their entry in the statistical overview. This indicates that an estimate of 100% birth registration has been “assumed”, since the civil registration systems in these countries “are complete and *all* vital events (including births) are registered”.<sup>217</sup> While this may be accurate in statistical terms, i.e. within a particular acceptable margin of error, it is not true in human terms. Not *all* children born in Europe today, including in those countries with an assumed 100% record, have their birth registered. That gaps persist was apparent in many of the ENS studies conducted in 2015 and is illustrated by the selected case studies presented later in this section. Any child who misses out is a child whose fundamental right to birth registration remains unfulfilled and represents a case that the child rights community should be concerned about. As Plan’s call to action for its global UBR campaign puts it: “Count Every Child”.<sup>218</sup>

The global birth registration data used for tracking progress on the achievement of this right also does not illuminate historic problems that may in fact endure. The indicator

used in the UNICEF report is defined as the percentage of children under age five whose births are registered at the moment of the survey. A child whose birth was not registered but who is already over the age of five when the data was captured will not be visible in these statistics. This is particularly significant in those civil registration systems where the parents are required to present their own birth certificate or ID document in order to register their children. A “historic” problem of birth registration thereby becomes an intergenerational cycle, as the case of 30-year old mother of three, Ljulja, from Serbia demonstrates:

“ I just want to get an ID card, like other citizens, and then register the birth of my children. My greatest wish is that my children go to school... There are a lot of good people in our neighbourhood who help us survive, but they cannot help us with the documents”.<sup>219</sup>

Ljulja’s own birth was never registered and her citizenship not recognised. Her own children now face the same fate. ENS studies in Albania, Estonia, Latvia, Macedonia, Poland and Romania all found that the parents’ lack of identification documents can block a child’s access to birth registration. Research by UNHCR in Armenia reached the same conclusion with respect to births in that country,<sup>220</sup> and it was also one of the reasons found for lack of access to birth registration for Syrian refugees in Turkey, as outlined above.<sup>221</sup> Indeed, birth registration can be impossible if the mother is undocumented, regardless of the situation of the father.<sup>222</sup>

## BREAKING THE INTERGENERATIONAL CYCLE OF LACK OF DOCUMENTATION

One of the ways in which states have sought to deal with an intergenerational lack of documentation is by simplifying the procedures for the late registration of births, making it easier for adults who do not have a birth certificate to acquire one, which can subsequently be used to register their own children’s births. In Serbia, a new court procedure was introduced in 2012 for people who found it impossible to complete the administrative procedure for late birth registration. According to the NGO, Praxis: “*In the first year following the enforcement of the amendments to the Law on Non-Contentious Procedure, through which the new court procedure was established, the date and place of birth were determined for approximately 150 persons who could not get registered in the birth registry book. It testifies to the impact of the improved birth registration procedure on the resolution of the problem of legally invisible persons*”.<sup>223</sup> While the Serbian birth registration system still exhibits some flaws,<sup>224</sup> this is an important improvement.

The Serbian experience has inspired similar law reform in Montenegro, which adopted its own court procedure for late birth registration in April 2015. Moreover, it is part of a broader set of national and regional initiatives in the countries of Southeast Europe to address the different factors that are obstructing birth registration for vulnerable groups. In October 2011, the governments of Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia, adopted a joint declaration on access to civil registration, known as the “Zagreb Declaration”. Among its list of actions for the national level was: “*Remove all obstacles to the documentation and registration needs, particularly of vulnerable persons. This may include legal reforms, adequate residency and documentation requirements, the waiving of fees, facilitated birth and subsequent registration and the issuance of identity cards*”.<sup>225</sup> When the governments reconvened in 2013 to discuss progress achieved, they noted – among others – examples of law reform, database improvement, increased collaboration between stakeholders, use of mobile registration teams and capacity building. Nevertheless, a number of ongoing concerns were also identified and further recommendations for follow-up action formulated.<sup>226</sup>

## LACK OF BIRTH REGISTRATION AND THE RISK OF STATELESSNESS

A statistical perspective on birth registration also hides the important fact that where children are nevertheless missing out, this is likely to be in situations where the consequent risk of statelessness is significant. In most cases, the acquisition of nationality and the registration of births are, in theory at least, two distinct processes: nationality is usually acquired automatically by operation of the law the moment a child is born if the prescribed *jus sanguinis* or *jus soli* connection is present, while birth registration is a separate administrative process through which a child is assured official recognition by the state of the facts of his or her birth. However, “persons without birth registration are more vulnerable to [...] statelessness”<sup>227</sup> and the registration of births of all children born on a state’s territory is a tool that helps to “safeguard their right to a nationality”.<sup>228</sup> This is because by providing formal evidence of the child’s place of birth and parentage, the child will be better able to prove their acquisition of or entitlement to nationality of the state of birth or of the parents’ nationality, as provided for under the relevant nationality laws.

The reason that in the European context, where birth registration rates are so high, there is cause for particular concern about the ability of the population of unregistered children – however small this is – to fulfil their right to a nationality is that the lack of access to registration in the European system is not just an administrative or statistical glitch. It is not the case that, at random, one in every x thousands of children does not have their birth recorded. Rather, European states appear to be systematically failing to ensure the registration of particular groups of vulnerable children – children of parents who themselves do not have a birth certificate or identification document being just one of these.<sup>229</sup> Minority populations, in particular the Roma, also experience structural problems in accessing birth registration and citizenship.<sup>230</sup> Children born to parents who are irregular migrants are another high risk group, prevented either by law<sup>231</sup> or in practice<sup>232</sup> from gaining access to birth registration systems because of their unlawful presence in the country – in spite of international standards guaranteeing the right to birth registration irrespective of a child or his or her parents’ legal status.<sup>233</sup> Other children for whom birth registration can be difficult include: children born outside of hospitals, children born out of wedlock, children of same-sex couples, abandoned children, children whose parents have no fixed residence, disabled children, children of prisoners or detainees, children of internally displaced persons and children from rural poor families.

Thus, to achieve true equity in the enjoyment of the right to birth registration, including in Europe, more must be done to identify and remedy the barriers to registration for these vulnerable groups and ensure equal access to procedures for all children.<sup>234</sup> This is a key measure in the prevention of childhood statelessness in the region, given that those who are vulnerable include populations that experience discrimination or have a more complex position under nationality law (e.g. migrant background, abandonment or out of wedlock) and therefore the inability to secure proof of birth may more quickly prompt a problem of statelessness.

## BADEMA’S STORY

*Macedonia...* Badema is a 26-year old stateless woman who was placed in an orphanage when she was three years old. Her birth has never been registered and she is stateless. Badema is now married (a common law marriage) with three children. Her husband is a Macedonian national, yet her children cannot acquire Macedonian citizenship because their births cannot be registered due to Badema’s lack of documentation. In fact, in order for a child’s birth to be registered in the municipal registry, parents have to show their own legal identity documents and proof of their civil status. As Badema cannot meet these requirements, her children also face statelessness. Badema is denied welfare benefits, does not have the right to employment or health insurance and lives with her family in a home with one room in an informal settlement. In order to survive she has no choice but to beg for money.<sup>235</sup>

## ANDREEA’S STORY

*Romania...* Andreea is eight years old and lives with her father and siblings. At the time Andreea was born her mother had lost her ID documents and so Andreea could not be registered because both parents need to prove their identity through legal documents in order to register a child. When the mother acquired her new document, more than a year had passed since Andreea’s birth and her parents did not know how to file for late registration. Andreea’s mother left to work in Bucharest after she acquired her new ID and the family has not heard from her since. As a result of Andreea’s lack of documentation she cannot go to school, does not receive any state allowances and cannot visit a doctor free of charge. Her father says: “She had a bad flu recently so we went to a clinic to get a prescription for medication, but to get the check-up and medication we used the certificate of her younger sister. It’s good they have no ID yet, the birth certificate has no picture on it, and she is quite thin and small so she can pass as being younger”.<sup>236</sup>

## BLERINA’S STORY

*Albania...* Blerina is an Albanian citizen and mother of three. Her children were all born in Greek hospitals but at the time of their birth Blerina could not afford the medical fees and was therefore never provided with a birth notification for her children. This put her and her children in dire circumstances when they returned to Albania and Blerina discovered that she could not register the children in the Civil Status Office in Albania. In fact, due to the lack of the children’s birth certificates, Blerina could not prove that she is legally the mother of her children and she could not secure Albanian citizenship for them. As a result, Blerina’s children were not able to be registered in schools, did not have access to healthcare and did not receive any welfare benefits. Today, two of her three children have fortunately acquired Albanian citizenship by judicial decision. Her oldest child is still not registered because the father (a Greek national) took the child from Blerina before the legal proceedings were completed and since the child has no records it is difficult for her to initiate an investigation to get her child back.<sup>237</sup>



# CONCLUSION AND RECOMMENDATIONS



“ Roman’s father was a Yugoslav citizen and his mother was a citizen of the former USSR. Early in his life, his mother took Roman to Russia to live with his grandmother, and abandoned him. Before he reached legal maturity (which would have enabled him to have access to an ID), his grandmother died and he started to wander around Europe without any personal documents. He lived the sad life of a person whose identity was never recognised and he left this world alone, with no single manifestation of recognition of his human dignity.

ABOUT ROMAN (DECEASED), STATELESS IN SLOVAKIA

Despite living his entire life in Europe, Roman never enjoyed a nationality and spent his final 14 years living destitute on the streets of Slovakia. He suffered the indignity of an anonymous cremation – the result of compounded administrative glitches that stemmed from Roman's lack of nationality and lack of legal status in Slovakia (he was never formally recognised as stateless either).<sup>238</sup> His story powerfully illustrates just how critical it is to prevent or resolve childhood statelessness, before it becomes entrenched and leaves an indelible mark on the lives of those affected.

Fortunately, childhood statelessness is by no means an intractable problem. In fact, as this report reaffirms, realising every child's right to a nationality is neither complicated nor arduous. This conclusion provides a summary of key measures that are needed to prevent and resolve childhood statelessness, before offering – on the basis of existing trends, developments, challenges and good practices in the region – a series of recommendations directed towards those stakeholders whose engagement will be most critical in ending childhood statelessness in Europe.

