

Statelessness and Child Marriage as Intersectional Phenomena: Instability, Inequality, and the Role of the International Community

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In 2013, the United Nations General Assembly adopted a stand-alone resolution tackling the international problem of child marriage for the first time. Such a historic gesture by the international community was a welcome step, but not necessarily a surprise. Efforts to promote women's empowerment have rapidly gained traction on the international stage in recent years, as prominent voices have identified the moral and strategic imperative of gender equality—including the prevention and reduction of child marriage—as essential to countries' economic and political stability.

Yet as the international community collectively analyzes and addresses child marriage, it risks overlooking a critical element of this global problem—an element with staggering consequences for human rights, development, and international stability: the problem of statelessness. Statelessness, or individuals' lack of legal status or recognition by any country, exists on the outermost boundaries of international law and policy. But it is not a marginal issue. An estimated twelve million people are currently stateless, and the numbers are growing. Many of them are young women and girls,

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whose lack of legal identity denies them access to the protections and rights of any country.

This Note makes a novel contribution by illuminating the often overlooked linkages between statelessness and child marriage. In many cases, these two discriminatory regimes interact and compound upon themselves to perpetuate a cycle of statelessness and gender inequality that lasts for generations. Efforts to prevent and reduce child marriage are thus especially complex in the statelessness context.

But these problems are not insurmountable. This Note suggests programmatic and policy reforms tailored to the statelessness context and presents a normative framework for alleviating statelessness and reducing gender inequality as embodied in the practice of child, early, and forced marriage.

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INTRODUCTION

Sakinah Kahtu, a young woman living in the western reaches of rural Burma, led a sheltered life. As one of eight children, she spent most of her childhood indoors doing housework for her family.¹ As a Muslim minority

1. *Rohingya Women and Children Brave the Seas to Flee Myanmar*, THOMPSON REUTERS FOUNDATION (July 17, 2013), <http://www.trust.org/item/20130711095259-lup2a> [<https://perma.cc/WH79-SGG5>].

ethnic Rohingya living in Burma, Kahtu was prohibited from attaining Burmese citizenship or any other type of legal recognition from the Burmese government.² This rendered her de jure stateless—meaning that she was not considered a national by any state under the operation of its law.³ Without identification documents or legal status, Kahtu was unable to attend school, receive health care, or seek employment.⁴ Ethnic violence had left hundreds of thousands of Rohingya displaced, and this violence was intensifying as the Burmese military junta was moving into her family’s region.⁵ The junta were notorious for their deliberate and systematic use of rape and sexual violence against ethnic minority women, employing it as a tactic to “quell opposition movements and retain control” of the border regions by breaking down communities’ social fabric through sexual violence in conflict.⁶ Kahtu’s parents were afraid that they could no longer protect her, an unmarried single woman, from potential sexual violence.⁷ Instead of risking such violence, her parents informed her that they had already paid a band of human smugglers more than \$300 to take her to Malaysia, where they believed she would be safe.⁸

For fifteen days, Kahtu and nearly 500 other Rohingya drifted at sea with little food or drink.⁹ Before reaching Malaysia, traffickers intercepted her boat. Kahtu was apprehended and detained for three days. While in detention, a

2. A 1982 law stripped all Rohingya of their citizenship rights, rendering over one million people immediately stateless. See U.S. DEP’T OF STATE, BURMA 2012 HUMAN RIGHTS REPORT 25 (2013):

The 1982 citizenship law classifies citizens based on ethnicity and effectively makes more than one million residents stateless, including the Rohingya and those of Chinese, Indian, Nepali, and Eurasian descent. The UNHCR [United Nations High Commissioner for Refugees] continued to advocate for amendment of the 1982 citizenship law to focus on civic rather than ethnic nationality, but the government did not provide stateless persons the opportunity to gain nationality on a nondiscriminatory basis. . . . The government asserted that most Rohingya were recent economic migrants and denied full citizenship on the grounds their ancestors did not belong to a national race.

3. Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117, <http://treaties.un.org/doc/Publication/UNTS/Volume%20360/v360.pdf> [<https://perma.cc/ADU2-XDCW>] [hereinafter 1954 Statelessness Convention].

4. *Rohingya Women and Children Brave the Seas to Flee Myanmar*, *supra* note 1.

5. *Id.*

6. Bryan Hoben, *Burma Refuses to Relinquish Rape as a Weapon of War*, WOMEN’S MEDIA CTR. (Oct. 2, 2013), <http://www.womenundersiegeproject.org/blog/entry/burma-refuses-to-relinquish-rape-as-weapon-of-war> [<https://perma.cc/J2DR-ZMLL>]; see also SHAN HUMAN RIGHTS FOUND. & SHAN WOMEN’S ACTION NETWORK, LICENSE TO RAPE: THE BURMESE MILITARY REGIME’S USE OF SEXUAL VIOLENCE IN THE ONGOING WAR IN SHAN STATE (2002), http://www.burmacampaign.org.uk/media/License_to_rape.pdf [<https://perma.cc/ASK2-RH32>] (noting that reports of sexualized violence committed by the army and police, particularly in Burma’s ethnic and border regions, have increased over the last two years. In the ethnic Shan state, there was a “concerted strategy by the Burmese army” to rape Shan women, and “83% of the rapes were committed by officers, usually in front of their own troops. The rapes involved extreme brutality and often torture such as beating, mutilation and suffocation.”).

7. *Rohingya Women and Children Brave the Seas to Flee Myanmar*, *supra* note 1.

8. *Id.*

9. *Id.*

Rohingya man whom Kahtu had never met encountered her and took pity on her. He paid a \$2,520 “asking price” to release her from the traffickers and get her to Malaysia. When Kahtu’s village members learned of his deed, they told the man that in return for securing Kahtu’s release, he could take Kahtu as his bride. Three days after arriving in Malaysia, Kahtu was married.¹⁰

Kahtu’s story illustrates the often overlooked linkages between statelessness and early and forced marriage. Although Kahtu’s family reported to authorities that she was eighteen years old, she likely did not possess a birth certificate or proof of age due to her ethnicity.¹¹ It is not uncommon for families to lie about a young bride’s age so she meets a country’s minimum marriage age requirement.¹² And because no state had conferred a nationality under which Kahtu could claim protection—due to her ethnicity, she was affirmatively *denied* her right to nationality—she was forced to flee and rendered particularly vulnerable to exploitation, trafficking, and gender-based violence. Paradoxically, in seeking stability and protection, Kahtu was forced into a marriage. With the exchange of a few thousand dollars, her fate was sealed.

In Jordan, similar stories abound of displaced women and girls who seek early marriage as an alternative to the instability of statelessness. Noha, a young woman “who says she is [eighteen] but looks younger,” fled Damascus with her family and was living in Jordan’s Zaatari refugee camp for more than a year.¹³ Unlike Kahtu, who was denied nationality inside her country of birth and, therefore, *de jure* stateless,¹⁴ Noha was at risk of *de facto* statelessness.

10. *Id.*

11. *See id.* (noting the “apartheid-like policies segregating minority Muslims from the Buddhist majority” in Burma, wherein ethnic Rohingya are denied proof of citizenship or birth registrations); Jason Szep, *Special Report: In Myanmar, Apartheid Tactics Against Minority Muslims*, REUTERS (May 15, 2013), [http://www.trust.org/item/20130514235457-9gvxf/\[https://perma.cc/X6HF-UHP8\]](http://www.trust.org/item/20130514235457-9gvxf/[https://perma.cc/X6HF-UHP8]) (describing a 1982 citizenship law that denies Rohingya Burmese citizenship and concluding that “[o]fficial discrimination and lack of documentation mean[s] many Rohingya have no hope” of safely resettling in their home state); *see also* Greg Constantine, *Historical Timeline*, EXILED TO NOWHERE: BURMA’S ROHINGYA, <http://www.exiledtonowhere.com/index.php> (last visited Jan. 9, 2016) (noting that in 1994, “Burmese authorities stop[ped] issuing birth certificates to Rohingya children”).

12. *See Fighting to Prevent Child Marriages*, PLAN INT’L, <https://web.archive.org/web/20131204021414/http://plan-international.org/where-we-work/asia/indonesia/what-we-do/our-successes/fighting-to-prevent-child-marriages/> (last visited May 7, 2014) (describing how the family of the groom forged the birth date of a young bride, who was actually 14 years old); Alem Rahmanyar, *Afghan Authorities Annul 7-Year-Old’s Marriage-for-Money, Launch Investigation*, RADIO FREE EUROPE (Dec. 27, 2013) <http://www.rferl.org/content/afghanistan-probe-child-marriage/25214436.html> [https://perma.cc/YKC2-4WXJ] (describing how a seven-year-old’s father lied about his daughter’s age to marry her off for \$2,000).

13. *Syrian Refugees Tell Their Stories: All of These Shoes Tell a Story*, MARIE CLAIRE (Mar. 4, 2014), <http://au.lifestyle.yahoo.com/marie-claire/beauty/news/g/21778323/all-of-these-shoes-tell-a-story/21778329/#2> (Image 2 in the slideshow).

