

Nationality Laws and Statelessness After State Breakup: A Comparative Look at the Former SFRY and Sudan, and a Prediction for Postconflict Syria

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I. INTRODUCTION

Citizenship, and the lack thereof, is a concern for millions of people worldwide. Though taken for granted by many, a person's citizenship provides him important social and political rights. For many, citizenship affords the right to vote, the right to participate in local and national political processes, and the right to obtain identity documents.¹ Without these rights, a person is moved to the fringe of society. A person without identity documents may be barred from claiming or accessing many social and economic benefits, such as the right to education, healthcare,

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1. *Stateless People*, UNITED NATIONS HIGH COMM'R FOR REFUGEES (UNHCR), <http://www.unhcr.org/pages/49c3646c155.html> (last visited Nov. 19, 2014).

employment, marriage, a bank account, or property.² In some cases, a person may even lose the right to remain in his country.³ Without the right to vote and to participate in community and governmental functions and procedures, a person is stripped of his ability to exercise self-determination regarding his country and community. The denial of these rights subjects an individual to laws in which he had no voice, laws that may restrict his social and economic growth.⁴ The lack of participation also leaves individuals vulnerable to laws that strip him of property and fundamental rights, including freedom of movement.⁵

The effects of statelessness on the individual can be crippling. So, too, can these effects have consequences for states themselves and for the international community. In an era of increasing globalization, international business, travel, and marriage are common. The laws of one country have effects that extends beyond their borders, for example through trade or migration. Funding from international sources crosses borders for business and development purposes, including working toward the full realization of universal human rights.⁶ When groups are stateless, or become stateless, their participation in the economy is stunted,⁷ there is administrative confusion and inefficiency,⁸ and political and ethnic tensions may be fueled due to the discrimination.⁹ The loss of citizenship is acute in postconflict areas, particularly when states are dissolved and new states are formed.¹⁰ It is at this juncture that it is most

2. See, e.g., Bronwen Manby, *Citizenship Law in Africa: A Comparative Study*, OPEN SOCIETY FOUNDATIONS 1, 86-87 (2010), http://www.opensocietyfoundations.org/sites/default/files/citizenship-africa_20101118.pdf (explaining that identity documents are required in Egypt to access social services such as education and also for marriage recognition); see also Immigration & Refugee Bd. of Can., *Lebanon: Treatment of Palestinian Refugees, Including Information on Identity Documents, Mobility Rights, Property Rights, Access to Social Services, Education and Employment, and Living Conditions*, REF WORLD (Nov. 15, 2011), <http://www.refworld.org/docid/507553bd2.html> [herein-after *Treatment of Palestinian Refugees*] (noting that Palestinians without identity documents in Lebanon have restricted social rights and freedom of movement).

3. See Manby, *supra* note 2, at 27.

4. See, e.g., *Treatment of Palestinian Refugees*, *supra* note 2.

5. *Id.*

6. For example, the International Monetary Fund (IMF) and the World Bank are both agencies that lend billions of dollars to developing countries for development projects. *Factsheet: The IMF and the Millennium Development Goals*, INT'L MONETARY FUND (Apr. 2014), <https://www.imf.org/external/np/exr/facts/pdf/mdg.pdf>.

7. See, e.g., Manby, *supra* note 2, at 88.

8. See, e.g., *Report on Statelessness in South Eastern Europe*, UNHCR 1, 27 (Sept. 2011), <http://www.refworld.org/pdfid/514d71562.pdf> (discussing bureaucratic inefficiencies in registering stateless persons in the aftermath of the dissolution of the former SFRY).

9. See *Media Backgrounder: Millions Are Stateless, Living in Legal Limbo*, UNHCR, <http://www.unhcr.org/4e54ec469.html> (last visited Nov. 19, 2014).

10. *Id.*

important for the future stability of the states and for the respect for human rights that careful attention is paid to the matter of citizenship.

This Comment will discuss the international interrelation of domestic nationality laws and the attendant risks of statelessness in postdissolution and postsecession states. It will proceed in Part II with a background of statelessness: geographical areas of concern, causes, and consequences. Part III will analyze nationality laws in the domestic and international realm, discussing the context, meaning, and effect of different types of nationality laws and international conventions. Part IV will examine two case studies of nationality law: the former Socialist Federal Republic of Yugoslavia (SFRY) in its postdissolution aftermath and the Republic of Sudan (Sudan) and the Republic of South Sudan (South Sudan) postsecession. Part V will compare the effects, shortcomings, and benefits of the different approaches of the two case studies, particularly regarding the geopolitical differences of the states in each conflict, the bases each situation afforded for granting citizenship, and the level of regional and international cooperation involved in the postconflict rebuilding. Part V will then conclude with an analysis of the conflict in the Syrian Arab Republic (Syria) in the context of postconflict issues of nationality, in particular considering how the lessons of the conflicts in the former SFRY and Sudan apply.

II. STATELESSNESS: BACKGROUND

National citizenship is an uncontested right for many. It is a legal bond between an individual and a country¹¹ that confers rights and obligations.¹² Yet worldwide, millions of individuals are without such a bond.¹³ Although statelessness occurs all over the world, there are particular geographical areas of concern where statelessness affects large groups, such as parts of Africa and South Asia.¹⁴ Without that bond conferring rights and protections, stateless persons may be limited in their social, political, and economic participation and may be subjected to an increased risk of physical and sexual abuse.¹⁵ These consequences can arise from the narrow scope of varying domestic nationality laws and from various forms of discrimination and political and social upheaval.¹⁶

11. *Stateless People*, *supra* note 1.

12. *See, e.g., Citizenship Rights and Responsibilities*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities> (last visited Nov. 19, 2014).

13. *Stateless People*, *supra* note 1.

14. *Media Backgrounder: Millions Are Stateless, Living in Legal Limbo*, *supra* note 9.

15. *See infra* notes 27-32 and accompanying text.

16. *See infra* notes 33-51 and accompanying text.

Such causes inform the drafting and application of domestic nationality laws that deny citizenship.

The exact number of stateless people globally is unknown, though there are known geographical areas of concern. The United Nations High Commissioner for Refugees (UNHCR) estimates there are more than 10 million stateless people worldwide.¹⁷ However, there is an inherent difficulty in counting the number of stateless individuals because they live outside of national registration processes.¹⁸ Southeast and Central Asia, Eastern Europe, the Middle East, and parts of Africa have the highest populations of stateless people.¹⁹ For example, ethnic and gender discrimination lead to large pockets of stateless people in the Middle East and parts of Africa,²⁰ political instability and state dissolution have contributed to the high prevalence of statelessness in Eastern Europe,²¹ and low birth registration rates place millions at risk of statelessness in South Asia.²² On the other hand, Central and South America have the lowest incidences of statelessness due largely to more encompassing nationality laws.²³ Still, the consequences of statelessness extend beyond the affected regions because of increasing globalization.²⁴

There is a host of political, social, and economic consequences attached to statelessness. Without citizenship, these individuals have little legal protections and no right to vote.²⁵ They may be vulnerable to restrictions on their movement and danger to their person. For example, they may be held in detention for longer periods because they cannot prove their identity and they may not have the ability to travel freely without documentation.²⁶ Stateless people may also be more exposed to physical and sexual abuse and discrimination due to a lack of governmental protection.²⁷ Social and economic restrictions may result in limited property rights,²⁸ bars to opening a bank account, or the denial

17. *Stateless People*, *supra* note 1.

18. *Media Backgrounder: Millions Are Stateless, Living in Legal Limbo*, *supra* note 9 (quoting Mark Manly, UNHCR's chief expert on statelessness).

