

Women, Peace, and Security and Nationality Laws in the Syrian Conflict

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ABSTRACT

The right to nationality is enshrined in the Universal Declaration of Human Rights and various international and regional human rights treaties, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the European Convention on Nationality. Nationality provides a link to a specific state, and, more importantly, it constitutes the condition sine qua non for the deployment of an array of human rights. Yet, states are unwilling to fully defer to international law the determination of the right to a nationality. This, in combination with gender-based discrimination in nationality laws, can strip individuals their right to a nationality. In the case of Syria, women cannot pass on their nationality to their children born in exile, creating a generation of stateless children. This paper analyses how the Women, Peace and Security agenda of the Security Council offers a solution to solve this problem and to challenge Syrian nationality laws. WPS provides a gender perspective and a human rights approach to conflict and post-conflict situations, including displacement. Nationality rights are only merely tackled in the WPS resolutions. Nonetheless, WPS is a strong tool to address the issue of statelessness created by the intersection of gender discriminatory laws, displacement, and an incomplete human rights framework.

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INTRODUCTION

“As a woman, I have no country. As a woman I want no country.
As a woman my country is the whole world.”²

The Syrian conflict has recently passed its seventh year. After several rounds of peace negotiations, it has been impossible to reach an agreement, intensifying the scepticism as to how to solve this conflict in the shortcoming future. This conflict has forced over 5.6 million people to flee the country and seek refuge, mostly in neighbouring states.³ It is estimated that around 6.6 million Syrians are internally displaced,⁴ making Syria both the country with the largest internally displaced population in the world⁵ and the principal country emitting refugees.⁶ The massive exodus of Syrians has exacerbated the creation of statelessness. The intersection between gender discriminatory Syrian nationality laws that do not grant equal rights to men and women in transferring their nationality to their children and massive international displacement is creating a generation of stateless children born in exile.⁷ This poses additional problems to the conflict that must be addressed in a pertinent peace agreement.

Since 2011, over 300,000 Syrian children have been born in exile.⁸ Due to the high casualty rate and forcible separation, the UN estimates that around a

² Virginia Woolf, *Three Guineas* (Blackwell Publishing 2001) 99.

³ UNHCR, ‘Syria Emergency’ <<http://www.unhcr.org/uk/syria-emergency.html>> accessed 30 December 2018.

⁴ *ibid.*

⁵ UNHCR, ‘Syria. Internally Displaced People’ <<http://www.unhcr.org/sy/29-internally-displaced-people.html>> accessed 30 December 2018.

⁶ UNHCR, ‘Figures at a Glance’ <<http://www.unhcr.org/figures-at-a-glance.html>> accessed 30 December 2018.

⁷ Louise Osborne and Ruby Russell, ‘Refugee crisis creates ‘stateless generation’ of children in limbo’ *The Guardian* (Berlin and Antakya, 27 December 2015) <<https://www.theguardian.com/world/2015/dec/27/refugee-crisis-creating-stateless-generation-children-experts-warn>> accessed 15 June 2017.

⁸ Zahra Albarazi and Laura van Waas, ‘Understanding statelessness in the Syria refugee context’ (2016) Norwegian Refugee Council <<http://www.syrianationality.org/pdf/report.pdf>> accessed 30 December 2018.

quarter of Syrian refugees are female-headed households.⁹ Discriminatory gender nationality laws exacerbate the creation of statelessness, especially when taken in conjunction with the existing difficulties in registering the birth of children in host countries; the lack of marriage certificates that some countries require for determining the identity of the child's legal father or, more generally, the difficulty in documenting the connection of a child with a Syrian father.¹⁰

The existing human rights framework seems to be unable to adequately solve this problem. Although there are two Conventions on Statelessness, and various international and regional treaties that provide for the right to nationality, states are unwilling to fully defer the determination of peoples' nationality to international law. There is a recognition of the human right to a nationality, but not to any nationality in particular. There is an obligation to avoid statelessness, but few guidelines for its fulfilment. There is the principle of gender equality, but it is easily avoided through reservations. The new generation of Syrian stateless children are enclosed in this limbo. The United Nations High Commissioner for Refugees (UNHCR) has clearly stated that '[e]nsuring gender equality in nationality laws can mitigate the risk of statelessness'.¹¹ The reforms to incorporate gender equality can often be achieved merely through small changes to the formulation of the laws.¹² However, political will is needed in order to adequately address this problem. For this reason, it is paramount to turn to other frameworks.

The Women, Peace and Security (WPS) agenda of the UN Security Council (UNSC) provides a promising opportunity to address the lack of political will and to challenge Syrian nationality laws. WPS provides a platform to include women's issues in peace and security. With regards to peace-building, it calls attention to women's oppression and marginalisation and includes 'gender-aware

⁹ Radhika Coomaraswamy, 'Preventing Conflict, Transforming Justice, Securing Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325' (*UN Women* 2015) 84 <[http://www.peacewomen.org/sites/default/files/UNW-GLOBAL-STUDY-1325-2015%20\(1\).pdf](http://www.peacewomen.org/sites/default/files/UNW-GLOBAL-STUDY-1325-2015%20(1).pdf)> accessed 20 January 2017.

¹⁰ Albarazi and van Waas (n 8) 7.

¹¹ UNHCR, 'Background Note on Gender Equality, Nationality Laws and Statelessness' (2016) <<http://www.refworld.org/docid/56de83ca4.html>> accessed 10 June 2017.

¹² *ibid.*

and women-empowering political, social, economic and human rights'.¹³ It also encourages the promotion of equality, justice and human rights to achieve a sustainable peace.¹⁴

Therefore, this paper seeks to address the current problem of statelessness caused by gender discriminatory nationality laws through the lens of the WPS agenda. I argue that an adequate implementation of this agenda calls for the inclusion of a clause in a pertinent peace agreement compelling Syria to modify its current nationality laws. By supporting this, the international community will meet its international obligation of reducing statelessness, while, at the same time, fulfilling the goals of the WPS. In Part II, this paper focuses on the philosophical and moral aspects of the right to a nationality. In Part III, this contribution analyses the legal framework of statelessness and the right to a nationality. Finally, in Part IV, this paper examines how the WPS agenda can contribute to advance Syrian women's right to pass their nationality to their children by advocating for the inclusion of this right in the forthcoming Syrian peace agreement.

II. THE PARADOX OF HUMAN RIGHTS

The fundamental premise underlying human rights law is that human rights apply universally to every individual, without distinction of any kind. Nationality constitutes one of the non-discriminatory grounds enumerated in Article 2 of the Universal Declaration of Human Rights (UDHR).¹⁵ Yet, the legal bound to a specific state is still conceived as the essential prerequisite for an effective enjoyment and protection of the full range of human rights.¹⁶ Nationality is thus a 'gateway to other rights'.¹⁷ Ironically, nationality also serves as a means of exclusion from these 'universal' human rights. Aliens or non-citizens are not entitled to the same rights as nationals. Despite the tendency towards the

¹³ Susan McKay, 'Women, Human Security, and Peace-building: A Feminist Analysis' in Shinoda Hideaki and How-Won Jeong (eds), *Conflict and Human Security: A Search for New Approaches of Peace Building* (Hiroshima University-IPSHU 2004) 167.

¹⁴ *ibid.*

¹⁵ Universal Declaration of Human Rights, UNGA res 217A (III), 10 Dec 1948.

¹⁶ Mirna Adjami and Julia Harrington, 'The Scope and Content of Article 15 of the Universal Declaration of Human Rights' (2008) 27(3) *Refugee Survey Quarterly* 93, 94.

