

Report on Statelessness in South Eastern Europe

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Executive Summary

The purpose of this paper is to present issues related to statelessness within South Eastern Europe in a regional context, drawing on the shared history of the States that were part of the former Socialist Federal Republic of Yugoslavia (former SFRY) and highlighting the similarities and differences they face today in their national legal and administrative frameworks with respect to stateless persons and persons at risk of statelessness. This report includes Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, and Serbia (and Kosovo: SCR 1244).¹

Accession to the key international and regional treaties related to statelessness is important for the protection of stateless persons and the reduction of statelessness. All the countries covered in this report have succeeded to the 1954 Convention relating to the Status of Stateless Persons. Bosnia and Herzegovina has acceded to the 1961 Convention on the Reduction of Statelessness, while Croatia and Serbia both were in the process of completing the accessions procedures for this Convention at the time of completion of this study. UNHCR strongly encourages all the remaining States in the region to accede to this important Convention, noting that provisions related to the acquisition of citizenship and the prevention and reduction of statelessness found in national citizenship legislation in Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia already generally conform to the provisions in the 1961 Convention.

In addition, Bosnia and Herzegovina, Montenegro and the former Yugoslav Republic of Macedonia have ratified the Council of Europe's 1997 European Convention on Nationality and Montenegro has ratified the Council of Europe's 2006 Convention on the Avoidance of Statelessness in Relation to State Succession. UNHCR encourages all States to accede to these regional Conventions as well.

Within South Eastern Europe two key groups of persons need to be considered for a discussion on statelessness. The first is people who are recognized as stateless² in accordance with legislation on foreigners in the national frameworks. While there are no formalized statelessness determination procedures within the region, Bosnia and Herzegovina, Croatia and Serbia and the former Yugoslav Republic of Macedonia have all recognized stateless persons through ad hoc mechanisms. All these States have incorporated some basic protections for stateless persons into national law.

The second group, which is the principle focus of this paper mostly focuses on, is people who are mainly at risk of statelessness³ due, in part, to historical factors such as the

¹ References to the authorities, citizenship and Kosovo laws shall be understood within the context of Security Council Resolution 1244 (1999). UNHCR operates under the SCR 1244 and maintains status neutrality with respect to the UDI.

² In this report, a stateless person is understood as someone who in line with Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons is not considered as a national by any state under the operation of its law; *see also* UNHCR, *Expert Meeting - The Concept of Stateless Persons under International Law (Summary Conclusions)*, May 2010.

³ The term 'At risk of statelessness' used in this paper refers to persons who have difficulties providing proof that they meet the requirements set by law for acquisition of nationality. This means that they are at

dissolution of the former SFRY from 1991-1995, the 1999 conflict in Kosovo, Montenegro's independence in 2006 and Kosovo's unilateral declaration of independence in 2008. Roma, Ashkali and Egyptians, who are among the most marginalized and excluded communities in the region, feature prominently in this second group. According to UNHCR's 2010 statistics, an estimated 18,122 individuals are stateless or at risk of statelessness in South Eastern Europe.⁴

Following the dissolution of the SFRY, statelessness was largely avoided due to the principle of continuity of republican citizenship, which was incorporated into the citizenship legislation of all the States of the former SFRY. While people did not always acquire the citizenship of the State in which they were living, or have the right to acquire it later, in theory, few were left without the citizenship of any State. It must be stressed, however that there were some individuals who did not possess a republican citizenship, or lacked the means of proving possession.

Nevertheless, in the aftermath of the dissolution of SFRY, many people experienced problems with civil registration and documentation, which in some cases left people without a citizenship while many others faced significant challenges proving that they were citizens of a particular State. The dissolution of the former SFRY and the conflicts of the 1990's including the 1999 conflict in Kosovo displaced many within and across borders of the former SFRY and wreaked havoc on the civil registry system. While many people were able to reconstruct their personal records in the intervening years, others, in particular, the most vulnerable and socially and economically disadvantaged, were left without valid personal records and documents.

Many Roma, Ashkali and Egyptians who lack documents are trapped in a cycle where the lack of documentation among one generation, creates obstacles in the registration of the next. In most countries, this lack of documentation has exacerbated problems with the registration of children at birth, because parents are unable to meet the evidentiary requirements for registering their children. While requirements for registration of birth, such as personal identification documentation, legally registered residence, marriage certificates, and the fees and associated costs are the same for all parents, they can be particularly challenging for the Roma, Ashkali and Egyptians who live in poverty and on the margins of society. Despite safeguards in the national framework, there are Roma, Ashkali and Egyptian children who remain unregistered at birth. They face complicated and difficult procedures in order to register later in life.

risk of not being considered nationals by the State. Such proof may stem from civil registries (notably birth certificates), witness testimony or national identity documents (indicating that the person was considered a national at the time of issuance). This situation is different from the concept of a stateless person as it does not describe populations that are currently stateless, but who turn out to be or could become stateless unless preventative action is taken.

⁴ Bosnia and Herzegovina: 5,000; Croatia: 1,749; Montenegro: 1,300; Serbia (and Kosovo: UNSCR 1244): 8,500; The former Yugoslav Republic of Macedonia: 1,573; see Annex 7 of UNHCR Global Trends 2010, United Nations High Commissioner for Refugees, 2011, <http://www.unhcr.org/statistics>.

Part I: Regional Historical Overview & Background

1.1. Introduction

The shared history of the republics of the former Socialist Federal Republic of Yugoslavia (former SFRY) set the background for this regional analysis on statelessness. The new countries of South Eastern Europe, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia (including Kosovo) have, through their citizenship legislation, largely prevented statelessness from occurring on their territory in the aftermath of the dissolution of the former SFRY and emergence of successor states.⁵ However, there are a few gaps in the legislative framework of certain States that still may render some persons stateless.

This paper will focus on the issue of statelessness in the region, and provide an overview of some key commonalities, problems and gaps in the national and administrative frameworks in five South Eastern European States, with respect to international standards for the prevention and reduction of statelessness and the protection of stateless persons. It will draw upon international legal standards, national legislation, and academic analyses of the complex and at times overlapping citizenship regimes of the new States of South Eastern Europe.⁶

From a regional perspective, during the past twenty years several events have impacted the issue of statelessness within the region. The first two are the conflicts that marked the 1990s. The tension between the republics of the former SFRY, the breakup of that State, and the displacement of its citizens from 1991 to 1995 had a large impact on the citizenship of persons in the region. This major upheaval was followed by the Kosovo conflict in 1999, the displacement of persons throughout the region, the introduction of UNMIK under UN Security Council 1244, as well as the dislocation and destruction of birth registries, causing havoc for many within the State Union of Serbia and Montenegro and the neighboring former Yugoslav Republic of Macedonia.⁷

Two further events have altered the landscape of citizenship and civil registration. Montenegro's independence from the State Union with Serbia in 2006 caused a shift in the legal status of some former citizens of the State Union Serbia and Montenegro, including many internally displaced Roma, Ashkali and Egyptians from Kosovo who become foreigners in Montenegro overnight. Then, Kosovo's unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo towards the Republic of Serbia in 2008, and the subsequent promulgation of a State-like legal system

⁵ Slovenia, the sixth of the former republics is the only republic left out of this report as UNHCR covers issues of statelessness among EU countries separately.

⁶ Shaw, J. (2010), 'The Constitutional Mosaic Across the Boundaries of the European Union: Citizenship Regimes in the New States of Southeastern Europe, *CITSEE Working paper*, 2010/07, School of Law, University of Edinburgh, p. 6.

⁷ In 1999, the State Union of Serbia and Montenegro existed as the successor State to the Federal Republic of Yugoslavia (FRY) and the SFRY before it.

including a law on citizenship and new laws on civil registration, added an additional aspect of complexity to registration and issues of citizenship and documentation for many persons in Kosovo, and for those who originate from Kosovo, both within and outside of the Republic of Serbia.⁸

1.2 Citizenship in the former Socialist Federal Republic of Yugoslavia

The SFRY citizenship system consisted of two levels – the federal and republican level; one was a SFRY citizen and was also a citizen of one of the member-republics.⁹ This was affirmed in Article 249 of the 1974 SFRY Constitution.¹⁰ People were simultaneously citizens of both a republic and the SFRY.¹¹ The important citizenship for purposes of State identity and for accessing state rights was the federal SFRY citizenship; republican citizenship was important for a few specific issues, including the right to vote. Due to the primacy of federal citizenship, relatively few people changed their republican citizenship when moving from one republic to another, despite the fact that it was a relatively easy administrative process.

1.3 The disintegration of the former SFRY: nationality, state succession and the risk of statelessness 1991-1995¹²

While there was no succession treaty regulating issues of citizenship following the disintegration of the former SFRY, avoidance of statelessness was a key concern of the parties to the Peace Agreements (Bosnia-Herzegovina, Croatia and the Federal Republic of Yugoslavia). The avoidance of statelessness was promoted in the “The Principles on Citizenship Legislation Concerning the Parties to the Peace Agreements in Bosnia and Herzegovina,” (*The Principles*) adopted by the expert meeting on citizenship legislation,

⁸ In Kosovo, UNSC Resolution 1244 remains in effect. This situation precludes Kosovo from becoming a UN member and a state party to UN treaties⁸. UNMIK was mandated by the UN Security Council to develop nationality legislation applicable to Kosovo (SCR 1244) and has done so. Following the inability of the EU-US-Russia Troika to reach a status agreement in December 2007, the Unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo of 17 February 2008 and the adoption of the Kosovo Constitution on 9 April 2008, the UN Secretary-General acknowledged that “a new reality” had been created in Kosovo and argued before the Security Council for the reconfiguration of the international civil presence in the Territory. At ‘independence’, Kosovo accepted the Ahtisaari plan, which provided for internationally sponsored mechanisms, including an International Civilian Office and the EU Rule of Law Mission (EULEX). Population registries remain contentious issues. Zeri, KohaDitore, Lajm - 28/03/11; KTV, TV21, RTK - 27/03/11

⁹ UNHCR, Regional Bureau for Europe (1997), ‘Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia’, European Series 3(1): June 1997.

¹⁰ SFRY Constitution, Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 9/74.

¹¹ Štiks, I. (2010), ‘A Laboratory of Citizenship: Shifting Conceptions of Citizenship in Yugoslavia and Its Successor States’, CITSEE working paper, February 2010.