14. *See Statelessness Versus Legal Invisibility Under International Law*, (NON)CITIZENS OF THE WORLD (May 5, 2011), <http://noncitizensoftheworld.blogspot.com/2011/05/statelessness-versus->

That is, although she possessed a meritorious claim to citizenship in her country of nationality (Syria), she was precluded from asserting her rights because conflict rendered Syria incapable of affording her any protection.¹⁵ Noha found a way to escape her plight in a refugee camp—through marriage. Her parents arranged for her to marry a man whom she had never met as a way out of the camp. “After the wedding, I will live at his house,” she said. “I have been imagining my future husband and I imagine that I like everything about him. But we have never met so there is no love. I just hope that he is a good man.”¹⁶

Whether Noha’s consent to the marriage was genuinely autonomous is unclear, but it again illustrates the linkages between the instability created by forced migration and statelessness, and the pressure on families to seek protection for their daughters through early and forced marriage. This paradoxical outcome directly results from an international failure to effectively address the problems associated with statelessness and forced migration. Because the international community has been unable to furnish adequate protection to stateless women and girls under international or national legal systems, families may use marriage to shield young women from sexual exploitation and insecurity. This results in perpetuating child marriage, which further compounds the insecurity of young girls and the communities in which they reside.¹⁷

When addressing the broader issue of child, early, and forced marriage, the international community must not forget the unique challenges facing Kahtu, Noha, and other women and girls like them.¹⁸ For the stateless, child marriage is not only a traditional cultural practice. It can also be a modality

legal-invisibility.html [https://perma.cc/9UG8-G5YH] (noting that “[i]nternational standards such as the Statelessness Convention are primarily designed to protect de jure stateless persons, i[.e.], those who are legally without citizenship from any country”).

15. *Id.* (acknowledging the ambiguity of the term as a catch-all for those situations in which a person is not de jure stateless, but is unable “to avail oneself of government protection due to persecution on the basis of race, religion, political views, or membership in a particular social group. Escape from genocide or conflict are likely other valid reasons”).

16. *Syrian Refugees Tell Their Stories: All of These Shoes Tell a Story*, *supra* note 13.

17. See RACHEL B. VOGELSTEIN, COUNCIL ON FOREIGN RELATIONS, ENDING CHILD MARRIAGE: HOW ELEVATING THE STATUS OF GIRLS ADVANCES U.S. FOREIGN POLICY OBJECTIVES 18 (2013), <http://www.cfr.org/children/ending-child-marriage/p30734> [https://perma.cc/GAT5-6FUS] (noting that child marriage “is highly correlated with domestic and sexual violence, which is destabilizing not only to girls but also to others in their households and communities”).

18. See generally Linda Kerber, *The Stateless as the Citizen’s Other: A View from the United States*, MIGRATIONS AND MOBILITIES: CITIZENSHIP, BORDERS, AND GENDER 76, 106 (Seyla Benhabib & Judith Resnik, eds. 2009) (“Statelessness is not a static conceptual matter; it now breaks along the fault lines of perceptions of state security, race and ethnicity, ideal workers, and gender By far most of these people are women, many of whom . . . slide all too easily into the international traffic in women and into the [UNHCR’s] understanding of ‘ineffective nationality’ and ‘de facto statelessness.’ In this volatile political context, statelessness is no longer so easily measured only by the presence or absence of a passport; it is a state of being, continually produced by new and increasingly extreme forms of restriction”).

through which women seek to gain protection from the vulnerabilities associated with statelessness—protection the institutions of one’s home nation normally provides.¹⁹

On November 21, 2013, the United Nations General Assembly adopted the first stand-alone resolution specifically addressing the international problem of early, child, and forced marriage.²⁰ This phenomenon, which has been described as a “barbaric practice” and a “scourge,” affects more than fourteen million children and young adults each year—the overwhelming majority of them young girls.²¹ The resolution, cosponsored by more than one hundred countries, designated an international panel of gender and development experts to convene and recommend strategies to eradicate child marriage by the year 2030.²² In addition, the resolution’s main sponsor committed \$5 million toward pilot projects to reduce child, early, and forced marriage in five countries: Afghanistan, Ethiopia, Ghana, Somalia, and Zimbabwe.²³ The hope is that these projects will provide the basis for broader, large-scale programs that can be implemented globally to meet the 2030 eradication target.²⁴

19. See WILLIAM CONKLIN, STATELESSNESS: THE ENIGMA OF THE INTERNATIONAL COMMUNITY 118 (2014) (“With little or no legal protection, the ‘ordinary’ circumstances of stateless children and women mean that they are even more vulnerable to kidnapping, trafficking and smuggling for sexual slavery or enforced military service.”); Ada Williams Prince, Women’s Refugee Commission, Remarks: Gender Aspects of Statelessness (Dec. 17, 2009), <https://womensrefugeecommission.org/about/staff/62-protection/advocacy/918-ada-williams-prince-remarks-gender-aspects-of-statelessness> [<https://perma.cc/ASK7-V95B>] (“[S]tatelessness may lead to forced or early marriage, harassment, sexual and physical violence, and trafficking. Traffickers of stateless children cannot be taken to court when children are without proper documents that prove their age or resident status.”).

20. *United Nations General Assembly Adopts Resolution on “Child, Early and Forced Marriage,”* GIRLS NOT BRIDES (Nov. 22, 2013), <http://www.girlsnotbrides.org/united-nations-general-assembly-adopts-resolution-on-child-early-and-forced-marriage/> [<https://perma.cc/38R2-ZZPW>]. For purposes of brevity, the term “child marriage” refers to the entire spectrum of early, child, and forced marriages.

21. *Canada Leads UN Effort to Stop Child, Early and Forced Marriage*, GLOBAL AFFAIRS CANADA (Oct. 24, 2013), <https://web.archive.org/web/20131120215452/http://www.international.gc.ca/media/aff/news-communicues/2013/10/24a.aspx?lang=eng> (reporting on announcement of Canadian Foreign Affairs Minister John Baird); see also Lyric Thompson & Allison M. Glinski, *How to End Child Marriage in a Generation*, OPENDEMOCRACY.NET (May 1, 2014), <http://www.opendemocracy.net/opensecurity/lyric-thompson-allison-m-glinski/how-to-end-child-marriage-in-generation> [<https://perma.cc/X5W4-FTD6>] (noting that the strategies will be included in the United Nation’s post-2015 development agenda, which aims to carry on the work of the Millennium Development Goals).

22. *United Nations General Assembly Adopts Resolution on “Child, Early and Forced Marriage,”* *supra* note 20.

23. See *Canada Leads UN Effort to Stop Child, Early and Forced Marriage*, *supra* note 21 (stating that the new allocation of \$5 million for tackling child, early, and forced marriage will initially be rolled out to programs in Afghanistan, Ethiopia, Ghana, Somalia, and Zimbabwe, with funding available for further projects).

24. See Thompson & Glinski, *supra* note 21.

Such a historic gesture by the international community was a welcome step, but not necessarily a surprise. Gender equality and women's empowerment have rapidly gained traction on the international stage in recent years. Prominent voices such as former Secretary of State Hillary Rodham Clinton,²⁵ Chilean President Michelle Bachelet,²⁶ and Archbishop Desmond Tutu²⁷ have all discussed the moral and strategic imperative of gender equality—including the prevention and reduction of child marriage—as essential to countries' economic development and political stability in the twenty-first century. Secretary-General Ban Ki-Moon recently issued a report to all UN member states in which he called child marriage a human rights abuse and urged for its total eradication.²⁸

Yet as the international community undertakes collective efforts to analyze and address the complex factors that contribute to and perpetuate child marriage,²⁹ it risks overlooking a critical element of this global problem—one with staggering consequences for human rights, development, and international stability. That is the problem of statelessness.

Any efforts to prevent and reduce child marriage become especially difficult in the statelessness context. In many countries with protracted statelessness situations, gender inequality and patriarchy is endemic among the

25. *Ending Child Marriage a 'Personal Commitment' of US Secretary of State Clinton*, Girls Not Brides (Aug. 8, 2012), <http://www.girlsnotbrides.org/ending-child-marriage-a-personal-commitment-of-us-secretary-of-state-clinton> [https://perma.cc/43ZP-WKVN] (describing that as Secretary, Clinton noted her “personal commitment” to ending the practice of child marriage and pledged that the United States would “intensify [its] diplomacy and development work” to address it).

26. As executive director of UN Women, the United Nations' gender policy and research arm, Bachelet chose eradicating child marriage as the theme to mark the first annual International Day of the Girl Child on October 11, 2012. *Ending Girl Child Marriage: U.N. International Day Event at UC San Diego*, CAL. INST. FOR TELECOMM. & INFO. TECH., <http://www.calit2.net/events/popup.php?id=2055> [https://perma.cc/55YN-W6T2].

27. Desmond Tutu, *A Message to Men and Boys from Archbishop Desmond Tutu*, GIRLS NOT BRIDES (Sept. 20, 2011), <http://www.girlsnotbrides.org/desmond-tutu-a-message-to-men-and-boys-about-child-marriage/> [https://perma.cc/MU6C-C2X9]. Archbishop Tutu founded “The Elders,” a group of independent global leaders focused on peace and human rights, including specifically on preventing child marriage and promoting girls' education around the world. The Elders, *Child Marriage*, <http://theelders.org/child-marriage>; Omar J. Robles, *Who Are the Elders?*, Too Young to Wed (Oct. 23, 2012), <http://tooyoungtowed.org/blog/tag/the-elders/>

28. U.N. Secretary-General, *A Life of Dignity for All: Accelerating Progress Towards the Millennium Development Goals and Advancing the United Nations Development Agenda Beyond 2015*, ¶ 85, U.N. Doc. A/68/202 (July 26, 2013), http://www.un.org/ga/search/view_doc.asp?symbol=A/68/202 [hereinafter *A Life of Dignity for All*] (noting that “[t]he practice of child marriage must be ended everywhere” and that UN development agencies “must ensure the equal rights of women and girls, their full participation in the political, economic and public spheres and zero tolerance for violence against or exploitation of women and girls”).