19. *Id.* Countries that have the largest estimates of stateless persons are Estonia, Iraq, Kenya, Latvia, Myanmar, Nepal, Syria, and Thailand. *Id.*

20. *Id.*

21. *Id.*

22. *Child Protection from Violence, Exploitation and Abuse*, UNICEF, http://www.unicef.org/protection/57929_58010.html (last updated Jan. 13, 2014).

23. *Id.*

24. *See supra* Part I.

25. *Statelessness*, U.S. DEP'T OF ST., <http://www.state.gov/j/prm/policyissues/issues/c50242.htm> (last visited Nov. 19, 2014).

26. *Media Backgrounder: Millions Are Stateless, Living in Legal Limbo*, *supra* note 9.

27. *Statelessness*, *supra* note 25.

28. *Id.*

of access to education, employment, healthcare, or housing.²⁹ Without a political voice, these obstacles are difficult to overcome. Exacerbating this problem, statelessness can be perpetuated through generations because the requirement of parental citizenship can prevent children from obtaining citizenship in many countries.³⁰

There are many causes of statelessness, such as political instability, restrictive laws and administrative obstacles, and gender and ethnic discrimination. Political causes may arise from changes in the government, state dissolution, or succession. A breakup of states, such as the former Soviet Union, or the former SFRY, can cause confusion and upheaval due to migration and displacement of individuals³¹ and the loss or destruction of national documents.³² This increases the risk of individuals who retain citizenship of former (and extinct) states without gaining citizenship of the emerging states or any other state.³³

Complex laws and administrative obstacles can also contribute to statelessness.³⁴ Failure to register births can be a problem in developing countries³⁵ where geographical, financial, and social factors result in low birth registration rates.³⁶ According to the United Nations Children's Fund (UNICEF), close to 230 million children worldwide who are under the age of five have not had their births registered.³⁷ Though this does not necessarily preclude obtaining citizenship, without proof of birth place, birth date, and parentage, the requirements for citizenship are much harder to meet, particularly in a world that is increasingly migratory.³⁸

Restrictive laws may further complicate matters, leaving a child with parents of different nationalities without the right to citizenship in either country.³⁹ For example, a child who is born outside of the territories of Syria and Tonga to a naturalized Syrian mother and Tongan father who was born outside of Tonga is not eligible for citizenship of

29. *Media Backgrounder: Millions Are Stateless, Living in Legal Limbo*, *supra* note 9.

30. *Id.*

31. *Id.*

32. *Statelessness*, *supra* note 25.

33. *Media Backgrounder: Millions Are Stateless, Living in Legal Limbo*, *supra* note 9.

34. *Id.*

35. *Id.*

36. *See generally Birth Registration: Right from the Start*, U.N. CHILD. FUND (Mar. 2002), http://www.childinfo.org/files/birthregistration_Digestenglish.pdf (discussing the causes, statistics, and consequences of unregistered births in different areas of the world).

37. *Child Protection from Violence, Exploitation and Abuse*, *supra* note 22.

38. *Media Backgrounder: Millions Are Stateless, Living in Legal Limbo*, *supra* note 9.

39. *Id.*

either Syria or Tonga.⁴⁰ Countries also have different laws for the revocation of citizenship, which may leave individuals in limbo without certainty of gaining new citizenship.⁴¹ Some countries, such as the United States, allow voluntary renunciation of citizenship without proof of new citizenship.⁴² Other countries, such as Pakistan, revoke citizenship if an individual has lived outside the country for a specified time without registration at a consulate.⁴³

Both gender and ethnic discrimination in the laws can cause statelessness.⁴⁴ Gender discrimination can be manifested by certain restrictions on mothers passing citizenship to their children. For example, in certain instances, mothers may be barred entirely from passing citizenship due to the nuances of legislative wording that do not specifically grant such passage.⁴⁵ Ethnic discrimination can manifest through laws that affect only certain ethnic groups living within the boundaries of a country, such as revocation of their citizenship,⁴⁶ limitations placed on their right to obtain citizenship, or erection of substantial barriers they must overcome in order to obtain citizenship.⁴⁷ Long-standing discrimination against marginalized groups can have lasting effects even after legislation has changed, due to prohibitive bureaucratic and financial obstacles to obtaining citizenship.⁴⁸

Identifying causes of statelessness is important to understand the social and political context of each state's situation. Still, whether the causes are political, administrative, or discriminatory, they are placed into effect by the drafting and application of each state's nationality laws. An understanding of the bases for granting citizenship domestically and the various conditions placed on those bases are necessary to fully grasp

40. See Legislative Decree No. 276 of 1969 (Syria); Nationality Act, 1988, § 2 (Tonga).

41. *Media Backgrounder: Millions Are Stateless, Living in Legal Limbo*, *supra* note 9.

42. See, e.g., *Renunciation of U.S. Nationality*, U.S. DEP'T OF ST., <http://travel.state.gov/content/travel/english/legal-considerations/us-citizenship-laws-policies/renunciation-of-citizenship.html> (last visited Nov. 19, 2014) ("Persons intending to renounce U.S. citizenship should be aware that, unless they already possess a foreign nationality, they may be rendered stateless and, thus, lack the protection of any government.").

43. See, e.g., Pakistan Citizenship Act No. 2 of 1951, § 16(4) PAK-120 (Pak.).

44. *Media Backgrounder: Millions Are Stateless, Living in Legal Limbo*, *supra* note 9.

45. This is inferred from the omission of positive language in a statute that would grant the passage of citizenship through the mother. See, e.g., Nationality Act § 2 ("The following persons shall be deemed to be Tongan subjects—(a) any person born in Tonga whose father is a Tongan; (b) any person born abroad of a Tongan father who was born in Tonga; (c) any person born out of wedlock in Tonga whose mother is a Tongan . . .").

46. See *Media Backgrounder: Millions Are Stateless, Living in Legal Limbo*, *supra* note 9 (noting that in 1980, Saddam Hussein revoked Iraqi citizenship for all Faili Kurds).

47. See *id.* (discussing, for example, the Rohingya in Myanmar or nomadic groups like the Roma or Bidoon).

48. *Id.*

the interrelated character of these laws, particularly in situations of state dissolution and secession.

III. NATIONALITY LAWS

A. *Domestic Nationality Laws*

Although there are international instruments addressing issues of nationality,⁴⁹ individual states are sovereign and have the authority to determine who becomes a citizen.⁵⁰ Domestic nationality laws determine the citizenship status of individuals who are geographically or ancestrally related to a state. As such, the root causes of statelessness discussed above (e.g., state dissolution or discrimination) are given agency through the domestic nationality laws of states. The granting of citizenship is afforded on different bases that can vary from state to state. When laws are more restrictive it is easier for individuals to be denied citizenship.

Citizenship is generally granted on one of three bases: birth (*jus soli*), descent (*jus sanguinis*), or naturalization. *Jus soli* is “[t]he rule that a child’s citizenship is determined by place of birth.”⁵¹ For example, a child born on U.S. soil has the right to become a U.S. citizen.⁵² A child may also be granted citizenship based on the parents’ citizenship, *jus sanguinis*.⁵³ The third basis is naturalization, in which individuals who wish to change citizenship go through an application process that must be approved by the state granting citizenship.⁵⁴ There are variations within these three bases that, in the global setting, create a maze of nationality laws capturing most of the global population. These classifications, however, give rise to large pockets of stateless persons or persons vulnerable to statelessness.

Jus soli comes in various levels, from unconditional to particularized application. Unconditional *jus soli* is becoming rarer. The United States⁵⁵ and twenty-nine other countries have unconditional⁵⁶ *jus soli*,

49. See *infra* Part III.B.

50. See Manby, *supra* note 2, at 21.

51. BLACK’S LAW DICTIONARY 942 (9th ed. 2009).

52. Immigration and Nationality Act of 1952, 8 U.S.C. § 301(a) (2012) (“The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof . . .”).