Simple, legislative safeguards that address the situation of children who would otherwise be left stateless form the cornerstone of efforts to avoid childhood statelessness, and are directly prescribed by relevant international norms. States must put in place provisions that prevent, for example, the inheritance of statelessness and confer nationality when a child is the victim of a conflict between the nationality laws of the country of birth and the country of his or her parent(s). These safeguards can be introduced into national law without changing or undermining a state's main doctrinal approach to nationality, and taking into account the real connections that a child has to the country, such as by granting nationality to all children who would *otherwise be stateless* and who are *born in the country*. Critically, such safeguards must be comprehensive, in both their formulation and their implementation – or else children will continue to fall through the cracks.

This report reveals that currently there are far too many gaps in the nationality laws of European states. While almost all countries in the region have included some provisions in their laws which are specifically designed to prevent cases of childhood statelessness, remarkably *few* provide any child who would otherwise be stateless the opportunity to acquire nationality *immediately upon or as soon as possible after birth* – a provision which is clearly in the best interests of the child. As shown in section 3 of this report, procedural requirements and additional stipulations in the law can nullify relevant safeguards for some of the children who should benefit from them. Moreover, in a worrying number of cases, these deficiencies in the law are overtly in violation of the international obligations undertaken by the state in question. Law reform is urgently needed to prevent the creation of new cases of childhood statelessness in Europe and, wherever possible, should be introduced with retroactive effect so as to cover children left stateless under the previous law.

The establishment of inclusive legislative safeguards for the avoidance of childhood statelessness must go hand-in-hand with measures to remove practical or administrative hurdles in accessing or confirming nationality. Simply put: where a child is

entitled to a nationality under the law, he or she must be able to be recognised as a national in practice. This means both resolving structural problems that have the effect of inhibiting the enjoyment of nationality, as well as adopting special measures to actively facilitate access to nationality where statelessness arises. Key among the former is the identification and elimination of barriers that restrict access to birth registration for vulnerable groups, especially those who face a significant risk of statelessness if left without official evidence of the facts of their birth. With regard to the latter, these must include the enhanced identification of relevant cases, so as to avoid such scenarios as where a child is labelled as being of "unknown nationality" for a prolonged period of time. Improving the provision of information on applicable nationality procedures to those affected likewise constitutes an important complement in identifying stateless children, where the remedy is not automatic under the law.

In general, the solutions outlined above are relatively straightforward, largely uncontroversial and firmly embedded in international legal standards. It simply requires states to follow through on the principle of the avoidance of childhood statelessness – which they have unanimously embraced through their ratification of the CRC and other instruments – with strengthened law, policy and practice. Nevertheless, as this report has shown, there are certain contexts, where children are vulnerable to statelessness, which European states have not adequately identified or addressed. These include: stateless children born to irregular migrants or to refugees, children of same-sex couples, children commissioned by European parents through international commercial surrogacy and children who have been abandoned, including where the mother has been seen but her identity unconfirmed. In any and all such cases, states must respect the fact that the right to acquire a nationality is a right of *every* child. Even if the circumstances of the child's conception or birth are complex (and may even be considered controversial or problematic), the best interest of the child to be protected from statelessness must prevail regardless of the parents' status or choices. Similarly, a child's right to preserve his or her identity, including nationality, must be assured – including where the parents' action is what jeopardises this.

Strengthening existing frameworks is therefore essential to achieving the goal of ending childhood statelessness in the region. At the same time, improved data collection on children's access to nationality by relevant stakeholders, as well as closer monitoring by human rights bodies, are important complements to these measures, helping to track and encourage progress towards this goal. For those contexts in which children's enjoyment of the right to acquire a nationality continues to pose particular challenges, further research and additional standard-setting or doctrinal guidance – as needed – can help states to identify and implement effective solutions. This report, presenting the findings of eight in-depth country studies and further regional analysis, is intended as a contribution towards this process. The following recommendations are addressed, where appropriate, to specific stakeholders who are well placed to help end childhood statelessness in Europe. It is hoped that the recommendations and report will also serve as a basis for the development of more targeted strategies for action at the national level, in accordance with the specific context and challenges encountered.

## I. GENERAL RECOMMENDATIONS

- 1.1 Elevate the goal of ending childhood statelessness as a major policy priority, including with regard to the design and implementation of National Action Plans initiated under the framework of UNHCR's *#ibelong* campaign which seeks to eradicate statelessness within a decade.
- 1.2 Promote the mainstreaming of childhood statelessness in the policy discourses and strategic plans of all relevant stakeholders, including through the dissemination of this report.
- 1.3 Build on ENS's regional conference "None of Europe's Children Should be Stateless", and the resulting Action Statement, as a catalyst and guide for concerted and joint action by a diverse range of stakeholders.
- 1.4 Develop effective communications strategies, including the harnessing of social and digital media, in order to share knowledge of the causes and consequences of childhood statelessness with a much wider audience and thereby increase societal and political pressure.
- 1.5 Translate increased awareness about the problem of childhood statelessness into a greater mobilisation of resources in support of measures aimed at addressing this.
- 1.6 Underscore and complement awareness-raising gains with new targeted research to plug information gaps, as well as deepen knowledge of why/where childhood statelessness occurs, and good practices to address it.

## 2. RECOMMENDATIONS TO GOVERNMENTS

- 2.1 Accede to the 1961 Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality, including states that have already pledged to do so.
- 2.2 Implement measures to fulfil children's right to a nationality, in accordance with article 7 of the CRC and *General Comment No. 5* of the Committee on the Rights of the Child,<sup>239</sup> which include – as needed – treaty accession,<sup>240</sup> the removal of reservations, legislative reform, National Action Plans, Child Rights Impact Assessments, outreach and information campaigns, training and capacity building, data collection, collaboration with civil society and international cooperation.
- 2.3 Conduct a comprehensive review of all relevant laws, regulations and practices, assessing compatibility against international standards and child rights principles (including the best interests of the child).
- 2.4 Adopt amendments to national laws, policy guidelines and/or further implementing measures to address all situations in which children born in the territory or to citizen parents can be left stateless, as well as to address barriers to birth registration for vulnerable groups, taking into account the need to ensure acquisition of a nationality immediately or soon after birth.
- 2.5 Review and improve data collection and reporting methods relating to childhood statelessness, including birth registration (with due respect for data protection and confidentiality). Ensure that this is disaggregated by age and gender.
- 2.6 Build the capacity of relevant administrative and judicial bodies to proactively identify and address situations of childhood statelessness – including among cases of "unknown nationality" – and ensure that decisions/actions are taken in accordance with relevant international

standards, jurisprudence and related authoritative guidance of international bodies such as the Committee on the Rights of the Child and UNHCR.

- 2.7 Encourage, through bilateral and multilateral external relations policy the adoption of more effective measures to prevent and reduce statelessness in countries outside the region, in particular to repeal any discriminatory laws or practices affecting children's access to nationality.

## 3. RECOMMENDATIONS TO REGIONAL ACTORS

### Council of Europe

- 3.1 Promote further ratifications of the European Convention on Nationality and the comprehensive implementation in national law and practice of Convention standards for the avoidance of statelessness, with due regard for the general principles of the right to a nationality, non-discrimination and best interests of the child such that access to nationality for stateless children is not contingent on their own or their parents' residence status.
- 3.2 Identify good practice and facilitate awareness raising as well as information exchange among parliamentarians and policy makers on the importance of, and measures for, ending childhood statelessness in Europe.
- 3.3 Strengthen the jurisprudence of the European Court of Human Rights relating to nationality as a protected element of a person's identity, including by providing further normative guidance on the role of the principle of best interests of the child in the context of the avoidance of childhood statelessness.

### European Union

- 3.4 Implement the pledge made in 2012 for all EU Member States yet to accede to the 1961 Convention to explore doing so, and periodically report on progress in this regard.
- 3.5 Increase attention on the causes, impact and solutions of childhood statelessness in Europe, across all relevant European Union institutions, and identify areas of EU policy which provide an avenue for strengthening efforts to mitigate the effects of childhood statelessness and improve children's enjoyment of the right to a nationality.
- 3.6 Ensure that issues around childhood statelessness are mainstreamed in the upcoming renewal of the EU child rights agenda, the Forum on the Rights of the Child, the Framework for National Roma Integration Strategies and the European Commission's Investing in Children Recommendations. Monitor the application of this, including through the European Parliament's Inter Group on Children's Rights.
- 3.7 Promote the systematic generation and dissemination of reliable data on children affected by statelessness and on children's access to nationality by EU Member States as a means to better identify trends, gaps and good practices.
- 3.8 Stimulate states around the world to address discriminatory or otherwise problematic laws and practices affecting children's right to a nationality, including through the European External Action Service, and by using multilateral fora such as the UN Human Rights Council. To this endeavour, provide political and financial support to initiatives related to ending childhood statelessness, including the UNHCR *#ibelong* campaign.



### European Network of Ombudspersons for Children (ENOC) and European Network of National Human Rights Institutions (ENNHRI)

- 3.9 Adopt a strong collective stance to eliminate childhood statelessness in Europe, and engage in regional-level advocacy for the strengthening of measures to protect children's right to a nationality, including by raising awareness within European institutions.
- 3.10 Monitor the implementation in national law and practice of international and regional standards relating to children's right to acquire a nationality, and address challenges through national-level awareness raising and advocacy, as well as through reporting to UN human rights mechanisms such as the Universal Periodic Review (UPR) and the Committee on the Rights of the Child.

## 4. RECOMMENDATIONS TO UN HUMAN RIGHTS BODIES

- 4.1 Strengthen the use of the UPR process and state party reporting to the UN Treaty Bodies (including but not limited to the Committee on the Rights of the Child) to identify and raise issues relating to children's right to acquire a nationality, including by issuing concrete, targeted recommendations for addressing gaps in law or practice.
- 4.2 Require governments to provide information, as part of their regular human rights reporting to UN bodies, on the implementation of measures to reduce childhood statelessness in their territory and among children of their citizens, including by sharing relevant quantitative and qualitative data.
- 4.3 Identify areas where the realisation of children's right to acquire a nationality would benefit from additional standard-setting or doctrinal guidance and take steps to develop this, as appropriate, through Resolutions, Recommendations, General Days of Discussion and/or General Comments.