29. The United Nations will partner with governments, civil society, nongovernmental organizations, and other human rights groups to meet the 2030 target. See Thompson & Glinski, *supra* note 21.

entire population via social, economic, and even legal forces.³⁰ Thus, stateless women and girls are vulnerable not only to exploitation and abuse on account of their lack of legal status; their femaleness also contributes to further marginalization and insecurity. These two discriminatory regimes interact and compound on themselves to perpetuate the cycle of statelessness and early and forced marriage for generations.

This Note will briefly address the underlying similarities between those illicit consequences of statelessness—which are considered criminal, and thus relegated to the public sphere—and the more *private* and noncommercial nature of early and forced marriage. Further, this Note contends that because child marriage involves an economic transaction akin to buying property, it should be considered a form of sexual exploitation on par with sex trafficking and thus merit greater attention, resources, and enforcement. This focus on child marriage as a second-order result of statelessness is particularly important as the international community addresses child marriage in a comprehensive and meaningful way.³¹

Part I of this Note describes the nature and scope of statelessness and child marriage. Part II analyzes how nationality laws and marriage laws interact to further impede stateless girls' prospects for realizing their full human rights and dignity. Part II also analyzes international legal instruments addressing statelessness, displacement, and child marriage, contending that the current human rights regime is failing to affirm and protect the rights of stateless girls and women. Part III examines the legal regimes in Jordan, Nepal, and Malaysia—three countries that face protracted stateless situations as well as a high or rising incidence of child marriage. This Part will focus on prevailing gender inequities and how they intersect with domestic nationality laws to further disadvantage women and deprive them of their fundamental rights—despite the existence of international instruments that aim to break this cycle of discrimination. Finally, Part IV identifies possible solutions to adequately address this problem. These solutions range from programs aimed at increasing birth registration, to campaigns raising awareness among community leaders, to efforts directed at educating, employing, and empowering young girls. Overall, however, addressing the effects of statelessness requires a systematic and concerted effort by the international community to incentivize countries to rectify discriminatory nationality laws and to meaningfully comply with existing human rights instruments.

30. See WOMEN'S REFUGEE COMM'N, OUR MOTHERLAND, OUR COUNTRY: GENDER DISCRIMINATION IN THE MIDDLE EAST AND NORTH AFRICA, WOMEN LIVING UNDER MUSLIM LAWS (June 2013), http://www.wluml.org/sites/wluml.org/files/Our_Motherland_Our_Country_06-05-13.pdf [https://perma.cc/RGM6-D5HP]; Kelly Clements, Bureau of Population, Refugees, and Migration, U.S. Dep't of State, Remarks: No Country, No Rights: Gender Discrimination and Statelessness (Aug. 7, 2013), <http://www.state.gov/j/prm/releases/remarks/2013/212954.htm> [https://perma.cc/9N6Z-9WKK].

31. See *Canada Leads UN Effort to Stop Child, Early and Forced Marriage*, *supra* note 21.

I.

DEFINING THE PROBLEMS

A. *Defining Statelessness*

The phenomenon of statelessness, or individuals' lack of legal status or recognition by any country, exists on the outermost boundaries of international law and policy. It is an unfortunate byproduct of citizenship gaps: countries can determine which residents may become citizens and also can refuse to legally recognize any persons within their borders.³²

People are vulnerable to becoming stateless when governments refuse to confer any nationality to certain persons within their territory—"when governments determine citizenship based on descent, race, ethnicity, or the whim of those in power."³³ The United Nations High Commissioner for Refugees (UNHCR) estimated that in 2009, twelve million people worldwide "are not considered as nationals by any State under the operation of its law,"³⁴ but some organizations put the number closer to fifteen million.³⁵ However, even this number is speculative, because stateless persons are by definition outside of any legal regime and must live in the shadows on the outermost margins of society. According to the U.S. Department of State, data on statelessness "is so limited that the international community does not even know if the numbers are growing or shrinking."³⁶ This lack of legal recognition directly correlates with enhanced marginalization and discrimination.

A person may become stateless in a variety of ways, including through expressly or impliedly discriminatory nationality laws, ethnic or civil conflict that leads to mass displacement, or simply ineffective or nonexistent birth

32. 1954 Statelessness Convention, *supra* note 3, at 136 (defining a stateless person as someone who is "not considered as a national by any State under the operation of its law").

33. 4 GOVERNMENTS OF THE WORLD: A GLOBAL GUIDE TO CITIZENS' RIGHTS AND RESPONSIBILITIES 129 (C. Neal Tate ed., 2006); *see* BRAD K. BLITZ, REFUGEE STUDIES CTR., STATELESSNESS, PROTECTION AND EQUALITY 9 ("Some of the most widely cited cases of statelessness include minority groups that have been formally excluded from the right to nationality such as the Rohingyas in Myanmar (+ [one] million) . . .").

34. Indira Goris et al., *Statelessness: What It Is and Why It Matters*, FORCED MIGRATION REV., Apr. 2009, at 4, <http://www.fmreview.org/FMRpdfs/FMR32/04-06.pdf> [<https://perma.cc/8BUR-W43F>] ("Estimates of the current number of stateless persons in the world range from about [eleven] to [fifteen] million. There is not only a lack of systematic attention given to collecting reliable statistics but also a lack of consensus on whom to include when counting stateless people."); *see also* U.N. HIGH COMM'R FOR REFUGEES (UNHCR), UNHCR ACTION TO ADDRESS STATELESSNESS: A STRATEGY NOTE 4 (2010), <http://www.unhcr.org/4b960ae99.html> [hereinafter UNHCR ACTION TO ADDRESS STATELESSNESS].

35. *See* Goris et al., *supra* note 34.

36. Jay Milbrandt, *Stateless*, 20 CARDOZO J. INT'L & COMP. L. 75, 81 (2011); *see also* Samuel M. Witten & David J. Kramer, U.S. Dep't of State, *Imagine This: You Have No Country, No Country Will Claim You*, DIPNOTE: U.S. DEP'T STATE OFFICIAL BLOG (Sept. 16, 2008), <https://blogs.state.gov/stories/2008/09/16/imagine-you-have-no-country-no-country-will-claim-you> [<https://perma.cc/UB6T-SALE>].

registration regimes.³⁷ In all cases, the authority to confer legal status on any individual lies with the particular country in which that individual resides.

This nation-centered approach to citizenship presents an inevitable tension between sovereignty and individual rights. The international legal system is built on the principles of state sovereignty and self-determination, which include a country's right to decide who can and who cannot receive the benefits of nationality. Thus, when a country declines to afford someone living within its borders the benefits of nationality, the international community has very limited options for compelling that country to comply with international laws and norms that aim to prevent statelessness.³⁸ For more than sixty years, the international community has been acutely aware of the problems that contribute to, and result from, a lack of any nationality or status.³⁹ Yet countries still refuse to recognize certain groups of individuals within their borders and affirmatively strip certain groups of their right to citizenship, despite diplomatic overtures, economic incentives, and even legal reforms.⁴⁰ The problem of statelessness therefore continues unabated, with devastating effects on stateless individuals, particularly young girls.

Since the mid-twentieth century, the international community has recognized statelessness as a pressing global issue affecting both individual rights as well as the stability of entire nations and governments. Following World War II, the reconfiguration of the European continent produced thousands of individuals who were denied citizenship.⁴¹ In Germany, Jewish survivors of the Nazi regime continued to be stripped of their citizenship after the end of the war.⁴² In addition, millions of Eastern Europeans of Germanic descent were expelled from the Soviet Bloc and rendered stateless.⁴³ The 1948 Universal Declaration of Human Rights specifically identified statelessness as

37. See faerog10, *Statelessness: The Basics*, WEAVE NEWS (Nov. 1, 2012), <http://weavenews.org/blogs/faerog10/4213/statelessness-basics> [https://perma.cc/E2ZF-GJA3] (describing and enumerating the various ways that people can become stateless, including: (1) the dissolution of a state; (2) “Complex Domestic and International Laws, and [(3)] Discrimination (most often Racial and Ethnic discrimination or discrimination against women”).

38. UNHCR, *ENDING STATELESSNESS WITHIN TEN YEARS* 5–6 (2010), <http://www.unhcr.org/546217229.pdf> [https://perma.cc/DAF4-A9UE] (noting that “for decades solving statelessness appeared to be insurmountable [because] [m]any governments and the international community as a whole appeared uninterested, often prolonging crises rather than undertaking efforts to solve them”).

39. *Id.* at 5.

40. *Id.* at 20–21 (identifying the key factor in resolving statelessness as “political will,” and discussing a renewed effort to end statelessness within ten years by “persuading and supporting states to undertake” several programs to reduce statelessness).

41. Miriam Rürup, *Living on the Margins: ‘Illegality,’ Statelessness and the Politics of Removal in 20th Century Europe and the United States*, GERMAN HIST. INST., WASHINGTON DC (Sept. 2, 2012), <http://hsozkult.geschichte.hu-berlin.de/tagungsberichte/id=4199> [https://perma.cc/W9X6-9P6S].