53. See BLACK’S LAW DICTIONARY, *supra* note 51, at 941.

54. *Id.* at 1126.

55. 8 U.S.C. § 301(a).

56. The term *unconditional*, as used here, includes countries that provide exceptions for rare occurrences such as children born of foreign diplomats and children born of tourists in transit. See, e.g., Belizean Nationality Act, 2000, ch. 161, § 5(1), (3)(a) (Belize), available at <http://www.belizelaw.org/web/lawadmin/index2.html> (select “Chapter 161” under “Chapter” drop-down menu).

meaning that a child born in the country is automatically granted citizenship.⁵⁷ However, the trend is moving towards more restrictive *jus soli* or a complete removal of *jus soli*. In recent years, economically advanced countries such as Australia, Ireland, the United Kingdom, and New Zealand have repealed their unconditional birthright citizenship laws.⁵⁸ The only countries known to retain such laws are located in the Western Hemisphere throughout North and South America.⁵⁹ The other more restrictive trend is in line with increasing awareness of the consequences of statelessness. It extends *jus soli* to children born within the territory to parents of unknown nationality, to children who are found without parents and without proof of other nationality, and/or to children who would otherwise be stateless.⁶⁰

Jus sanguinis also has conditional elements that span the range from liberal to restrictive. On the liberal side, citizenship by descent is granted no matter where the birth took place as long as one parent is a citizen of the country.⁶¹ On the restrictive side, some countries' *jus sanguinis* laws restrict citizenship by descent only to children whose fathers are citizens.⁶²

Jus soli and *jus sanguinis* are based on an inherent right of birth.⁶³ They are, in some respects, the gatekeepers to citizenship. If neither *jus soli* nor *jus sanguinis* applies to a child at birth, then there are greater obstacles to overcome in the naturalization process. This can take years without a guarantee of citizenship. During these years of limbo, an individual is left without citizenship or the protections it offers. Because of the importance of obtaining citizenship by right of birth⁶⁴ and the maze of conditions and qualifications, it is important to understand the interrelation of *jus soli* and *jus sanguinis* laws between countries and the effect they have on newborn children. The case studies in Part III

57. Jon Feere, *Birthright Citizenship in the United States: A Global Companion*, CTR. FOR IMMIGR. STUD. (Aug. 2010), <https://cis.org/sites/cis.org/files/articles/2010/birthright.pdf>.

58. *Id.*

59. *Id.*

60. See, e.g., Law on Croatian Citizenship, 1991, art. 7, *translated in Croatia: Citizenship*, LEGISLATIONLINE, <http://www.legislationline.org/topics/country/37/topic/2> (last visited Nov. 19, 2014).

61. Zákon č. 40/1993 Sb. (Czech).

62. See, e.g., Legislative Decree No. 276 of 1969 (Syria).

63. This as opposed to naturalization, which is based on an application process for citizenship separate from a claim to citizenship by some element tied to birth. BLACK'S LAW DICTIONARY, *supra* note 51, at 941-42, 1126.

64. This is not to be confused with the term *birthright citizenship*, which is another term for *jus soli*. See, e.g., *Birthright Citizenship Definition*, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/definition/american_english/birthright-citizenship (last visited Nov. 19, 2014).

provide examples of consequences when states in conflict implement restrictive nationality laws during times of political instability and population displacement, and the difficulties of substituting effective naturalization laws to smooth the transition process.

*B. International Nationality Laws*⁶⁵

The international community has recognized the importance of citizenship and the adverse effects of statelessness and has taken steps to create a global consensus to reduce and prevent statelessness. They first addressed the issues in two international conventions: the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention)⁶⁶ and the 1961 Convention on Reduction of Statelessness (1961 Convention).⁶⁷ Oversight of these conventions was placed with UNHCR, whose mandate is to prevent and reduce statelessness and protect stateless persons.⁶⁸ In response to its mandate, UNHCR has focused on raising awareness of statelessness, encouraging more states to ratify the conventions, and working with governments to prevent and reduce statelessness in their territories.⁶⁹

The 1954 Convention was initially intended as an additional protocol to an earlier convention, the 1951 Convention Relating to the Status of Refugees (1951 Convention).⁷⁰ However, after the 1951 Convention entered into force, the parties agreed that a separate instrument was needed to address the different needs of stateless persons and refugees.⁷¹ Notably, the 1954 Convention defines the term *stateless person* as “a person who is not considered a national by any State under the operation of its law.”⁷² It also provides, inter alia, for the nondiscrimination of the application of the provisions regarding the

65. There are a number of regional conventions on statelessness as well. *See, e.g.*, European Convention on Nationality, Nov. 6, 1997, C.E.T.S. No. 166; Convention on the Avoidance of Statelessness in Relation to State Succession, May 19, 2006, C.E.T.S. 200.

66. Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117 [hereinafter 1954 Convention].

67. Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175 [hereinafter 1961 Convention].

68. *Who We Help: Millions of Vulnerable People Around the World*, UNHCR, <http://www.unhcr.org/pages/49c3646c11c.html> (last visited Nov. 19, 2014).

69. *Stateless-UNHCR Actions: How UNHCR Helps the Stateless*, UNHCR, <http://www.unhcr.org/pages/49c3646c16a.html> (last visited Nov. 19, 2014).

70. Carol Batchelor, *The 1954 Convention Relating to the Status of Stateless Persons: Implementation Within the European Union Member States and Recommendations for Harmonization*, REFUGE, 2005, at 14, 34.

71. *Id.*

72. 1954 Convention, *supra* note 66, art. 1.

treatment of stateless persons,⁷³ addresses the issuance of travel documents for stateless persons,⁷⁴ and provides for facilitated streamlining of naturalization procedures for stateless persons.⁷⁵ The 1954 Convention is the “primary international instrument . . . to regulate and improve the legal status of stateless persons and to ensure to them fundamental rights and freedoms without discrimination.”⁷⁶ This convention, however, had few state parties—only sixty-five in fact—until 2011 when UNHCR began its renewed campaign to increase the number of signatories.⁷⁷

The second international convention was adopted in 1961. Disagreements were sharp as to the purpose of the 1961 Convention—whether it was to eliminate or simply reduce statelessness—as well as to the effect of such a convention on the sovereignty of nations.⁷⁸ Concerns arose because the 1961 Convention provides positive law (obligations on contracting parties) to grant citizenship in some instances to otherwise stateless individuals and to refrain from revoking citizenship if the individual would become stateless. However, some nations felt this was in direct conflict with current legislation as well as in contravention to each nation’s sovereignty. The 1961 Convention is a compromise from both sides, providing comprehensive legal guidelines for the prevention of future cases of statelessness.⁷⁹

The prevention of future statelessness is addressed in the first article of the 1961 Convention. Article 1(1) sets the general rule that “[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.”⁸⁰ Nationality will be granted by birth, by law, or by application.⁸¹ This safety net to prevent future statelessness is supported by article 1(3), filling in part of the gender-bias gap found in some *jus sanguinis* laws by providing for the possibility of a maternal passage of citizenship to a child born in wedlock if the child

73. *Id.* art. 3 (“The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.”).

74. *Id.* art. 28 (“The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory . . .”).

75. *Id.* art. 32 (“The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons.”)

76. Batchelor, *supra* note 70, at 34.

77. *UN Conventions on Statelessness: Key for Protecting the Stateless*, UNHCR, <http://www.unhcr.org/pages/4a2535c3d.html> (last visited Nov. 19, 2014).