¹² The term ‘nationality’ is understood to have different meanings within the States of the former SFRY. The most common translation of ‘nationality’ into some of the languages in the region results in a term that is more equivalent to ‘ethnicity’ than it is to ‘citizenship.’ In this paper, wherever used, the term nationality should be understood as synonymous to citizenship.

at the request of a decision of the Council of Europe's Committee of Ministers in 1996.¹³ The document included 'Fundamental Principles' and ten 'Specific Principles and Rules' that worked towards the avoidance of statelessness in the citizenship regimes of the new countries. The Principles included a vast array of safeguards, not all of which were adhered to, such as the right to return to and/or remain in the country of habitual residence with full economic and social rights.

However, as recommended in *The Principles*, Successor States used the principle of continuity of internal (republican) citizenship in the creation of their new internal citizenship laws.¹⁴ As a result, republican citizenship took on a sudden new importance, as it became the basis for the emerging States to avoid large-scale statelessness within the region. When the SFRY Successor States chose to grant nationality based upon the list of names in their republican nationality registers, the result had both positive and negative aspects. The positive side was that in principle, statelessness was prevented, as all persons were presumed to be registered in one of the republican nationality registers. The negative aspect of this approach, with serious repercussions for thousands of people, was that those who were not registered in the Successor State in which they had permanent residence were made foreigners in that state overnight. Two of the states, Slovenia and the Federal Republic of Yugoslavia, thus offered facilitated access to nationality during a transitional period to former SFRY citizens who were permanently residing in the state. In the former Yugoslav Republic of Macedonia, the Citizenship Law also included a transitional provision for former SFRY citizens. However, UNHCR noted that the conditions for acquisition of citizenship under these provisions were "quasi-identical" to the provisions for acquisition of citizenship through ordinary naturalization. In other words, they did not really facilitate access to citizenship for former SFRY citizens. In Croatia, acquisition of citizenship was not facilitated and permanently resident former SFRY citizens could only acquire citizenship through regular naturalization procedures.¹⁵

In addition to the continuity of republican citizenship, following the breakup of SFRY most of the Successor States of Yugoslavia provided privileged access to the dominant ethnic group.¹⁶ This policy gave an advantage to some citizens over others – in a way that had a discriminatory impact on many. Vulnerable and marginalized minority groups were particularly affected. In some cases they risked becoming stateless due, in part, to not being able to prove their former republican nationality or to apply for citizenship because

¹³ Council of Europe, Strasbourg, 16 January 1997, 'Principles on Citizenship Legislation Concerning the Parties to the Peace Agreements on Bosnia and Herzegovina', the Council of Europe in co-operation with UNHCR.

¹⁴ The 1992 Citizenship Act of Bosnia and Herzegovina was based on the principle of legal continuity but was amended in 1993 to grant citizenship automatically to all citizens of the former SFRY who resided in the Republic on 6 April 1992; see UNHCR, Regional Bureau for Europe (1997), 'Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia', European Series 3(1): June 1997.

¹⁵ UNHCR, Regional Bureau for Europe (1997), 'Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia', European Series 3(1): June 1997.

¹⁶ Štiks, I. (2010), 'A Laboratory of Citizenship: Shifting Conceptions of Citizenship in Yugoslavia and Its Successor States', *CITSEE working paper*, February 2010.

they had left their specific republic during the war and due to destroyed registries in the territories affected by the war, in particular within Bosnia and Herzegovina and Croatia.

1.4 Loss of birth registration and personal documentation in the region due to the 1999 Kosovo conflict

The 1999 Kosovo conflict led to a new wave of loss or destruction of personal documents and civil registries (including birth registries) in the sub-region, placing many of the most socially and economically vulnerable persons at risk of statelessness. Not only did the dislocated and destroyed registry books greatly impact the ability of Serbian citizens from Kosovo to prove their citizenship, the resulting displacement aggravated the already vulnerable situation of some of the most disadvantaged sectors of the population, such as the Roma. Some of these populations already lacked proof of civil registration and necessary documentation that would enable them to enjoy fully all their civil, political, social and economic rights and to provide proof of citizenship.

1.5 Montenegro's independence and Kosovo's unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo

During a period of less than twenty years, Montenegro has experienced two state disintegrations and four changes in the organization of the state. Following the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), the Federal Republic of Yugoslavia (FRY) was established on 27 April 1992, formed by the two former Yugoslav republics – Serbia and Montenegro, proclaiming continuity with the SFRY and its legal system. On 4 February 2003, FRY was reestablished as the State Union of Serbia and Montenegro because of political discrepancies between the leading parties in both republics and demands of Montenegro for the reorganization of the State. The State Union of Serbia and Montenegro existed until 3 June 2006, when Montenegro declared independence, following a referendum on 21 May 2006. Montenegro's 2006 readmission agreement with the European Union includes a provision requiring readmission of former SFRY citizens who were born on Montenegrin territory, or who had permanent residence in Montenegro on the date of the establishment of the Federal Republic of Yugoslavia in 1992, and who have not acquired any other citizenship. Some of these persons may not be able to clarify their citizenship upon return and obtain the new documents necessary to live in Montenegro or another State.

Kosovo unilaterally declared independence in February 2008, however the international legal regime for Kosovo established under Security Council Resolution 1244 (1999) remains in force today.¹⁷ Following the unilateral declaration of independence, Kosovo authorities promulgated citizenship legislation and have recently updated Kosovo's civil

¹⁷ Despite the fact that UN SCR 1244 remains in place, the UN Secretary General, in his June 2008 report to the UN Security Council acknowledged that the declaration of independence and the entry into force of the constitution had created a new reality in Kosovo, and argued for a reconfiguration of the international civil presence in Kosovo.

registry system. As Croatia, the former Yugoslav Republic of Macedonia and Montenegro have recognized Kosovo; the doors are open for bilateral discussions regarding issues of mutual concern, such as the citizenship and civil registration of displaced populations from Kosovo in these countries.

Part II: Implementation of International Law in National Legal Frameworks within the Region

2.1 The Legal Framework for the Protection of Stateless Persons

2.1.1 International Framework protecting Stateless Persons

Stateless persons are granted specific protection by the 1954 Convention relating to the Status of Stateless Persons (“1954 Convention”). The former SFRY acceded to the 1954 Convention on 9 April 1959; following the dissolution of the former Yugoslavia, all the successor States have in turn succeeded to the Convention, without reservation. The countries of the former SFRY have to a certain extent honored their commitment to the 1954 Convention in their national legal frameworks for example by incorporating a definition of a stateless person, including provisions for the issuance of travel documents for or by granting residence to stateless persons.

The 1954 Convention is based on a core principle: no stateless person should be treated worse than any foreigner who possesses a nationality and it aims to ensure the widest possible enjoyment of their human rights. It provides a definition of a stateless person as “a person who is not considered as a national by any State under the operation of its law,” and sets out a common minimum standard of treatment and protection for stateless persons within a State.¹⁸

While proper identification is critical in ensuring that the protection offered by the 1954 Convention is accessible to those who need it, the Convention does not prescribe a particular procedure for the determination of whether someone is a stateless person at the national level. However, States should have a mechanism for fair and efficient determination of statelessness in line with international standards¹⁹, including procedural safeguards and the possibility for appeal or review.

¹⁸ With regard to certain rights, the 1954 Convention stipulates that stateless persons must be treated like nationals of the State. The Convention also pursues a nuanced approach depending on the level of attachment of a stateless person to the State. Some guarantees apply to all stateless people while others are reserved to stateless persons lawfully present or lawfully staying in the territory.

¹⁹ For details, see UN High Commissioner for Refugees, *Expert Meeting - Statelessness Determination Procedures and the Status of Stateless Persons (Summary Conclusions)*, December 2010, available at: <http://www.unhcr.org/refworld/docid/4d9022762.html> [accessed 23 August 2011] and UN High Commissioner for Refugees, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, 5 April 2012, HCR/GS/12/02, available at: <http://www.unhcr.org/refworld/docid/4f7dafb52.html>.

2.1.2 National Framework for Protection of Stateless Persons in South Eastern Europe

Statelessness affects two broad categories of persons within South Eastern Europe: first, those who are recognized as stateless persons and second, those who have not gone through formal procedures to determine them as stateless persons or as nationals of the country they reside in or other countries they have links with, but who face serious challenges proving their nationality due to documentation problems. While recognizing that some of these individuals may be found to be stateless once procedures for confirming nationality have been exhausted, these individuals will for the sake of simplicity all be referred to below as ‘persons who are at risk of statelessness’.

The first category is comprised of people who have been formally recognized as stateless by a State. Within the region, statelessness is generally determined incidentally through procedures, the main purpose of which is not necessarily to recognize and grant a legal status to stateless persons. Bosnia and Herzegovina, Croatia, Serbia and the former Yugoslav Republic of Macedonia have all recognized stateless persons living on their territory. These people are entitled to the protection offered by the 1954 Convention as implemented in national legislation. There are stateless persons recognised by the state in Serbia. They arrived from Albania in the 1980s and are mostly of Serb or Montenegrin origin. One person so far has been recognized as stateless in Bosnia and Herzegovina. Since he had a link with the country previously, he was subsequently naturalized. One person was recognized as stateless in the former Yugoslav Republic of Macedonia and subsequently naturalized.

According to information from the Macedonian (the former Yugoslav Republic of Macedonia) Ministry of Interior, Section for Aliens and Readmission, 116 individuals are "considered" as stateless although no decision to this effect has been issued to any of them. Although the Law on Aliens provides for grant of residence permit for "stateless persons" under Article 80 which generally refers to "humanitarian grounds", these persons have been issued Alien Residence Permits on other grounds contained in the Law. However, because their nationality is recorded as "stateless" in the registry records for aliens managed by the MOI-Section for Aliens and Readmission, they are waived from requirements such as provision of a valid passport/travel document from the country of origin, etc. and benefit from facilitated access to regulated legal residence in the country.

All countries in the region moreover stipulate that stateless persons have the right to be issued travel documents, despite the lack of formal statelessness determination procedures or even, in some cases, a definition of stateless persons in national legislation.

In addition, there is a second, more broadly constituted group of people who are at risk of statelessness. These individuals have not been determined to be stateless and do not as such enjoy the benefits of the 1954 Convention in the countries where they reside. At a minimum, however, they are entitled to the basic human rights standards which apply to all persons on the territory of a State. These persons are generally from economically and

socially marginalized groups living in the former SFRY. As a result of conflict and displacement and reasons related to, or exacerbated by the laws and administrative procedures governing citizenship in the new States of South Eastern Europe, these persons are at a heightened risk of statelessness. This group of persons will be discussed more in 2.2 and in Part III of this study.