42. *Id.*

43. *Id.*

a human rights concern⁴⁴ and in 1950, the United Nations created the Office of the High Commissioner for Refugees (UNHCR). Part of the UNHCR's mandate includes protecting stateless persons and working toward reducing all statelessness across the globe.⁴⁵

Two UN conventions specifically address stateless persons: the 1954 Convention Related to the Status of Stateless Persons⁴⁶ and the 1961 Convention on the Reduction of Statelessness.⁴⁷ These two conventions establish the core of international law regarding statelessness. Article 1(1) of the 1954 Convention defines a stateless person as “a person who is not considered as a national by any State under the operation of its law.”⁴⁸ Most countries, including the United States, have not signed or ratified these conventions sixty years after their promulgation, precisely because of concerns that they will interfere with their country's sovereignty and self-determination.⁴⁹

As Anna Dolidze notes, the operation of article 1(1) is “entirely dependent on . . . domestic law.”⁵⁰ In 2009, the United Nations Human Rights Council acknowledged this fact by declaring that the “acquisition and loss of nationality are essentially governed by internal legislation.”⁵¹ This dependence on domestic law can be problematic because it leaves enforcement to the discretion of each individual country.

It is important to briefly note the underlying theories animating the international regime governing statelessness. The theories can be divided into two schools of thought. The first, expressed by Hannah Arendt, reflects a

44. G.A. Res. 217 A (III), U.N. Doc. A/810, Universal Declaration of Human Rights (Dec. 10, 1948), <http://www.un.org/en/documents/udhr> [<https://perma.cc/PVA2-B5UV>]; see also 1954 Statelessness Convention, *supra* note 3, at 117 (Article 15 of the Declaration affirms that: (1) everyone has the right to a nationality; and (2) no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.).

45. UNHCR ACTION TO ADDRESS STATELESSNESS, *supra* note 34, at 4.

46. 1954 Statelessness Convention, *supra* note 3, at 117.

47. Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175, <https://treaties.un.org/doc/Publication/UNTS/Volume%20989/v989.pdf> [<https://perma.cc/HZ9P-R733>].

48. 1954 Statelessness Convention, *supra* note 3, at 136.

49. SRINI SITARAMAN, STATE PARTICIPATION IN INTERNATIONAL TREATY REGIMES 124–25 (2013) (noting that the two international conventions pertaining to statelessness “have some of the poorest ratification records of all human rights treaties” and that governments’ [o]pposition to both of these treaties have been widespread even before adoption since both these conventions touch on a wide variety of state policies—issuance of travel or identity papers, passports, granting of citizenship or nationality, and territoriality—that are considered to be sovereign domains beyond the purview of any international authority”).

50. Anna Dolidze, *Lampedusa and Beyond: Recognition, Implementation, and Justiciability of Stateless Persons' Rights Under International Law*, 6 INTERDISC. J. HUM. RTS. L. 123, 130 (2011) (“[T]he definition is problematic because it requires any potential applicant to prove the existence of the negative condition—the fact that one does not possess the nationality of any country.”).

51. U.N. Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality*, U.N. Doc. A/HRC/13/34, at 5 (Dec. 14, 2009), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/175/12/PDF/G0917512.pdf>.

cynicism about the international system's ability to protect stateless persons.⁵² Arendt herself was left stateless when Nazi Germany stripped her of citizenship in 1933.⁵³ She argued that international law was solely based on the contractual relationships between states, and that any "attempts to obtain redress for human rights abuses were beyond the reach of international law."⁵⁴ In the modern day, Seyla Benhabib and Randall Hansen carry forward Arendt's skeptical view. Benhabib contends that refugees and stateless persons "exist at the limits of all rights regimes and reveal the blind spot in the system of rights, where the rule of law flows into its opposite: the state of the exception and the ever-present danger of violence."⁵⁵ Hansen is more optimistic about the international regime defending individual rights of the stateless, so long as it is tied to the nation-state as "the single most important generator of rights."⁵⁶ Hansen concludes that national courts must enforce international human rights for those rights to carry any real consequence for the individuals to whom they are endowed.⁵⁷

The second school of thought moves away from the so-called "outmoded" state-centric model of citizenship and instead views individuals as increasingly embodying "universal personhood" that is delinked from any one country's domestic laws.⁵⁸ Anna Dolidze surveys the scholarship of Yasemin Soysal, David Jacobson, and Linda Bosniak, who view modern-day international human rights institutions as increasingly affirming "postnational conceptions"⁵⁹ of personhood; migration patterns that are changing the nature of nationality and "gradually eroding citizenship";⁶⁰ and an "alternative source of rights that transcends the jurisdiction of individual nation[]states."⁶¹ In contrast to the Arendt paradigm, this nascent school of thought disagrees on the extent to which states dictate the contours of an individual's citizenship and nationality in an increasingly globalized world. Dolidze notes, however, that "domestic national courts are of primary importance" in defining the rights and protections of citizens.⁶² In this way, state-centric models of citizenship have

52. See Dolidze, *supra* note 50, at 126 ("How could I explain to you on the telephone or even in the context of a letter the infinitely complex red-tape existence of stateless persons?" (quoting *Letter from Hannah Arendt to Karl Jaspers, January 29, 1946*, in *THE PORTABLE HANNAH ARENDT* 25 (Peter Baehr ed., 2003))).

53. *Id.*

54. *Id.*

55. SEYLA BENHABIB, *THE RIGHTS OF OTHERS: ALIENS, RESIDENTS AND CITIZENS* 163 (2004).

56. Randall Hansen, *The Poverty of Postnationalism: Citizenship, Immigration, and the New Europe*, 38 *THEORY & SOC'Y* 1, 5 (2009).

57. *Id.*

58. Dolidze, *supra* note 50, at 127–28.

59. *Id.*

60. *Id.* at 127.

61. *Id.* at 128 (quoting LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 25 (2006)).

62. *Id.* at 144.

been, and likely will continue to be, the most immediate paradigms through which any attempts to reduce statelessness will be achieved on a broad scale.

1. *Historical Underpinnings of Gendered Nationality Laws*

These state-centric theories of citizenship and nationhood historically allowed states to determine who received the benefits of citizenship, which particularly affected the legal recognition of women. Until World War I, “the nationality laws of virtually all countries made a married woman’s nationality dependent on her husband’s nationality.”⁶³ This was called the “principle of the unity of nationality of spouses,” or “dependent nationality.”⁶⁴ This principle of conferring nationality to foreign women who married citizen men, and not vice versa, was rationalized through prevailing stereotypes that women did not have the capacity for public-mindedness. Therefore, issues of nationality and patriotism were simply not as important as the woman’s private life as a wife and mother.⁶⁵ This theory was predicated on the idea that women consented to membership in the nation of their husband “indirectly as part and parcel of their consent to marriage.”⁶⁶ A woman’s independent nationality was only a secondary consideration; her role in the family was the primary purpose for her legal recognition as a citizen.⁶⁷

This historical frame also shows that such “social and cultural patterns that favor men,” which are reified through discriminatory laws, are not problems exclusive to what some would call non-Western, “less-democratic,” or “less-developed” countries.⁶⁸ The United States, for example, has historically discriminated against certain classes of women through gendered nationality laws. In 1855, the U.S. Congress passed a statute that granted citizenship to any woman who married a male U.S. citizen, but did not provide the same for a U.S. citizen woman marrying a noncitizen man.⁶⁹ Similarly,

63. Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillan: Women’s Equality and Nationality in International Law*, 22 MICH. J. INT’L L. 523, 544–45 (identifying Virginia Woolf’s critique of British nationality laws, which discriminated based on gender: “As a woman, I have no country. As a woman I want no country. As a woman my country is the whole world”) (quoting VIRGINIA WOOLF, *A ROOM OF ONE’S OWN AND THREE GUINEAS* 234 (Michèle Barrett ed., Penguin Books 1993) (1938))).

64. *Id.* at 545.

65. *Id.* at 546–47 (“The stereotype of women as devoted to ‘the preservation and care of life’ meant that women were incapable of demonstrating the love of country that would entitle them to pass its nationality on to their children.”).

66. *Id.* at 543.

67. See ANNE MCCLINTOCK, *IMPERIAL LEATHER: RACE, GENDER AND SEXUALITY IN THE COLONIAL CONTEXT* 358 (1995) (“For women, citizenship in the nation was mediated by the marriage relation within the family.”).

68. Elizabeth Sepper, *Confronting the “Sacred and Unchangeable”: The Obligation to Modify Cultural Patterns Under the Women’s Discrimination Treaty*, 30 U. PA. J. INT’L L. 585, 586 (2008).

69. Act of Feb. 10, 1855, ch. 71, § 2, 10 Stat. 604; see Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 419–

children born abroad to U.S. citizen fathers were conferred U.S. citizenship but the same did not hold for children born abroad to U.S. citizen mothers.⁷⁰ Leti Volpp describes this dependent nationality in the American context as “an act of political consent to the U.S. nation state” where a “wife could only relate to the state through her husband.”⁷¹ This 1855 statute was consistent with the prevailing notion of “dependent citizenship” at the time, where “the citizenship of a wife and child followed the male head of the household.”⁷²

A half-century later, Congress passed new legislation reinforcing this dependent citizenship policy by conditioning nationality on women’s marital decisions. Volpp explains that the “logic of dependent citizenship was extended” with the 1907 Expatriation Act, which expressly divested U.S. citizen women of their U.S. nationality if they married a foreigner.⁷³ The law not only contributed to “striking gender disparit[ies]”⁷⁴ but it also rendered a woman stateless if her foreign spouse’s country of nationality did not automatically confer her citizenship.⁷⁵

But the sweeping Expatriation Act of 1907 was short-lived. The Cable Act of 1922 sought to restore citizenship to women who had been “expatriated” and to prevent future expatriation.⁷⁶ However, Volpp notes that the Cable Act had the practical effect of perpetuating racial and gender discrimination by only naturalizing women of certain races.⁷⁷ Before the Cable Act, only white women were able to become U.S. citizens via their husbands.⁷⁸ Although the Cable Act allowed white or black citizen women who had married noncitizen white or black men to retain their citizenship,⁷⁹ it nevertheless expressly prohibited renaturalization of citizen women who married noncitizen men ineligible to naturalize, particularly Asian men.⁸⁰ Those women could also still have their citizenship taken away. As this example shows, the idea that a woman’s nationality must depend on her husband’s flows from a history of societal patterns favoring men—patterns deeply rooted both in “Western” cultures as well as other political and cultural paradigms around the world.