78. Guy S. Goodwin-Gill, *Convention on the Reduction of Statelessness*, U.N. AUDIOVISUAL LIBR. INT’L LAW 1, 2-4 (2011), http://legal.un.org/avl/pdf/ha/crs/crs_e.pdf.

79. *Id.*

80. 1961 Convention, *supra* note 67, art. 1(1).

81. *Id.* art. 1(1)(a)-(b).

would otherwise be stateless.⁸² The 1961 Convention fills the gaps further through provisions for the grant of nationality to a child found within the territory of a contracting state without parents⁸³ and for the passage of citizenship of either parent should a child born be otherwise stateless.⁸⁴

However, the compromise between state sovereignty issues and the prevention of statelessness is apparent within article 1 itself. Article 1(2) allows conditions to be placed before granting citizenship based on naturalization.⁸⁵ Conditions that may be set at the state level are, *inter alia*, the minimum length of residency and the time period of application eligibility.⁸⁶ Article 1 maneuvers between the absolute assurance of the right to citizenship for all and the existence of state sovereignty over nationality.

The 1961 Convention also prevents the loss of nationality through circumstances other than by birth or descent. First, it provides that renunciation, loss, and deprivation of citizenship are contingent on acquiring new citizenship.⁸⁷ However, the contingency of acquiring new citizenship before renunciation of the old is a provision that some countries argue impinges on an individual's freedom.⁸⁸ Second, the 1961 Convention addresses political situations such as a transfer of territory between states. If a treaty between states governs the transfer, article 10(1) provides that the treaty include provisions preventing residents of the transferred territory from becoming stateless.⁸⁹ In the event there is no treaty governing the transfer, article 10(2) calls on states to extend their domestic provisions covering stateless persons to the transferred territory.⁹⁰

The 1961 Convention also sets the stage for placement of oversight responsibility in an organ of the United Nations.⁹¹ This responsibility was placed with UNHCR in 1974.⁹² Though international cooperation

82. *Id.* art. 1(3).

83. *Id.* art. 2.

84. *Id.* art. 4.

85. *Id.* art. 1(2).

86. *Id.*

87. *Id.* arts. 5-9.

88. For example, the United States has stated this as one of the reasons it has not ratified this convention. Stewart M. Patrick, *No Country for Fifteen Million: The Plight of the World's Stateless*, COUNCIL ON FOREIGN REL. (Aug. 16, 2012), <http://blogs.cfr.org/patrick/2012/08/16/no-country-for-fifteen-million-the-plight-of-the-worlds-stateless/>.

89. 1961 Convention, *supra* note 67, art. 10(1).

90. *Id.* art. 10(2).

91. *Id.* art. 11.

92. U.N. High Comm'r for Refugees, *Self-Study Module on Statelessness*, REF WORLD (2012), <http://www.refworld.org/pdfid/50b899602.pdf>.

was stagnant for nearly thirty years, in 2006 UNHCR issued guidelines for renewed action.⁹³ Since UNHCR launched its campaign in 2011, fifteen additional countries have become state parties to the 1954 Convention,⁹⁴ and eighteen additional countries have become state parties to the 1961 Convention.⁹⁵

IV. STATELESSNESS IN POSTDISSOLUTION/POSTSECESSION STATES: A COMPARATIVE LOOK

A. *The Former Socialist Federal Republic of Yugoslavia*

The SFRY was formed after World War II.⁹⁶ It was a federation comprised of six republics: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia.⁹⁷ Economic, political, and ethnic tensions caused the SFRY to break apart during bouts of conflict spanning over a decade starting in 1991.⁹⁸ The issue of statelessness was a priority for the successor states, many of which ratified the two international conventions and enacted liberal domestic nationality laws. However, the administrative implementation of the laws was difficult due to out-of-date residency registration, lost or destroyed identity documents, and discriminatory application of naturalization laws.

Prior to its dissolution, the SFRY had a two-tiered system of citizenship.⁹⁹ Individuals were citizens of SFRY, providing them state identity and access to state rights, and they were citizens of their own republics, which included the right to vote.¹⁰⁰ Because of the greater benefits of federal citizenship and the ease of moving between republics, SFRY citizens did not often change their republican citizenship when moving between republics.¹⁰¹ After dissolution of the SFRY, there was no succession treaty addressing nationality issues, however avoiding

93. Exec. Comm., *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, U.N. HIGH COMM'R FOR REFUGEES (Oct. 6, 2006), <http://www.unhcr.org/453497302.html>.

94. *Status of Signatories to the Convention Relating to the Status of Stateless Persons*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~3&chapter=5&Temp=mtdsg2&lang=en (last visited Nov. 19, 2014).

95. *Status of Signatories to the Convention on the Reduction of Statelessness*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en (last visited Nov. 19, 2014).

96. Andrew G. Marshall, *Backgrounders: Breaking Yugoslavia*, GEOPOLITICAL MONITOR (July 21, 2008), <http://www.geopoliticalmonitor.com/breaking-yugoslavia-936/>.

97. *Id.*

98. *See id.*

99. *Report on Statelessness in South Eastern Europe*, *supra* note 8, at 7.

100. *Id.*

101. *Id.*

statelessness was a priority in the Peace Agreements signed by Bosnia and Herzegovina, Croatia, and the Federal Republic of Yugoslavia, which included Serbia and Montenegro.¹⁰² Even with a goal of avoiding statelessness, the displacement, violence, ethnic discrimination, political instability, and destruction or dislocation of identity and birth documents created obstacles leaving many stateless or vulnerable to statelessness.¹⁰³

In an attempt to ease the transition and quell the confusion of not only the political breakup, but also to transition from a primarily federally focused system of citizenship to a system based on the previously less important citizenship of the republics, the successor states of the SFRY chose to grant nationality based on republic registration lists.¹⁰⁴ While in theory this ensured that all citizens of the former SFRY had a nationality, in actuality it made thousands of individuals who were not registered in the republic in which they were permanently living a foreigner in that state.¹⁰⁵ Additionally, after the 1999 Kosovo conflict, a majority of the civil registries had either been destroyed or moved and were in the possession of Serbia, which would not return them.¹⁰⁶ In a time of postconflict confusion, Kosovo had to start completely new civil registries and document its inhabitants using other methods to prove identity, ranging from former SFRY personal documents to hospital records corroborated by witnesses.¹⁰⁷

Slovenia, the Federal Republic of Yugoslavia, and the former Yugoslav Republic of Macedonia attempted to facilitate granting citizenship by streamlining provisional citizenship procedures for permanent residents during the period following the breakup.¹⁰⁸ These provisions, however, were not significantly different from normal requirements of naturalization and often showed signs of discrimination against marginalized groups within the regions and, in fact, created barriers to gaining citizenship.¹⁰⁹ The political instability, ethnic tensions, and continual disintegration of states over the past two decades have exacerbated the plight and vulnerability of the stateless and persons at risk of statelessness.¹¹⁰ With civil and birth registries displaced or

102. *Id.*

103. *See id.* at 8-9.

104. *Id.* at 8.

105. *Id.*

106. *Every Child Counts: Birth Registration in Kosovo*, UNICEF 1, 18 (2009), http://www.unicef.org/Kosovoprogramme/UNICEF_Birth_Registraiton_2009_English.pdf.

107. *Id.* at 18-19.

108. *Report on Statelessness in South Eastern Europe*, *supra* note 8, at 8.