## 5. RECOMMENDATIONS TO UN AGENCIES

### UNHCR

- 5.1 Encourage European states to prioritise measures to prevent and resolve cases of childhood statelessness in the development and implementation of National Action Plans in respect of the *#ibelong* campaign.
- 5.2 Identify situations or contexts in which children born in Europe to refugee parents and children born to migrants or refugees *en route* to Europe face difficulties in accessing a nationality, with a view to developing further doctrinal guidance and the sharing of good practices.
- 5.3 Explore, in collaboration with UNICEF and other relevant stakeholders, the relationship between Actions 2 (Ensure that no child is born stateless) and 7 (Ensure birth registration for the prevention of statelessness) of the *#ibelong* campaign, so as to provide effective policy, programming and good practice recommendations that address this.
- 5.4 Engage and provide technical support to administrative bodies, particularly (decentralised) authorities responsible for birth registration, population registration and nationality procedures.
- 5.5 Continue to promote universal accession in Europe to the 1961 Convention on the Reduction of Statelessness (and the 1954 Convention relating to the Status of Stateless Persons), as part of Action 9 of the *#ibelong* campaign.

- 5.6 Ensure that the voices of stateless youth in Europe are heard during the Global Refugee Youth Consultations and other youth engagement processes.

### UNICEF

- 5.7 Build on existing expertise and engagement on the promotion of Universal Birth Registration to identify and address barriers to registration and the recognition of citizenship for children of vulnerable groups in Europe, including by conducting further research on the nexus between discrimination, birth registration and statelessness.
- 5.8 Incorporate awareness raising on statelessness and the right to a nationality in capacity building for UNICEF staff as well as in Child Rights Education work in schools and with state authorities.

### All relevant UN agencies (including UNHCR, UNICEF, UNDP, UNSD and UNFPA)

- 5.9 Collaborate, as appropriate to respective roles and mandates, to identify opportunities for increased engagement in delivering on the goal of ending childhood statelessness in Europe – be it through strengthening data collection, institution-building, programming or other developments.
- 5.10 Utilise the global post-2015 development agenda, including relevant Sustainable Development Goals, for promoting children's right to a nationality and strengthening the protection of stateless children in Europe.

## 6. RECOMMENDATIONS TO CIVIL SOCIETY, INCLUDING ACADEMIA

- 6.1 Utilise the findings in this report, and other ENS resources, to make targeted recommendations to end childhood statelessness at country level, and in support of ENS's *#StatelessKids* campaign.
- 6.2 Expand the study, monitoring and sharing of information on state practice in relation to the avoidance of statelessness among children born in Europe or to European citizen parents, including through public awareness raising and involving (school) students in debating solutions.
- 6.3 Strengthen engagement with international human rights reporting mechanisms in advocating for full respect of children's right to acquire a nationality, in particular by submitting stakeholder reports to the UPR process and alternative reports to UN Treaty Bodies.
- 6.4 Identify and pursue concrete opportunities for strategic litigation on childhood statelessness, in order to challenge domestic systems which provide partial, minimal or no safeguards – or the non-implementation of legislative safeguards – and to further progress the normative guidance emerging from regional jurisprudence on this issue. Build stronger engagement in individual casework on childhood statelessness through legal assistance and paralegal projects.
- 6.5 Encourage and contribute to the collection of improved quantitative and qualitative data on childhood statelessness, while emphasising and acting on the need to pursue solutions without delay where problems have been identified, even in the absence of comprehensive data.
- 6.6 Consolidate and strengthen partnerships with regional and international child rights organisations on work to address childhood statelessness, including under the auspices of ENS's *#StatelessKids* campaign and related training, advocacy and awareness raising efforts.

# ANNEXES AND ENDNOTES

## ANNEX I

### State parties to the 1961 Convention and ECN (as of 15 July 2015)

(s = signatory only)

Country	1961 Convention on the Reduction of Statelessness	1997 European Convention on Nationality
Albania	9 July 2003	11 February 2004
Armenia	18 May 2014	
Austria	22 September 1972	17 September 1998
Azerbaijan	16 August 1996	
Belarus		
Belgium	1 July 2014	
Bosnia and Herzegovina	13 December 1996	22 Oct 2008
Bulgaria	22 Mar 2012	2 February 2006
Croatia	22 September 2011	19 Jan 2005 s
Cyprus		
Czech Republic	19 December 2001	19 Mar 2004
Denmark	11 July 1977	24 July 2002
Estonia		
Finland	7 August 2008	6 August 2008
France	31 May 1962 s	4 Jul 2000 s
Georgia	1 July 2014	
Germany	31 August 1977	11 May 2005
Greece		6 Nov 1997 s
Hungary	12 May 2009	21 November 2001
Iceland		26 Mar 2003
Ireland	18 January 1973	
Italy		6 Nov 1997 s
Latvia	14 April 1992	30 May 2001 s
Liechtenstein	25 September 2009	
Lithuania	22 July 2013	
Luxembourg		26 May 2008 s
Macedonia		3 June 2003
Malta		29 Oct 2003 s
Moldova	19 April 2012	30 November 1999
Montenegro	5 December 2013	22 June 2006
Netherlands	13 May 1985	21 Mar 2001
Norway	11 August 1971	4 June 2009
Poland		29 Apr 1999 s
Portugal	1 Oct 2012	15 Oct 2001
Romania	27 January 2006	20 January 2005
Russia		6 Nov 1997 s
Serbia	7 December 2011	
Slovakia	3 April 2000	27 May 1998
Slovenia		
Spain		
Sweden	19 February 1969	28 June 2001
Switzerland		
Turkey		
Ukraine	25 Mar 2013	21 December 2006
United Kingdom	29 Mar 1966	

## ANNEX 2

### Analysis of national laws against article I, 1961 Convention and article 6(2), ECN.

Countries marked with asterisk are in violation of their international obligations

Countries with full safeguards		Countries with partial safeguards		Countries with no or minimal safeguards	
<b>Armenia</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Albania*</b>	<ul style="list-style-type: none"> <li>• legal residence of the parents</li> </ul>	<b>Cyprus</b>	<ul style="list-style-type: none"> <li>• none</li> </ul>
<b>Belgium</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Austria*</b>	<ul style="list-style-type: none"> <li>• too limited timeframe 18-20</li> </ul>	<b>Norway*</b>	<ul style="list-style-type: none"> <li>• Facilitated acquisition for stateless individuals, but with problematic conditions (e.g. permanent residence of the child)</li> <li>• Foundlings acquire citizenship</li> </ul>
<b>Bosnia and Herzegovina</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Azerbaijan*</b>	<ul style="list-style-type: none"> <li>• parents' citizenship (stateless)</li> </ul>	<b>Romania*</b>	<ul style="list-style-type: none"> <li>• naturalisation for stateless individuals</li> <li>• foundlings acquire citizenship</li> </ul>
<b>Bulgaria</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Belarus</b>	<ul style="list-style-type: none"> <li>• permanent residence of the parents</li> </ul>	<b>Switzerland</b>	<ul style="list-style-type: none"> <li>• &lt;18yr, be integrated, abide the law, no threat to the State</li> <li>• foundlings acquire citizenship</li> </ul>
<b>Finland</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Croatia*</b>	<ul style="list-style-type: none"> <li>• parents' citizenship (unknown)</li> </ul>		
<b>France</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Czech Republic*</b>	<ul style="list-style-type: none"> <li>• legal residence of the parents (on day of birth of the child)</li> <li>• parents' citizenship (stateless)</li> </ul>		
<b>Greece</b>	<ul style="list-style-type: none"> <li>• following proof of non-transmission of parents' foreign nationality</li> </ul>	<b>Denmark*</b>	<ul style="list-style-type: none"> <li>• Legal residence of the child</li> </ul>		
<b>Ireland</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Estonia</b>	<ul style="list-style-type: none"> <li>• too limited timeframe &lt;15</li> <li>• permanent residence of the child</li> <li>• &gt;5yr legal residence of the parents</li> <li>• parents' citizenship (stateless)</li> </ul>		
<b>Italy</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Georgia*</b>	<ul style="list-style-type: none"> <li>• permanent residence of the parents</li> <li>• parents' citizenship (stateless)</li> </ul>		
<b>Liechtenstein</b>	<ul style="list-style-type: none"> <li>• &gt;5yr ordinary residence, &lt;22 yr, stateless since birth</li> </ul>	<b>Germany*</b>	<ul style="list-style-type: none"> <li>• &gt;8yr legal and permanent residence of the parents</li> </ul>		
<b>Luxembourg</b>	<ul style="list-style-type: none"> <li>• following proof of non-transmission of parents' foreign nationality</li> </ul>	<b>Hungary*</b>	<ul style="list-style-type: none"> <li>• legal residence of the parents (on day of birth of the child)</li> <li>• parents' citizenship (stateless)</li> </ul>		
<b>Malta</b>	<ul style="list-style-type: none"> <li>• proof lies with applicant</li> </ul>	<b>Iceland</b>	<ul style="list-style-type: none"> <li>• &gt;3yr legal residence of the child</li> </ul>		
<b>Moldova</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Latvia*</b>	<ul style="list-style-type: none"> <li>• too limited timeframe &lt;15</li> <li>• permanent residence of the parents</li> <li>• parents' citizenship (stateless)</li> </ul>		
<b>Montenegro</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Lithuania*</b>	<ul style="list-style-type: none"> <li>• permanent residence of the parents</li> <li>• parents' citizenship (stateless)</li> </ul>		
<b>Portugal</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Macedonia*</b>	<ul style="list-style-type: none"> <li>• <i>parents' citizenship (stateless or unknown)</i></li> </ul>		
<b>Serbia</b>	<ul style="list-style-type: none"> <li>• grant of nationality alongside the registration of the birth</li> </ul>	<b>Netherlands*</b>	<ul style="list-style-type: none"> <li>• &gt;3yr legal residence of the child</li> </ul>		
<b>Slovakia</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Poland</b>	<ul style="list-style-type: none"> <li>• parents' citizenship (stateless or unknown)</li> </ul>		
<b>Spain</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Russia</b>	<ul style="list-style-type: none"> <li>• legal residence of the parents</li> </ul>		
<b>Turkey</b>	<ul style="list-style-type: none"> <li>• automatic</li> </ul>	<b>Slovenia</b>	<ul style="list-style-type: none"> <li>• parents' citizenship (stateless or unknown)</li> </ul>		
<b>Ukraine</b>	<ul style="list-style-type: none"> <li>• following an application by the child's legal representative</li> </ul>	<b>Sweden*</b>	<ul style="list-style-type: none"> <li>• Legal residence of the child</li> </ul>		
<b>United Kingdom</b>	<ul style="list-style-type: none"> <li>• &gt;5yr habitual residence, &lt;22yr, stateless since birth</li> </ul>				



### **ANNEX 3 CONFERENCE ACTION STATEMENT “NONE OF EUROPE’S CHILDREN SHOULD BE STATELESS”, 2015**

This statement was presented and discussed during the closing session of the ENS conference “None of Europe’s children should be stateless” which was held in Budapest on 2-3 June 2015 and brought together 100 participants from over 30 European countries. Those in attendance included lawyers, academics, and NGOs as well as representatives from government, intergovernmental organisations, ombudspersons, the judiciary, UN Treaty Bodies, the Council of Europe and the European Union. The conclusions below relate to five conference guiding questions, and are intended to help guide joint efforts to end childhood statelessness in Europe.