20 (2005) (noting that the statute said “[a]ny woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen” (quoting Act of Feb. 10, 1855 at 604)).

70. Volpp, *supra* note 69, at 420.

71. *Id.* at 421–22.

72. *Id.* at 420.

73. Expatriation Act, ch. 2534, §§ 3–4, 34 Stat. 1228, 1228–29 (1907); *see* Volpp, *supra* note 69, at 425.

74. Volpp, *supra* note 69, at 425.

75. *Id.*

76. *Id.* at 433.

77. *Id.*

78. Knop & Chinkin, *supra* note 63, at 545–46.

79. Volpp, *supra* note 69, at 433.

80. *Id.*

These views of women's inherent role in the private sphere extended to the state's treatment of children's citizenship. In the 1920s, international scholars believed in a stereotype of women devoted to "the preservation and care of [family] life," which indicated that they were "incapable of demonstrating the love of country that would entitle them to pass [their] nationality on to their children."⁸¹ Others, however, rationalized dependent nationality as an extension of the elevated stature of the husband in family life.⁸² Any independence on the part of the wife—even as it related to nationality—would threaten the husband's authority: "If the wife has a different nationality, then she will feel a duty of obedience to her country that rivals her duty of obedience to her husband. She must acquire his nationality so that he will have no rival for her obedience."⁸³ For much of the twentieth century, then, "[t]he practice of dependent nationality, which was explicit in many laws of the time, classified female adults as minors."⁸⁴ The cohesion of the family unit thus came at the expense of a woman's independent nationality and ability to confer nationality to her children.

2. *The Modern-Day Landscape*

In the latter part of the twentieth century, the promulgation of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) began to dismantle this rationale.⁸⁵ Article 9 of CEDAW specifically grants women equal rights with men to "acquire, change[,] or retain" their nationality, and protects women against statelessness if a country strips her of citizenship upon marriage.⁸⁶ However, as discussed below, the Convention itself is riddled with an alarming number of objections—called "reservations"—by states parties, particularly about article 9.⁸⁷

Today, statelessness based on gender discrimination can arise from conflicting application of nationality laws. The notion of *jus sanguinis* ("right

81. Knop & Chinkin, *supra* note 63, at 546–47.

82. *Id.* at 558–59 ("[I]t is in conformity with the spirit of marriage that spouses have the same nationality. From that moment, it is natural that the nationality of the husband spread to the wife." (quoting RENÉ FOIGNET, MANUEL ÉLÉMENTAIRE DE DROIT INTERNATIONAL PRIVÉ 80 (Knop & Chinkin's translation, 6th ed. 1921))).

83. COMM. ON FEMINISM AND INT'L LAW, INT'L LAW ASS'N LONDON CONFERENCE, FINAL REPORT ON WOMEN'S EQUALITY AND NATIONALITY IN INTERNATIONAL LAW 27 (2000) (citing A.N. Makarov, *La Nationalite de Law Femme Mariee*, 60 RECUEIL DES COURS 115, 141–45 (1937)) [hereinafter FINAL REPORT ON WOMEN'S EQUALITY].

84. FERYAL M. CHERIF, MYTHS ABOUT WOMEN'S RIGHTS: HOW, WHERE, AND WHY RIGHTS ADVANCE 63 (2015) (citing a UN document from 1962).

85. Convention on the Elimination of all Forms of Discrimination Against Women, art. 16(2), Dec. 18, 1979, 1249 U.N.T.S. 13, 20 <https://treaties.un.org/doc/Publication/UNTS/Volume%201249/v1249.pdf> [<https://perma.cc/3CTX-8ZLF>] [hereinafter CEDAW].

86. *Id.* art. 9(1)–(2).

87. Knop & Chinkin, *supra* note 63, at 573 (adding that while article 9 does not expressly oblige states to ensure both male and female spouses can acquire nationality, the article simply prohibits unequal treatment of foreign spouses).

of blood”), whereby nationality derives through the descent of the parent, is applied in a discriminatory fashion in many countries. Twenty-seven countries currently operate under a *jus sanguinis* regime in which women are either severely restricted or completely prohibited from passing their nationality on to their children.⁸⁸ These gendered *jus sanguinis* nationality laws perpetuate statelessness from one generation to the next, as children cannot inherit the national identity of their mother, including the rights that flow from that nation’s citizenship. In contrast, *jus soli* (“right of soil”) nationality laws grant citizenship through birth within a state’s territory. While this principle is gender-neutral on its face, some scholars have found that it favors the father’s nationality “insofar as women have traditionally tended to reside in their husband’s state.”⁸⁹

Conversely, sometimes even the act of marriage can leave a young girl stateless.⁹⁰ In some countries that maintain *jus sanguinis* nationality laws, the bride assumes her husband’s nationality and domicile upon marriage.⁹¹ If she has a country of nationality, her original state may revoke her nationality if she marries a foreigner or if her husband’s nationality changes.⁹² Thus, a child-bride is rendered stateless if her husband’s country does not extend nationality to her.

Even today, as discussed above, many discriminatory nationality laws permit only the foreign spouses of men to naturalize. Many countries prohibit nationality from passing from a mother to her children, even if the child is born in the mother’s country of nationality.⁹³ A female bride who wants her children to have a nationality would thus be forced to move to her husband’s country of nationality, particularly if her country’s nationality laws only confer nationality through the father. This can be troubling for girls involved in marriage against their consent, as they may be stranded outside of their home country and unable

88. UNHCR, BACKGROUND NOTE ON GENDER EQUALITY, NATIONALITY LAWS AND STATELESSNESS (2014), <http://www.unhcr.org/4f5886306.html>.

89. FINAL REPORT ON WOMEN’S EQUALITY, *supra* note 83, at 15.

90. *See infra* notes 91–92 and accompanying text; *see also* Prince, *supra* note 19 (“Gender discrimination is another crucial factor in statelessness. Gender discrimination in nationality means a woman can lose her right to citizenship by virtue of marriage because she must denounce her nationality when she gets married.”).

91. U.N. ECON. & SOC. COMM’N FOR ASIA & THE PACIFIC, PROMOTING WOMEN’S RIGHTS AS HUMAN RIGHTS, at 11, U.N. Doc ST/ESCAP/1974, U.N. Sales No. E.00.II.F.53 (1999) (“In some countries, if a woman marries a foreigner she automatically loses her citizenship in her country of origin as it is assumed that she will assume the citizenship and domicile of her foreign husband.”).

92. Kerber, *supra* note 18, at 100 (noting that despite a 1957 UN convention prohibiting compulsory expatriation of women who marry foreigners, “in some nations today, women who marry foreign men lose their citizenship, exposing themselves and the children of their marriage to statelessness”).

93. Sattar Azizi et al., *Discriminatory or Non-Discriminatory Application of Jus Sanguinis*, 5 J. POL. & L. 145, 145–46 (2012) (conducting a review of various *jus sanguinis* regimes and concluding that “some systems such as the legal system in Iran considers the father as the only parent who can pass the nationality, while other systems consider the equal role for both mother and father”).

to leave their husbands for fear of rendering themselves *and* their children stateless.

In sum, the complexities of statelessness—both as a legal concept and a practical notion of an individual’s existence in the world—are manifold. This Section sought to highlight the interwoven history of statelessness and gender, whereby states have used citizenship and nationality to reinforce women’s dependence on their husbands, to restrict women’s movement and autonomy, and to limit a mother’s ability to confer nationality upon her children. Although international human rights instruments have attempted to dismantle these inequities, states continue to enforce *jus sanguinis* laws that have the practical effect of leaving women and their children particularly vulnerable to statelessness.

B. Defining Child Marriage

This Section defines the problem of child marriage as a human rights abuse. Some United Nations organizations define an early marriage as one involving a person under the age of eighteen.⁹⁴ CEDAW article 16.2 categorically states that “[t]he betrothal and the marriage of a child shall have no legal effect.”⁹⁵ Because CEDAW does not define the age of majority, it is unclear which marriages are actually forbidden.⁹⁶ CEDAW instead allows state parties to determine the age of majority through their own laws.⁹⁷ This Note will use the United Nations’ eighteen-year-old marker as a broad guide but does not suggest an appropriate marriage age. Indeed, many international instruments do not define either a minimum age of marriage or an age of majority, and thus leave states broad discretion to determine when young women can legally wed.⁹⁸

94. U.N. POPULATION FUND (UNFPA), MARRYING TOO YOUNG: END CHILD MARRIAGE (2012), <https://www.unfpa.org/sites/default/files/pub-pdf/MarryingTooYoung.pdf> [<https://perma.cc/9DCM-VE2B>] [hereinafter MARRYING TOO YOUNG].

95. CEDAW, *supra* note 85, art. 16(2).

96. *Id.* (stating that “all necessary action, including legislation, shall be taken to specify a minimum age for marriage”).