Bosnia and Herzegovina

In Bosnia and Herzegovina, a definition of a stateless person is found in Article 5(b) of the Law on the Movement and Stay of Aliens and Asylum (“LMSAA”). “A stateless person refers to any person who is neither a citizen of Bosnia and Herzegovina nor a citizen of any other state under the operation of its law.”²⁰ While there are no specific procedures to establish statelessness, the Government has recognized one person as stateless who has since naturalized.²¹ Under Article 54(c) of the LMSAA, a stateless person may lodge an application for a temporary residence permit on humanitarian grounds, with the Ministry of State’s Service for Foreigner Affairs. The Service for Foreigner Affairs should decide on a request and grant temporary residence within 30 days. If the request is refused, a person may lodge an appeal to the Ministry of State within 15 days from the day for receipt of decision.²² Stateless persons also have the right to be issued a travel document.²³

Croatia

While there is no definition of statelessness in national law, Article 2 of the Foreigners Act defines a foreigner as anyone who is not a Croatian citizen.²⁴ Therefore, while not explicit, this would implicitly include stateless persons. In Croatia, 17 individuals whose status was determined through an ad hoc procedure have been registered as stateless persons with the Ministry of the Interior and 60 persons are registered as being of ‘unknown citizenship’. In addition, there are 172 persons who are former habitual residents of Croatia and who UNHCR has identified as being at risk of statelessness.²⁵ These former habitual residents are members of national minorities. Under Article 11 of the Foreigner’s Act, the Ministry of the Interior is responsible for issuing residence permits and travel documents to stateless persons.

According to the MoI, there is no formal national procedure for the determination of statelessness in Croatia. It is determined on a case by case basis. For each individual case, the MoI takes into account all relevant facts and, inter alia, requests a document from the country of origin to verify that the foreigner is not listed in the national registry of citizenship. There is no specific deadline foreseen if the government concerned fails to

²⁰ Law on Movement and Stay of Aliens, Official Gazette of Bosnia and Herzegovina, No.36/08

²¹ UNHCR Representation in Bosnia and Herzegovina, *internal report*, January 2011.

²² Article 53, Law on Movement and Stay of Aliens, Official Gazette of Bosnia and Herzegovina, No.36/08, and Article 28 and 58 of the Rulebook on Entry and Stay of Aliens.

²³ Article 46 (1), Law on Movement and Stay of Aliens, Official Gazette of Bosnia and Herzegovina, No.36/08.

²⁴ Foreigners Act, Official Gazette of the Republic of Croatia, No. 109/03.

²⁵ UNHCR Representation in Croatia, *internal report*, January 2011.

reply, but there are deadlines foreseen in the General Administrative Procedures Act of 30 or 60 days from completing the file. In practice, this can be extended. The Croatian authorities rely on a formal reply from the government of a State with which person/applicant has a link. The MoI officials are familiar with the previous and current legislation in the successor states to SFRY. In case of doubt, the MoI will check the citizenship status with governments of those countries with which the applicant for Croatian citizenship has links. The burden of proof is at first place on the applicant; however, as per legislation, the burden of proof is also on the government if the relevant information is officially and easily available to the competent Croatian authority.

Statelessness is determined through the administrative procedure under the Croatian Citizenship Act, although there are no specific provisions for the verification of citizenship. The person can be also identified as stateless through the national asylum procedure in accordance with the Asylum Act provisions, covering both refugee status and subsidiary protection. The government reports on an estimated total population of 194 persons including 32 stateless persons, and 60 persons of unknown citizenship. A further 117 persons, members of national minorities and non-Croatian citizens who returned are identified as being at risk of statelessness. Improved protection is needed for persons at risk of statelessness and those declared as of ‘unknown citizenship’.

The former Yugoslav Republic of Macedonia

In the former Yugoslav Republic of Macedonia, the Law on Aliens contains a definition for a stateless person which is in line with the 1954 Convention definition. Article 2(2) of the Law provides that “A foreigner is also a stateless person that is a person who is not considered as a citizen by any State under the operation of its law.”²⁶ There are no formalized procedures for determining statelessness, but one person has been recognized as stateless in the course of processing an application for naturalization.²⁷ Under Article 80 of the Law on Aliens, Stateless persons can be issued temporary residence on humanitarian grounds, and under Article 123, they can be issued travel documents by the Ministry of the Interior.

Montenegro

Statelessness is not defined in Montenegro’s national legislation; however stateless persons are referred to in the definition of a ‘foreigner’ in Article 6(6) of the Law on Foreigners, which states that “a foreigner is a citizen of another State or *a person without citizenship*” (emphasis added).²⁸ There is no procedure for determination of statelessness, and Montenegro does not count any persons as stateless.²⁹ Under Article 80

²⁶ Law on Foreigners, Official Gazette of the Republic of Macedonia, No. 35/06.

²⁷ UNHCR Representation in the former Yugoslav Republic of Macedonia, *internal report*, January 2011. However, the authorities have admitted and are considering an application for determining statelessness in 2010 in a procedure governed by the Law on General Administrative Procedure.

²⁸ Law on Foreigners, Official Gazette of Montenegro, No. 82/08.

²⁹ UNHCR Representation in Montenegro, *internal report*, January 2011.

of the Law on Foreigners, however, persons without citizenship have the right to travel documents, issued by the Ministry of Internal Affairs.

Serbia

In Serbia,³⁰ the Law on Aliens does not define who is a stateless person, but rather incorporates the 1954 Convention directly by stating in Article 2 that “Stateless persons shall be the subject of the provisions of the Convention Relating to the Status of Stateless Persons, if this is more favourable to them.”³¹ There are no formalized statelessness determination procedures, and the Ministry of the Interior has recognized 155 persons as stateless through an *ad hoc* procedure. Out of these, 146 have been granted permanent residence and 9 have been granted temporary residence.³² Under Article 60, they have access to travel documents.

In Kosovo (SCR1244), the definition of a stateless person, in accordance with the 1954 Convention is included in the Civil Status Law (approved in June 2011). The 2008 Citizenship Law has been amended and includes the definition of stateless persons and a specific article will address stateless persons.

2.2 The Legal Framework for the Prevention and Reduction of Statelessness: Implementation of International Law and in National and Administrative Practices

Despite the fact that the national legislation of all States covered in this report is in general conformity with its provisions, Bosnia and Herzegovina is the first State covered by this report that has acceded to the 1961 Convention on the Reduction of Statelessness (“1961 Convention”).³³ In May 2011, Croatia adopted the Law on Endorsing the 1961 Convention and has thus completed the domestic procedure for accession and the procedure for accession has also been initiated in Serbia.³⁴ In addition, all countries in the region are member States of the Council of Europe which has two regional Conventions that support the prevention and reduction of statelessness and in some aspects provide further safeguards. These are the 1997 European Convention on Nationality of the Council of Europe and its 2006 Convention on the Avoidance of Statelessness in Relation to State Succession. Montenegro is the only State which has ratified the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession.³⁵ Bosnia and

³⁰ Kosovo (SCR1244) developed a Law on Foreigners in 2008 after its unilateral declaration of independence. This law is currently in the process of being amended. As the UN maintains neutrality with respect to the status of Kosovo, the law will not be analyzed here.

³¹ Law on Foreigners, Official Gazette of the Republic of Serbia, No. 97/08.

³² UNHCR Representation in Serbia, *internal report*, January 2011.

³³ Bosnia and Herzegovina acceded to the 1961 Convention on 13 January 1996.

³⁴ On 27 May 2011, the Croatian Parliament adopted the Law on Endorsing the 1961 Convention. The Law entered into force on 18 June; by doing so, the Government of Croatia has completed the domestic legislative procedure required for accession to the 1961 Convention. In Serbia, the Government adopted a draft Law on Accession to the 1961 Convention on 19 August. Following finalization of this report, Croatia acceded on 22 September 2011, and Serbia acceded on 7 December 2011.

³⁵ Montenegro ratified this Convention on 2 March 2010.

Herzegovina, the former Yugoslav Republic of Macedonia and Montenegro have signed and ratified the 1997 European Convention on Nationality of the Council of Europe.³⁶ However, as member States of the Council of Europe, all countries are called upon to implement the Recommendation of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness and the Recommendation of the Committee of Ministers to Member States on the Nationality of Children.³⁷

The 1961 Convention on the Reduction of Statelessness offers carefully detailed safeguards against statelessness by setting rules for the conferral and withdrawal of nationality aimed at preventing persons from being left stateless. The Convention opens with safeguards to avoid statelessness among children who would otherwise be stateless at birth in Articles 1 and 4. These measures feature prominently in the Convention, and are arguably among the most important of its provisions, reinforcing a wide range of human rights instruments including the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.³⁸ The 1961 Convention, in Articles 5 through 9, also requires that appropriate measures are taken to avoid statelessness due to loss, renunciation or deprivation of nationality. Article 10 addresses the specific context of State succession and asks States to include provisions to ensure the prevention of statelessness in any treaty dealing with the transfer of territory and to use their best endeavours to secure that any such treaty made with a State which is not a party to this Convention includes such provisions. In addition, paragraph 2 of article 10 states that in the absence of such provisions a Contracting State to which the territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

³⁶ Bosnia and Herzegovina ratified the convention in February 2008, without reservation. Montenegro ratified with a reservation to Article 16 on dual citizenship in 2010. Initially, in 2002, the former Yugoslav Republic of Macedonia entered a reservation to Chapter III, Article 6, item 3 of the Convention, stating that “the Republic of Macedonia retains the right to foresee among the requirements for acquisition of citizenship by naturalization a period of uninterrupted lawful residence in the territory of Macedonia of at least fifteen years until the submission of the application for admission into citizenship”. However, the reservation was withdrawn following the adoption of the 2004 Law Changing and Amending the Law on Citizenship [Official Gazette of Republic of Macedonia No. 08/04]. The country ratified the Convention in June 2003.

³⁷ Council of Europe: Committee of Ministers, *Recommendation R (1999) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness*, 15 September 1999, (1999) 18, available at: <http://www.unhcr.org/refworld/docid/3ae6b3964.html> and Council of Europe: Committee of Ministers, *Recommendation CM/Rec(2009)13 of the Committee of Ministers to Member States on the nationality of children*, 9 December 2009, CM/Rec(2009)13, available at: <http://www.unhcr.org/refworld/docid/4b83a76d2.html>.

³⁸ According to Article 7(1) of the CRC, a child shall be registered immediately after birth and shall have the right from birth to a name and the right to acquire a nationality. In Article 7(2) there is a direct reference to the prevention of statelessness as understood in the 1961 Convention. States that are party to the CRC “shall ensure the implementation of these rights in accordance with their national laws and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.” Article 24(3) of the ICCPR also establishes that, “Every child has the right to acquire a nationality.” *See also*, Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 8.