109. *Id.*

110. *Id.* at 9.

destroyed through various conflicts, ethnic groups living as minorities in newly formed states were at risk of statelessness due to the ease of citizenship discrimination.¹¹¹

After the transitional period, as political and administrative growing pains of the dissolution began to ease, a number of persistent but previously glossed-over nationality concerns started becoming clear. In particular, marginalized communities such as the Roma, Ashkali, Egyptians, and other groups who lacked documentation before displacement were faced with increased obstacles to obtaining citizenship.¹¹² These communities often had difficulty following the procedures of confirming or acquiring citizenship or did not even realize that they were not citizens due to the confusion and state instability for over a decade. As a result, they were required to take steps to become citizens.¹¹³ In these cases, acquiring citizenship through normal means could become impossible because the transition periods with facilitated procedures had already passed.¹¹⁴ One particular problem that many Roma faced was proving habitual residency in order to obtain citizenship.¹¹⁵ UNHCR estimated that there were around 500 Roma in Croatia who would likely meet the requirements to obtain citizenship but for the residency requirement.¹¹⁶ Without the ability to prove nationality of a previous state (that in the meantime may have dissolved) and without the ability to obtain citizenship through the new states, these groups would become either stateless or remain at a heightened risk of becoming stateless.¹¹⁷ Gaining citizenship was also burdensome when the catch-22 arose of (1) not being able to prove permanent residency and (2) not being able to leave the country because an individual cannot obtain travel documents (such as a birth certificate) that are outside of the country, such as the case was in Croatia.¹¹⁸

Although all six of the succeeding republics of the SFRY have succeeded or signed on to the 1954 Convention,¹¹⁹ only four have become

111. *See id.* The conflict in Kosovo is a prime example of this. *Id.*

112. *Id.* at 16.

113. *Id.*

114. *Id.*

115. *Id.* at 18.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Status of Signatories to the Convention Relating to the Status of Stateless Persons*, *supra* note 94.

parties to the 1961 Convention.¹²⁰ Citizenship in the majority of these countries is based on *jus sanguinis*, with the laws providing equality in gender and marital status and providing citizenship safeguards for children of unknown parentage or who would otherwise be stateless.¹²¹ Yet, despite acceding to the international conventions and considering the priority of avoiding statelessness upon dissolution, there are still legislative gaps that leave some children without a legal right to citizenship of any state.¹²² In the former Yugoslav Republic of Macedonia and in Croatia, citizenship laws did not cover children born within the territory to parents of foreign citizenship who were unable to pass citizenship to their children.¹²³ In Kosovo,¹²⁴ the citizenship law does not even provide for the granting of citizenship to a child who would otherwise be stateless.¹²⁵

Looking back, the new states implemented measures that prevented many from becoming stateless. They were conscientious about enacting safeguards against statelessness in domestic laws and signing on to international conventions addressing statelessness. Their nationality laws were not discriminatory on the basis of gender or marital status. They provided some streamlined procedures during the transition period and allowed for more lenient registration of some social services for those who had trouble proving citizenship.¹²⁶

The main problems were in the special issues of the most vulnerable (the Roma, Ashkali, and Egyptians); in the administrative difficulties of birth registration, proof of residence, or citizenship; and in the location and obtainment of identity documents in other countries. So, while most of the former SFRY countries enacted liberal forms of nationality laws espoused in the international conventions, difficulties arose when identity issues associated with birth, citizenship, and proof of residency did not fit smoothly within the administrative parameters.

120. *Status of Signatories to the Convention on the Reduction of Statelessness*, *supra* note 95. The four states that have become Contracting Parties are Bosnia and Herzegovina (1996), Croatia (2011), Montenegro (2013), and Serbia (2011). *Id.*

121. *Report on Statelessness in South Eastern Europe*, *supra* note 8, at 22.

122. *Id.*

123. *Id.*

124. Though some countries recognize Kosovo as an independent country, it is not the majority consensus, and the United Nations treats it as a special case under the Security Council Resolution 1244. *Id.* at 4 n.1.

125. *Id.* at 20.

126. *Id.* at 25 (discussing methods such as not requiring identity documents for school registration).

B. *Sudan and South Sudan*

After years of civil war, the south of Sudan seceded in July 2011 to become South Sudan.¹²⁷ At the time of secession, Sudan's nationality laws were strict, providing for *jus soli* citizenship only in the event of a child who was found within the territory and whose parents were unknown, and for *jus sanguinis* citizenship passing through the father.¹²⁸ Sudanese citizenship could be revoked without proof or without the condition of the acquisition of new citizenship.¹²⁹ These aspects of Sudan's nationality law (as well as a postsecession amendment stripping many Sudanese of their citizenship) in conjunction with South Sudan's broad nationality law created confusion as to the citizenship and residency status of hundreds of thousands of people.

Within the year after secession, in March 2012, Sudan and South Sudan pledged to an agreement stating a commitment to four "freedoms" that would ease the transition of citizenship status between the residents and citizens of the two countries.¹³⁰ The agreement, once signed, would ensure that the "nationals of each State shall enjoy in the other State the following freedoms: (a) Freedom of residence; (b) Freedom of movement; (c) Freedom to undertake economic activity; (d) Freedom to acquire and dispose of property."¹³¹ Signing, however, was delayed until September 2012.¹³² In the meantime, Sudan stripped ethnic South Sudanese residents of Sudan of their Sudanese citizenship and gave them a nine-month deadline to regularize their status and acquire South Sudanese citizenship.¹³³ The deadline was April 8, 2012.¹³⁴

At independence, South Sudan enacted the South Sudan Nationality Act of 2011 that indiscriminately granted the right of South Sudanese citizenship (regardless of place of residence) to (1) individuals with at

127. *Sudan Profile*, BBC NEWS AFR. (Oct. 26, 2013, 6:19 AM), <http://www.bbc.com/news/world-africa-14094995>.

128. Sudanese Nationality Act of 1994 (Sudan). In the event of a child born out of wedlock or a child that has not been legitimized, citizenship can be passed to the child from the mother.

129. *Id.*

130. *Framework Agreement on the Status of Nationals of the Other State and Related Matters Between the Republic of the Sudan and the Republic of South Sudan*, REF WORLD (Mar. 13, 2012), <http://www.refworld.org/docid/4f60ba492.html>.

131. *Id.* art. 4.

132. *Sudan Humanitarian Update: 3rd Quarter 2012*, OCHA 1 (2012), https://ochanet.unocha.org/p/Documents/OCHA_Sudan_Quarterly_Humanitarian_Update_3rd_Quarter_2012.pdf.

133. James Copnall, *Dispossessed: The South Sudanese Without a Nationality*, BBC NEWS AFR. (Apr. 6, 2012), <http://www.bbc.com/news/world-africa-17624075>.

134. *Id.*

least one ancestor, including up to great-grandparents, who were born in South Sudan, (2) the indigenous communities of South Sudan, and (3) habitual residents of South Sudan since 1956 (the year that Sudan acquired independence).¹³⁵ The law allows for nationality to be passed by either parent and allows for dual nationality.¹³⁶

In August 2011, Sudan amended its nationality law of 1994 to revoke Sudanese citizenship from anyone who had acquired South Sudanese citizenship.¹³⁷ This provision is highly discriminatory because it disallows dual citizenship only for those who acquire South Sudanese citizenship.¹³⁸ Further, the combination of the nationality laws of Sudan and South Sudan creates an unusual occurrence of revocation of citizenship upon the involuntary acquisition of another country's citizenship; an individual who has Sudanese citizenship prior to the secession, but who has familial ties to South Sudan, will involuntarily be stripped of Sudanese citizenship as a result of the broad sweep of the South Sudanese nationality law.¹³⁹

Although Sudan and South Sudan attempted to make agreements for the treatment and privileges of nationals of the other state in the "four freedoms" document, the issue of statelessness was not addressed.¹⁴⁰ Additionally, neither country has acceded to either the 1954 Convention or the 1961 Convention,¹⁴¹ although UNHCR has a presence in both countries.¹⁴² Nor does either country provide for citizenship to be granted to children of stateless parents, or for protection or facilitated naturalization procedures for stateless persons.¹⁴³ This lack of a legal

135. *Laws of South Sudan: The Nationality Act of 2011*, REFWORLD (July 7, 2011), <http://www.refworld.org/docid/4e94318f2.html>.