¹⁷ Matthew Gibney, 'Statelessness and the right to citizenship' (2009) 32 *Forced Migration Review* 50.

‘denationalisation’ of human rights, aliens are still considered second-class individuals who do not have the full capability of enjoying the same rights and freedoms as nationals.

The current dependence on nationality

Hannah Arendt, in *The Origins of Totalitarianism*, wrote about the plights of the stateless population, describing them as ‘*rightless*’, following the mass denaturalisations which took place in the inter-war period and the Nazi era. Human rights, allegedly inalienable, were stripped from these people at the same moment as their nationality was taken away from them.¹⁸ She criticised the inconsistency between the inalienable nature of human rights and, at the same time, their dependency upon a person having a link with a community.¹⁹ The paradox involved in the loss of human rights is that:

such loss coincides with the instant when a person becomes a human being in general – without a profession, without a citizenship, without an opinion, without a deed by which to identify and specify himself – and different in general, representing nothing by his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance.²⁰

In essence, human rights ‘are held and protected by virtue of membership to a political community’.²¹ Therefore, the subject of the rights becomes the national or the citizen rather than the human and leaves in an extremely vulnerable situation those who lack a link with a sovereign state: they are *rightless*. This inconsistency is grounded in the fact that the human rights framework has determined the state as the community where human rights are to be enjoyed and protected, making human rights dependent on, rather than independent from, the government.²² As a consequence, Arendt concluded on the existence of a ‘right

¹⁸ Hannah Arendt, *The Origins of Totalitarianism* (Harcourt Brace Jovanich College Pub 1973) 295-296.

¹⁹ *ibid* 299.

²⁰ *ibid* 302.

²¹ Alison Kesby, *The Right to Have Rights: Citizenship, Humanity and International Law* (OUP 2012) 90.

²² *ibid* 55.

to have rights' (to live, in the framework of a community) and a right to belong to some kind of organised community.²³ She compared the deprivation of nationality with the expulsion of that person from humanity. The loss of nationality entailed, in all instances, the loss of human rights and, conversely, the fact that human rights could only be achieved through the restoration of or the establishment of nationality rights.²⁴

This criticism is paramount to understanding the contradictions in the human rights framework created by the principle of universality and the protection of the territorial sovereignty of states.²⁵ Arendt considered that the morality underpinning the obligations that humans owe to each other is the obligation not to deny membership to a community.²⁶ Yet, this is incompatible with the idea of a nation-state and their sovereignty to determine the members belonging to its community. For this reason, international law has always been very cautious of intervening in issues of citizenship and the ways in which states determine the boundaries of their membership.²⁷

On another note, Benhabib highlights that the same act of inclusion will always generate exclusion.²⁸ The systems of nation-states will always carry the injustice of domestic exclusion and aggression of the foreigner.²⁹ She considers that it is not possible to get around this paradox of membership. Human rights are thus intrinsically exclusive due to their dependency on a nation. Arendt tried to resolve this problem by proposing the idea of a civic and not an ethnic membership. In contemporary terms, this would mean a broader acceptance of *jus soli* as a means for the acquisition of nationality.³⁰

The influence that national borders have in securing rights, while at the same time same time excluding people from those rights, has led some scholars to reflect

²³ Arendt (n 18) 296.

²⁴ *ibid* 299.

²⁵ Seyla Benhabib, *Los Derechos de los Otros. Extranjeros, Residentes y Ciudadanos* (Gedisa 2004) 19-20.

²⁶ *ibid* 50-51.

²⁷ Peter Spiro, 'A New International Law of Citizenship' (2011) 105 *American Journal of International Law* 694.

²⁸ Benhabib (n 25) 57.

²⁹ *ibid* 53.

³⁰ *ibid* 52-53.

upon them and advocate for a world of open borders. For instance, Gibney notes that nationality does not always secure people the protection of their rights: the country into which a person is born into citizenship is sometimes almost as important as having citizenship. For this reason, he calls to imagine a world without borders.³¹ Nonetheless, others, such as Arendt and Benhabib are more sceptical on the possibility of a global government.³² The paradox between universal human rights and national sovereignty seems irreconcilable but, at the same time, the eradication of borders is not conceived as a genuine solution.

Towards the denationalisation of human rights?

In the ensuing years, Arendt's concept of the 'right to have rights' has been framed in terms of the right to a nationality.³³ The context within which she wrote has significantly changed, with the development of international human rights laws and the widening of rights to non-nationals. International human rights law has changed the position of the individual in international law and, with the inclusion of the right to a nationality in the UDHR, the idea of the power to determine nationality as being a state's absolute right has shifted. Similarly, globalisation and supranational institutions have created an international project that has influenced the traditional concepts of nationality.³⁴ For instance, the European Union (EU) constitutes an example of 'post-national citizenship', where European citizenship is no longer circumscribed to a nation-state but is defined by its transnational character.³⁵ EU citizenship blurs or transcends nationality, although it is limited to EU nationals and does not apply to non-EU residents, which consequently reinforces the logic of nationality as an allocative principle.³⁶ As Rubenstein concludes, 'in the post-national world, nationality maintains its relevance but the (...) superiority of nationality (...) should be and is being challenged'.³⁷

³¹ Mathew Gibney, 'Statelessness and Citizenship in Ethical and Political Perspective' in Alice Edwards and Laura van Waas (eds), *Nationality and Statelessness under International Law* (CUP 2014).

³² Benhabib (n 25) 53, 156.

³³ Kesby (n 21) 40.

³⁴ Saskia Sassen, 'Towards Post-National and Denationalized Citizenship' in Egin Isin and Bryan Turner (eds) *Handbook of Citizenship Studies* (SAGE 2002).

³⁵ *ibid* 282.

³⁶ Gerald Neuman, 'The resilience of Nationality' (2007) *American Society of International Law* 97.

³⁷ Kim Rubenstein, 'Rethinking Nationality in International Law' (2007) *American Society of International Law* 99, 102.

The changes to the idea of citizenship have been paired with the denationalisation of human rights. This trend was underscored by Judge Cançado Trindade in a separate opinion in the case *Yean and Bosico v Dominican Republic*, where he noted that:

with the passage of time, it became evident that the nationality regime was not always sufficient to provide protection under any of stateless persons). Throughout the twentieth century and to date, international human rights law has sought to remedy this deficiency or vacuum, by denationalising the protection (and thus including every individual, even stateless persons).³⁸

However, the denationalisation of the protection is not yet complete.³⁹ Human rights still permit the differentiation in treatment between citizens and non-citizens. This is visible in some rights, such as the right to vote, which is limited to ‘every citizen’ in contrast to ‘every person’; or other rights associated with a nationality such as the right to leave one’s ‘own country’ or the right to reside in the territory of one’s nationality. Today, the possession of a nationality is almost always necessary for ensuring an adequate protection of human rights in the contemporary world.⁴⁰ The Committee of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has noted that ‘while human rights are to be enjoyed by everyone, regardless of nationality status, in practice nationality is frequently a prerequisite for the enjoyment of basic human rights’.⁴¹

The universality of human rights appears only once the individual has fulfilled the requirement of acquiring a nationality. Therefore, ‘[t]he national subsumes the human such that to cease to be a national is to cease to hold human

³⁸ Inter-American Court of Human Rights (IACtHR) Series C no 130 (8 Sept 2005).

³⁹ Mark Manly and Laura van Waas, ‘The Value of the Human Security Framework in Addressing Statelessness’ in Alice Edwards and Carla Ferstman (eds) *Human Security and Non-Citizens. Law, Policy and International Affairs* 67.