#### **Shaping a research agenda to further understand the causes and consequences of childhood statelessness**

- Build on the existing body of country-level research on childhood statelessness by prioritising research where initial analysis suggests gaps in the national legal framework or where there exist innovative good practices in addressing it.
- Continue to explore the normative framework in respect of the avoidance of statelessness, in particular in order to identify where further standard-setting or doctrinal guidance may be needed, including to support advocacy or litigation efforts.
- Explore thematic issues which have emerged within, but cut across, different national contexts and require a greater depth of understanding – including from a longitudinal perspective and by stimulating further collaboration with academics. Key thematic issues identified include:
  - The attribution of nationality to children and the (mis)use of the label “unknown nationality” as a factor in the non-implementation of safeguards against statelessness;
  - The interaction between birth registration and acquisition of nationality by birth;
  - The enjoyment of nationality and prevention of statelessness for children of refugees;
  - The avoidance of statelessness for children in emerging contexts of nationality contention (e.g. commercial surrogacy, same-sex partnerships and “baby boxes”).
- Identify any misconceptions, myths or fears surrounding the issue and conduct research that can help to deflate these. Ensure that all research is carried out diligently, to build a solid knowledge base that could also be used, for instance, as evidence in litigation.
- Design and implement research projects in such a way as to enable these to generate different types and format of product, for different audiences and purposes, including integrating storytelling or multimedia components as appropriate.

#### **Improving data on children’s access to nationality and birth registration, and on the scale and impact of childhood statelessness**

- Encourage relevant government bodies to review and improve their data collection relating to childhood statelessness, including through national census exercises and municipal/population registries. Ensure that such data is disaggregated, by sex and age in order to be effective.
- Utilise the state party reporting to the Committee on the Rights of the Child and other human rights bodies, as well

as mechanisms within the EU framework, to promote the systematic generation of reliable data on children’s access to nationality and birth registration.

- Facilitate the extraction, analysis and sharing of relevant data that is captured by civil society, UN and other organisations in the course of their programmes, including in particular data generated through paralegal and other relevant community outreach activities.
- Work with UNICEF, Plan and other child rights organisations to identify gaps in data on access to birth registration in Europe and to explore methodologies for addressing those gaps.

#### **Creating the public and political space to more effectively respond to childhood statelessness through awareness raising and social mobilisation**

- Develop an integrated strategic response that builds on the growing knowledge base by disseminating it more widely, including to support effective advocacy on childhood statelessness and the building of public pressure in support of political action.
- Recognise and harness the power of (social) media and public engagement in order to create societal and political pressure to address childhood statelessness. Tailor messaging to non-expert audiences and build communications around stories and facts, not abstract concepts.
- Employ a social media strategy that uses existing research/data to create bespoke content suitable for social media audiences, and that includes user-generated components to maximise societal mobilisation and promote greater and more sustained engagement.
- Grow partnerships between civil society and UNHCR for joint awareness raising and social mobilisation around ending statelessness for children and youth as both a component of the *#ibelong* campaign and the ENS/other civil society campaigns and initiatives.

#### **Mobilising actors at the national level to improve law, policy and practice around the prevention of childhood statelessness**

- Strengthen engagement of and collaboration between relevant national stakeholders, including government bodies, civil society organisations, academia, UNHCR, UNICEF, Ombudspersons for Children, National Human Rights Institutions and journalists.
- Engage and provide technical support to different government bodies, with a particular focus on (decentralised) authorities responsible for birth registration, population registration and nationality procedures, as well as on the judiciary.
- Build stronger engagement in individual casework on childhood statelessness through the development of legal assistance, paralegal and strategic litigation projects targeting this issue.
- Create opportunities – such as trainings, conferences and study visits – for peer-to-peer learning and sharing of good practices between countries. Integrate statelessness components within existing training nexuses e.g. relating to civil registration, refugee law or Roma rights.
- Report systematically to the Committee on the Rights of the Child, the Council of Europe Commissioner for Human Rights, National Human Rights Institutions and (Children’s) Ombudspersons, as well as other human rights mechanisms.
- Participate in the development and implementation, as appropriate, of National Action Plans adopted under the auspices of UNHCR’s *#ibelong* campaign to ensure that ending childhood statelessness is sufficiently prioritised.

### Engaging actors at the regional and international level to promote solutions to childhood statelessness

- Promote synergy between different regional and international actors to enhance and maintain momentum. For example, utilise the European Network on Ombudspersons for Children to create a common position and generate momentum for EU-level engagement on the issue.
- Advocate towards Ministries of Foreign Affairs and permanent representations in Geneva/Brussels to identify ways in which childhood statelessness can be raised higher on the international/regional agenda.
- Encourage and support the development of further tools and doctrinal interpretation by international and regional bodies that can provide authoritative guidance – including by the Committee on the Rights of the Child and by relevant Council of Europe and EU institutions.
- Through a coordinated pan-European strategy, enhance the use of strategic litigation to address childhood statelessness issues emerging through research and which encounter political resistance to reform. Utilise existing networks to identify and pursue suitable cases.
- Explore and develop avenues for direct interaction between persons affected by childhood statelessness (children, parents) and relevant regional and international bodies in order to promote a better understanding of the issue, its urgency and the appetite for reform.
- Consolidate and build on efforts to engage regional and international child rights organisations with campaigning on the issue of childhood statelessness. At the EU level, seek to mainstream this issue in the upcoming renewal of the EU child rights agenda, the Forum on the Rights of the Child, the Framework for National Roma Integration Strategies and the Commission's Investing in Children Recommendations.

A longer version of this Conference Action Statement can be found on the website of ENS: [www.statelessness.eu](http://www.statelessness.eu)

## ANNEX 4 FURTHER READING

### ENS Working Paper Series on Ending Childhood Statelessness

The following papers form a dedicated ENS Working Paper Series, compiling research undertaken in the context of the campaign “None of Europe’s children should be stateless”. The research was conducted by ENS members between January and June 2015. Each of the country studies offers: a detailed legal analysis, including of relevant lower-level circulars/policy guidelines; the identification and analysis of relevant jurisprudence; and data from interviews with implementing authorities, lawyers and other service providers about their knowledge and experience of relevant safeguards, as well as with relevant organisations with regard to advocacy around this issue. These papers also include a number of case studies to highlight particular issues identified. They were conducted according to a common methodology and research template designed by ENS’s expert partner, the Institute on Statelessness and Inclusion, and extensive comments and input were provided on all papers by Dr Laura van Waas, Co-Director of the Institute. All the working papers can be accessed on the ENS website [www.statelessness.eu](http://www.statelessness.eu)

- ENS, *Ending Childhood Statelessness: A Study on Romania*, Working Paper 01/15, 2015.
- ENS, *Ending Childhood Statelessness: A Study on Macedonia*, Working Paper 02/15, 2015.
- ENS, *Ending Childhood Statelessness: A Study on Poland*, Working Paper 03/15, 2015.
- ENS, *Ending Childhood Statelessness: A Study on Estonia*, Working Paper 04/15, 2015.
- ENS, *Ending Childhood Statelessness: A Study on Italy*, Working Paper 05/15, 2015.
- ENS, *Ending Childhood Statelessness: A Study on Albania*, Working Paper 06/15, 2015.
- ENS, *Ending Childhood Statelessness: A Study on Latvia*, Working Paper 07/15, 2015.
- ENS, *Ending Childhood Statelessness: A Study on Slovenia*, Working Paper 08/15, 2015.
- ENS, *Ending Childhood Statelessness: A comparative study of safeguards to ensure the right to a nationality for children born in Europe*, Working Paper 09/15, 2015.

### Other selected resources relating to childhood statelessness

- ENS Blogs available at: [www.statelessness.eu/blog](http://www.statelessness.eu/blog)
- ENS, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014.
- Plan International, *Count Every Child. The right to birth registration*, 2009.
- Report of the Office of the United Nations High Commissioner for Human Rights, *Birth registration and the right of everyone to recognition everywhere as a person before the law*, A/HRC/27/22, 17 June 2014.
- UNICEF, *A Passport to Protection: A guide to birth registration programming*, 2013.
- UNICEF, *Every Child’s Birth Right. Inequalities and trends in birth registration*, 2013.
- UNHCR, *Global Action Plan to End Statelessness*, 4 November 2014 [Actions 2, 3 and 7].
- European Network of National Human Rights Institutions, *Position Paper with Recommendations on the Eradication of Statelessness in Europe*, September 2014.
- UNHCR, *Conclusion on Civil Registration*, No. 111 (LXIV-2013), 17 October 2013.
- UNHCR, *Guidelines on Statelessness No. 4: Ensuring every child’s right to acquire a nationality through articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012.
- UNHCR and Plan International, *Under the Radar and Under Protected: The urgent need to address stateless children’s rights*, June 2012.

### Other selected resources relating to statelessness

- ENS, *Still Stateless, Still Suffering. Why Europe must act now to protect stateless persons*, 2014.
- ENS, *Good Practice Guide on Statelessness Determination and the Protection Status of Stateless Persons*, 2013.
- UNHCR and Inter-Parliamentary Union, *Nationality and Statelessness: Handbook for Parliamentarians No. 22*, July 2014.
- UNHCR, *Handbook on protection of stateless persons*, 30 June 2014.
- UN Secretary-General, *Guidance Note of the Secretary-General: The United Nations and Statelessness*, June 2011.