136. *Id.*

137. Bronwen Manby, *The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws*, OPEN SOC'Y INITIATIVE FOR E. AFR. 1-2 (Apr. 16, 2012), <http://www.opensocietyfoundations.org/sites/default/files/right-nationality-and-secession-south-sudan-summary-recommendations-20120618.pdf>.

138. *Id.* at 2.

139. Mike Sanderson, *Statelessness and Mass Expulsion in Sudan: A Reassessment of the International Law*, 12 NW. J. INT'L HUM. RTS. 74, 74-75 (2014).

140. See *Framework Agreement on the Status of Nationals of the Other State and Related Matters Between the Republic of the Sudan and the Republic of South Sudan*, *supra* note 130.

141. *Status of Signatories to the Convention Relating to the Status of Stateless Persons*, *supra* note 94; *Status of Signatories to the Convention on the Reduction of Statelessness*, *supra* note 95.

142. *Sudan: 2014 UNHCR Country Operations Profile*, UNHCR, <http://www.unhcr.org/pages/49e483b76.html> (last visited Oct. 28, 2014); *South Sudan: 2014 UNHCR Country Operations Profile*, UNHCR, <http://www.unhcr.org/pages/4e43cb466.html> (last visited Nov. 19 2014).

143. See Sudanese Nationality Act of 1994; *Laws of South Sudan: Nationality Act of 2011*, *supra* note 135.

framework regarding the issue of statelessness is apparent in the inapposite approach of both countries during the growing pains postseparation.

The transitional period for the regularization process ended on April 8, 2012.¹⁴⁴ This has left thousands in Sudan who have not regularized their citizenship status in Sudan or left Sudan for South Sudan (due to their own will or due to circumstances beyond their control) at risk of becoming, or in fact being, stateless.¹⁴⁵ This may seem exaggerated due to the broad sweep of the South Sudan nationality law, but in fact, the *ex lege* application of both the South Sudanese granting of citizenship and the Sudanese revocation of it are both separate and unreviewed processes.¹⁴⁶ One effect of these *ex lege* applications of law is that there is a “continuing practical uncertainty in relation to the application of these laws (and the manner and degree of their enforcement).”¹⁴⁷ For example, the definitional and evidentiary requirements to prove inclusion in one of the South Sudan ethnic groups may be difficult to provide or may not, in the eyes of South Sudan, meet the criteria to be considered part of the group.¹⁴⁸ This, however, does not prevent the authorities in Sudan from determining that the same individual is a member of that ethnic group that would provide him South Sudanese citizenship and thus revoke Sudanese citizenship, in effect making that individual *de jure* stateless.¹⁴⁹ This potentiality is significant because had Sudan been a party to the 1961 Convention, articles 8 and 9 of the 1961 Convention would have placed it under obligation to ensure that the revocation of citizenship in the above situation would not have left those individuals stateless.¹⁵⁰ Another effect is the extreme vulnerability of those who are stripped of their nationality. It is estimated that at least half a million individuals in Sudan are left in the vulnerable state of potential expulsion from their country of habitual residence on the grounds of Sudanese authorities determining that they are citizens of South Sudan.¹⁵¹

The secession of South Sudan came into effect three years ago. As such, the long-term effects of the nationality laws of both Sudan and South Sudan are not yet known. The main issue exacerbating the transition after South Sudan’s secession was the *ex lege* imposition of

144. Copnall, *supra* note 133.

145. Manby, *supra* note 137, at 1-2.

146. Sanderson, *supra* note 139, at 88-89.

147. *Id.* at 111.

148. *Id.* at 88-89.

149. *Id.*

150. 1961 Convention, *supra* note 67, arts. 8-9.

151. Sanderson, *supra* note 139, at 109-11.

nationality based on ethnicity and ancestry. This had the effect of making hundreds of thousands of people foreigners in their own land, many of whom may have never even visited South Sudan. The agreement of the “four freedoms” (not yet fully implemented)¹⁵² seems not to have had an effect on the administrative processes or the lives of these vulnerable individuals caught between two nationalities.

V. DISCUSSION

A. *Comparison of Citizenship Issues Presented After State Secession: SFRY and Sudan*

A comparison of the former SFRY and Sudan situations evokes three major points of contrast. First, the former SFRY and Sudan are geopolitically different: the former SFRY was comprised of republics that already had functioning governments and whose approach to nationality laws was more liberal, while South Sudan created a new government and Sudan’s nationality laws were more restrictive. Second, the countries in each conflict based new nationality laws on different requirements: former SFRY countries chose residency registration lists, while South Sudan chose ethnic and familial ties and Sudan reacted to that choice. Third, the amount of cooperation among the countries in each situation was vastly different: SFRY countries tended to cooperate with each other and with the international community, while Sudan and South Sudan have made little attempt at cooperation with each other and the international community.

To begin the comparison, the former SFRY and Sudan are geopolitically different, which can indirectly be seen through the starting points of their nationality laws. Recall, for example, that SFRY had already been a party to one of the conventions on statelessness,¹⁵³ while Sudan had not.¹⁵⁴ Recall also that the SFRY republics provided more liberal passage of citizenship by descent, gender, and marital status,¹⁵⁵ while Sudan had a stricter law particularly in regards to the father being the parent of first resort for passing citizenship to the child.¹⁵⁶ With statelessness already on the radar, it may have been easier for SFRY states to acknowledge the serious consequences of statelessness, and take steps to prevent it. Further, the former SFRY was made up of republics,

152. *Sudan: 2014 UNHCR Country Operations Profile*, *supra* note 142.

153. *See supra* note 119 and accompanying text.

154. *See supra* note 141 and accompanying text.

155. *See supra* Part IV.A.

156. *See supra* note 128 and accompanying text.

each of which had functioning governments;¹⁵⁷ South Sudan is a completely new country with a new government that is shaping its policies and its place domestically, regionally, and globally.¹⁵⁸ Finally, the former SFRY became extinct as a result of the accession to independence of its republics; therefore, *all* SFRY citizens were required to obtain new citizenship, and no succeeding state had to deal with the continued existence of its predecessor; in contrast, Sudan still exists, though territorially smaller, and is a neighbor with strong citizenry ties to South Sudan.

Even with these differences, pertinent inferences can be made regarding the approaches and results of citizenship procedures. The starkest contrast between the postconflict nationality laws in the successor states of the former SFRY and Sudan and South Sudan is the choice of basis for affording new citizenship. The former SFRY chose residence as a determinant for citizenship, while Sudan and South Sudan based their laws on ethnic or familial ties. Although reliance on residency was not a foolproof plan that eradicated the confusion and displacement of individuals and groups in former SFRY states, it was less disruptive than the mass displacement and uncertainty that occurred in Sudan resulting from *ex lege* citizenship determinations based on ethnic or familial ties. The problem that the SFRY countries faced when implementing their new citizenship laws was that prior to the dissolution of the SFRY there was lax enforcement of citizenship changes at the republic level when individuals moved between republics. Further exacerbating this was the duration of the dissolution; it passed through multiple phases. The political instability created obstacles for individuals who were not in possession of identity documents from traveling to obtain them or even knowing where they were located. The failure in this case was not the choice of residence as the basis for granting citizenship, but a failure to anticipate, plan for, and adjust to the administrative difficulties and necessary cooperation that were required because of the previously lax registration enforcement of the republics in the former SFRY.