2.2.1 Citizenship policies following state succession

As detailed in the beginning of this report, the successor States to the SFRY generally applied the rule of continuity of republican citizenship in their new citizenship laws. It was the principle followed in Croatia, the former Yugoslav Republic of Macedonia, and the Federal Republic of Yugoslavia during the 1990s. Bosnia and Herzegovina initially applied the principle of continuity of republican citizenship but amended the law in 1993 to broaden it to all former SFRY citizens who were resident in the territory of Bosnia and Herzegovina as of 6 April 1992. When Montenegro separated from Serbia in 2006, it also applied the principle of continuity of republican citizenship.

Given the very close linking of ethnic and political identity in the emerging States of South Eastern Europe, provisions for naturalization often directly or indirectly favored certain ethnicities or “nationalities” over others.³⁹ As an example, the Citizenship Laws adopted by each State usually offered emigrants belonging to the dominant ethnic group of the State access to facilitated naturalization. “The ‘internal’ Yugoslav migrants, residing in a republic whose citizenship they did not possess and to whose ethnic majority they did not belong, were the first to suffer the consequences of the new citizenship regimes.”⁴⁰

While many persons managed to arrange their paperwork in the intervening years, marginalized communities, especially Roma, Ashkali and Egyptians, and those who lacked documentation before displacement, often faced obstacles. Sometimes the most marginalized had difficulty meeting the various requirements for confirming or acquiring citizenship. Other times they did not realize that they had become ‘foreigners’ and that action was needed to regularize their status where they resided. In many cases they missed a window of opportunity for acquiring citizenship through facilitated procedures, which applied during a transitional period. Subsequently, acquisition of citizenship has become more complicated and for some even impossible.⁴¹ Due to the issues related to State succession, those unable to obtain citizenship of any State they had a link with became stateless. As will be described further below, many others face problems confirming that they are nationals of a particular state, due to lack of documentation.

Bosnia and Herzegovina

In Bosnia and Herzegovina, the international community ensured that an ethnically balanced approach to citizenship would be taken into account following the dissolution of the SFRY. Annex IV of the Dayton Peace Accord created a carefully calibrated political structure by using the constitutional framework to establish the key feature of citizenship

³⁹ Ragazzi, F. & I. Štiks (2010), ‘Country Report: Croatia’, EUDO Citizenship Observatory, November 2009 (revised April 2010), Robert Schuman Centre for Advanced Studies, European University Institute.

⁴⁰ Ragazzi, F. & I. Štiks (2010), ‘Country Report: Croatia’, EUDO Citizenship Observatory, November 2009 (revised April 2010), Robert Schuman Centre for Advanced Studies, European University Institute, p. 8.

⁴¹ See e.g. the case of “Leila” on the impact of State dissolution, UNHCR, Social Inclusion of Roma Ashkali and Egyptians in South-Eastern Europe: Real Life Stories, p 10-12, available at <http://www.unhcr.org/4b75652e9.pdf>

legislation: a dual system with citizenship at the entity and national level. This design institutionalized a balance among the three main ethnicities and two entities of Bosnia and Herzegovina.⁴²

Bosnia and Herzegovina's 1999 Citizenship Law, as well as the entities' laws provide for safeguards to prevent statelessness, as a result of the dissolution of the former Yugoslavia.⁴³ Article 37 provides that all persons who were citizens of the Republic of Bosnia and Herzegovina prior to the Constitution in December 1995 and those who were citizens up until 6 April 1992 (which is the crucial date, marking the beginning of the war) are Bosnian citizens. Also, all persons who started to live habitually in Bosnia and Herzegovina between 6 April 1992 and the entry into force of the Citizenship Law (1 January 1998), and who lived there uninterruptedly for a minimum of two years after January 1998, were able to apply for naturalization.

There are a significant number of Roma who lived in Bosnia and Herzegovina before the war, and would normally qualify to be immediately recognized as citizens according to Article 37, but who cannot prove their citizenship due to the fact that their births were never properly registered. There were also a large number of former SFRY citizens, who arrived in Bosnia and Herzegovina after the war started, and who in theory could qualify for facilitated naturalization, provided that they can prove that they have had the required registered permanent residence. However, like the Roma who came before the war, many have never been properly registered and facilitated naturalization remains only a theoretical option for them.⁴⁴ These two groups remain of particular concern and are stateless or at risk of becoming stateless, until they are able to regularize their birth and civil registration in their places of origin.

Croatia

The Croatian Citizenship Act of 1991 was based on two major principles: legal continuity with citizenship of the Socialist Republic of Croatia and facilitated access to citizenship for persons of Croatian ethnicity.⁴⁵ People who were living in Croatia on 8 October 1991,

⁴² Sarajlić, E. (2010), 'Country Report: Bosnia and Herzegovina', EUDO Citizenship Observatory, June 2010, Robert Schuman Centre for Advanced Studies, European University Institute.

⁴³ Law on Citizenship of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No. 13/99 (as amended by Law of 18 September 2009)

⁴⁴ The Law on Movement and Stay of Aliens and Asylum sets strict requirements for registering permanent stay of aliens in Bosnia and Herzegovina. Aliens may permanently reside in Bosnia and Herzegovina if they have: 1) official temporary residence in Bosnia and Herzegovina, which has been registered for at least five years, 2) sufficient income, 3) adequate accommodation; and 4) a health insurance. Undocumented persons, including a large number of Roma from Kosovo who live in extreme poverty, cannot meet the above criteria. The financial requirements to register for (permanent) residence present a burden, in particular for Roma. In addition, an alien who resides in Bosnia and Herzegovina on the ground of temporary protection, for humanitarian reasons, or on the ground of international protection (asylum) cannot get permanent residence in Bosnia and Herzegovina.

⁴⁵ Law on Citizenship, Official Gazette of the Republic of Croatia, No. 53/91 (last amended 1993). All persons who held the citizenship of the Socialist Republic of Croatia were considered to be citizens of Croatia on 8 October 1991, the date Croatia proclaimed independence. Ethnic Croats who were registered residents in Croatia but who did not possess Croatian republican citizenship were able to acquire Croatian

but were registered as citizens elsewhere in the former SFRY, were granted the status of *former habitual residents* and were eligible to apply for Croatian citizenship through ordinary naturalization procedures. However, those who were habitually resident in Croatia and who fled during the armed conflict were not in a position to apply as they could not meet the requirement of continuous residence on the territory. This primarily impacted Serbs and other ethnic minorities from Croatia.

In Croatia, many persons were born in other republics of the former SFRY and were living on the territory of Croatia at the time of its independence but did not possess Croatian republican citizenship. Because no facilitated procedures applied for habitual residents who wanted to acquire Croatian citizenship, many of these individuals – the majority of whom are Roma – were not able to regulate their status. Many of them have birth registration records – but are required and cannot travel to their country of origin (e.g. the former Yugoslav Republic of Macedonia or Kosovo) because they cannot afford either the travel or administrative fees to procure the documents. Moreover, many of them do not have any identification document with a photograph of the holder, and therefore cannot leave the country to travel to the place they were born to obtain a copy of their birth certificate.

UNHCR, through consultations with government institutions and civil society, estimates there are approximately 500 Roma who should be able to fulfill the requirements for acquiring Croatian citizenship under the current naturalization provisions in the legislation. A key problem preventing Roma from acquiring citizenship by naturalization however is the fact that if they do not have registered residence, they cannot meet the requirement of uninterrupted residency.⁴⁶

The former Yugoslav Republic of Macedonia

The Law on Citizenship of the former Yugoslav Republic of Macedonia as enacted in November 1992 and provided that the citizens who possessed republican citizenship of the Socialist Republic of Macedonia (SRM) and the citizenship of SFRY became citizens of the new state *ex lege*. The 1992 Law on Citizenship had a transitional provision allowing for facilitated naturalization of all those originating from other republics of former SFRY who were legally domiciled in SRM and possessed a SRM ID card.⁴⁷ Such applicants had to show *inter alia* that they had registered permanent residence in the country at the time of independence, as well as regular source of means of subsistence and at least 15 years of uninterrupted lawful residence in the country. This transitional provision was open for applications until 11 November 1993. The requirement of fifteen

citizenship by declaration, i.e. by submitting a written statement to the police that they considered themselves Croatian citizens.

⁴⁶ Criteria for naturalization: A foreigner who was granted five years of uninterrupted residence in Croatia can apply for Croatian citizenship if s/he fulfills the following criteria: s/he is of full age and has legal capacity; s/he is familiar with the Croatian language and Latin script; s/he has renounced her/his current citizenship and that s/he respects the legal order of the Republic of Croatia. However, in practice, the Ministry of Interior does not reject applications due to lack of knowledge of the Croatian language and Latin script for persons above 60 years of age and who are not employed.

⁴⁷ Article 26, Law on Citizenship of the Republic of Macedonia.

years of uninterrupted residence in the former Republic was criticized for targeting ethnic minorities, and was later modified by a two-year transitional provision in 2004.⁴⁸ There were many who failed to regulate their citizenship status due to the high threshold initially set by the Citizenship Law for persons originating from elsewhere in the SFRY. Often people were unaware of the fact that they were not considered nationals of the newly independent State in which they were residing, and that there was a need for them to take steps to acquire citizenship.

Long-term habitual residents may under the current citizenship legislation acquire Macedonian citizenship through ordinary naturalisation, most often either on basis of a marriage to Macedonian national, or after eight years legal and continuous residence in the country. In both cases they are required to produce inter alia a certificate of non-conviction and a certificate that there is no criminal procedure pending against them in the country of origin. Long-term habitual residents who were born in the former Yugoslav Republic of Macedonia and who have never registered residence in the country considered to be their country of origin may be unable to obtain such certificates when the authorities of the country of origin do not issue certificates on criminal records for individuals who were born abroad and who have never registered domicile/residence in that country of origin. It is worth noting however that the Citizenship Department within the Macedonian Ministry of the Interior have applied discretion and have exempted such persons from these requirements.

In addition, when persons who were born in the former Yugoslav Republic of Macedonia have never registered residence in the country considered to be their country of origin, or never confirmed that they are nationals of this or any other State, they may face insurmountable obstacles in regulating their legal residence in the former Yugoslav Republic of Macedonia, i.e. obtaining an Alien Residence Permit, if they do not have a valid travel document from their country of origin,. Without legal residence, there is no hope for eventual naturalization.