⁴⁰ Gibney (n 31) 62.

⁴¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), ‘General Recommendation No 32 on the Gender-related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women’, UN doc CEDAW/C/GC/32, 5 Nov 2014 para 51.

rights: the national is the subject of rights'.⁴² Nationality is still critical to ensure the full participation in society.⁴³ This makes people without a nationality, the stateless, extremely vulnerable and politically, socially and culturally marginalised.

In sum, the deployment of human rights has been linked to the existence of a nationality. The state was only responsible for ensuring and protecting its own nationals. Despite a movement towards the de-nationalization of human rights, notably through the extension of the 'universality' of human rights to protect aliens and stateless in some cases, statelessness continues to put individuals in an extremely vulnerable position. Nationality, the 'right to have rights', is still paramount. Therefore, ensuring that individuals have a nationality through legal and political actions is essential for the full enjoyment of a range of human rights.

III. THE LEGAL FRAMEWORK

Nationality as a domestic issue

Nationality, as an international law concept, is described as the link between an individual and a sovereign state through which the individual is afforded international protection by that state in relation to other sovereign states.⁴⁴ Initially, nationality was conceived as a prerogative of the state: it is the state's right to determine which citizens will be afforded its nationality. With the development of human rights law, limits have been posed to the discretion of states on this issue. Yet, it remains a fundamental bastion of state sovereignty.

In the Advisory Opinion of *Nationality Decrees in Tunis and Morocco*, the Permanent Court of International Justice determined that nationality is a domain reserved to municipal law but it 'depends upon the developments of international

⁴² Kesby (n 21) 66.

⁴³ CEDAW, 'General Recommendation No 21 on Equality in Marriage and Family Relations', UN Doc A/49/38, Thirteenth Session 1994.

⁴⁴ Beate Rudolf, Marsha Freeman and Christine Chinkin, *The UN Convention on the Elimination of all Forms of Discrimination Against Women: a Commentary* (OUP 2012) 233.

relations'.⁴⁵ Therefore, it was left open the possibility of international law imposing limits on nationality matters.⁴⁶ The International Court of Justice (ICJ), in *Nottebohm*, further reiterated this idea: 'international law leaves it to each State to lay down the rules governing the grant of its own nationality'.⁴⁷

The rise of human rights has managed to erode state's sovereignty on this issue.⁴⁸ In 1984, in the Advisory Opinion on *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, the Inter-American Court of Human Rights elaborated on the limits of state's sovereignty from a human rights perspective. It held that nationality is 'an inherent right of all human beings' and that 'despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits' and that the 'powers of the state are also circumscribed by their obligations to ensure the full protection of human rights'.⁴⁹

The UN Conventions on Statelessness

Following the mass denaturalisations and expulsions following the Second World War, states were forced to develop principles to avoid statelessness.⁵⁰ Hence, the 1954 Convention Relating to the Status of Stateless Persons⁵¹ and the 1961 Convention on the Reduction of Statelessness⁵² were created. These constitute the foundation of the international legal framework to address statelessness.⁵³

⁴⁵ Advisory Opinion [1923] PCIJ Series B No 4 [24].

⁴⁶ Anne Bayefsky (ed) *Statelessness, Human Rights and Gender. Irregular Migrant Workers from Burma in Thailand* (Koninklijke Brill NV 2005) 22.

⁴⁷ Judgment [1955] ICJ Rep 1955, 4.

⁴⁸ Bayefsky (n 46).

⁴⁹ Advisory Opinion OC-4/84, IACtHR (19 January 1984) [32].

⁵⁰ Bayefsky (n 46) 20.

⁵¹ Convention Relating to the Status of Stateless Persons (adopted 28 Sept 1954, entered into force 6 June 1960) 189 UNTS 175.

⁵² Convention on the Reduction of Stateless Persons (adopted 30 August 1961, entered into force 13 Dec 1975) 989 UNTS 175.

⁵³ Michelle Foster and Hélène Lambert, 'Statelessness as a Human Rights Issue: A Concept Whose Time Has Come' (2016) 8(4) *International Journal of Refugee Law* 564, 566.

Unfortunately, both are poorly ratified: the 1954 Convention has 89 states parties⁵⁴ and the 1961 Convention only 68.⁵⁵

The 1954 Convention's aim is to guarantee the enjoyment by stateless persons of a minimum set of civil, economic, political and cultural rights. Article 1 defines a stateless person as 'a person who is not considered as a national by any State under the operation of its law'. This definition has been recognised as part of customary international law.⁵⁶ A person fulfilling this definition is referred to as *de jure* stateless. The concept of *de facto* stateless has also emerged to describe a situation where, although a person formally holds a nationality, the nationality lacks effectiveness. However, there is no international consensus on the definition of *de facto* statelessness, nor a treaty addressing this issue.⁵⁷ Importantly, the Convention does not require state parties to grant their nationality to stateless persons, although it contains a weak provision that solely calls to facilitate 'as far as possible the naturalisation of stateless persons'.⁵⁸

The 1961 Convention addresses the principal causes of statelessness. It provides safeguards with respect to three broad contexts: a) the acquisition of an original nationality at birth, including founding (Articles 1 to 4); b) loss, deprivation or renunciation of nationality later in life (Articles 5 to 9); and c) in relation to state succession (Article 10).⁵⁹ It exemplifies the unwillingness of states to defer their sovereignty in relation to nationality matters: they solely agreed on 'reducing' statelessness, rather than 'eradicating' or 'eliminating' it. As van Waas notes, it falls short of prescribing obligations that would decisively eliminate

⁵⁴ UN Treaty Collection. 1954 Convention

<https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V3&chapter=5&Temp=mtdsg2&clang=_en> accessed 15 June 2017.

⁵⁵ UN Treaty Collection. 1961 Convention

<https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=_en> accessed 15 June 2017.

⁵⁶ International Law Commission, 'Report of the International Law Commission: Fifty-Eight Session', UN doc A/61/10, 1 Oct 2006, 48-49.

⁵⁷ Sophie Nonnenmacher and Ryszard Cholewinski, 'The nexus between statelessness and migration' in Edwards, *Nationality* (n 31) 249.

⁵⁸ 1954 Convention, art 32.

⁵⁹ Laura van Waas, 'The UN Statelessness Conventions' in Edwards, *Nationality* (n 31) 74-75.

statelessness in all circumstances.⁶⁰ In other words, it does not recognise a general right of an individual to a nationality.⁶¹

Nevertheless, it constitutes an important step as it imposes positive obligations on states to grant nationality in certain circumstances (in contrast with the negative obligations of the 1930 Convention on Certain Questions Relating to the Conflict of Nationality Law).⁶² Article 1 provides that nationality shall be granted to a person born in the state's territory who would otherwise be stateless (therefore, the obligation is only for new-borns and not for those who are already stateless). However, this obligation is immediately limited by provisos contained in the article's subparagraphs. Thus, states are allowed to determine whether the acquisition of nationality is *ex lege* or based on an application. In the latter scenario, states can further reduce their obligation by imposing the conditions (of exhaustive character) listed in Article 1(2) such as age, habitual residence, criminal conviction and that the person concerned 'has always been stateless'.

Human rights treaties

The UN Conventions on Statelessness are poorly ratified and lack adequate implementation and enforcement mechanisms.⁶³ This leaves a vast number of stateless persons unprotected in countries that have not ratified the conventions.⁶⁴ It is here where other human rights treaties step in to address these deficiencies. The principal tools to deal with statelessness in human rights law are the right to a nationality, the prohibition of discrimination, the right of registration at birth and the prohibition of arbitrary deprivation of nationality.⁶⁵ This paper only focuses on the first two tools.