97. See G.A. Res. 2018 (XX), Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (Nov. 1, 1965) (noting that in 1965, the UN General Assembly recommended that the minimum age for marriage “shall not be less than fifteen” and that “no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation . . .”).

98. Convention on the Rights of the Child, art. 1, Nov. 20 1989, 1577 U.N.T.S. 3, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [<https://perma.cc/N6LA-YDMS>] [hereinafter CRC]; see also Melinda Jones & Lee Ann Bassar Marks, *The Dynamic Developmental Model of the Rights of the Child: A Feminist Approach to Rights and Sterilisation*, 2 INT’L J. CHILD. RTS. 265, 270 (1994) (discussing how different countries use different measurements, such as age, behavior, biological development, or mental status, for setting the age of majority). These myriad factors exist because the state believes that a child may develop some, but perhaps not all, of the traits of a competent adult by a certain age. Jones & Marks, *supra*, at 270; see also Douglas Hodgson, *Sex Tourism and Child Prostitution in Asia: Legal Responses and Strategies*, 19 MELB. U. L. REV. 512,

Child marriage is a global epidemic. According to the International Center for Research on Women, one-third of girls in the developing world are married before the age of eighteen,⁹⁹ and an estimated 39,000 girls under eighteen are married each day.¹⁰⁰ One in nine girls—five million each year—is married before the age of fifteen, and girls who give birth before their fifteenth birthday are five times more likely to die in childbirth than women in their twenties.¹⁰¹ If present trends continue, the United Nations Population Fund (UNFPA) estimates that between 2011 and 2020, 142 million girls will be married before reaching the age of eighteen—more than fourteen million girls per year.¹⁰²

Early marriage has dire consequences for young girls and the families they raise. Young brides are often underdeveloped and undernourished, and early childbirth renders them susceptible to reproductive and maternal health issues.¹⁰³ They are at greater risk of contracting HIV/AIDS from older husbands, experiencing higher levels of domestic violence, and being exploited in domestic servitude, prostitution, or sex trafficking.¹⁰⁴ In addition, young brides rarely return to school and are at far greater risk of being illiterate.¹⁰⁵

Child marriage strips girls of their fundamental human rights and cripples the economic and social health of communities in which they live.¹⁰⁶ While girls lose the opportunity to get a job and generate their own income, the economy loses an educated citizen with the potential to contribute to the

523 (1994) (discussing how the minimum age of “consent” varies widely based on these attributes and is often inconsistent between girls and boys).

99. *Child Marriage Facts and Figures*, INT’L CTR. FOR RES. ON WOMEN, <http://www.icrw.org/child-marriage-facts-and-figures> [<https://perma.cc/EQ9H-7N89>].

100. Press Release, UNFPA et al., *Child Marriages: 39,000 Every Day – More than 140 Million Girls Will Marry Between 2011 and 2020* (Mar. 7, 2013), <http://www.un.org/youthenvoy/news/child-marriages-39000-every-day-more-than-140-million-girls-will-marry-between-2011-and-2020/> [<https://perma.cc/BVR6-Q7V2>].

101. *Id.*; see also MARRYING TOO YOUNG, *supra* note 94; Susanne Louis B. Mikhail, *Child Marriage and Child Prostitution: Two Forms of Sexual Exploitation*, 10 GEN. & DEV. 43, 47 (2002) (noting that pregnancy is the leading cause of death worldwide for girls ages fifteen to nineteen).

102. MARRYING TOO YOUNG, *supra* note 94.

103. See *Child Marriage Facts and Figures*, *supra* note 99.

104. See ANJU MALHOTRA ET AL., INT’L CTR. FOR RESEARCH ON WOMEN, *SOLUTIONS TO END CHILD MARRIAGE: WHAT THE EVIDENCE SHOWS* 4 (2011), <http://www.icrw.org/files/publications/Solutions-to-End-Child-Marriage.pdf> [<https://perma.cc/TR24-V3FN>].

105. *Discrimination, A WORLD AT SCHOOL* (Sept. 2015), <http://www.aworldatschool.org/issues/topics/discrimination> [<https://perma.cc/A5U3-UR6F>] (noting that more than 60 percent of child brides have no formal education and that a “large portion of child brides cannot return to school after marriage due to financial constraints to pay school fees, lack of child care, and unavailability of flexible school programmes or adult classes”); see also JUDITH-ANN WALKER, *WHY ENDING CHILD MARRIAGE NEEDS TO BE AN EDUCATION GOAL 1* (2013), http://www.brookings.edu/~media/Research/Files/Reports/2013/12/improving%20learning%20outcomes%20girls%20africa/walker_girls_education.pdf [<https://perma.cc/7U2V-KEW2>] (“For each additional year that a girl delays marriage, her likelihood of being literate increases by 5.6 percent and the prospect of her secondary school completion rises by 6.5 percent.”).

106. See MALHOTRA ET AL., *supra* note 104.

country's economic growth.¹⁰⁷ According to a recent study in India, if the country eradicated child marriage and employed men and women equally, the country's gross domestic product would increase by 27 percent.¹⁰⁸

Several factors, both economic and cultural, contribute to the high incidence of child marriage around the world. These factors include poverty, a desire to "protect" girls' virginity, and entrenched gender discrimination. Because girls are considered an economic burden, they are devalued by domestic violence and a lack of education, health care, and autonomy.¹⁰⁹

The United Nations Children's Fund's (UNICEF) Innocenti Research Center notes that "poverty is one of the major factors underpinning early marriage," as an impoverished family may regard a daughter as an economic burden.¹¹⁰ Families often receive a dowry payment or some other form of compensation as the bride price for their daughter.

Cultural factors stemming from patriarchal viewpoints or sex stereotypes also contribute to the prevalence of early marriage. Specifically, child marriage often occurs because of the value placed on a girl's virginity and the perceived need to protect girls from sexual advances.¹¹¹ Ruth Levine explains that the practice of child marriage results from entrenched gender roles in certain communities, which define a woman's social standing in terms of marriage and child bearing.¹¹² Child marriage is linked to the "assurance of [a girl's] virginity" when she marries.¹¹³ As such, early marriage is a protective mechanism to ensure girls do not enter into "intimate relations with unfamiliar men" and bring dishonor and shame to their families.¹¹⁴ For example, in the Roma community across eastern Europe, child marriage is openly accepted as "a protectionist strategy" to maintain "tribal and social purity."¹¹⁵ In this way,

107. *Id.* at 18.

108. Surbhi Tangri, *The Impact of Early Marriage on the Economy*, BREAKTHROUGH (Sept. 13, 2013), <http://www.breakthrough.tv/earlymarriage/2013/09/impact-early-marriage-economy> [https://perma.cc/F986-7YFB].

109. Pierre Tristam, *Child Marriage: Facts, Causes, and Consequences*, ABOUTNEWS (Dec. 10, 2014), <http://middleeast.about.com/od/humanrightsdemocracy/a/child-brides.htm> [https://perma.cc/ZZJ5-FKNA].

110. Innocenti Research Ctr, UNICEF, *Early Marriage: Child Spouses*, 7 INNOCENTI DIG., Mar. 2001, at 6, <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> [https://perma.cc/9BBQ-HMA8] [hereinafter *Early Marriage: Child Spouses*].

111. See Robert Jensen & Rebecca Thornton, *Early Female Marriage in the Developing World*, 11 GEN. & DEV. 9, 17 (2003); Nell Williams, *Early Marriage and Female Genital Cutting in Ethiopia: Exploring the Links*, GIRLS NOT BRIDES (June 5, 2014), <http://www.girlsnotbrides.org/early-marriage-female-genital-cutting-ethiopia-exploring-links/> [https://perma.cc/5D4P-S2BV].

112. RUTH LEVINE ET AL., CTR. FOR GLOBAL DEV., *GIRLS COUNT: A GLOBAL INVESTMENT AND ACTION AGENDA* 48 (2008), http://www.cgdev.org/sites/default/files/15154_file_GC_2009_Final_web_0.pdf [https://perma.cc/V7G6-GUBQ].

113. Mikhail, *supra* note 101, at 43.

114. *Id.*

115. Jeff Timmerman, *When Her Feet Touch the Ground: Conflict Between the Roma Familistic Custom of Arranged Juvenile Marriage and Enforcement of International Human Rights Treaties*, 13 J. TRANSNAT'L L. & POL'Y 475, 479 (2004).

the Roma view child marriage as a means of “cultural, economic, and societal preservation and autonomy” in the face of systematic discrimination against Roma communities by many European Union member states.¹¹⁶

Although child marriage is rooted in traditional notions of honor and purity, the practice shares many characteristics with child sex trafficking and prostitution. The two concepts may seem paradoxical, given their relative places in the private and public spheres. However, both notions “endorse intimate contact with often unfamiliar men,”¹¹⁷ and some scholars note that the discourse around child marriage is beginning to align more closely with the moral approbation associated with child prostitution.¹¹⁸ Indeed, the two practices share four important similarities.

First, as Susanne Mikhail notes, both child prostitution and early marriage involve economic transactions between a “client” and a “supplier.”¹¹⁹ Many practices demand either a “brideprice,”¹²⁰ paid to the bride’s family from the groom, or a dowry, which the bride is expected to bring to the marriage.¹²¹ In both cases, the girl is cut out of the economic transaction and can rarely access the payment.¹²²

Second, both practices involve a lack of consent and a fundamental violation of human rights.¹²³ In many cases, a girl’s family makes the unilateral decision either to sell her into sex slavery as a prostitute or to sell her into sexual bondage as a child bride, without any forewarning or opportunity for input.¹²⁴ Of course, this reality does not necessarily imply that families do not care about their daughters’ well being; many families believe they are protecting their daughters by giving them away in marriage. Still, as discussed above, involving a young girl in marriage without an opportunity for her meaningful consent affects her emotional, physical, and mental health. It can also have serious consequences for the well-being and livelihood of her family.