## ENDNOTES

- <sup>1</sup> While the process of birth registration in most cases does not, itself, confer nationality – this is usually acquired automatically at birth, under operation of the nationality law – it does provide vital evidence of the facts of birth, without which a child's claim to nationality may not be recognized by the state in question. See further section 6 of this report.
- <sup>2</sup> Ionela's story is told in more detail in the ENS publication *Ending Childhood Statelessness: A Study on Romania*, 2015.
- <sup>3</sup> Note that this report uses the terms "nationality" and "citizenship" interchangeably – both denoting a legal bond between a person and a state. "Child" is defined in article 1 of the Convention on the Rights of the Child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (although the Committee on the Rights of the Child encourages states to review the age of majority if this is set below 18).
- <sup>4</sup> A stateless person is someone "who is not considered as a national by any state under the operation of its law". Article 1 of the 1954 Convention relating to the Status of Stateless Persons. See for guidance on the interpretation of this definition UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014.
- <sup>5</sup> See, for instance, UNHCR and Plan International, *Under the radar and under protected. The urgent need to address stateless children's rights*, 2012.
- <sup>6</sup> Keynote address by Nils Muižnieks, Council of Europe Commissioner for Human Rights at the First Global Forum on Statelessness, The Hague, 15-17 September 2014.
- <sup>7</sup> Remarks by Louise Aubin, Deputy Director in the Division of International Protection at UNHCR, at the ENS regional conference on Preventing Childhood Statelessness in Europe, Budapest, 2-3 June 2015.
- <sup>8</sup> For statistics on persons affected by statelessness, see UNHCR, *Global Trends 2014: World at War*, 2015.
- <sup>9</sup> See <http://ibelong.unhcr.org/en/home.do>.
- <sup>10</sup> See, in particular, Actions 2 and 7 of the UNHCR *Global Action Plan to End Statelessness: 2014-2024*.
- <sup>11</sup> Building on the earlier ENS publication *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014.
- <sup>12</sup> These country studies were carried out in: Albania, Estonia, Italy, Latvia, Macedonia, Poland, Romania and Slovenia. See for further details Annex 4. Note that by drawing data from these eight studies, the report relies significantly on these countries to illustrate problems and good practices present in the region, but other problems and good practices may arise elsewhere and may not have been identified in this report.
- <sup>13</sup> This analysis targeted a total of 45 countries and is presented in section 3. See also the separate ENS publication *Ending Childhood Statelessness: A comparative study of safeguards to ensure the right to a nationality for children born in Europe*, 2015.
- <sup>14</sup> UNHCR, *Ending statelessness within 10 years: A special report*, 2014.
- <sup>15</sup> See Institute on Statelessness and Inclusion, *The World's Stateless*, 2014; and "Counting the world's stateless: reflections on statistical reporting on statelessness" in *UNHCR Statistical Yearbook 2013*, 2 February 2015.
- <sup>16</sup> The need for states to collect disaggregated data in order to monitor and ensure the realisation of children's rights has been emphasised by the Committee on the Rights of the Child in *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, 27 November 2003.
- <sup>17</sup> These were Latvia and Estonia. See further below.
- <sup>18</sup> See, for instance, Action 10 of the UNHCR *Global Action Plan to End Statelessness: 2014-2024*.
- <sup>19</sup> See section 2 of the Conference Action Statement "None of Europe's Children Should be Stateless", 3 June 2015, in Annex 3.
- <sup>20</sup> From a total of over 260,000 persons affected. Figure for the beginning of 2015. See ENS, *Ending Childhood Statelessness: A Study on Latvia*, 2015.
- <sup>21</sup> From a total of over 88,000 persons affected. Figure for August 2014. See ENS, *Ending Childhood Statelessness: A Study on Estonia*, 2015.
- <sup>22</sup> See K. Koleson, *Tackling childhood statelessness in Ukraine*, paper presented at the ENS Conference "None of Europe's Children Should be Stateless, 2015, page 9-10. The reported figure for the total number of stateless persons in Ukraine at the end of 2014 was 35,335. See UNHCR, *Global Trends 2014*.
- <sup>23</sup> The reported figure for the total number of stateless persons in the Russian Federation is 113,474. See UNHCR, *Global Trends 2014*.
- <sup>24</sup> UNHCR, *Global Trends 2014*.
- <sup>25</sup> Some limited data has been captured, for instance numbers relating to the implementation of safeguards against childhood statelessness at the municipal level: 11 children were granted nationality in the Municipality of Rome during 2012-2014 based on a safeguard in the law for children born in the territory who would otherwise be stateless. ENS, *Ending Childhood Statelessness: A Study on Italy*, 2015.
- <sup>26</sup> Figure for end of 2014, as reported online by Statistics Sweden.
- <sup>27</sup> Figure for November 2013. UNHCR, *Mapping Statelessness in Iceland*, December 2014.
- <sup>28</sup> For a further discussion of this problematic administrative category, see section 3 of this report.
- <sup>29</sup> Figure for end of 2014, as reported online by the German Federal Statistical Office.
- <sup>30</sup> Figure for 1 January 2012. Advisory Committee on Migration Affairs, *No country of one's own: An advisory report on treaty protection for stateless persons in the Netherlands [Dutch language version]*, 2013.
- <sup>31</sup> G. Gyulai, *Nationality Unknown? An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary*, Hungarian Helsinki Committee, January 2014.
- <sup>32</sup> ENS, *Ending Childhood Statelessness: A Study on Poland*, 2015.
- <sup>33</sup> UNHCR/Asylum Aid, *Mapping Statelessness in the United Kingdom*, November 2011.
- <sup>34</sup> See, for example, Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligations imposed on States Parties to the Covenant*, 26 May 2004.
- <sup>35</sup> See in particular Committee on the Rights of the Child, *General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin*, 1 September 2005.
- <sup>36</sup> See, for example, UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, A/HRC/19/43, 19 December 2011.
- <sup>37</sup> An early international treaty to address this question, dating from the time of the League of Nations, was the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws.
- <sup>38</sup> These include the International Covenant on Civil and Political Rights (article 24); the Convention on the Rights of All Persons with Disabilities (article 18); and numerous regional human rights instruments. Article 15 of the Universal Declaration of Human Rights establishes, more generally, that "everyone has the right to a nationality". A more comprehensive overview of norms relating to nationality and statelessness in universal and regional human rights instruments can be found online, on UNHCR's Refworld website.
- <sup>39</sup> Emphasis added. See also UNICEF, *Implementation Handbook for the Convention on the Rights of the Child (section on article 7)*, 2007.
- <sup>40</sup> See further Committee on the Rights of the Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, 27 November 2003.
- <sup>41</sup> Article 6 CRC.
- <sup>42</sup> Article 3 CRC.
- <sup>43</sup> Article 12 CRC.
- <sup>44</sup> Article 2 CRC.
- <sup>45</sup> UNHCR and Plan International, *Under the radar and under protected. The urgent need to address stateless children's rights*, 2012.
- <sup>46</sup> On the importance of implementing child rights in early childhood see, for instance, UN General Assembly Resolution 65/197, *Rights of the Child*, A/RES/65/197, 21 December 2010. See for specific guidelines on the interpretation of international norms relating to the prevention of childhood statelessness in light of the CRC and the principle of best interests of the child, UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, HRC/GS/12/04, 21 December 2012.
- <sup>47</sup> See sections 3 and 4 of this report for problematic areas of policy in Europe in this respect.
- <sup>48</sup> See, for instance, the situations discussed in section 5 of this report.
- <sup>49</sup> A detailed analysis of the work of the UN Committee on the Rights of the Child in respect of children's right to a nationality – covering not just Europe, but all regions of the world – is provided in a forthcoming policy paper by the Institute on Statelessness and Inclusion.
- <sup>50</sup> See Annex 3, sections 4 and 5.
- <sup>51</sup> European Court of Human Rights, *Genovese v. Malta*, Application No. 53124/09, 11 October 2011.
- <sup>52</sup> European Court of Human Rights, *Mennesson v. France*, Application No. 65192/11, 26 June 2014.
- <sup>53</sup> *Ibid.*, para. 99.
- <sup>54</sup> In *Genovese v. Malta* the Court found a violation of article 14 of the ECHR (prohibition of discrimination) in conjunction with article 8 (private life). See in particular para. 34.
- <sup>55</sup> European Court of Human Rights (Grand Chamber), *Kuric and others v. Slovenia*, Application No. 26828/06, 26 June 2012. See also, more generally, on special consideration for the circumstance of statelessness, *Andrejeva v. Latvia*, Application No. 55707/00, 18 February 2009; *Kim v. Russia*, Application No. 44260/13, 17 July 2014.
- <sup>56</sup> In the classic example, where a child is born on a country that grants nationality by descent (from citizen parents, *jus sanguinis*), but his/her parents are citizens of a country that grants nationality by virtue of birth on the territory (*jus soli*).
- <sup>57</sup> There are in fact two UN conventions dedicated to addressing statelessness, the other one being the 1954 Convention relating to the Status of Stateless Persons, which provides the international legal definition of a stateless persons and outlines the minimum standard of treatment to be enjoyed by individuals who meet this definition. This instrument also contains a provision obliging state parties to as far as possible facilitate