⁶⁰ *ibid.*

⁶¹ Foster (n 53) 567.

⁶² Guy Goodwin-Gill, 'Convention on the Reduction of Statelessness' (UN Audio-visual Library of International Law 2011) <http://legal.un.org/avl/pdf/ha/crs/crs_e.pdf> accessed 10 June 2017.

⁶³ Foster (n 53) 567.

⁶⁴ Paul Weiss, 'The Convention Relating to the Status of Stateless Persons' (1961) 10 *International and Comparative Law Quarterly* 255, 264.

⁶⁵ Manly and van Waas (n 39) 60.

The right to a nationality

The Human Rights Council (HRC) has reiterated in numerous occasions that the right to a nationality is a fundamental right.⁶⁶ However, this assertion cannot be viewed as a statement of customary international law.⁶⁷ International human rights law does not explicitly impose a positive obligation on states to grant their nationality to stateless persons. Article 15 of the UDHR enshrines the right to a nationality. Yet it is a weak provision, as it does not ‘indicate which nationality a person may have a right to, nor which state has the obligation to grant it’.⁶⁸ The same weakness is present in other binding documents. Article 24(3) of the International Covenant on Civil and Political Rights (ICCPR) recognises the right of every child to acquire a nationality.⁶⁹ This article distances itself from the general assertion of the right to nationality of the UDHR and, ‘[d]ue to “complexities” of the issues involved’, it was circumscribed to children.⁷⁰ Article 7(1) of the Convention of the Rights of the Child (CRC) determines that children ‘shall be registered immediately after birth’ and recognises their right to acquire a nationality.⁷¹ Article 7(2) contains an important safeguard against child statelessness. Thus, these treaties articulate the right of a child to a nationality and impose a positive obligation on states to implement the provisions before the child has reached the age of majority. Read in conjunction with the obligation to register every child after birth provided by Article 24(2) CRC, it means that early conferral of nationality is expected.⁷² However, neither the ICCPR nor the CRC establish an unqualified obligation: they do not indicate which nationality a child

⁶⁶ See for instance UNHRC, ‘Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary-General’, UN doc A/HRC/25/28, 19 Dec 2013.

⁶⁷ Christine Chinkin and Karen Knop, ‘Remembering Chrystal Macmillan: Women’s Equality and Nationality in International Law’ (2000-20001) 22 Michigan Journal of International Law 523, 563.

⁶⁸ Gerard-René de Groot, ‘Children, their Right to a Nationality and Child Statelessness’ in Edwards, *Nationality* (n 31) 145.

⁶⁹ International Covenant on Civil and Political Rights (adopted 16 Dec 1966, entered into force 23 Mar 1976) 999 UNTS 171.

⁷⁰ Kesby (n 21) 48.

⁷¹ Convention on the Rights of the Child (adopted 20 Nov 1989, entered into force 2 Sept 1990) 1577 UNTS 3.

⁷² Groot (n 68) 145.

may have right to, nor do they guarantee that the nationality is acquired at birth.⁷³

There have also been regional initiatives on the law of statelessness. The American Convention on Human Rights imposes the obligation on states to grant nationality on the basis of *jus soli* to children that would otherwise be stateless.⁷⁴ The Covenant on the Rights of the Child in Islam also establishes that every child shall have his/her nationality determined from birth.⁷⁵ The African Charter on the Rights and Welfare of the Child enshrines the right of a child to a nationality and obliges states to grant nationality based on *jus soli* to children that would otherwise be stateless.⁷⁶ A similar provision is found in the European Convention on Nationality (ECN), although the granting of nationality may be conditioned by a lawful and habitual residence.⁷⁷ The ECN imposes that nationality has to be given to a child otherwise stateless within a period of five years (limiting the period of 18 years given by the 1961 Convention). Furthermore, it does not permit the denegation of nationality on the basis of some specific crimes. In conclusion, the regional conventions are stricter than the 1961 Convention, reflecting on the development of the prohibition of statelessness under international law.⁷⁸

Principle of non-discrimination

The UN Stateless Conventions do not contain a special protection with regard to discrimination based on gender or sex. Yet, international and regional human rights treaties contain the principle of non-discrimination. In the first place, Article 2 of the UDHR prohibits discrimination on the basis of sex. Read in conjunction with Article 15, it could be argued that it prohibits discrimination based on sex in nationality laws.⁷⁹ The ICCPR provides that states should ensure

⁷³ *ibid* 146.

⁷⁴ American Convention on Human Rights (adopted 22 Nov 1969, entered into force 18 July 1978) 1144 UNTS 144, art 20.

⁷⁵ Covenant on the Rights of the Child in Islam (adopted June 2005) OIC/9-IGGE/HRI/2004/Rep.Final, art 7(1).

⁷⁶ African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, into force 29 Nov 1999) OAU Doc. CAB/LEG/24.9.49, art 6(4).

⁷⁷ European Convention on Nationality (adopted 6 Nov 1997, entered into force 1 Mar 2000) ETS 166, art 6(2).

⁷⁸ Groot (n 68) 155.

⁷⁹ Chinkin and Knop (n 67) 579.

the equal enjoyment of civil and political rights to men and women (Article 3). It also establishes the principle of equality before the law, without discrimination on grounds of sex, and imposes the obligation to guarantee to every person an equal and effective protection against discrimination (Article 26). The HRC has explained that Article 26 constitutes an autonomous right to equality and it is not limited to the rights enshrined in the ICCPR.⁸⁰ It also determined that a discriminatory intention is not necessary to breach this article and that discrimination can be both direct and indirect.⁸¹ Finally, it established that equality does not always mean identical treatment.⁸² Furthermore, the provisions of the right to nationality (Articles 7 and 8), non-discrimination (Article 2) and best-interest of the child (Article 3(1)) of the CRC have to be read in conjunction in order to conclude that the child should have equal access to the nationality of his/her mother and father.⁸³

The most specific and complete treaty regarding the principle of non-discrimination on the grounds of sex is the CEDAW,⁸⁴ which complements and reinforces the international protection regimes relating to stateless.⁸⁵ It is an anti-discrimination treaty which contains a broader definition of discrimination than other treaties, covering formal equality, i.e. equality of opportunity, and equality of outcome or substantive equality, i.e. *de facto* equality.⁸⁶ Article 9 of the Convention further reinforces the principle of equality in regards to the right to a nationality.

⁸⁰ UNHRC, General Comment No 8: Article 9 (Right to Liberty and Security of Persons) UN Doc. CCPR/C/21/Rev.1/Add. 1, 21 Nov 1989.

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ Groot (n 68) 147.

⁸⁴ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 Dec 1979, entered into force 3 Sept 1981) 1249 UNTS 13.

⁸⁵ Alice Edwards, 'Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination against Women' (2009) UNHCR.

⁸⁶ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law. A Feminist Analysis* (Manchester University Press 2000) 217.