Third, as a result of this lack of consent, in both child marriage and child sex slavery, girls live in “bondage.”¹²⁵ Their freedom of movement is severely

116. *Id.*

117. See Mikhail, *supra* note 101, at 43; see also Elizabeth Warner, *Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls*, 12 J. GENDER, SOC. POL’Y & L. 233, 241 (2004) (noting that “[t]he need to keep girls ‘pure’ and virginal before marriage reflects a double standard that has existed throughout human history”).

118. Mikhail, *supra* note 101, at 43–44.

119. *Id.* at 44.

120. See FORUM ON MARRIAGE AND THE RIGHTS OF WOMEN AND GIRLS, EARLY MARRIAGE: SEXUAL EXPLOITATION & THE HUMAN RIGHTS OF GIRLS (2001) [hereinafter SEXUAL EXPLOITATION AND THE HUMAN RIGHTS OF GIRLS] (defining “brideprice” as the sum needed to purchase a woman for her labor and her fertility”); see also Warner, *supra* note 117, at 239 n.29.

121. Warner, *supra* note 117, at 234–35.

122. *Id.*; see also Mikhail, *supra* note 101, at 44.

123. Warner, *supra* note 117, at 239 (noting that parents’ “desires take precedence over the wishes of the child”).

124. Mikhail, *supra* note 101, at 46.

125. *Id.*

curtailed by “employer[s]”—or husbands—who have complete authority over their actions and interactions.¹²⁶ In the case of child marriage, girls are tied to their husbands not only through marriage but also through the social stigma that accompanies divorce.¹²⁷ They are trapped within their husband’s familial structure and often are prohibited from seeing their own family members.¹²⁸ Families prefer young wives who will be submissive, docile, and unquestioning of their roles in the familial hierarchy.¹²⁹ In addition, young brides often must endure gender-based violence at the hands of their husbands—frequently with no legal redress. In Jordan, as Mikhail notes, 26 percent of reported cases of domestic violence were against brides younger than eighteen years old.¹³⁰

Finally, both sex slavery and early marriage pose significant risks to the health of young girls. Both activities render girls susceptible to contracting HIV/AIDS from older men.¹³¹ Moreover, in both cases, young girls become pregnant before fully developing and are thus at greater risk of suffering the life-threatening impacts of childbirth. In fact, “[p]regnancy-related deaths are the leading cause of mortality for fifteen- to nineteen-year-old girls

126. *Id.*

127. *Id.* at 47.

128. *Id.*

129. Hannatu Musawa, Opinion, *Child Marriage — Stealing Their Right to Innocence* [sic], YNAIJA (July 20, 2013), <http://ynaija.com/opinion-child-marriage-stealing-their-right-to-innocence/> [<https://perma.cc/H9FJ-SCDF>].

130. Mikhail, *supra* note 101, at 47.

131. JUDITH BRUCE, POPULATION COUNCIL, CHILD MARRIAGE IN THE CONTEXT OF THE HIV EPIDEMIC (2007) (noting that husbands of child brides tend to be older and more sexually experienced, and referencing a study in which 31 percent of male partners of married girls aged fifteen to nineteen are infected with HIV, compared to 12 percent of partners of unmarried girls of the same age). Furthermore, Bruce references studies finding that “[g]irls who are forcibly initiated into sexual relations may be particularly susceptible to sexually transmitted infections, including HIV, both because of the physical trauma and because of the immaturity of their genital tract.” *Id.*; see also AKINRINOLA BANKOLE ET AL., GUTTMACHER INST., RISK AND PROTECTION: YOUTH AND HIV/AIDS IN SUB-SAHARAN AFRICA 9 (2004); Amanda Kloer, *Sex Trafficking and HIV/AIDS: A Deadly Junction for Women*, AM. BAR ASS’N HUM. RTS. MAG., Spring 2010, http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol37_2010/spring2010/sex_trafficking_and_hiv_aids_a_deadly_junction_for_women_and_girls.html [<https://perma.cc/HX6Z-NQWY>].

Another example of how sex trafficking can spread HIV is the cultural belief in some parts of the world that sex with a virgin can cure HIV or AIDS. HIV-positive men who believe this myth will seek out traffickers to procure a virgin for them, often a child. They then have unprotected sex with that virgin, and in the process will sometimes transmit the disease. However, the transmission factor of this encounter is multiplied exponentially, because after this sexual contact, the man, thinking himself cured, may have unprotected sex with other partners. The child he used, now possibly infected, will often continue to be trafficked for sex. In these cases, HIV transmission is not merely a byproduct of sex with a trafficking victim, but is the impetus for the trafficking and the sexual contact. It is also an action that can spread the disease exponentially.

worldwide.”¹³² These similarities between child prostitution and child marriage highlight the commodification of the girl-child in these economic transactions.

Yet the international community has, thus far, focused its efforts mainly on the criminality of child prostitution and sex trafficking, while young girls condemned to early and forced marriage fall through the cracks.¹³³ In fact, scholars have noted that “there appears to be little recognition that the same forms of abuse” subject to regulation in the *public* sphere also occur in the *private*, noncommercial sphere of child marriage.¹³⁴ Kirsten Backstrom notes that in many countries where early marriage is prevalent, “[a]s the female child nears the age of majority, the state provides her with less protection” just at the time that she is most vulnerable to exploitation and abuse.¹³⁵ “As she matures, the female adolescent is more vulnerable to human-rights abuses.”¹³⁶ This is true despite “unprecedented international demand for and focus on children’s rights” through widespread international participation in conventions and legal regimes addressing the rights of the child.¹³⁷ And although the UN Convention on the Rights of the Child (CRC) and the CEDAW address the rights of children and women, respectively, they fail to comprehensively reaffirm and protect the rights of young girls in adolescence.¹³⁸

In the case of statelessness, the female child is vulnerable at all times. As illustrated in the cases of Kahtu and Noha, discussed above, many families turn to child marriage to secure protection for the girl, or for her family, during instability, conflict, or displacement. This is a consideration unique to the problems of statelessness and conflict that generally does not arise in the traditional child marriage paradigm.

In sum, child marriage is symptomatic of women’s rights violations and gender inequality. The practice of child marriage violates a wide range of human rights, including the right to consensual marriage, the right to equality, the right to education, and the right to be free from torture and slavery.¹³⁹

132. See Warner, *supra* note 117, at 240 n.37 (quoting *Early Marriage: Child Spouses*, *supra* note 110, at 10–11) (internal quotation marks omitted).

133. *Id.* at 243–47 (2004) (“[I]t is striking how poorly existing international human rights and women’s rights conventions address the practice of child marriage or the forms of abuse that can occur within such a marriage.”).

134. SEXUAL EXPLOITATION AND THE HUMAN RIGHTS OF GIRLS, *supra* note 120.

135. Kirsten M. Backstrom, Note, *The International Human Rights of the Child: Do They Protect the Female Child?*, 30 GEO. WASH. J. INT’L L. & ECON. 541, 542 (1996).

136. *Id.*

137. *Id.* at 541.

138. *Id.*

139. See Jensen & Thornton, *supra* note 111, at 10; see also FAREDA BANDA, OFFICE OF THE HIGH COMM’R FOR HUM. RTS., PROJECT ON A MECHANISM TO ADDRESS LAWS THAT DISCRIMINATE AGAINST WOMEN 64 (2008), http://www.ohchr.org/Documents/Publications/laws_that_discriminate_against_women.pdf [<https://perma.cc/E5FR-UTJZ>]; RANGITA DE SILVA DE-ALWIS, UNICEF, CHILD MARRIAGE AND THE LAW, at i (2008), [http://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law\(1\).pdf](http://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law(1).pdf) [<https://perma.cc/4GV9-89MT>].

Shifting the status quo to reduce the incidence of both of these phenomena will require a shift in power relations between women and men and an attendant emphasis on girls' value to the economic, social, and cultural lives of their communities.

II.

THE LEGAL LANDSCAPE

A. *Nationality Laws and Child Marriage*

This Part begins with a brief overview of the theoretical foundations of the current nationality debate and broader theories of citizenship. As Lisa Stratton notes, traditionally, “only [s]tates, not individuals, were subjects of international law.”¹⁴⁰ Nationality connected the individual with the state such that the state's obligations and responsibilities within the international scheme would extend to the individual.¹⁴¹ This view was supported by Jeremy Bentham and other nineteenth-century positivists, who concluded that “international law had only states as its subjects.”¹⁴² But some scholars argue that this state-centric model of international rights is now outdated, and that the promulgation and ubiquity of multilateral human rights treaties “limit the ability of sovereign states to circumscribe individual rights, thus making the individual a subject of international law.”¹⁴³

These two theories of international law come into tension when considering the problem of statelessness. Individual states, through their own domestic law, have sole authority over conferring nationality.¹⁴⁴ Membership in one country “carries a different set of rights and obligations, within a different legal framework, than does membership in another.”¹⁴⁵ For example, while U.S. citizens are accorded full civil and political rights, U.S. nationals, territorial occupants, and other noncitizens have reduced rights, including the inability to vote in federal or state elections.¹⁴⁶ Likewise, citizenship laws and laws regarding the minimum marriage age vary significantly among the states.