This also created an atmosphere that was conducive to ethnic discrimination. The SFRY was home to many ethnic groups across republics, so while the *prima facie* laws based mostly on habitual residence did not discriminate, the requirement of showing proof of residency allowed for ethnic discrimination to creep in for individuals

157. *See supra* Part IV.A.

158. *See supra* Part IV.B.

who were not registered in the republic of their habitual residence. Still, the priority that a number of the new states placed on the prevention of statelessness was apparent in the aftermath of the dissolution. The laws based on residence positively impacted the prevention of mass displacement of individuals from ethnic groups of different countries.

In Sudan, almost the exact opposite approach was taken. A decided *lack* of importance placed on habitual residence was the source of citizenship troubles for many individuals. This had the effect of uprooting hundreds of thousands of people. Sudanese citizens who had their citizenship revoked because of the *ex lege* application of the new Sudanese nationality law prohibiting dual nationality for South Sudanese were left with uncertainty as to their legal status and were required to relocate from their permanent residence in Sudan to a new country, which some had never even visited.

While the South Sudan laws seemed to be sweeping to the effect of preventing mass statelessness, they actually created issues of statelessness as well. A lack of cooperation between South Sudan and Sudan made the vastly different nationality laws practically incompatible with each other. Unlike in the case of the former SFRY countries, there were no discussions between Sudan and South Sudan about preventing statelessness during the transition period. The “four freedoms” may be seen to address the issue somewhat in that each country, at least superficially, agreed to provide economic and residential protections to citizens of the other country found within their territories. However, the agreement has not been operationalized to give it effect. Further, there is no cooperation between the countries to facilitate the determinations of citizenship of thousands of individuals who are left in limbo. The former SFRY countries may not have cooperated with each other at all times (for example, Serbia refusing to deliver civil registries to Kosovo), but members of the international community were involved as state parties to treaties and through international aid agencies. UNHCR took part in the planning and administering of the civil registration procedures when Kosovo undertook registering and reregistering a vast majority of its inhabitants. Neither Sudan nor South Sudan is a party to the international conventions on statelessness, nor have they accepted aid in the drafting, administration, or application of their nationality laws. This isolation exacerbates the problem of statelessness in their countries and keeps both countries from becoming a member of the international community in the fight to reduce statelessness.

Each approach had positive and negative elements, but a common and significant flaw in each is found in the organization and

implementation of the administration of the laws. If SFRY countries had been able to provide alternative means of proving residence or had created cooperative departments for retrieving identity documents, many of the issues of statelessness might have been mitigated. If Sudan and South Sudan had cooperatively arranged for reviews of citizenship applications and the voluntary retention of dual citizenship, mass compulsory relocation and its attendant risk of statelessness might have been avoided.

Periods of state dissolution and state secession are particularly vulnerable times. They often follow periods of conflict and unrest that feed into the confusion of establishing new state boundaries, governments, and citizens. When there is conflict, there is often displacement, which can lead to many individuals in a new place of residence sometimes without identity documents. Consequently, they are unable to prove their citizenship or residency status, such as in the case of the former SFRY. In these situations, international aid should be utilized to assist in the identification of individuals who have trouble proving their identity, in the facilitation of administrative processes that regularize individuals, and for consultation in the framing of nationality laws to conform to the growing body of norms regarding statelessness. Further, as new states emerge and craft their government and a new identity for themselves in the world order, ego, politics, and inexperience can play a role in the growing pains. Feelings of ill will towards prior governmental rule or relations may hinder the implementation of effective nationality law, as seen in the case of Sudan and South Sudan. As statelessness is increasingly seen as a global issue, international bodies should offer assistance in the facilitation of settling citizenship matters among adverse states.

The approach to creating a safety net of statelessness prevention is not a cookie-cutter program. There are, however, key themes that extend to reach a maximum number of at-risk individuals in the wake of governmental change, no matter what the basis is for granting citizenship. The first is the effect of the drafting of legislation. States should create an effective *jus soli* law that provides citizenship to individuals who would otherwise be stateless; they should allow for the passage of citizenship through ancestral lines of both the mother and father whether the child is born in wedlock or outside of wedlock; and they should make the revocation of citizenship contingent on a case-by-case review and only on the condition that new citizenship has been, or is certain to be, affirmatively granted. The second theme is administrative. States should extend transitional periods of facilitated, nondiscriminatory

naturalization and citizenship procedures to provide enough time for information dissemination and coordinated document attainment and processing for individuals and governments in the process of adjusting to the new state structure. The third and final key theme is regional and international cooperation. States should acknowledge the consequences and risks of statelessness and make it a priority to address those issues in the immediate and long-term aftermath of the conflict. The international community should also take the opportunity to encourage the governments involved to accept international assistance in the matter and to enter the international effort to reduce and prevent statelessness.

B. A Look Ahead: Citizenship in Postconflict Syria

This Comment has analyzed two cases in which new countries have emerged, whether through state dissolution or through state secession. There is not an indication at the moment that a similar fate awaits Syria, but regardless, there are comparable themes of destruction, ethnic factors, and displacement already occurring that should be a warning sign that the risk of mass statelessness could be severe after the conflict subsides. Although each situation and its attending problems are different, lessons can be learned from the two cases at hand to prepare for a postconflict Syria.

Syria's conflict began during the Arab Spring in 2011 with protests opposing the autocratic rule of President Bashar al-Assad and escalated to a full civil war by April 2012.¹⁵⁹ Assad and his father before him have ruled over Syria since 1970.¹⁶⁰ During the father-son regime, Syria's human rights record has been one of the "worst in the world" including state control of media, discriminatory economic policies, and imprisonment of government critics.¹⁶¹ Human rights violations and allegations of violations against both sides increased after fighting escalated into 2013.¹⁶² There is evidence of torture, indiscriminate attacks, executions, and kidnapping.¹⁶³ In addition to this, the government has used chemical weapons and cluster bombs indiscriminately, destroying whole neighborhoods and putting civilians in danger,¹⁶⁴ in violation of

159. David Gritten et al., *Syria: The Story of the Conflict*, BBC NEWS MIDDLE EAST (Mar. 13, 2014, 9:15 PM), <http://www.bbc.com/news/world-middle-east-26116868>.

160. *Syria: Origins of the Uprising*, BBC NEWS MIDDLE EAST (June 8, 2012, 10:14 PM), <http://www.bbc.com/news/world-asia-17344858>.

161. *Id.*

162. *World Report 2014: Syria*, HUM. RTS. WATCH, <http://www.hrw.org/world-report/2014/country-chapters/syria?page=1> (last visited Nov. 19, 2014).

163. *Id.*

164. *Id.*

international humanitarian law.¹⁶⁵ The violence and brutality has resulted in the death or displacement of nearly half of the Syrian population; estimates suggest that over 100,000 Syrians have died, 2.5 million Syrians have fled the country, and another 6.5 million are believed to be internally displaced.¹⁶⁶ An additional 500,000 Palestinian refugees¹⁶⁷ and 150,000 Kurds living in Syria were already stateless at the time of the uprising.¹⁶⁸ In a time of instability, uncertainty, and fear, these numbers are extremely disconcerting. Given the destruction, political instability, discriminatory undertones, and mass displacement in the Syrian conflict, close to 10 million people are at risk of becoming or remaining stateless.