Despite CEDAW being the second most ratified international human rights treaty,⁸⁷ its practical effects have not been as revolutionary as its ideals.⁸⁸ This is due to its relatively weak language, for example with many positive obligations limited to requiring states parties to take ‘all appropriate measures’,⁸⁹ the limited authority and power of its Committee,⁹⁰ and the vast number of reservations, many of which are premised on cultural relativism.⁹¹

In sum, although it has been recognised that nationality is a human right and that statelessness is unacceptable,⁹² treaties do not impose a general obligation on states to grant nationality to stateless persons. The broad recognition of the right of a child to acquire a nationality and the right of registration at birth, provide widely accepted safeguards against statelessness at birth which complement the 1961 Convention.⁹³ Nevertheless, this obligation is weak, as treaties provide a very limited guidance on how the right has to be exercised.⁹⁴ As the HRC has explained, the right of a child to acquire a nationality:

‘does not necessarily make it an obligation for states to give their nationality to every child born in their territory. However, states are required to adopt every appropriate measure, both internally and in cooperation with other states, to ensure that every child has a nationality when he [or she] is born’.⁹⁵

The international human rights framework has managed to mould the obligations imposed by the UN Conventions on Statelessness. Firstly, it has included the prohibition of non-discrimination on the basis of sex. Secondly, it

⁸⁷ 189 states have ratified it, only behind the CRC.

⁸⁸ Julie A, Minor ‘An Analysis of Structural Weakness in the Convention of Elimination of All Forms of Discrimination against Women’ (1994) 24 Georgia Journal of International and Comparative Law 137.

⁸⁹ Charlesworth and Chinkin (n 86) 220-221.

⁹⁰ Minor (n 88) 148-150.

⁹¹ Hilary Charlesworth, ‘Two Steps Forward, One Step Back?: The Field of Women’s Human Rights’ (2014) European Human Rights Law Review 560, 564.

⁹² Manly (n 39) 61.

⁹³ *ibid.*

⁹⁴ Groot (n 68) 146.

⁹⁵ UNHRC, ‘General Comment No 17: Article 24 (Rights of the Child)’, 7 Apr 1989, para 8.

has reduced the ambiguous situations created by the 1961 Convention where children could be stateless for years, by emphasising the right of every child, from birth, to be registered and to obtain a nationality. Thirdly, regional human rights treaties have expanded the obligations of states, some of them even imposing the principle of *jus soli* to avoid statelessness, whereas others have contributed in reducing the state's discretion permitted in the 1961 Convention. Moreover, it has managed to impose limitations to the states' prerogative through the prohibition of arbitrary deprivation of nationality and the duty to avoid statelessness.⁹⁶

Nationality: androcentric?

Chinkin and Charlesworth note that human rights are androcentric,⁹⁷ and nationality laws are no exception to the rule. There are two modes of acquisition of nationality: *jus sanguinis*, i.e. where nationality is transmitted through descent, and *jus soli*, i.e. where nationality is determined by the geographical location of birth. States either follow one or a combination of both. Nationality can also be obtained through *jus domicili*, where it is granted on the basis of residence or personal ties to a state. All these forms have been criticised for perpetuating patriarchal conception of the family. The *jus sanguinis* principle was initially limited to paternal lineage based on the Roman concept of *patria potestas* (i.e. power of the father) or on the common law idea of dependent nationality. The *jus soli* principle indirectly discriminates women, as they are more likely to live in the country of their foreign husband and thus will not be able to pass their nationality to their children. Finally, *jus domicili* also indirectly discriminates women as the conditions imposed to fulfil the requirements for naturalisation often suppose a bigger hurdle for women. For instance, women are less likely to work and thus will have more difficulties in passing a language or knowledge test.⁹⁸

Sixty years ago, the majority of states did not provide equal rights to women in nationality laws.⁹⁹ This became an early concern of the feminist movement. Chinkin and Knop distinguish three generations of women's struggle

⁹⁶ Alice Edwards, 'The Meaning of Nationality in International Law in the Era of Human Rights' in Edwards, *Nationality* (n 31) 25-28.

⁹⁷ Charlesworth and Chinkin (n 86) 231.

⁹⁸ Rudolf (n 44) 238.

⁹⁹ UNHCR (n 11).

for equality in nationality law.¹⁰⁰ The first generation achieved the modification of the principle of dependent nationality which virtually all countries had. This principle defended the idea that a whole family unit should have the same nationality and, following the patriarchal understanding of the family, women, upon marriage, would automatically acquire the nationality of their husbands.¹⁰¹ The fight to eradicate this is crystallised in Article 9(1) CEDAW.

The second-generation fought for the right of women to pass their nationality to their children, which is now prescribed by article 9(2) CEDAW and implied in the CRC.¹⁰² The third generation is derived from the consequences of the elimination of dependent nationality, which left the family unit less legally secure. This contributed to the creation of statelessness when nationality laws conflicted and also rendered the non-national spouse without the entitlement and benefits that are traditionally attached to nationality.¹⁰³ For this reason, Chinkin and Knop consider that it is paramount that either national laws extend the protection to non-nationals or permit the acquisition of dual nationality.¹⁰⁴

The CEDAW has had a tremendous impact on nationality laws, yet the high number of reservations testifies that some aspects of patriarchy still persist and, moreover, states without reservations frequently have discriminatory laws.¹⁰⁵ The HRC is also pressuring states to implement their nationality laws in accordance with the principle of gender equality, ‘with a view to preventing and reducing statelessness’¹⁰⁶ and to reform nationality laws that do not permit women to pass their nationality to their children.¹⁰⁷ Finally, the UNHCR has clearly stated that ‘[e]nsuring gender equality in nationality laws can mitigate the risk of statelessness’.¹⁰⁸ However, today, over 60 countries do not allow women

¹⁰⁰ Chinkin and Knop (n 67).

¹⁰¹ *ibid* 544-546.

¹⁰² *ibid* 546.

¹⁰³ *ibid* 550-556.

¹⁰⁴ *ibid*.

¹⁰⁵ Rudolf (n 44) 127.

¹⁰⁶ UNHRC, ‘Resolution 32/7: The Right to a Nationality: Women’s Equal Nationality Rights in Law and in Practice’ UN doc A/HRC/32/L.12, 18 July 2016 para 3.

¹⁰⁷ *ibid* para 5.

¹⁰⁸ UNHCR (n 11).

to acquire, change or retain their nationality equally with men¹⁰⁹ and 27 countries do not grant equality between men and women relating to the conferral of nationality to their children.¹¹⁰

Syrian nationality law

The 2012 Syrian Constitution enshrines the principle of non-discrimination on the grounds of sex.¹¹¹ The acquisition of nationality in Syria is regulated in the Syrian Nationality Law Legislative Decree No. 276 of 1969. Under Article 3 (A) a child born to a Syrian man acquires *ipso facto* the nationality, whether he or she is born in Syria or abroad. It provides some safeguards in order to prevent statelessness, including the principle of *jus soli*, or by enabling Syrian Arab mothers to pass their nationality to their child born in Syria, when the relationship with the child's father has not been established (Article 3).

These exceptions are rarely enforced¹¹² and fail to mitigate statelessness when the child of a Syrian mother, whose linkage with a father has not been determined, is born abroad. Moreover, the gender discrimination in the law is also present in Article 8 which denies Syrian women the right to transfer their nationality to their foreign spouse on an equal basis as Syrian men.

Syria is not a party to the UN Conventions on Statelessness. However, it is a party to various international and regional treaties that recognise the right to a nationality and the principle of non-discrimination: CRC; ICCPR; the Arab Charter on Human Rights and the Covenant on the Rights of the Child in Islam. It is also a party to CEDAW, although it has a specific reservation on Article 9.¹¹³

¹⁰⁹ UNHCR, 'Ending Gender Discrimination in Nationality Laws' (18 June 2015) <<http://www.unhcr.org/news/press/2014/6/53a15cc56/ending-gender-discrimination-nationality-laws.html>> accessed 15 June 2017.