Montenegro

Both the disintegration of the SFRY and dissolution of the State Union of Serbia and Montenegro were followed with the adoption of new citizenship legislation and changes in State policies toward the issue of citizenship. After the Federal Republic of Yugoslavia (“FRY”) had been established in 1992, the Parliament passed a new Law on Yugoslav Citizenship in July 1996. Article 46 of the Law on Yugoslav citizenship adopts the principle of continuity of republican citizenship, granting citizenship to persons who held the citizenship of the Republic of Serbia or the Republic of Montenegro, on 27 April 1992, the day when the Constitution of the Federal Republic of Yugoslavia was

⁴⁸ Law Changing and Amending the Law on Citizenship, Official Gazette of the Republic of Macedonia, 8/04; Spaskovska, L. (2010), ‘Macedonia’s Nationals, Minorities and Refugees in the Post-Communist Labyrinths of Citizenship’, *CITSEE Working paper*, 2010/05, School of Law, University of Edinburgh, p. 8-9.

promulgated. In addition, those who had permanent residence in FRY on that same date were also granted a right to citizenship.⁴⁹

In 1999, a new Law on Montenegrin Citizenship was adopted by the Parliament of Montenegro (28 October 1999) providing for the supremacy of Montenegrin citizenship over that of FRY.⁵⁰ On 4 February 2003, FRY was transferred into the State Union of Serbia and Montenegro and the Constitutional Charter confirmed supremacy of the republic citizenship.⁵¹

Following the dissolution of the State Union with Serbia, the Parliament of Montenegro adopted a new Law on Montenegrin Citizenship on 14 February 2008. The law confirms the principle of continuity of citizenship in Article 39 of the law: “Every person that acquired Montenegrin citizenship according to the legislation which was in force before this law, and is registered in the Montenegrin citizenship registries, shall be considered as a citizen of Montenegro.”

In addition to the general criteria for Montenegrin citizenship, the law stipulates in Article 41 that citizens of ex-Yugoslav republics, who had registered permanent residence in Montenegro before 3 June 2006, can acquire Montenegrin citizenship by admittance.⁵² Kosovo refugees, some of whom are Roma, Ashakali and Egyptians, do not have the ability to naturalize under this provision, as the residence provided by their status as “internally displaced persons” is not considered as eligible.⁵³ While access to Montenegrin citizenship is blocked, these refugees have a right to access and apply for citizenship of Serbia. They may also approach, or with the Authorities of Kosovo, as Montenegro recognizes Kosovo as an independent State.⁵⁴

⁴⁹ Law on Yugoslav Citizenship, Official Gazette of SFRY, No 58/76

⁵⁰ Law on Montenegrin Citizenship, Official Gazette of Republic of Montenegro, No. 41/99. Article 22 stipulated that: “Person who had citizenship of Montenegro on the day when implementation of this law has started will be considered as a citizen of Montenegro.” In addition, Article 23 stipulated that: “For those persons not registered in the Montenegrin citizenship registries, maintained in accordance with the previous legislation, or those registered as citizens of Montenegro in the citizenship registries of ex SFRY republics, or FRY republics, the Ministry of Interior will determine citizenship upon their request.”

⁵¹ The Constitutional Charter of the State Union Serbia and Montenegro, Official Gazette of Serbia and Montenegro, No. 1/03.

⁵² The Decision on the Criteria on Establishing Conditions for Acquiring Montenegrin Citizenship by Admittance, Official Gazette of Montenegro, No. 1/07

⁵³ It should be noted that the Government of Montenegro *currently* uses the term “internally displaced person” for Kosovo refugees but, not in the generally-understood sense of IDPs. Persons from Kosovo who sought refuge in Montenegro during the 1990s had not crossed an international border and were therefore IDPs. Following the dissolution of the former Yugoslavia, and Montenegro’s eventual independence in 2006, these persons were never recognized as refugees or granted the same rights as refugees under the Montenegrin Law on Asylum or the 1951 Refugee Convention and 1967 Protocol. UNHCR considers these persons for all intents and purposes as refugees.

⁵⁴ Though it would not resolve the problem of statelessness, it should be noted that for those Kosovo refugees classified as “internally displaced persons,” the Government has enacted special local integration provisions which allow those who have valid travel documents and birth certificates to apply for permanent residence. These provisions are due to expire as of November 2011, but based on consultations with the Government it is expected that the provisions will be extended.

Serbia

In the Federal Republic of Yugoslavia (FRY) ethnicity was also an underlying factor in the approach to citizenship. The FRY claimed continuity with the international legal personality of the former SFRY, and when ‘Yugoslav’ citizenship was established in 1996, those who held permanent residence were granted the right to citizenship. Ethnic Serbs maintained political control within FRY, and Serbian ethnicity maintained predominance while the rights of ethnic groups, and minorities, were often not preserved.⁵⁵

Article 52 of the current Serbian Citizenship Law, however, envisages that any person who had on 27 February 2005 citizenship of any of the former Republics of the SFRY, that is citizenship of any other State established on the territory of the former SFRY, and who has had permanent residence in Serbia for a period of at least nine years, will be accorded Serbian citizenship. To this effect, he/she needs to submit a written statement that s/he seeks to acquire or confirm citizenship of Serbia and requests to be registered in the citizenship books.⁵⁶ As well, the same Article of the Serbian Citizenship Law envisages a similar solution for citizens of Montenegro who on 3 June 2006 had registered permanent residence in Serbia.

The impact of the Unilateral Declaration of Independence proclaimed by the Kosovo Assembly in February 2008 on the issue of citizenship in the territory of Kosovo remains to be seen. Under UN protectorate since 1999, Serbia still considers Kosovo as its Autonomous Province of Kosovo and Metohija and considers residents who meet the criteria stipulated in the Law on Citizenship of Serbia as Serbian citizens. As such, Serbia’s Law on Citizenship does not refer to any special situation regarding the citizenship of persons living there.

In the meantime, the Kosovo Authorities have adopted a Law on Citizenship in 2008, which provides transitional provisions for the acquisition of citizenship for two groups of people.⁵⁷ Article 28 confers citizenship on those who are registered as ‘habitual residents’⁵⁸ in Kosovo pursuant to UNMIK Regulation No 2000/13. Article 29 provides citizenship to former citizens of the Federal Republic of Yugoslavia who resided in Kosovo prior to 1 January 1998, “irrespective of their current residence or citizenship”. Although the Law on Citizenship is currently being amended, the above provisions remain unchanged.

⁵⁵ Rava, N. (2010) ‘Serbia: Elusive Citizenship in an Elusive Nation-State’, *CITSEE Working paper*, 2010/8, School of Law, University of Edinburgh, p. 8-10

⁵⁶ Law on Serbian Citizenship, Official Gazette of the Republic of Serbia, No. 135/04 and amended by the Law on amendments and Modifications of the Law on Citizenship of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 90/07

⁵⁷ Law on Citizenship, Official Gazette of the Republic of Kosovo, No. 26/08.

⁵⁸ “*Habitual residents*” were defined, inter alia, as those born in Kosovo, or had at least one parent born in Kosovo or had resided in Kosovo for at least five continuous years (with an exception for those who had been forced to leave). This provision was also extended to otherwise ineligible dependent children of habitual residents.

2.2.2 Acquisition of Citizenship - Prevention of Statelessness at Birth

Citizenship legislation in Bosnia and Herzegovina, Croatia, Montenegro, Serbia, Kosovo (SCR 1244) and the former Yugoslav Republic of Macedonia is based on *jus sanguinis*, i.e. citizenship is granted on the basis of being born to a citizen rather than on the basis of being born on the territory of the State. The citizenship legislation in each of the countries has retained important safeguards against statelessness which already existed in the SFRY citizenship legislation. This includes grant of citizenship to children found abandoned on the territory of the State (foundlings). In addition, women and men have equal rights to pass on their citizenship to children born both inside and outside of the country, and children born out of wedlock have the same rights to acquire nationality as do children born in wedlock. The citizenship laws in three States in the region, Bosnia and Herzegovina, Montenegro and Serbia, all incorporate the important principle that citizenship is granted at birth to children born on State territory who would otherwise be stateless.

While key safeguards against statelessness at birth generally have been incorporated into the citizenship laws of all the countries in the region, a few gaps remain. In the former Yugoslav Republic of Macedonia, citizenship is granted to children born to at least one national and although safeguards exists in the law in the case of children born on the territory of the State whose parents are unknown, or are of unknown citizenship or stateless, there is no provision to cover children whose parents are citizens of another State, but are unable to transmit their nationality to the child. In the case of children, born to a citizen and a foreign parent abroad, the former Yugoslav Republic of Macedonia Citizenship Law also diverges from the other laws in the region by providing that these children only become citizens by registering before they reach the age of 18 or by settling permanently in the former Yugoslav Republic of Macedonia, although having reached the age of 18. A person who has not done so may acquire Macedonian citizenship if he/she submits an application for registration in the Macedonian citizenship before reaching 23 years of age.

In Croatia, the Citizenship Act also contains a gap which may cause statelessness in a few cases. While the Act grants citizenship to children born to parents who are stateless or of unknown nationality, it does not cover children who are born to parents who are citizens of another State but who are unable to transmit their nationality to their child.⁵⁹

Another example is Kosovo (UNSCR 1244), where the Citizenship Law provides that children born in Kosovo to at least one parent who is a Kosovo national acquire citizenship, while those born to foreigners only become citizens when the parents have valid residence permits and both agree that the child becomes a Kosovo national. No provision is made to grant citizenship to children born in Kosovo who would otherwise be stateless, for instance because they are born to parents who are themselves stateless or

⁵⁹ See Article 7, Law on Citizenship, Official Gazette of the Republic of Croatia, No. 53/91 (last amended 1993)

unable to transmit their nationality to the child. Moreover, if a child is born outside of Kosovo to one citizen and a foreigner, the consent of both parents is required for the child to become a citizen. Where such consent is not given, the children concerned risk becoming stateless. A safeguard exists, however, in case the second parent is stateless or of unknown nationality, in which case the child automatically acquires Kosovo citizenship.

2.2.3 Loss, renunciation and deprivation of nationality

The provisions for loss, renunciation and deprivation of nationality in the region are generally in line with the standards set by the 1961 Convention. Importantly, all laws in the region seek to avoid statelessness when citizens change their citizenship by requiring that renunciation of citizenship can only take place when a person possesses or has an assurance to acquire another citizenship. No law moreover provides that a citizen would lose his or her citizenship on the basis of residence abroad.

In Kosovo (SCR1244), the competent body may verify the lawfulness of the registration of a person as habitual resident pursuant to UNMIK Regulation No 2000/13. In the event that the competent body determines that the person did not fulfill the legal requirements for being registered as a habitual resident, such person shall lose his/her citizenship and shall be deleted from the register of citizens.⁶⁰ Although the deletion from the register of citizens is without prejudice to the individual applying for citizenship through birth, origin, adoption, or naturalization, some individuals may, nevertheless, not be able to prove eligibility and this might result in statelessness.