- the naturalization of stateless persons, which can provide an avenue for stateless children to acquire a nationality along with their stateless parents where the problem is an intergenerational one.
- <sup>58</sup> This instrument was adopted within the framework of the Council of Europe, which has also adopted a specific Convention on the Avoidance of Statelessness in Relation to State Succession, including a provision aimed at avoiding statelessness at birth among children born *after* the succession of states (article 10). Within the auspices of the Council of Europe, numerous recommendations and resolutions touching on the prevention of statelessness, including childhood statelessness, have also been adopted. These include Council of Europe, *Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children*, 9 December 2009. See also G. de Groot, "Children, their right to a nationality and child statelessness" in A. Edwards and L. van Waas (eds) *Nationality and Statelessness under International Law*, Cambridge University Press, 2014, pp. 144-168.
- <sup>59</sup> The necessity of adopting specific legislative safeguards against statelessness points to an important role for national parliaments in protecting children's right to a nationality. In this respect, a useful tool available in several different European languages, is UNHCR and IPU, *Nationality and Statelessness: Handbook for Parliamentarians* No. 22, July 2014.
- <sup>60</sup> Both instruments also address situations in which statelessness may arise that do not relate (specifically) to children, such as with respect to the loss or deprivation of nationality, but these norms are largely outside the scope of the present report.
- <sup>61</sup> See further section 3 of this report for the details of – and differences between – these safeguards in the 1961 Convention and ECN.
- <sup>62</sup> See article 4 of the 1961 Convention, as well as article 1(4). The ECN does not contain an equivalent provision, but does promote *jus sanguinis* transmission of nationality through the more generally formulated clauses found in article 6(1) and 6(4b), which should be read in light of the principle that "statelessness shall be avoided" as found in article 4(b). See further section 4 of this report.
- <sup>63</sup> Children who have been abandoned, whose parents and possibly even place of birth are not known. See further section 5 of this report.
- <sup>64</sup> Articles 5 and 6 of the 1961 Convention; article 7(3) of the ECN. See further section 4 of this report.
- <sup>65</sup> See Annex 1 for a list of state parties to both conventions, as well as an indication of which states have signed – but not completed the accession/ratification process of one or both of these instruments.
- <sup>66</sup> The (further) pursuit of strategic litigation in order to expose, clarify and address gaps in domestic legal frameworks relating to the prevention of childhood statelessness was another area in which participants of the June 2015 regional conference convened by ENS identified opportunities for increased engagement. See Annex 3, sections 4 and 5.
- <sup>67</sup> This statement was presented on the occasion of the First Global Forum on Statelessness, the Hague, 15-17 September 2014.
- <sup>68</sup> See for an assessment of engagement of NHRIs on issues of statelessness to date, including a number of European NHRIs, L. van Waas and M. Neal, *Statelessness and the Role of National Human Rights Institutions*, 2013.
- <sup>69</sup> See L. van Waas, *Fighting for children's right to nationality in Europe*, Blog for ENS, 5 June 2015. See also Annex 3.
- <sup>70</sup> Article 24 of the Charter of Fundamental Rights of the European Union.
- <sup>71</sup> Article 20 of the Treaty on the European Union.
- <sup>72</sup> Court of Justice of the European Union, *Rottmann v. Freistaat Bayern*, Case C-135/08, 2 March 2010, para. 44.
- <sup>73</sup> *Ibid.*, paras. 56, 39 and 48.
- <sup>74</sup> K. Swider, *Litigating Strategically: Stateless children born in the EU*, ENS Blog, 12 November 2014.
- <sup>75</sup> Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, 5 April 2011.
- <sup>76</sup> Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008.
- <sup>77</sup> 9th European Forum on the rights of the child, *Coordination and cooperation in integrated child protection systems: Reflection paper*, 30 April 2015.
- <sup>78</sup> *Ibid.*
- <sup>79</sup> See, for instance, the European Commission Recommendation, *Investing in children: breaking the cycle of disadvantage*, 2013/112/EU, 20 February 2013.
- <sup>80</sup> From the multimedia piece by Greg Constantine, *Nationality Unknown. Stateless in Holland*, 2014.
- <sup>81</sup> Above n6.
- <sup>82</sup> That the *jus soli* principle is widely embraced across the Americas is seen as an important factor for the relatively low incidence of statelessness there and has contributed to comments in some quarters that it has the potential to be the first continent to eradicate statelessness. See, for instance, F. Quintana and L. Gamboa, *Four reasons why the Americas could become the first region to prevent and eradicate statelessness*, ENS Blog, 11 March 2015. Nevertheless, *jus soli* systems are not without their challenges. See C. Becker, *Jus Soli: A miraculous solution to prevent statelessness?* ENS Blog, 9 April 2015.
- <sup>83</sup> C. Vlieks and K. Swider, *The jus sanguinis bias in Europe and what it means for childhood statelessness*, Blog for the European Network on Statelessness, 17 June 2015. This assumption that a child must (have) acquire(d) the nationality of his or her parents creates a challenge, in practice, in the implementation of safeguards for otherwise stateless children born in the territory – a problem which came to light in several of the ENS country studies, including for instance ENS, *Ending Childhood Statelessness: A Study on Slovenia*.
- <sup>84</sup> Article 15 of the convention.
- <sup>85</sup> UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2015*, 6 March 2015; See also Action 3 of the UNHCR *Global Action Plan to End Statelessness: 2014-2024*.
- <sup>86</sup> See also the IVF case outlined in section 5.
- <sup>87</sup> See, for instance, B. Fisher, "Why non-marital children in the MENA region face a risk of statelessness" in *Harvard Human Rights Journal Online*, January 2015.
- <sup>88</sup> UNHCR, *Statelessness in the Canadian context: An updated discussion paper*, March 2012.
- <sup>89</sup> Such requirements are in place, for instance, in a number of Latin American countries. See, for instance, the case of Rosa later in this section.
- <sup>90</sup> See for a discussion of this challenge in a specific national context, for instance, G. Gyulai, *Nationality Unknown? An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary*, Hungarian Helsinki Committee, January 2014.
- <sup>91</sup> Worldwide, it is estimated that at least 1.5 million refugees are also stateless. Institute on Statelessness and Inclusion, *The World's Stateless*, 2014, section 3(VII) on stateless refugees.
- <sup>92</sup> See further on the nexus of statelessness and displacement, Norwegian Refugee Council and Tilburg University, *Statelessness and Displacement. A scoping paper*, 2015.
- <sup>93</sup> See the case of Rosa later in this section.
- <sup>94</sup> See further section 6 of this report.
- <sup>95</sup> See further section 6 of this report.
- <sup>96</sup> In 2013, there were approximately 60,000 boat arrivals. In 2014, nearly 220,000 people arrived in Europe by sea and in the first six months of 2015, a further 137,000 people crossed the Mediterranean to Europe by boat. See further UNHCR, *The sea route to Europe: The Mediterranean passage in the age of refugees*, 1 July 2015.
- <sup>97</sup> Commissioner for Children, *Manifesto for Children 2013*, Section 2.1.3: Right to a Nationality (informal translation), as cited in UNHCR, *Mapping Statelessness in Malta*, August 2014, page 52. Note that this situation also exposes a potential gap within the international legal framework for the prevention of statelessness, since the 1961 Convention only prescribes that birth on a ship which flies the flag of a contracting state shall be treated – for the purposes of application of the safeguards in the convention – as birth within the territory of that state (article 3). It does not account for or suggest a solution for cases in which a child is born on a vessel which is unregistered.
- <sup>98</sup> Article 1(1a) of the 1961 Convention; article 6(2a) of the ECN.
- <sup>99</sup> UNHCR, *Guidelines on Statelessness no. 4* (HCR/GS/12/04 21 December 2012) para. 11. See also the views of the Human Rights Committee on the application of article 24(3) of the International Covenant on Civil and Political Rights, which has expressed that "States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born". Emphasis added, Human Rights Committee, *General Comment No. 17: Article 24 (Rights of the Child)*, 7 April 1989, para. 8.
- <sup>100</sup> A more comprehensive report of the findings of this analysis is provided in the separate ENS publication *Ending Childhood Statelessness: A comparative study of safeguards to ensure the right to a nationality for children born in Europe*, 2015.
- <sup>101</sup> Annex 2 offers a full overview of countries by category and a summary of the main details relating to the safeguard in each law.
- <sup>102</sup> As indicated in section 1, Latvia and Estonia are home to 7,846 and 936 stateless children respectively. See above at n20 and n21.
- <sup>103</sup> Details of this survey and the reasons given by parents as to why they would not apply for nationality for their child can be found in ENS, *Ending Childhood Statelessness: A Study on Latvia*, 2015, page 10.
- <sup>104</sup> *Ibid.*, page 9.
- <sup>105</sup> See S. Djakovska, *Statelessness among children in Latvia: current situation, challenges and possible solutions*, Blog for ENS, 29 September 2014.
- <sup>106</sup> ENS, *Ending Childhood Statelessness: A Study on Estonia*, 2015.
- <sup>107</sup> See Annex 2 for details.
- <sup>108</sup> Section 9(1)(3) of the Finnish Nationality Act.
- <sup>109</sup> Article 19-1(2) of the French Code Civil; Article 1(1b) of the Italian Citizenship Act.
- <sup>110</sup> "Establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual's case in practice", it is "a mixed question of fact and law". UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, page 12.
- <sup>111</sup> See UNHCR, *Recommendations on the relevant aspect of the protection of stateless persons in Italy*, October 2014.
- <sup>112</sup> This case demonstrates how even when the legislation appears to provide for automatic conferral of nationality to otherwise stateless children at birth, the practice can unfold very differently. It is featured in ENS, *Ending Childhood Statelessness: A Study on Italy*, 2015.
- <sup>113</sup> See further on difficulties surrounding the implementation of the safeguard