¹¹⁰ UNHCR, 'Background' (n 11). These countries are: Bahamas, Bahrain, Barbados, Brunei Darussalam, Burundi, Iran, Iraq, Jordan, Kiribati, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Sierra Leone, Somalia, Sudan, Swaziland, Syria, Togo and United Arab Emirates.

¹¹¹ Art 33(3).

¹¹² Institute on Statelessness and Inclusion and the Global Campaign for Equal Nationality Rights, 'Submission to the Human Rights Council at the 26th Session UPR, Syrian Arab Republic', (2016) para 17.

¹¹³ UN Women, 'Declarations, Reservations and Objections to CEDAW' <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> 18 June 2017.

The current status of Syrian nationality law thus clearly contradicts the obligations enshrined in all these treaties.

In sum, there is no international obligation for states to give their nationality to any children born in their territory. The determination of which individuals are granted nationality of a given state is still considered to be domestic issue. The emergence of human rights has set some boundaries to this discretion of states, namely by enshrining the right to a nationality and through the principle of non-discrimination. Therefore, Syrian children born in exile need to have a Syrian nationality, as it is their strongest, if not only, claim to one. Unfortunately, Syria's reservation to CEDAW permits for an exception to the principle of gender equality in nationality laws. The human rights framework is unable to adequately address the new generation of stateless children born in exile. Thus, there is a need to resort to other instruments, such as the WPS agenda to tackle this.

IV. THE POLITICAL FRAMEWORK

Peace and security: general ideas

Although international human rights law provides tools for preventing statelessness, little progress has been made. This is due to problems in the implementation and enforcement; the low number of ratifications of the UN Conventions on Statelessness and the fact that very little guidance and principles are given to assign responsibility to a particular state to grant nationality to an individual.¹¹⁴ These problems are exacerbated in relation to women's human rights, as it is hard to pressure states to withdraw from their reservations, notably when they use the concept of 'culture' as a shield. Thus, Manly and van Waas propose turning to the human security framework to complement human rights law and fulfil its gaps.¹¹⁵ The human security framework constitutes an added value to human rights law and will provide the political will that is needed at the international level to solve statelessness.¹¹⁶ Nonetheless, in the case of the Syrian

¹¹⁴ Adjam (n 16) 104.

¹¹⁵ Manly (n 38).

¹¹⁶ *ibid.*

conflict, WPS could offer a more pertinent framework to create political will. While human security and WPS overlap in their focus on security from the perspective of the people, the former does not pay enough attention to gender.¹¹⁷ The gendered approach of WPS makes it the best framework to deal with the consequences of conflict-induced displacement and pre-existing gender discriminatory laws.

The notion of security has changed dramatically since the end of the Cold War. Its traditional concept was state-centred, and its goal was to protect state's national interest. This perception of security has been left behind in favour of the notion of human security. The latter is people-centred and is linked to human development.¹¹⁸ It highlights the need to uphold human rights and respect human dignity.¹¹⁹ Similarly, peace is no longer conceived as the 'absence of violence', but rather implies 'an inclusive political process, a commitment to human rights in the post-war period and an attempt to deal with issues of justice and reconciliation'.¹²⁰ Based on the principles of justice, inclusivity and the universality of human rights, peace must include women's human rights.

Feminist discourse has also managed to find a niche into these concepts due to the transformation in the global security environment.¹²¹ Since the 1990s, feminist scholars such as Tickner and Enloe have criticised the prevailing realist discourse in international relations, denounced the absence of women in this area and drew attention to how security, militarism and conflict impacted men and women differently.¹²² Thus, feminist security theories appeared. These are built on the recognition of the effects of the existing structural violence on women; on the awareness of the connection between women's everyday experience and

¹¹⁷ Annick Wibben, 'The search for lasting peace: Critical perspectives on gender-responsive human security' (2015) 23(2) *Gender and Development* 385.

¹¹⁸ Anuradha Chenoy, 'A plea for endangering human security' (2005) 42(2) *International Studies* 167, 174.

¹¹⁹ Commission of Human Security, *Human Security Now* (New York, 2003) 5.

¹²⁰ Coomaraswamy (n 9) 24.

¹²¹ Susan Willet, 'Introduction: Security Council Resolution 1325: Assessing the Impact on Women, Peace and Security' (2010) 17(2) *International Peacekeeping* 142,146.

¹²² *ibid* 144.

security and on a special focus on inequality and emancipation.¹²³ Some of these feminist ideas have been incorporated into the WPS agenda: a revolutionary agenda that is transforming the ways of understanding how peace and security are conceived, protected and enforced.¹²⁴ For all these developments, women are no longer invisible.

WPS

On October 2000, the UNSC unanimously adopted a ground-breaking resolution: UNSCR 1325.¹²⁵ After tremendous efforts of the civil society, women and girls' issues and their human rights finally managed to permeate the walls of the SC. Until that moment, the SC had only dealt superficially with women, who were categorised as a vulnerable group or as victims. This resolution acknowledges the idea of women's agency¹²⁶ and comprises two main themes: a) gender mainstreaming in the areas of peace and security, traditionally dominated by a male perspective and b) ensuring a gender balance, through women's participation, at all processes and decision-making levels of peace-building.¹²⁷ UNSCR 1325 issues women's rights and empowerment language in the context of peace-building.¹²⁸ Furthermore, it calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective including '[t]he special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction' and 'measures that ensure the protection of and respect for human rights of women and girls'.¹²⁹

¹²³ Eric Blanchard, 'Gender, international relations and development of feminist security theory' (2003) 28(4) *Journal of Women in Culture and Society* 1289, 1298.

¹²⁴ Carol Cohn, Helen Kinsella and Sheri Gibbins, 'Women, Peace and Security Resolution 1325' (2004) 6(1) *International Feminist Journal of Politics*, 130.

¹²⁵ UN Security Council Resolution (UNSCR) 1325, UN doc S/RES/1325, 31 Oct 2000.

¹²⁶ Torunn Tryggestad, 'Trick or treat? The UN and implementation of Security Council Resolution 1315 on Women, Peace and Security' (2009) 15(4) *Global Governance* 539, 540.

¹²⁷ Hilary Charlesworth and Christine Chinkin, 'Building Women into Peace: the International Legal Framework' (2006) 27(5) *Third World Quarterly* 937, 939.

¹²⁸ Hilary Charlesworth, 'The Women Question in International Law' (2011) 1 *Asian Journal of International Law* 33, 37.

¹²⁹ UNSCR 1325 (n 125) para 8.

UNSCR 1325 is followed by seven other resolutions¹³⁰ that consolidate the four pillars of the agenda: participation, protection, prevention, and relief (peace-building) and recovery.¹³¹ WPS is essentially a human rights mandate, rooted in the principles of gender equality and non-discrimination of the CEDAW.¹³² Hence, it reaffirms the need to implement international humanitarian and human rights laws which protect women and girls during and after armed conflict. The main focus of these resolutions is on the protection of women from violence in the conflict area (specially from sexual violence)¹³³ and on participation.¹³⁴ While gender-based violence is notably the most visible aspect in a conflict (and has thus had an ‘over-focus’ in WPS), other situations also exacerbate women’s vulnerability. For this reason, the Committee of the CEDAW has underscored that an adequate implementation of WPS must cover all rights enshrined in the Convention.¹³⁵ One of the rights that is protected in the CEDAW is the right of women to pass their nationality to their children on an equal basis with men (Article 9(2)). Thus, this right must also be promoted during times of conflict and post-conflict.