In Montenegro, a different situation occurred due to an administrative error. In January 2009, Montenegro centralized its registry system, placing all citizenship records with the Ministry of Internal Affairs. At that time, some children who had been born to parents of “displaced persons” and “internally displaced persons” and who were erroneously registered as citizens of Montenegro at birth. As their registration was without legal basis, the Ministry deleted them from the citizenship registry books without written notification.⁶¹ As they were considered as citizens at one point, some of these children might never have acquired the status of “displaced person” or “internally displaced person” from their parents. Therefore, in addition to not being citizens, they cannot be considered for permanent residence under Montenegro’s amended legislation.

The authorities in Montenegro have no information how many children are deleted from citizenship registry books. This unknown number of persons is still among the group of persons at risk of statelessness in Montenegro.

⁶⁰ Law on Citizenship, Official Gazette of the Republic of Kosovo, No. 26/08.

⁶¹ UNHCR Representation in Montenegro, *internal report*, January 2011.
Law on Citizenship, Official Gazette of the Republic of Kosovo, No. 26/08.

Part III: Birth Registration, Personal Documentation and Citizenship: The Risk of Statelessness among Roma, Ashkali and Egyptian Communities⁶²

Problems with respect to birth registration do not occur equally across the region one problem – central to all of the countries, is the risk of statelessness for children who are born to parents who do not possess required documents. Children born to undocumented parents of undetermined or unknown citizenship are unable to complete their birth registration. They are at risk of statelessness to the extent that this makes it difficult to prove where they were born and who their parents are, which may mean that they will be unable to prove their nationality. The next section of this paper will deal with specific problems related to registration of birth among Roma, Ashkali and Egyptians.

3.1 Background

UNHCR has been working with Roma, Ashkali and Egyptian communities in the States of South Eastern Europe within the territory of the former SFRY under its global mandate to prevent and reduce statelessness and to protect stateless persons. While it is not easy to determine the precise number of Roma, Ashkali and Egyptians in the region who are affected by statelessness; compared to the population at large, there are a disproportionate number who lack birth registration and personal documentation.⁶³ Without these basic forms of proof of citizenship they can be at risk of statelessness.

Birth registration, and access to proof of birth registration, is an essential prerequisite to proving a person's legal identity and existence in any country. Without proof of birth registration a person cannot obtain personal identification documentation or be registered as a citizen within any country in the region. Exact figures of the number of persons affected are difficult to provide given the fact that persons who are 'legally invisible' generally live on the margins of society, and do not show up in government statistical databases. Surveys conducted by UNHCR throughout the region have continuously shown that the most vulnerable are those who have suffered forced displacement, and those who live in informal settlements.⁶⁴

The specific problems that many Roma, Ashkali and Egyptians in South Eastern Europe face related to birth registration and identity documentation are both caused and

⁶² Throughout the region there are Roma communities, which often speak Romanes, and Ashkali and Egyptian communities, which are often predominantly Albanian speaking. These distinct groups share similar problems related to social marginalization. Self-identifying members of these groups are present throughout South Eastern Europe.

⁶³ Numerous reports specifically cite the difficulties of Roma, Ashkali and Egyptian minorities with respect to documentation throughout the States covered by this report. These include the Progress Reports of the European Union, which are available at http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm and the country-specific Concluding Observations of United Nations human rights treaty bodies such as the Human Rights Committee, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination. Concerns were also been raised by other States in the Universal Periodic Review

⁶⁴ For more details on conducted surveys in the region, see Summary Report on the Social Inclusion Project, UNHCR September 2011.

compounded by a wide range of factors related to their societal marginalization.⁶⁵ Many within these communities remain undocumented for generations due to lack of awareness, understanding of the importance of birth registration, and discretionary practices in the registration process that can lead to mistrust. Language barriers for those who speak only Romanes or Albanian can play a role. Many parents are unable to produce the required evidence for registration at birth, some due to their young age (they are still minors) and lack of identification documentation. Many families are unable to pay the high administrative fees and associated travel costs (often to other countries in the region), in order to procure required evidence. These are especially burdensome for large families.

In addition, due to a shared history in civil registration practice within the States of the former SFRY, the large scale displacement of persons in the region throughout the 1990s, the destruction and displacement of civil registries, and the creation of new States and changing State borders within the former SFRY, many of the most vulnerable individuals, especially those who were already legally invisible, have faced significant obstacles in obtaining birth registration, and proof of birth registration for themselves and their family members.

Migration and large-scale forced displacement of persons in the former SFRY has created a strong cross-boundary component to the problems many persons have with civil registration. Parents who have children in a State that is different from the former republican State in which they were born, may have difficulty registering their child if their own registration and identity documentation is not in order. Lack of identity documentation is by itself an indicator that a person could be either stateless or at risk of becoming stateless. Children born outside the region may also face specific risks. Children returning to Kosovo under readmission agreements from Western Europe without their original foreign birth certificates can be at risk of statelessness.⁶⁶

3.2 Problems and Solutions

Without birth registration and identity documentation, Roma, Ashkali and Egyptians in the region are denied access to basic rights including: ID cards, passports, driver's licenses, school enrolment, essential health services, employment, travel, official marriage, political participation, housing and social services, including financial benefits. People can even be fined for not having an ID card, although these are seldom applied in practice.⁶⁷

⁶⁵ See e.g. individual cases in, UNHCR, *Social Inclusion of Roma Ashkali and Egyptians in South-Eastern Europe: Real Life Stories*, available at <http://www.unhcr.org/4b75652e9.pdf>.

⁶⁶ Knaus, V. and Widmann, P., *Integration Subject to Conditions: A report on the situation of Kosovo Roma, Ashkali and Egyptian children in Germany and after their repatriation to Kosovo*, UNICEF Kosovo and the German Committee for UNICEF, 2010.

⁶⁷ Throughout the region, possession of identity cards is mandatory with requirements ranging from 16 to 18 years of age.

Practical measures have been taken to ensure access to some basic services without proper civil registration. Several countries provide access to health care and education to Roma, Ashkali and Egyptians in an informal manner, based largely upon the good will of public officials. In Serbia, Kosovo (SCR 1244) and the former Yugoslav Republic of Macedonia, elementary education criteria have been relaxed so that birth certificate is not necessary for enrolment. In Croatia, elementary education is granted to a child without a birth certificate and the legal status of the parents and a child is not linked to enrolment.⁶⁸ However, in Serbia, a child can attend school, but cannot get a certificate of completion as long as the child remains undocumented. In Kosovo (SCR 1244) the attendance certificate will not be issued without a valid birth certificate.

Serbia has also attempted to facilitate access to health care for the Roma population at large.⁶⁹ These practices are positive and in line with the Convention on the Rights of the Child.⁷⁰ However, a key objective of this report is to highlight issues that should be addressed within the national legal framework. While taking measures to ensure access to health care, education and other rights is critical, it does little to address the underlying problem of birth registration. In order to protect these persons and improve their enjoyment of access to a full spectrum of rights, the best course of action is ensuring that all persons have birth registration, personal documentation and citizenship.

A key to facilitating access to birth registration is to simplify the administrative procedures throughout the region, part of the common legacy of the legal system under the former SFRY. The purpose of this remainder of this section is to highlight specific aspects of the civil registration systems within the region, in order to analyse and compare problems with procedural and administrative obstacles and solutions, featuring best practices that may be relevant in making improvements elsewhere. The analysis provided below is not exhaustive.

3.3 Birth Registration – national standards

The State has the obligation to ensure birth registration for all persons born on the territory of the State regardless of status or nationality of the child or parents.⁷¹ All the

⁶⁸ Primary education (8 classes, from age of 6-14) is obligatory for all children, regardless of their status. If a child does not have a birth certificate, the school has to request authorization from the Ministry of Science, Education and Sport for enrollment, which is always granted. The legal status of the parents and a child is not linked to enrolment to primary education.

⁶⁹ There is no explicit mentioning of Roma population in the Law on Health Insurance in the former Yugoslav Republic of Macedonia; however the Law has been amended in May 2009 to cover all nationals, Official Gazette of the Republic of Macedonia, No. 67/09. Article 22 of Serbia's Law on Health Insurance explicitly states that persons of Roma nationality who do not have permanent or temporary residence registered due to their traditional way of life can be beneficiaries of health care.

⁷⁰ The UN Committee on the CRC has noted that "children whose births have not been registered and who are without official documentation should be allowed to access basic services such as health and education, while waiting to be properly registered," Belize CRC/C/15/Add.252, para. 33.

⁷¹ The obligation for birth registration is a fundamental human right, which is guaranteed in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC). Bosnia-Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia, Montenegro and the Republic of Serbia have all succeeded to the ICCPR and the CRC, which were signed

countries in the region require registration at birth by law. Within the region, the fact of birth can generally be registered through one of three specific procedures: registration, subsequent registration (a process that occurs any time after the deadline provided by law for registration of birth), and re-registration, for a person who was registered, but is now unable to access their records of birth registration due to the destruction or dislocation of the registry during conflict.

There are certain legal and administrative obstacles within the birth registration procedure that are common to the countries of the region, given their shared history and similarity of legal systems. While they adversely impact all citizens, these issues create obstacles that prove to be insurmountable among the most vulnerable and excluded sectors of the population. The problem varies within each country, but no matter to what extent the problem is prevalent in the country, Roma, Ashkali and Egyptians who live in extreme poverty are in all cases the group most prominent among those affected.

3.4 Birth Registration Procedure and the Roma, Ashkali and Egyptian Communities

Within the region it is generally a two-step process for a child's birth to be fully and formally registered within the civil registry system. In terms of implementation, however, problems remain because of the inability of some in meeting the evidentiary requirements, and the fact that full registration is not carried out automatically when the authorities first learn of the birth.

In all of the countries covered in this report – health facilities are required by law to report the birth of a child within a specific time-frame ranging from three days in Montenegro to eighteen days in Croatia.⁷² However, the registration of birth is not completed with this step alone. A second step is required. An authorized person (generally a parent or a legal guardian) must visit the municipal registry office to complete the birth registration and must provide formal proof of the identity and civil status of both parents. This step must be completed within thirty days to two months.⁷³

and ratified by the former Yugoslavia in 1971 and 1991, respectively. The Kosovo authorities have undertaken to abide by the provisions/standards of a variety of international treaties by incorporating the pre-UDI Constitutional Framework and the post-UDI Constitution.