Syria is not a state party to either of the international conventions on statelessness.¹⁶⁹ Its nationality laws, however, to some extent provide safety nets for the prevention of statelessness at birth. On the spectrum of *jus soli* and *jus sanguinis* laws, Syrian nationality laws are moderately paternalistic. A Syrian father can pass citizenship to his child regardless of where his child is born.¹⁷⁰ A Syrian mother can pass on her citizenship only in certain cases: (1) if her child is born in Syria illegitimately,¹⁷¹ (2) if her child is born in Syria and the child would not be eligible to acquire another nationality,¹⁷² and (3) if she is Syrian and her child has not acquired another nationality and has not met the deadlines for applying for Syrian nationality.¹⁷³ The law also provides citizenship to children of unknown parentage and to children of stateless parents.¹⁷⁴

In theory, these laws should provide the safety net needed to prevent statelessness. However, recollecting the issues of documentation present in the aftermath of the SFRY dissolution, Syria seems poised to confront the same issues from currently stateless persons already living in Syria and Syrian nationals who have fled the violence without proper

165. Peter Maurer, *IHL and Humanitarian Principles Are Non-Negotiable: Syria Is No Exception*, INT'L COMM. OF THE RED CROSS (Feb. 15, 2014), <http://www.icrc.org/eng/resources/documents/article/editorial/2014-02-15-syria-maurer-humanitarian-principles.htm>.

166. Gritten et al., *supra* note 159.

167. *Syria's Palestinians: Stateless and Hapless as Ever*, ECONOMIST (Nov. 17, 2012), <http://www.economist.com/node/21566708/print>.

168. Khaled Yacoub Oweis, *Kurds Struggle for Recognition in Syrian Revolt*, REUTERS (Mar. 29, 2012, 11:47 PM), <http://www.reuters.com/article/2012/03/30/us-syria-kurds-idUSBRE82T05C20120330>.

169. *Status of Signatories to the Convention Relating to the Status of Stateless Persons*, *supra* note 94; *Status of Signatories to the Convention on the Reduction of Statelessness*, *supra* note 95.

170. Legislative Decree No. 276 of 1969, art. 3(A) (Syria).

171. *Id.* art. 3(B).

172. *Id.* art. 3(D).

173. *Id.* art. 3(E).

174. *Id.* art. 3(C).

documentation. Syrian refugees may have trouble crossing international borders to return to Syria, or any other country, if they do not have their identity documents, similar to individuals who were unable to travel to other former SFRY states to obtain their identity documents. Because one of Syria's nationality safeguards is to provide citizenship to those of Syrian origin who otherwise would be stateless, there is potentially a similar situation of proving ancestry and gaining entry back to their country as seen in South Sudan, particularly in cases when the individual or child has not been habitually living in the country purported to be its own.

To combat some of these issues, UNHCR has launched initiatives in neighboring countries to assist Syrian refugee families, such as to ensure they have their identity documents and are able to register their young and newborn children if the children were born abroad or were not registered prior to fleeing Syria.¹⁷⁵ This is a large initiative, considering 2.5 million Syrians have fled into neighboring countries.¹⁷⁶ Further exacerbating the situation is the large number of stateless persons already living or, in some cases, trapped in refugee camps on the Syria/Jordan border.¹⁷⁷ Fleeing the fighting further entrenches their statelessness.¹⁷⁸ Although a Syrian presidential decree issued just after the uprising started in 2011 granted citizenship to a large number of Kurds (comparable to the ethnic-based nationality law of South Sudan), there is a difference between a presidential decree and actually gaining citizenship. By 2012, only 6,000 of the 150,000 Kurds had been given nationality.¹⁷⁹ The difference is particularly significant considering so many Syrian residents have had to flee violent areas, potentially before even being able to register to start the citizenship process.¹⁸⁰

Not knowing when the Syrian violence will end, or how it will end, particular problem spots are evident from the experiences of the cases of the former SFRY and from Sudan and South Sudan. First, the destruction or dislocation of civil registries in the SFRY proved extremely taxing administratively and prevented or delayed many individuals from regularizing their citizenship status.¹⁸¹ The Syrian

175. Amit Sen, *Lacking a Nationality, Some Refugees from Syria Face Acute Risks*, UNHCR (Dec. 20, 2013), <http://www.unhcr.org/print/52b45bbf6.html>.

176. Gritten et al., *supra* note 159.

177. *Syria's Palestinians: Stateless and Hapless as Ever*, *supra* note 167.

178. *Id.*

179. Oweis, *supra* note 168.

180. *See Iraqi Kurdistan Welcomes Syrian Brethren, for Now*, IRIN (Aug. 10, 2012), <http://www.irinnews.org/report/96077/iraq-syria-iraqi-kurdistan-welcomes-syrian-brethren-for-now>.

181. *See supra* Part IV.A.

government and international agencies must make it a priority *now*, before the conflict ends, to maintain civil registries.

Second, the already large number of stateless persons in Syria are put at risk of entrenching their statelessness by fleeing and giving up their residency. This is doubly precarious because they are relinquishing a permanent residence and reducing access to evidence and witnesses as proof of such residence. As seen in particular with the Roma in Croatia, the inability to prove permanent residency was a hindrance to obtaining citizenship in the residence-based system employed by the former SFRY nations.¹⁸² Fleeing also will reduce their ability to gather witnesses and evidence of their prior residency should they return or try to gain citizenship elsewhere. The Syrian government should take immediate steps to hasten the official granting of citizenship to Syrian Kurds who do not yet have it and should take steps to document other stateless persons within Syria, particularly in the refugee camps.

Third, preliminary plans must begin to take shape for the return of Syrian refugees. Three years have passed since the beginning of the conflict. Identity documents have been lost or destroyed, and children have been born outside of Syria and in refugee camps. Procedures for civil registration upon return must be ready to handle the influx. As in Kosovo, the Syrian government should cooperate with international agencies such as UNHCR to put into place procedures for verifying identity and nationality and be prepared to effectively resolve cases in which evidence of identity or residence is lacking. UNHCR is already laying a foundation in the refugee camps of neighboring countries that should facilitate the process of reintegration immensely.¹⁸³ Still, with 2.5 million Syrians in refuge outside of Syria, the border control issue, particularly in neighboring countries with large Syrian refugee populations, may become overwhelming and significantly delay the reintegration and citizenship verification process, similar to the border issues in Sudan and South Sudan.

These steps, however, may still not prevent the most vulnerable of individuals and groups from escaping statelessness. To this end, Syria must seek help from, and cooperate with, its neighbors and the international community. Noncooperation between neighboring states is a major factor in the crisis of statelessness in Sudan and South Sudan, and the Serbian refusal to return Kosovo civil registries results in severe delays and inefficiencies in determining birth and residency

182. See *supra* notes 115-118 and accompanying text.

183. See *supra* note 175 and accompanying text.

registration.¹⁸⁴ Syria must actively pursue communications with its neighbors to facilitate the transfer of information useful to the smooth administration of civil registration. Further, the international community must pressure Syria to accede to international and regional conventions on the reduction and prevention of statelessness. A broader sweep of *jus sanguinis* laws should be adopted to include full maternal passage of citizenship. Preparing for these eventualities now, whether the Syrian government retains power or a new government or state emerges, will provide an easier transitional period that will, in theory, provide security of citizenship not only for current Syrian citizens and their children, but also for the Syrian residents who were previously stateless.

VI. CONCLUSION

The lack of uniformity of domestic nationality laws is a reality. Each state, as sovereign, may determine who may be a citizen of the state and how citizenship is conferred. However, particularly with the recent campaign of the United Nations and the UNHCR, awareness of the issue of statelessness has grown, and ideas of nationality are on their way to becoming international norms. Central to this is the prevention of statelessness. Greater international intervention and consultation during and after times of conflict can be a great opportunity to prevent and resolve the occurrence of statelessness and to advance nondiscriminatory provisions of the passage of citizenship.

184. See *supra* note 106 and accompanying text.