The impact of war on women is compounded by pre-existing gender inequalities and discrimination.¹³⁶ For this reason, it is essential to analyse the background and local context in order to achieve an adequate peace-agreement. Women’s experience during a conflict is likely to influence their post-conflict needs and priorities.¹³⁷ Moreover, attention should be given to intersectional

¹³⁰ UNSCR 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013) and 2242 (2015).

¹³¹ Coomaraswamy (n 9) 28.

¹³² Melissa Labonte and Gaynel Curry, ‘Women, Peace and Security: Are we there yet?’ (2016) 22 *Global Governance* 311, 312.

¹³³ See UNSCR 1820 (2008), 1888 (2009), 1960 (2010) and 2106 (2013).

¹³⁴ See UNSCR 1325 (2000), 1889 (2009) and 2122 (2013).

¹³⁵ CEDAW, ‘General Recommendation No 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations’ UN doc CEDAW/C/GC/30, 1 Nov 2013, para 25.

¹³⁶ Coomaraswamy (n 9) 68.

¹³⁷ Christine Chinkin, ‘Peace Agreements as a Mean for Promoting Gender Equality and Ensuring Participation of Women’ (2003) UN Division for the Advancement of Women 9 <<http://www.un.org/womenwatch/daw/egm/peace2003/reports/BPChinkin.PDF>> accessed 17 June 2017.

discrimination.¹³⁸ UNSCR 1889 urges states to guarantee gender mainstreaming in peace-building processes; to ensure that women's empowerment is taken into account and, in consultation with the civil society, to detail women's needs and priorities.¹³⁹ The contemporary understanding of peace and the conception of WPS as a human rights mandate implies that ensuring a non-violent and a physically secure environment for women in a post-conflict setting is not enough. In that way, UNSCR 1889 calls for the inclusion of better socio-economic conditions in post-conflict settings.¹⁴⁰ Nonetheless, a stronger emphasis should also be put on other rights that go beyond the traditional idea of security but that are needed for a sustainable peace, such as nationality rights.

The issue of statelessness and citizenship laws has been mentioned as aggravating the situation of women and girls in conflict. UNSCR 2122 (2013) provides a greater emphasis on encouraging relief and recovery, and expresses its concern:

‘at women's exacerbated vulnerability in armed conflict and post-conflict situations particularly in relation to forced displacement as a result of unequal citizenship rights, gender-biased application of asylum laws, and obstacles to registering and accessing identity documents which occur in many situations’¹⁴¹.

Following this resolution, the SC reiterated that statelessness can arise when women's experience in the conflict intersects with discriminatory nationality laws, such as the inability to pass on their nationality to their children.¹⁴² Similarly, the former Secretary General of the United Nations, Ban Ki-moon, emphasised the need to eliminate statelessness and underscored that nationality laws that do not grant women the ability to pass their nationality to their children cause

¹³⁸ In the Syrian conflict, special attention has to be given to Kurdish women.

¹³⁹ UNSCR 1889, UN doc S/RES/1889, 5 Oct 2009, paras 8-10.

¹⁴⁰ *ibid* para 10.

¹⁴¹ UNSCR 2122, UN doc S/RES/2122, 18 October 2013, Preamble.

¹⁴² An issue reiterated during the UNSC Open Debate on WPS: ‘Displaced Women and Girls: Leaders and Survivors’, 7289th session, UN doc S/PV.7289, 28 Oct 2014 and see UNSC, ‘Letter from the Permanent Representative of Argentina to the UN addressed to the SG’, UN doc S/2014/731 10 Oct 2014.

statelessness, ‘a problem that has an impact on at least 10 million people worldwide’¹⁴³. He concluded that the key action for avoiding statelessness is ‘the removal of nationality laws that directly or indirectly discriminate against women and girls’.¹⁴⁴ Finally, in the last Open Debate of the WPS, the Global Campaign for Equal Nationality Rights¹⁴⁵ and a NGO coalition called on states to provide an update of the actions taken to reform gender discriminatory nationality laws, as a means of addressing humanitarian crises through a gender lens.¹⁴⁶

WPS as an advocacy tool for changing the law

The Syrian peace agreement will, hopefully, cover the issue of building conditions for the safe and voluntary return of refugees.¹⁴⁷ Amongst these refugees, the stateless need particular attention due to the devastating consequences that the conflict has had on them. Recent post-conflict periods have provided women with new platforms and opportunities to change societies.¹⁴⁸ The WPS can thus be used as a tool to advocate for this change, based on the model of gender equality enshrined in CEDAW.¹⁴⁹ Coomaraswamy has recalled that ‘to fully realize the human rights obligations of the WPS agenda, all intergovernmental bodies and human rights mechanisms must act in synergy to protect and promote women’s and girls’ rights at all times, including in conflict and post-conflict situations’.¹⁵⁰ Therefore, all actors involved should ensure that ‘the women question’ is being asked in order to ensure an adequate implementation of the WPS.¹⁵¹

¹⁴³UNCS, ‘Report of the Secretary-General on Women, Peace and Security’ UN doc S/2015/716, 16 Sept 2015, para 46.

¹⁴⁴ *ibid.*

¹⁴⁵ Composed by Equality Now, Equal Rights Trust, the Institution on Statelessness and Inclusion, Women’s Refugee Commission and UNHCR.

¹⁴⁶ NGO Working Group on WPS, ‘Open Letter to Permanent Representatives to the UN: Recommendations on the Security Council Open Debate’ (2016) <<http://equalnationalityrights.org/images/zdocs/pdf-CSO-OpenLetter-WPS-OpenDebate-Oct2016.pdf>> accessed 18 July 2017.

¹⁴⁷ UNSCR 2254, UN doc S/RES/2254, 18 Dec 2015 para 14.

¹⁴⁸Julie Arostegui, ‘Gender, Conflict and Peace-Building: how Conflict can Catalyse Positive Change for Women’ (2013) 21(3) Gender and Development 533.

¹⁴⁹ Coomaraswamy (n 9).

¹⁵⁰ *ibid.* 350.

¹⁵¹ Chinkin (n 137) 8.

Henceforth, the WPS can serve as a tool for achieving transformational outcomes.¹⁵² The Syrian peace talks present a significant opportunity to modify existing gender discriminatory nationality laws. It will further need to provide a remedy for currently stateless children, through their nationalisation. By advocating the inclusion in the peace-agreement of a clause that modifies the current citizenship laws, the international community will fulfil its obligation of reducing stateless (which has to be done through international cooperation) whilst, at the same time, complying with the WPS mandate.

Why Syrian nationality?

International law recognises the right to a nationality but provides little guidance on what nationality a person should have. There is no widely ratified international treaty determining the criteria to grant nationality, thus *Nottebohm* is the only case that provides some guidance.¹⁵³ There, the ICJ established the principle of ‘genuine and effective connection’ which is emerging as a principle guiding state practice in granting nationality.¹⁵⁴ This doctrine determines that there should be a substantial connection or genuine link with the state conferring nationality.¹⁵⁵ This should be determined on a factual basis, such as the habitual residence, the centre of the person’s interests, family ties of attachment to a given country.¹⁵⁶ This idea is also contained in the principles of *jus soli* and *jus sanguinis* as being born on a certain territory or from a certain lineage are conceived as reasons that amount to a sufficient connection with a state to acquire the nationality.¹⁵⁷ It is clear that providing nationality of the host state on the basis of *jus soli* will superficially alleviate the problem of statelessness of Syrian children, yet there is no meaningful connection between them and the state: their family has Syrian nationality, and their home is Syria.

¹⁵² Niamh Reilly, ‘Seeking Gender Justice in Post-conflict Transitions: Towards a Transformative Women’s Human Rights Approach’ (2007) 2(3) *International Journal of Law in Context* 155.