⁷² In Montenegro a health facility is obliged to report the birth of a child within three days of birth. In Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia, the deadline is fifteen days, and in Croatia it is eighteen. In Kosovo (except northern municipalities) (SCR 1244), birth registration is conducted according to the Civil Status Law, approved in June 2011, which superseded UNMIK Regulation No 2004/46 on Civil Registers. The new law requires registration with the Municipal Civil Status Office within fifteen days and up to thirty days of birth in specific situations. If the deadline is not respected, fines will apply. This has not been the case since 1999 under the UNMIK Regulations. In Serb-enclave areas, the Serbian civil registration system is still accessible. Primarily Kosovo Serbs and Roma use these facilities. Documents issued by registers and archives by the Serbian Government and by Kosovo Authorities are not mutually recognized. Persons born in Kosovo, who are no longer living in Kosovo, would in theory be able to register under both systems.

⁷³ Both in Montenegro and in Serbia the parents of the child must complete the birth registration process within 30 days of birth and give a name to the child. In Croatia and in the former Yugoslav Republic of

After this deadline, the only option is a separate administrative procedure for the late or subsequent registration of birth.

For children born outside a health facility, which is more common among Roma, Ashkali and Egyptians than other groups, the duty to report and register the birth falls entirely on the parents or other persons who witnessed or assisted in the birth.⁷⁴ As well, despite the obligation to report every birth, health care facilities sometimes fail to execute their obligation to facilitate the reporting of birth to the registry office. For example, throughout the region, if a mother who lacks health insurance or financial means gives birth in a hospital, some hospitals have been known to withhold the attestation of birth until a payment is made. Without the attestation of birth, a parent cannot complete the registration process and formally provide the name of the child.

Some countries have implemented an important safeguard for the registration of children born in hospitals that requires registry offices to summon parents if they do not meet the deadline for completing registration. However, in practice follow-up action is not always taken. In the former Yugoslav Republic of Macedonia, the relevant administrative instructions prescribe that once the reporting form has been received from the medical institution; the parent of the child shall be summoned in order to determine the personal names of the child as well as to verify all other data.⁷⁵ However, this provision has not been implemented in practice. In Bosnia and Herzegovina and Serbia there is a similar rule that if the parents have not completed the birth registration within a certain deadline, the registrar should inform the Centre for Social Welfare to take action. This is seldom implemented in practice.

The fear of being charged a hospital fee for giving birth without health insurance is an incentive for some women to give birth at home. Some women without documents borrow the health booklet of a friend or relative to avoid fees for giving birth in a hospital.⁷⁶ This happens throughout the region. The child is consequently legally

Macedonia, parents must provide additional information within two months of birth to complete the registration. In Bosnia and Herzegovina the law is different in the different entities: in the Republica Srpska, the deadline to register the child is thirty days; in the Federation of Bosnia and Herzegovina it is two months.

⁷⁴ In Croatia, if the child is born at home, a parent or someone who knows about the birth must report within 30 days. In Bosnia and Herzegovina, if the child is born at home, the birth has to be reported by the father, the mother, a household member within the same amount of time as if the child were born in a hospital– 15 days of birth. In the former Yugoslav Republic of Macedonia a birth should be reported within 15 days of birth, and the Law provides for a wide range of persons qualified to register the birth: the child's father, mother (once she recovers), the health care worker that has assisted with the child's delivery, the person in whose dwelling the child was born, or any other person who has learned of the birth.

⁷⁵ Article 13, Instructions on Maintaining, Protection and Keeping of Registry Records and Documents, Issuance of Certificates, Attestation, Transcripts and Copies Based on the Registry Books, Conducting a Procedure and Preparing Minutes for a Foundling, Renewal of Destroyed, Damaged or Missing Registry Books, and the Forms of the Registry Books, the Registrar of Registry Books, Certificates and Attestations Issued on the Basis of the Registry Books, Official Gazette of the Republic of Macedonia, No. 110/10.

⁷⁶ Without identification documentation, a person cannot access the health care system. Many Roma, Ashkali and Egyptians cannot satisfy the requirement of valid health insurance since they are unable to apply for public health care prior to regulating their legal residence and obtaining an identification card. Premiums for private health care are prohibitively expensive for many families. In Montenegro, Roma,

registered with a different family and it is very difficult to correct the erroneous registration later on.

For births outside a hospital, there is a greater danger that the birth will not be recorded. Registrations of these births generally have higher evidentiary requirements; in lieu of a report from a hospital the administrative procedures generally require statements of two witnesses of the child's birth.⁷⁷ Without an attestation by the appropriate witnesses, who generally must also possess identity documentation, it is often not possible to register the children.

Whether they give birth inside or outside a hospital, Roma, Ashkali and Egyptians who lack documents face problems due to evidentiary requirements and administrative requirements that disproportionately affect them and other marginalized groups. Many parents simply give up, as they cannot meet these requirements. The result is that their child remains unregistered. Their only option is to initiate a procedure for subsequent registration later in life in order to obtain a legal identity.

(1) Requirement: ID cards of both parents

The requirement for parents to provide identification documentation to complete the registration of a child can be impossible for some to meet, and this requirement serves to perpetuate the cycle of undocumented parents transferring their problems with documentation to the next generation. While incomplete birth registration is possible if the father is not properly documented, the absence of the mother's proof of identity blocks registration of both the parents' and the child's name in the birth registry. Many Roma, Ashkali and Egyptian parents without identity documentation are simply unable to register their children, and often they give up.

Unregistered parents first need to complete/provide proof of their own birth registration through subsequent registration or re-registration, and procuring the required ID documents. Going through the administrative process can be costly, require travel to birth registries that may (now) be in a different country, and take long periods of time, in many cases over a year.

Persons who possess no identification document, such as a number of long-term habitual residents of the former Yugoslav Republic of Macedonia, are unable to register the birth/personal name of their children. In addition to the above, the practice with regards to the requirement of producing a valid identification document for the parents is also different in different towns throughout the country. While for example in the city of Skopje an expired Alien Residence Permit was accepted as a proof of identity prior to the

Ashkali and Egyptian refugees from Kosovo who have lost their status as 'internally displaced persons' due to temporary return to Kosovo or who never officially obtained the status from the Government, are in practice not entitled to health care and are obliged to pay the hospital fees for delivering a child. Without status and sufficient income, many prefer to give birth at home.

⁷⁷ Lack of access to health care, tradition, teenage pregnancy, and lack of information, are all factors that contribute to Roma, Ashkali and Egyptian women giving birth at home.

transfer of competencies, from the Ministry of the Interior to the Department for Managing the Registry Records within the Ministry of Justice, in other towns such documents were not accepted. Since the transfer, which took place 1 January 2010, the authorities insist on the parent producing a valid document for identification.⁷⁸

There is a higher incidence of young parents among Roma, Ashkali and Egyptian communities throughout the region. Often, young mothers (and fathers) can face obstacles in registering their children if they do not yet have photo identification documents, which are granted in some countries only after the age of 18. Parents, who give birth before they are able to obtain a valid identification document, must wait to register their children through subsequent registration procedures.

Particular difficulty arises in cases of children who are abandoned by unregistered parents. These cases are incredibly complex, and require appointment of a legal guardian. In some cases the father can submit the application for registration, and centres for social welfare can be engaged. However, sometimes they are reluctant to intervene and appoint legal guardians to children whose parents are known, even if they cannot be located.

(2) Requirement: legally registered residence of the parents

A legally registered residence is required to obtain personal identity documentation required for registration of the birth of a child. Some parents, who have birth registration, fail to register their children due to the fact that they do not possess a legally registered residence.

This requirement is particularly problematic for marginalized Roma, Ashkali and Egyptians who live in illegal settlements in Bosnia-Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and Serbia, including Kosovo (SCR 1244). In these countries, persons who live in illegal settlements and are unable to obtain a legally registered address and register domicile if they are unable to produce a valid form of evidence: a certificate of possession of property, a contract of ownership, or a verified lease agreement.⁷⁹

However, in Montenegro pursuant to an agreement with the Roma National Council, the Ministry of Internal Affairs accepts as evidence a certificate of legal address in Montenegro, issued by the Roma National Council – the administrative body established to represent local Roma population in Montenegro.⁸⁰

⁷⁸ Prior to 2008 long-term habitual residents were not required to produce a travel document issued by the country of origin in order to obtain Residence Permit. Hence, there are many individuals who have no travel documents/passports, but are in a possession of, now expired, Alien Residence Permit.

⁷⁹ In the former Yugoslav Republic of Macedonia, those residing in a dwelling which is owned by parents/children must produce a document proving their ownership of the dwelling and a written and verified statement by the parents/children in which they declare that the applicant will reside with them.

⁸⁰ Agreement between Roma National Council and Ministry of Internal Affairs and Public Administration in Montenegro, April 2009.

(3) Requirement: marriage certificates

Registry offices generally require a marriage certificate from the parents to register the father's name, along with the child's birth. If there is no marriage certificate, registry offices may require proof of paternity, and the administrative formalities become more complex.

However, traditional marriages among Roma, Ashkali and Egyptians are not always registered. The reasons are not just traditional; marriages are often not registered because parents do not possess identity documents required for registration. Also, early marriage is common within the Roma, Ashkali and Egyptian communities, and if children marry before they are able to obtain identity documentation, they cannot register their marriages.⁸¹ For example, in the former Yugoslav Republic of Macedonia, the procedure/documentary evidence required for children born out of wedlock is somewhat more complex in that presence of both parents is required, and each must both produce Birth Certificates not older than six months if the details of the father are to be recorded in the Birth Certificate, i.e. a procedure for recognition of paternity is initiated simultaneously to the subsequent registration of birth/personal name procedure.

(4) Requirement: the cost of birth registration

The application of fees or fines connected to the administrative process of birth registration can serve as a disincentive and deterrent for registration.⁸² These fees and fines represent a heavy burden for low income parents within the Roma, Ashkali and Egyptian communities, especially when multiplied by families that have many children. Costs further multiply when parents must first resolve their own lack of documentation, which may include travel costs to far away registry offices as physical presence is usually required for subsequent or re-registration.⁸³

In Kosovo (UNHCR 1244), there are fees for registration at birth, and in the former Yugoslav Republic of Macedonia fees are charged for subsequent registration. While there are sometimes fee-waivers⁸⁴ for certain individuals, in order to qualify, a person must obtain social welfare, which would require possession of identification documentation and proof of citizenship.

⁸¹ In Croatia, regarding underage marriages – at the age of 16 with approval of the parents. ID is obligatory at the age of 16.