- for otherwise stateless children born in the territory, ENS, *Ending Childhood Statelessness: A Study on Italy*, 2015, pages 7-14.
- <sup>114</sup> See the case of Djana. *Ibid*, pages 15-16.
- <sup>115</sup> *Ibid*, pages 14-15.
- <sup>116</sup> Specific status enjoyed under Latvian domestic law by persons left without a nationality following the country's independence, who are stateless for the purposes of international law.
- <sup>117</sup> See Annex 2, second column.
- <sup>118</sup> See section 2 above.
- <sup>119</sup> See, for instance, the cases of Erik and Maria outlined above. Moreover, by not also providing for a reasonable opportunity for the child to take action independently of his or her parents to make use of an available safeguard to acquire a nationality, such a policy may also run counter to the principle of respect for the views of the child. See article 12 CRC.
- <sup>120</sup> In this regard, the Human Rights Committee has, for instance, established that "no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents". Human Rights Committee, *General Comment No. 17: Article 24 (Rights of the Child)*, 7 April 1989, para. 8.
- <sup>121</sup> See ENS, *Good practice guide on statelessness determination and the protection of stateless persons*, 2013.
- <sup>122</sup> Article 6 of the Law on Citizenship of the Republic of Macedonia.
- <sup>123</sup> ENS, *Ending Childhood Statelessness: A Study on Macedonia*, 2015, page 7.
- <sup>124</sup> ENS, *Ending Childhood Statelessness: A Study on Slovenia*, 2015, pages 7-8.
- <sup>125</sup> Article 12(1), paras 1-2 of the Citizenship Law of Armenia.
- <sup>126</sup> Article 12(1), para 3 of the Citizenship Law of Armenia.
- <sup>127</sup> The different conditions relating to residence status requirements are different periods of permanent residence, legal residence, legal residence on the day of birth, legal residence since birth, or a combination of legal and permanent residence.
- <sup>128</sup> Habitual residence means stable and factual residence. UNHCR, *Guidelines on Statelessness no. 4 (HCR/GS/12/04 21 December 2012)* paras 40-41. Note that even though States are allowed under the ECN to require legal stay of the child, where states are also party to the 1961 Convention, this stipulation is in violation of their obligations under the latter convention.
- <sup>129</sup> In accordance with CRC articles 2, 3 and 7.
- <sup>130</sup> Committee on the Rights of the Child, *Concluding Observations: Czech Republic, CRC/C/CZE/CO/3-4*, 4 August 2011, para. 38; see also Committee on the Rights of the Child, *Concluding Observations: Lithuania, CRC/C/LTU/CO/2*, 17 March 2006, paras. 33-34; Committee on the Rights of the Child, *Concluding Observations: Switzerland, CRC/C/CHE/CO/2-04*, 30 January 2015, para. 31.
- <sup>131</sup> Above n52, para. 99.
- <sup>132</sup> Aanvullende Reactie van het Kabinet op het ACVZ-advies Inzake Staatloosheid (Additional Reaction from the Cabinet on the ACVZ-advice Concerning Statelessness) (12 November 2014)
- <sup>133</sup> In 2013, it was observed that 85 stateless children registered who were born in the territory and were four years or older, yet cannot acquire Dutch nationality because they lack a residence permit. L. van Waas, *Stateless People in the Netherlands Deserve Better*, Blog for the Statelessness Programme, 13 December 2013.
- <sup>134</sup> Schedule 2(3) of the British Nationality Act.
- <sup>135</sup> UNHCR/Asylum Aid, *Mapping Statelessness in the United Kingdom* (November 2011) 1136-137. In the same period, 145 formerly stateless children that were born on British territory acquired British nationality as a consequence of either of their parents becoming settled or becoming a British citizen.
- <sup>136</sup> See the examples of Germany, Sweden and the Netherlands given in European Network on Statelessness, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014, page 14.
- <sup>137</sup> See, for instance, Committee on the Rights of the Child, *Concluding Observations: Czech Republic, CRC/C/CZE/CO/3-4*, 4 August 2011.
- <sup>138</sup> See also section 2 of this report.
- <sup>139</sup> UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, HRC/GS/12/04, 21 December 2012, para. 22. See also Principle 8 of the Council of Europe, *Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children*, 9 December 2009: "Register children as being of unknown or undetermined nationality, or classify children's nationality as being 'under investigation' only for as short a period as possible".
- <sup>140</sup> Above n52, para. 97.
- <sup>141</sup> *Ibid*, paras. 99 and 97.
- <sup>142</sup> See also the ruling of the African Committee of Experts on the Rights and Welfare of the Child in the case of *Children of Nubian Descent v. Kenya*, Comm/002/2009, 22 March 2011, in which the Committee holds that "it cannot be in these children's best interests to leave them in a legal limbo for such a long period of time".
- <sup>143</sup> The information presented in this paragraph is taken from UNHCR, *Mapping Statelessness in Finland*, November 2014, page 19.
- <sup>144</sup> Annex 2, third column.
- <sup>145</sup> See further section 5 of this report.
- <sup>146</sup> Section 16 and Section 7(1) and 7(2) of the Act on Norwegian Citizenship.
- <sup>147</sup> Article 8 of the Law on Romanian Citizenship.
- <sup>148</sup> Articles 26 and 30 of the Federal Law on the acquisition and loss of Swiss nationality.
- <sup>149</sup> Committee on the Rights of the Child, *Concluding Observations: Switzerland, CRC/C/CHE/CO/2-04*, 30 January 2015.
- <sup>150</sup> See for instance ENS, *Ending Childhood Statelessness: A Study on Romania*, 2015.
- <sup>151</sup> *Ibid*, page 9.
- <sup>152</sup> George's story is told in more detail in the ENS publication *Ending Childhood Statelessness: A Study on Romania*, 2015.
- <sup>153</sup> Where the child's parents are EU citizens, this causes the child to also be excluded from the benefits of EU citizenship. See further section 2.
- <sup>154</sup> States are free to impose such additional conditions, as long as these are not discriminatory in nature, just as they are able to choose between a primarily *jus soli* or *jus sanguinis*-based system. However, safeguards should again be in place to ensure that statelessness does not result. See article 4 of the 1961 Convention.
- <sup>155</sup> ENS, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014, pages 16-17.
- <sup>156</sup> Above n51.
- <sup>157</sup> Note that by the time the European Court of Human Rights decided on the *Genovese* case, the law in Malta had already been amended to introduce gender equality. In the 2014 ENS report on preventing childhood statelessness, Finland was also identified as having problematic legislation as it distinguishes between children born in and out of wedlock with respect to the paternal *jus sanguinis* provisions. However, a separate section of the Finnish Nationality Act does allow children born abroad and out of wedlock to a Finnish father to acquire a nationality through a declaration procedure. It is considered to be in line with international law. See UNHCR, *Mapping Statelessness in Finland*, November 2014.
- <sup>158</sup> E. Ersboll, *Report on Citizenship Law: Denmark*, EUDO Citizenship Observatory, revised and updated July 2015, page 33; Information provided online on the current citizenship law of Sweden by the Migration Agency (July 2015).
- <sup>159</sup> J. Stern and G. Valchars, *Country Report: Austria*, EUDO Citizenship Observatory, revised and updated September 2013, pages 19-20.
- <sup>160</sup> See also section 5 on the challenge of securing a nationality for children born from international surrogacy.
- <sup>161</sup> In this particular instance, the children were not left stateless, nevertheless the lack of access to Polish nationality in such circumstances could easily lead to statelessness in similar cases. See further the ENS publication *Ending Childhood Statelessness: A Study on Poland*, 2015, page 11.
- <sup>162</sup> See above, n52.
- <sup>163</sup> In this case, because the children were born from an international surrogacy arrangement, prohibited in French law. See further section 5.
- <sup>164</sup> European Court of Human Rights, *Oliari and others v. Italy*, Application No. 18766/11 and 36030/11, 21 July 2015.
- <sup>165</sup> See ENS publication *Ending Childhood Statelessness: A Study on Poland*, 2015, page 13.
- <sup>166</sup> ENS, *Ending Childhood Statelessness: A Study on Slovenia*, 2015.
- <sup>167</sup> Extract from ENS, *Ending Childhood Statelessness: A Study on Albania*, 2015, page 10.
- <sup>168</sup> Article 7(1) of the 1961 Convention; article 8(1) of the ECN. This safeguard is also upheld in the legislation of many European states. See, for instance, ENS, *Ending Childhood Statelessness: A Study on Latvia*, 2015; ENS, *Ending Childhood Statelessness: A Study on Macedonia*, 2015; ENS, *Ending Childhood Statelessness: A Study on Albania*, 2015.
- <sup>169</sup> ENS, *Ending Childhood Statelessness: A Study on Romania*, 2015.
- <sup>170</sup> ENS, *Ending Childhood Statelessness: A Study on Poland*, 2015.
- <sup>171</sup> Committee on the Rights of the Child, *Concluding Observations: Ukraine, CRC/C/UKR/CO/3-4*, 21 April 2011, para. 38.
- <sup>172</sup> ENS, *Ending Childhood Statelessness: A Study on Macedonia*, 2015.
- <sup>173</sup> Note that in order to benefit from the right of option for Dutch nationality as an otherwise stateless child born in the country, the law requires the child to hold lawful residence – contrary to the Netherlands' obligations under the 1961 Convention – and the authorities must recognize that the child is, indeed, stateless. There are many children born in the country who experience difficulties in practice because their nationality has been registered as "unknown". See further section 3 of this report.
- <sup>174</sup> Marysia's story is told in more detail in the ENS publication *Ending Childhood Statelessness: A Study on Poland*, 2015.
- <sup>175</sup> This is found in article 14 of the Convention.
- <sup>176</sup> ENS, *Ending Childhood Statelessness: A Study on Latvia*, 2015. In Slovenia, for instance, the Ministry of Interior also confirmed that the founding provision can be applied in any relevant case where the person is still a child, i.e. under the age of 18. ENS, *Ending Childhood Statelessness: A Study on Slovenia*, 2015. See also ENS, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014, page 19.
- <sup>177</sup> See also the similar case of Agni, also reported in ENS, *Ending Childhood Statelessness: A Study on Poland*, 2015.
- <sup>178</sup> ENS, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014, page 20. See further G. Gyulai, *Nationality Unknown? An*

- overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary, Hungarian Helsinki Committee, January 2014.
- <sup>179</sup> ENS, *Ending Childhood Statelessness: A Study on Italy*, 2015.
- <sup>180</sup> ENS, *Ending Childhood Statelessness: A Study on Romania*, 2015.
- <sup>181</sup> Article 7 of the Croatian Citizenship Law, as amended by law of 28 October 2011.
- <sup>182</sup> ENS, *Ending Childhood Statelessness: A Study on Poland*, 2015. Note that in Slovenia, the legislation is ambiguous on this point as the provision in question which relates to foundlings (article 9) does not contain a safeguard against statelessness in such cases, yet there is a general stipulation in a separate section of the Citizenship Act (article 18) which prohibits loss of nationality without proof that the person has or will be granted another nationality. It would be advisable for the law to nevertheless be clarified on this point. ENS, *Ending Childhood Statelessness: A Study on Slovenia*, 2015.
- <sup>183</sup> Committee on the Rights of the Child, *Concluding Observations: Croatia, CRC/C/HRC/CO/3-4*, 19 September 2014, paras. 26-27.
- <sup>184</sup> Emphasis added. See further ENS, *Ending Childhood Statelessness: A Study on Albania*, 2015.
- <sup>185</sup> Articles 5(1) of the 1961 Convention; 6(4d) of the ECN and 8(2) of the CRC are particularly relevant in this context.
- <sup>186</sup> See also ENS, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014, page 31.
- <sup>187</sup> ENS, *Ending Childhood Statelessness: A Study on Romania*, 2015.
- <sup>188</sup> ENS, *Ending Childhood Statelessness: A Study on Macedonia*, 2015; ENS, *Ending Childhood Statelessness: A Study on Slovenia*, 2015.
- <sup>189</sup> Committee on the Rights of the Child, *Concluding Observations: Switzerland, CRC/C/CHE/CO/2-04*, 30 January 2015.
- <sup>190</sup> Explanatory Memorandum in respect of principle 12 of the Council of Europe, *Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children*, 9 December 2009.
- <sup>191</sup> Thorbjørn Jagland, Secretary-General of the Council of Europe, speech delivered at the 46th Annual Study Session of the IIDH "Children and International Human Rights Law", Strasbourg, 6 July 2015.
- <sup>192</sup> The Hague Conference on Private International Law is undertaking a mapping of state practice in respect of surrogacy which may help to identify gaps and good practices relating to the question of nationality at the domestic level, which can in turn form the foundation for international regulation.
- <sup>193</sup> Emphasis added. Council of Europe, *Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children*, 9 December 2009, principle 12.
- <sup>194</sup> None of the eight ENS country studies conducted during 2015 unearthed any rules on acquisition of nationality in the context of surrogacy. In Ukraine, however, surrogacy is regulated by law and the commissioning parents are recognized as the legal parents of the child. There is no legal relationship between the surrogate mother and the baby. See K. Koleson, *Tackling childhood statelessness in Ukraine*, 2015.
- <sup>195</sup> In Italy, for instance, organising or advertising the sale of surrogacy services is also punishable by imprisonment and hefty fines. See ENS, *Ending Childhood Statelessness: A Study on Italy*, 2015.
- <sup>196</sup> Above n52.
- <sup>197</sup> *Ibid.*, para. 72.
- <sup>198</sup> *Ibid.*, para. 99.
- <sup>199</sup> ENS, *Preventing childhood statelessness in Europe: Issues, gaps and good practices*, 2014, page 32.
- <sup>200</sup> J. Kanics, "Preventing and addressing statelessness in the context of international surrogacy arrangements" in *Tilburg Law Review*, Vol. 19, 2014, pp. 117-126.
- <sup>201</sup> ENS, *Ending Childhood Statelessness: A Study on Slovenia*, 2015.
- <sup>202</sup> As recounted by Greg Constantine in *Legally invisible in Serbia*, ENS Blog, 25 February 2015.
- <sup>203</sup> See, for instance, Praxis, *Preventing childhood statelessness – Remaining problems in Serbia*, May 2015.
- <sup>204</sup> See, for instance, S. Woldenberg, *Access to civil documentation and registration in South Eastern Europe: Progress and remaining challenges since the 2011 Zagreb Declaration*, 2013; UNHCR, *Study of birth registration procedure in the Republic of Armenia: Problems and prospects for overcoming them*, 2013; S. Reynolds and D. Grisgraber, *Birth Registration in Turkey: Protecting the future for Syrian children*, 30 April 2015.
- <sup>205</sup> See, in particular, the work of UNICEF and Plan International.
- <sup>206</sup> At the time of writing, the so-called "Zero Draft" document on the Post-2015 Development Agenda contained the following as its target 16.9: "By 2030, provide legal identity for all, including birth registration" (under Goal 16, "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels").
- <sup>207</sup> See, for instance, European Parliament Directorate for External Policies, *Addressing the human rights impact of statelessness in the EU's external action*, EXPO/B/2014/2014/07, November 2014, page 23.
- <sup>208</sup> There has been collaboration, for example, between the EU, the Office of the High Commissioner for National Minorities of the Organisation for Security and Cooperation in Europe and UNHCR to improve access to birth registration for Roma communities in South Eastern Europe. See, for a synopsis of some of this work, I. Sturkenboom, *Working towards the eradication of statelessness in South Eastern Europe*, Blog for ENS, 31 January 2014.
- <sup>209</sup> UNICEF, *Every Child's Birth Right. Inequalities and trends in birth registration*, 2013.
- <sup>210</sup> UNICEF, *A Passport to Protection. A guide to birth registration programming*, 2013, page 147.
- <sup>211</sup> Deni was born in Serbia, with a reported birth registration rate of 99%, so his case would be among the last 1% of unregistered births.
- <sup>212</sup> See n210. This document also defines universal Registration in the glossary as follows: "While indicated by complete registration (see Completeness), it specifically considers the inclusion of all/non-discrimination in the registration regardless of race, religion, national origin, sex or any other trait".
- <sup>213</sup> S. Reynolds and T. Duos, *A generation of Syrians born in exile risk a future of statelessness*, Blog for ENS, 15 July 2015.
- <sup>214</sup> *Ibid.*
- <sup>215</sup> S. Reynolds and D. Grisgraber, *Birth Registration in Turkey: Protecting the future for Syrian children*, 30 April 2015.
- <sup>216</sup> *Ibid.*
- <sup>217</sup> Emphasis added. UNICEF refers here to data from United Nations, Department of Economic and Social Affairs, Statistics Division, *Population and Vital Statistics Report, Series A, Vol. LXV*, New York, 2013.
- <sup>218</sup> Emphasis added. See Plan International, *Count Every Child. The Right to Birth Registration*, 2009.
- <sup>219</sup> As recounted by M. Drazovic in *Abandoned by parents, neglected by the state*, ENS Blog, 24 March 2014.
- <sup>220</sup> UNHCR, *Study of birth registration procedure in the Republic of Armenia: Problems and prospects for overcoming them*, 2013.
- <sup>221</sup> See n214.
- <sup>222</sup> See, for instance, the case studies of Badema and Andreea, described below, as well as the further case studies of Ebru (Macedonia) and Ionela (Romania) described in the respective ENS country studies. ENS, *Ending Childhood Statelessness: A Study on Macedonia*, 2015; ENS, *Ending Childhood Statelessness: A Study on Romania*, 2015.
- <sup>223</sup> M. Trifkovic, *New birth registration procedure – Impact on the prevention of statelessness in Serbia*, Blog for ENS, 21 February 2014.
- <sup>224</sup> Praxis, *Preventing childhood statelessness – Remaining problems in Serbia*, May 2015.
- <sup>225</sup> Zagreb Declaration, 27 October 2011, principle I(1).
- <sup>226</sup> UNHCR, OSCE-HCNM, European Commission, *Co-chair Conclusions of the Regional Conference on Access to Civil Registration and Documentation in South-Eastern Europe: Progress and Remaining Challenges since the 2011 Zagreb Declaration*, Podgorica, 25 October 2013. See also S. Woldenberg, *Access to civil documentation and registration in South Eastern Europe: Progress and remaining challenges since the 2011 Zagreb Declaration*, 2013.
- <sup>227</sup> UN Human Rights Council, *Resolution on Birth registration and the right of everyone to recognition everywhere as a person before the law*, A/HRC/RES/28/13, 7 April 2015.
- <sup>228</sup> Council of Europe, *Recommendation CM/Rec (2009) 13 of the Committee of Ministers to member states on the nationality of children*, 9 December 2009, principle 23. Consider also Action 7 of the UNHCR *Global Action Plan to End Statelessness: 2014-2024*.
- <sup>229</sup> A problem which is, itself, likely to grow in future with the increased use of more sophisticated identity certification systems, digital systems and biometric schemes. For instance, the GOV.UK Verify service, now being offered as part of the United Kingdom government's digital services platform has now announced that it will be possible to register a birth in Northern Ireland using GOV.UK Verify in 2016. While such digital systems are currently being used to facilitate access to government services that can still be accessed the "traditional" way, it may become increasingly difficult for people who are outside of such systems to interact with state bodies. See Identity Assurance and GOV.UK Verify, *Services that plan to start using GOV.UK Verify*, Blog by Government Digital Services, 23 July 2015.
- <sup>230</sup> In addition to the ENS studies on Albania, Italy, Macedonia and Romania, see also for instance Committee on the Rights of the Child, *Concluding Observations: The Former Yugoslav Republic of Macedonia*, CRC/C/15/Add.11821, 23 February 2000, para 22; *Concluding Observations: Croatia, CRC/C/HRC/CO/3-4*, 19 September 2014, paras. 26-27.
- <sup>231</sup> For instance, ENS, *Ending Childhood Statelessness: A Study on Latvia*, 2015.
- <sup>232</sup> For instance, ENS, *Ending Childhood Statelessness: A Study on Italy*, 2015.
- <sup>233</sup> For instance, UN Human Rights Council, *The right to a nationality: women and children*, A/HRC/RES/20/4, 16 July 2012.
- <sup>234</sup> The identification and sharing of good practices between countries is one important way to work towards this. For instance, it would be of interest to further explore the reported practice in Italy of allowing birth registration to be completed by parents who do not have any ID documents through the support of two witnesses. ENS, *Ending Childhood Statelessness: A Study on Italy*, 2015, page 28.
- <sup>235</sup> ENS, *Ending Childhood Statelessness: A Study on Macedonia*, 2015.
- <sup>236</sup> ENS, *Ending Childhood Statelessness: A Study on Romania*, 2015.
- <sup>237</sup> ENS, *Ending Childhood Statelessness: A Study on Albania*, 2015.
- <sup>238</sup> K. Fajnorova, *Do stateless people have a right to die?* Blog for ENS, 15 April 2015.
- <sup>239</sup> Committee on the Rights of the Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, 27 November 2003.
- <sup>240</sup> In particular the 1961 Convention and the ECN.



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The European Network on Statelessness (ENS) is a civil society alliance with 100 members in over 30 countries, committed to addressing statelessness in Europe. Among other objectives, ENS advocates for the enjoyment of a right to a nationality by all. This report is one of a series of publications and tools produced in support of the ENS Campaign “None of Europe’s children should be stateless” which was launched in November 2014.

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The report draws on research conducted by ENS members in eight countries: Albania (Raimonda Bozo, Vangjel Kosta and Anisa Metalla), Estonia (Alekssei Semjonov, Jelena Karzetskaja and Elena Ezhova), Italy (Daniela Maccioni, Daniela Di Rado and Jessica Gonzalez), Latvia (Svetlana Djackova and Sigita Zankovska-Odina), Macedonia (Martina Smilevska), Poland (Dorota Pudzianowska and Marta Szczepanik), Romania (Carolina Marin) and Slovenia (Katarina Vucko and Neža Kogovšek Šalamon). See Annex 4 for further information about the research content and methodology.

The development of this report was further supported by discussion at a regional conference on children’s right to a nationality convened by ENS in Budapest in June 2015, which was attended by over 100 delegates from 30 European countries.

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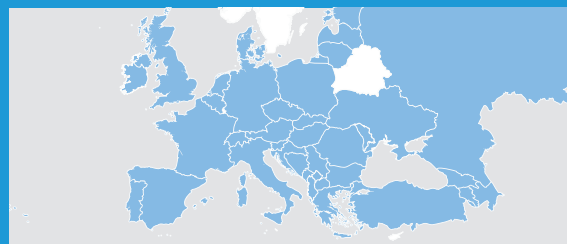


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## EUROPEAN NETWORK ON STATELESSNESS

The Network has developed rapidly since its launch in 2012, attracting 100 members in over 30 European countries (see shaded area of map). Our London-based Secretariat coordinates ENS’s law & policy, awareness-raising and capacity-building activities. For further information contact ENS Director Chris Nash ([chris.nash@statelessness.eu](mailto:chris.nash@statelessness.eu)).



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