¹⁵³ *Adjam* (n 16) 106.

¹⁵⁴ *ibid.*

¹⁵⁵ David Weissbrodt and Clay Collins, ‘The human rights of stateless persons’ (2006) 28 *Human Rights Quarterly* 245, 276.

¹⁵⁶ *Nottebohm* (n 47) para 22.

¹⁵⁷ Caia Vliet, Ernts Ballo and María José Recalde Vela, ‘Solving Statelessness: Interpreting the Right to Nationality’ (2017) *Netherlands Quarterly of Human Rights* 1, 8.

This same conclusion is reached in case a rights-based approach is followed. Vliets and other analyse the meaning of the right to enter to 'one's own country' in Article 12 ICCPR and conclude that this concept is defined in relation to the special ties of a person to a country.¹⁵⁸ Hence, the most appropriate nationality is the one of the persons' own country.¹⁵⁹ Again, this approach leads to the same conclusion as the principle set forth in *Nottebohm*: the most viable solution for the stateless children is not to give them any nationality, but the one of their 'own country': Syria.

WPS: towards a transformation

The WPS agenda is a promising mechanism for ensuring that a gender perspective is added to peace agreements and that existing structural inequalities are addressed. Thus, it links societal transformation to gender-specific human rights issues. Peace agreements drafted in accordance with the WPS must be designed in such a way that they contain provisions that reflect the particular status and situation of women, always in compliance with CEDAW. This means that they should include gender-neutral as well as gender-specific provisions (directed explicitly to women).

The agenda provides an ideal platform for the international community and different concerned actors to advocate and pressure Syria to modify its nationality law in accordance with the principle of gender equality. In doing so, the international community will comply with two main obligations.

First, it will fulfil its obligation to reduce and avoid future cases of statelessness. Stateless is increasingly framed in terms of security and the Commission of Human Security has even described it as a potential threat to international peace and security.¹⁶⁰ Likewise, the UNHCR has highlighted the importance of addressing statelessness for promoting a successful return of refugees and for contributing to post-conflict peace building.¹⁶¹ The peace

¹⁵⁸ *ibid* 11.

¹⁵⁹ *ibid* 12.

¹⁶⁰ Commission of Human Security (n 119) 7.

¹⁶¹ UNHCR, 'Statelessness and Citizenship' in *The State of the World's Refugees – A Humanitarian Agenda*, (OUP 1997).

agreement should further include a remedy for these stateless children, such as in the form of a new retroactive nationality law or through a nationalisation process.

Second, the international community will fulfil the obligations set forth in WPS with respect to gender mainstreaming and women's rights. An adequate Syrian peace agreement will necessarily imply the modification of nationality laws: women's rights must be upheld and pre-existing inequalities should to be eradicated in order to ensure an appropriate gender approach and a durable peace. Although guaranteeing citizenship rights is not an essential part of the WPS, UNSCR 2122 has already planted the seeds towards its fulfilment. Moreover, as a human rights mandate, the WPS requires compliance with all international obligations related to nationality rights; notably, the right of women to pass their nationality to their child and the right of a child to acquire the nationality from his or her mother on an equal basis as the father. Maintaining old patriarchal societies and laws will entail a lack of implementation of WPS and a breach of the peremptory norm of non-discrimination on the ground of sex.

In advocating for such a clause, the international community will be supporting initiatives of national women's organisations and civil society. The support and promotion of local initiatives and inclusion of women's national organisations constitutes the cornerstone of the participation pillar of the WPS.¹⁶² In Syria, there is already a national initiative led by the Syrian Women's League that seeks to change the legislative *status quo*.¹⁶³ Furthermore, there is international pressure from the Global Campaign to End Discrimination in Nationality Laws, an initiative mostly-led by civil society. Thus, a further aspect of the agenda will be fulfilled.

In conclusion, women's human rights need to be upheld and promoted before, during and after conflicts. The WPS agenda has established an on-going legal basis for equal treatment through all these periods.¹⁶⁴ Despite the devastating consequences of any conflict, the transition into peace offers an extraordinary opportunity for recasting and transforming pre-existing power relations – social,

¹⁶² UNSCR 1325 (n 127) para 8; 1889 (n 141) para 9 and 2122 (n 143) para 11.

¹⁶³ See Institute (n 113) para 14.

¹⁶⁴ Bell (n 161) 5.

economic, cultural and political- especially for those that had previously been denied human rights.¹⁶⁵ Peace agreements can provide a new framework of human rights, such as in the form of a specific right, like gender equality in nationality laws. Advocating for the inclusion of a provision in the future peace agreement that obliges Syria to amend its legislation in accordance with the principle of gender equality and Article 9 of the CEDAW will not only ensure the correct application of the WPS but will also serve to avoid future cases of statelessness. If the peace agreement does not contain a clause relating to this issue, it will perpetuate the marginalisation of women from the political sphere.

CONCLUSION

The right to nationality has long been referred to as ‘the right to have rights’. Without a nationality, people become ‘rightless’ and find themselves in the no-man’s land. This carries devastating consequences as stateless are left in an extremely vulnerable situation being denied their most basic rights and protection while it also poses great difficulties in maintaining the international order.¹⁶⁶ The existence of gender discriminatory nationality laws is intrinsically linked to statelessness. In the case of the Syrian conflict, the inability of Syrian mothers to pass their nationality to their children born in exile is creating a ‘stateless generation’.

This paper has suggested that the way of solving this problem is not by giving these children any nationality, but the one with which they have a ‘genuine and effective connection’ and special ties to: the Syrian nationality. As it stands, the international human rights framework is unable to provide an adequate solution. However, the gendered dimension of this issue opens the door for addressing statelessness and nationality laws through the lens of the WPS agenda. Conceived as a human rights mandate, the WPS needs to be interpreted within the broader human rights framework, in particular the principle of gender

¹⁶⁵ Reilly (n 152) 164.

¹⁶⁶ Gibney (n 31) 53.

equality. It provides the necessary tools for advancing women's rights and gender equality in post-conflict environment.¹⁶⁷

The WPS agenda mainly focuses on the participation of women in peace processes and on their protection from sexual violence. With respect to post-conflict settings, it emphasises the need to end impunity in relation to these crimes and promote women's empowerment, mainly through socio-economic rights. Despite those being the most elaborated pillars, it is paramount not to forget the ideals behind its creation: upholding women's human rights and pacifism. The CEDAW Committee has reiterated its link with the WPS and recalled that all the rights enshrined in the CEDAW need to be upheld before, during and after conflict. Not protecting all these rights implies that the WPS is not being adequately implemented.

Nationality rights are only superficially mentioned in the WPS. However, the Syrian conflict has shown the importance of addressing them, as gender inequality in national laws has created an extremely vulnerable group of refugees – the stateless. For this reason, this paper has suggested that a specific clause conducting the abolition of gender-biased nationality laws needs to be included in the future Syrian peace agreement. In doing so, the international community will meet its obligation of reducing and avoiding statelessness and promoting gender equality in post-conflict settings, while at the same time supporting local and international initiatives of the civil society. The opportunities that this agenda presents cannot be overlooked and need to be adequately used to ensure that all laws, policies and actions that negatively affect women are challenged.

¹⁶⁷ Jacqui True, 'Women, Peace and Security in Post-conflict and Peacebuilding Contexts' (2013).

NOREF

<http://www.peacewomen.org/sites/default/files/true_noref_unscr1325_feb_2013_final_0.pdf>
accessed 18 June 2017.