⁸² The UN Committee on the Rights of the Child has concluded on numerous occasions that the imposition of fines or other sanctions on parents for failing to register their children is likely to be counter-productive and can be a hindrance to birth registration. See for example the Committee's Concluding Observations upon consideration of the report submitted under Article 44 of the Convention by the State party, the Philippines, CRC/C/PHL/CO/3-4 (02.10/2010).

⁸³ In addition to the costs, Roma, Ashkali and Egyptian refugees in Montenegro may face serious obstacles in traveling to dislocated registry offices in Southern Serbia due to lack of travel documentation. The problem for RAE refugees from Kosovo is the fact that traveling to country of origin will result in cessation of their right to asylum in the former Yugoslav Republic of Macedonia.

⁸⁴ In Kosovo (SCR1244), the Civil Rights Program - Kosovo (CRPK) has successfully concluded MoUs with 26 Municipalities which ensure easy access to procedures and waiving of administrative fees.

In Bosnia and Herzegovina, Croatia and the former Yugoslav Republic of Macedonia there are fines for individuals/institutions failing to register birth/personal name of a child within the deadlines provided by law. These fines are generally not applied, but in practice, a fear of being fined serves as a disincentive for some parents from registering their children if they have missed the 30-day limit. In Federation of Bosnia and Herzegovina these fines are mostly symbolic (and established in a currency no longer in use), in the Republica Srpska the fines are much higher, 50-150 BAM (25-75 Euro) for individuals, and 500 – 1500 BAM for a hospital or CSW (Centre for Social Welfare institution). However, these fines are not normally applied.

3.4 Subsequent Registration of Birth

Throughout the region, a key obstacle preventing registration of children at birth is that parents who lack personal documents cannot meet the evidentiary requirements of birth registration. In order to register birth at a later date, the unregistered person, (above the age of legal majority) or his/her parents or legal guardian must initiate a process of subsequent registration with the birth registry. While all the countries covered in this report make late or subsequent birth registration possible after the deadline, the procedure remains largely undefined by law. This causes confusion over roles between administrative and judicial organs—and who has the authority to establish the facts and authorize subsequent registration.⁸⁵

For example, sometimes a court will deny its competency in matters related to birth, including legal relations and parenthood, and confirm that these issues should be established in an administrative procedure. In some instances, courts require an expensive DNA test, (the equivalent of around 500 Euros) charged to the person seeking registration. While most cases ultimately result in the subsequent registration of an individual, frequently a court will declare itself incompetent and refer the case back to the competent administrative body, leaving the legal relations of the individual undetermined. In other cases, the competent administrative body simply takes the court decision as one of many forms of evidence proving a person's legal relations, leaving the person unregistered because they are unable to complete the subsequent registration process.⁸⁶

⁸⁵ UNHCR Representations in Bosnia and Herzegovina, Serbia, Montenegro and the Office of the Chief of Mission in Kosovo have reported these problems, through the work of the Regional project on Social Inclusion Regional Support to Marginalized Communities. The Former Yugoslav Republic of Macedonia is a notable exception – following the transfer of responsibility from the Ministry of the Interior to the Ministry of Justice in January 2010. The Department for Managing the Registry Records, within the Ministry of Justice fully accepts the responsibility of subsequent registration of birth. The only cases referred to court are when a child's biological father was not registered as the spouse of the child's mother at the time of the birth, or if the birth occurred within 300 days after the marriage has been legally dissolved. According to the Law on Family (Article 50), the registered husband is considered as a father of a child in these two scenarios. In such a case, the biological father must initiate an extra-judicial procedure in a court of law to his paternity. DNA tests are often, but not always required in such cases.

⁸⁶ See, e.g., UNHCR, Social Inclusion of Roma, Ashkali and Egyptians in South-Eastern Europe: Real Life Stories 2008; see also, Praxis, Legally Invisible Persons in Serbia: The State must take over the Responsibility! October 2009 available at www.praxis.org.rs

3.6 Re-registration of Birth

The 1999 Kosovo conflict caused administrative havoc with respect to Serbia's civil registration records in Kosovo. There were many registry books in Kosovo which were either destroyed completely or dislocated to seven municipalities in central or southern Serbia.⁸⁷ The destruction of registry books created problems for those who remained in Kosovo, for internally displaced persons who fled to other parts of the State Union of Serbia and Montenegro, and for refugees who fled to other countries in the region. Those persons who still have not re-registered can be considered at risk of statelessness.⁸⁸

Persons whose registration was destroyed must initiate the administrative procedure of re-registration in the dislocated birth registry books in Serbia or in the small number of Serbian-run registries that remain in Kosovo.⁸⁹ The process of re-registration is usually less complex than that of subsequent registration, but it requires personal civil status documents issued prior to 1999. Documents issued after that date, by UNMIK or by Kosovo authorities, are not accepted. There is a lack of reciprocity between Kosovo and Serbia authorities with regards to the acceptance of civil status certificates issued by either authority. In practice, those who are displaced who obtain civil status certificates issued by a Serbian dislocated authority based on registry books from outside of their original jurisdiction will be unable to rely on them to obtain either civil status registration with Kosovo authorities.⁹⁰

As subsequent registration, practice and evidentiary requirements among registry offices vary. The registry office is required by law to initiate the reconstruction of the registry *ex officio*; however, the burden of proof is often shifted to the interested party, who is not able to provide all the required evidence.⁹¹

Due to the lack of evidence for the renewal of registry books, the competent registry office requires the applicant to come personally to a dislocated registry office to give a statement about the birth. This can be complicated and costly due to required travel, and the fact that many persons who need re-registration are without travel documents or for other reasons cannot travel to the dislocated registries in Serbia.

⁸⁷ In accordance with the Amendments to the Law on Registry Books, Official Gazette of Republic of Serbia, No. 57/03, the registry books dislocated from Kosovo were moved to seven municipalities in central and southern Serbia. See also, Praxis: *Access to Documents for Internally Displaced Persons in Serbia*, February 2007, p. 9 available at www.praxis.org.rs.

⁸⁸ For real life example, see, e.g. the story of "Ganimeta" in, UNHCR, *Social Inclusion of Roma Ashkali and Egyptians in South-Eastern Europe: Real Life Stories*, 2008, p. 22 available at <http://www.unhcr.org/4b75652e9.pdf>.

⁸⁹ Registration with the Kosovo authorities is also possible. According to Law on Civil Status approved in June 2011, birth should be registered in the books of the Municipal Civil Status Office (MCSO) of the municipality where the birth occurred.

⁹⁰ The situation might improve as a result of technical dialogue between Belgrade and Pristina agreement in June 2011, whereby Belgrade agreed to give Pristina copies of land registries and civil status documents on births, marriages and deaths in Kosovo to help Kosovo establish its own civil registry, and recognizing each other's education diplomas.

⁹¹ Article 44, Law on Registry Books, Official Gazette of Republic of Serbia, No. 20/09.

Part IV: General Conclusions & Recommendations

In the years following the dissolution of the SFRY, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia including Kosovo (SCR 1244) were able to avoid large-scale statelessness through safeguards, which ensured the continuity of Republican citizenship in their new citizenship legislation. Despite these fundamental safeguards, those who were displaced during conflict, in particular members of minority ethnic groups, had difficulty accessing civil registration and documentation from the Republic in which they held citizenship. People, who were living in a Republic other than the one where they held citizenship, also had to regulate their status following the dissolution of State. The most marginalized members of society, in particular ethnic minorities, were less able to cope with the changes, and some did not manage to regulate their legal status in the intervening years.

While the States covered within this report all have acceded to the 1954 Convention relating to the Status of Stateless Persons, statelessness determination procedures remain ad hoc, and need further development to ensure that stateless persons can be properly identified and protected. However, in all States, fundamental protections for stateless persons are largely reflected in national legislation.

The Laws on Citizenship for the States in the region are largely in conformity with the 1961 Convention on the Reduction of Statelessness, and incorporate key principles to ensure the prevention and reduction of statelessness. Bosnia and Herzegovina was the first State which acceded to this Convention; Croatia and Serbia are now in the process⁹². Other States should take this step as well to ensure there is a common set of rules to prevent statelessness across the region.

Areas for improvement in the prevention and reduction of statelessness lie primarily within the national framework for civil registration, the national framework for acquiring permanent residence for foreigner and/or citizenship status and in broadly facilitating access to identification documentation.

Children born to parents without documents or with expired documents must also be registered at birth, or subsequently, including registration of their name. In the event that some of the information required under national law for birth registration is missing, the relevant authorities nonetheless have a responsibility to register the birth and can do so by recording the information which is available, including the date and place of birth, the name of the child and any information on the identity of the mother and father. Additional information can be added subsequently. In addition, safeguards should be in place to ensure that children, whose citizenship is not determined at birth, are placed in an appropriate procedure to ensure that they confirm or acquire citizenship.

⁹² The two countries acceded shortly after the finalization of this report.

Recommendations:

UNHCR recommends all States in the region which have not yet done so, to accede to the following international instruments:

- 1961 Convention on the Reduction of Statelessness
- Council of Europe 1997 European Convention on Nationality
- Council of Europe 2006 Convention on the Avoidance of Statelessness in Relation to State Succession

UNHCR strongly encourages the Governments and relevant Authorities in the region to undertake additional measures to prevent statelessness on their territories and throughout the region, *where applicable*. This includes the following:

- Intensify efforts to identify all persons who are at risk of statelessness due to a lack of birth registration and or personal identification documentation;
- Establish formal procedures for determination of statelessness;
- Promote universal birth registration by simplifying evidentiary requirements and administrative procedures necessary to complete registration of birth;
- In light of the specific obstacles that Roma Ashkali, Egyptians and other marginalized groups face in meeting the evidentiary requirements of birth registration and personal documentation;
- Facilitate the acquisition of identity documentation for those not living in their place of birth (within a State, within the region and abroad), by providing assistance through diplomatic/consular missions, *where applicable*;
- Enable registration of residence for undocumented persons, or persons living in illegal settlements;
- Reduce or minimize additional evidentiary requirements for the registration of children born to parents in common law marriage;
- Clarify and/or amend the procedure for subsequent registration of birth for persons who did not register within the deadline in a way that permits and ensures universal registration, and a mechanism for administrative appeal;
- Proactively facilitate the re-registration of birth in situations where registry records have been destroyed; and in situations of lack of internationally recognised birth certificates (readmissions);

- Harmonize birth registration procedure and practice within States, ensuring consistent application throughout the territory of a State;
- Allow for reciprocal recognition of documents issued by the Government of Serbia and the Kosovo Authorities;
- Remove administrative fees associated with birth registration and procurement of identity documentation through a fee waiver or other mechanism (if the waiver mechanism does not already exist or if it is too complex for marginalized people);
- Remove fines penalizing late registration of birth.

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