Jay Milbrandt's research found that in parts of Africa and across the Middle East, citizenship is still restricted to the children of male nationals.¹⁴⁷ In countries where “women may not independently obtain a nationality,” they are

140. Lisa C. Stratton, *The Right to Have Rights: Gender Discrimination in Nationality Laws*, 77 MINN. L. REV. 195, 198–99 (1992).

141. *Id.*

142. M.W. Janis, *Individuals as Subjects of International Law*, 17 CORNELL INTL. L.J. 61, 62 (1984) (discussing Bentham and others' views and arguing that modern international law provides for a non-state-focused modality).

143. Stratton, *supra* note 140, at 199–200 (citation omitted).

144. See U.N. Human Rights Council, *supra* note 51, at 5.

145. Jeffrey L. Blackman, *State Successions and Statelessness: The Emerging Right to an Effective Nationality Under International Law*, 19 MICH. J. INT'L L. 1141, 1148 (1998).

146. *Id.*

147. Milbrandt, *supra* note 36, at 95.

prohibited from passing on their nationality to their children and often must forfeit their *own* nationality when they marry a nonnative.¹⁴⁸ Ultimately, these policies have “discourage[d] female citizens from marrying men of a different ethnicity or nationality because their children will be denied citizenship.”¹⁴⁹

Similarly, while most countries’ laws set a statutory minimum age for marriage among girls, the requirement is not always rigidly enforced. At least forty countries allow girls to marry below the minimum age based on “customary” practices at the local or tribal level.¹⁵⁰ This is true even in many American locales, where state laws allow for girls to be married below the minimum statutory age, so long as they have judicial or parental consent.¹⁵¹

B. International Instruments Fail in Preventing Statelessness and Child Marriage

There is no shortage of international human rights instruments that aim to address some component of gender inequality, be it sexual exploitation, forced labor and domestic servitude, trafficking, or child prostitution. This includes the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children; the Convention Against Torture; and even the Universal Declaration of Human Rights. Many of these instruments contain provisions relating to marriage. This comprehensive web of overlapping human rights laws would seem to provide a safety net for human rights abuses that stem from child marriage. Yet, this patchwork of treaties and conventions leaves gaping holes in implementation and enforcement, thus limiting their intended impact.

This Section describes the main human rights conventions that would provide the theoretical basis for affirming and protecting the rights of stateless women and girls: CEDAW, the CRC, and the Refugee Convention.¹⁵² However

148. *Id.*

149. *Id.*; see also *Nationality and Statelessness*, HUM. RTS. WATCH, <https://www.hrw.org/legacy/campaigns/race/nationality.htm> [https://perma.cc/4Y4S-ZK2E] (summarizing the plight of millions of individuals in Asia, Africa, Europe, and the Middle East who “have been denied or stripped of citizenship in their own countries solely because of their race, national descent, and gender”).

150. Warner, *supra* note 117, at 243–44 (noting that many laws also provide for exceptions to the minimum marriage age with parental or judicial consent).

151. *Id.*

152. The Statelessness Conventions are not included in this discussion, as they are widely seen as ineffectual. Too few countries have signed on to the conventions for them to be considered relevant in a discussion of customary human rights law. Instead, the Refugee Convention, which is nearly universally ratified, is discussed as a potential substitute mechanism to enforce the human rights of stateless persons. See TENDAYI BLOOM, UNITED NATIONS UNIV., *PROBLEMATIZING THE CONVENTIONS ON STATELESSNESS* 14–16 (2013), <http://i.unu.edu/media/gcm.unu.edu/publication/684/unu-gcm-policy-report-02-01-problematizing-the-conventions-on-statelessness.pdf> [https://perma.cc/9NF5-BB35] (discussing the differing trajectories of the Refugee Convention and the Statelessness Conventions). Bloom notes that “[t]he matter of statelessness is contentious” and that, in

well-intentioned they may be, these instruments are often toothless when it comes to enforcing the rights of individual girls against the states in which they reside. As explained in more detail below, CEDAW is plagued by a host of reservations that allow countries to maintain gender-discriminatory laws, despite their status as states parties to the Convention. The CRC is vague and deferential to local custom as it relates to acquiring nationality. And the Refugee Convention does not include gender-based discrimination as an explicit basis for a persecution claim.

Even though countries sign on to these human rights treaties, presumably in good faith, countries are permitted to make broad and categorical reservations to critical treaty provisions. This effectively permits countries to gain a reprieve from implementing those provisions in the name of sovereignty and national interest. The reservations thus undermine the effectiveness and overall purpose of the treaties. Similarly, the treaties are written so broadly that they offer states nearly boundless discretion in determining which laws to amend to be brought into compliance. In doing so, countries receive all of the benefits without any of the drawbacks: they can gain international credibility by being a party to a human rights treaty, yet they can also indemnify themselves from ever having to change their laws or behavior toward those who live at the margins of society.

The aforementioned problematic relationship between family law (and the archaic theory of dependent nationality) and gender equality is addressed in CEDAW, which was adopted by the United Nations General Assembly in 1979 and has been ratified by nearly every country.¹⁵³ In fact, the United States is one of only a handful of countries around the world—including Iran, Somalia, and Sudan—that has failed to ratify CEDAW.¹⁵⁴

First, CEDAW contains several provisions that address and affirm women's equal status regarding marriage and nationality. CEDAW's article 9 expressly affirms equal rights for men and women with respect to nationality by requiring that "change of nationality by the husband during marriage shall

the past decade, "UNHCR admitted they had not done enough to address the issue of Statelessness," leading to a concerted ratification campaign upon the fiftieth anniversary of the 1961 Convention. *Id.* at 16.

153. To date, 189 countries have ratified the treaty, making it the second-most ratified human rights treaty. *Status: Convention on the Elimination of All Forms of Discrimination Against Women*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last updated Jan. 10, 2016) [hereinafter *Status of CEDAW*]; CEDAW, *supra* note 85. In many countries, however, although women have legal equality, their substantive equality has yet to be realized. See Anjali Sara Bonner, *Muslim States' Reservations to CEDAW and Possibilities for the Reconciliation of Shariah Law with International Women's Rights Norms*, 3 H.K. J. LEGAL STUD. 27, 28 (2009).

154. *Convention on the Elimination of All Forms of Discrimination Against Women: Testimony Before the S. Judiciary Comm., Subcomm. on Human Rights and the Law*, 111 Cong. (2010), <http://www.state.gov/s/gwi/rls/rem/2010/151153.htm> [<https://perma.cc/586T-2H6J>] (detailing the statement of Melanie Vermeer, Ambassador-at-Large for Global Women's Issues, U.S. Dep't of State).

[not] automatically change the nationality of the wife” or render her stateless.¹⁵⁵ Article 16 provides that parties to the convention must take appropriate measures “to eliminate discrimination against women in all matters relating to marriage and family relations.”¹⁵⁶ It calls for the establishment of a minimum age for marriage and a compulsory marriage registration system.¹⁵⁷ In addition, article 5(a) requires parties to take all appropriate measures “[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”¹⁵⁸

However, although CEDAW is nearly universally ratified, it has the most reservations attached to it of any human rights treaty in existence.¹⁵⁹ In particular, many countries, such as Jordan and Malaysia, have made reservations to article 9 and refuse to enforce it.¹⁶⁰ Thus, statelessness may continue unabated, without any pressure that the formal international legal regime was designed to provide. To compound the problem, parties to CEDAW need only submit periodic “progress reports” on their work to address gender discrimination.¹⁶¹ There are no strings attached. For this reason, CEDAW has been criticized as “one of the weakest links in the chain of

155. CEDAW, *supra* note 85, art. 9.

156. *Id.* art. (1).

157. *Id.* art. 16(2).

158. *Id.* art. 5(a); *see also* OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS (OHCHR), FACT SHEET NO. 22, DISCRIMINATION AGAINST WOMEN: THE CONVENTION AND THE COMMITTEE 5 (1993), <http://www.ohchr.org/Documents/Publications/FactSheet22en.pdf> [<https://perma.cc/4CV7-DF3W>] (“Article 5 recognizes that, even if women’s legal equality is guaranteed and special measures are taken to promote their de facto equality, another level of change is necessary for women’s true equality. States should strive to remove the social, cultural and traditional patterns which perpetuate gender-role stereotypes and to create an overall framework in society that promotes the realization of women’s full rights.”).

159. *See Status of CEDAW*, *supra* note 153; *see also Reservations to CEDAW*, UN WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> [<https://perma.cc/US94-K6N7>]; *see also Reservations*, INT’L WOMEN’S RTS. ACTION WATCH ASIA PACIFIC, <http://www.iwraw-ap.org/cedaw/what-is-cedaw/reservations> (last visited Jan. 11, 2016).

160. Countries that made reservations to the article include Lebanon, Morocco, Monaco, Iraq, Bahrain, Kuwait, Saudi Arabia, and Syria. Canada, Austria, Czech Republic, Estonia, Denmark, and several other countries have objected to these reservations. *See Declarations, Reservations and Objections to CEDAW*, UN WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> [<https://perma.cc/DW4K-GPMF>]; UNICEF, JORDAN: MENA GENDER EQUALITY PROFILE 2 (2011), <http://www.unicef.org/gender/files/Jordan-Gender-Equality-Profile-2011.pdf> [<https://perma.cc/XW3G-NUS8>]; *see also Status of CEDAW*, *supra* note 153.

161. UNITED NATIONS DEV. PROGRAMME (UNDP), THE ARAB HUMAN DEVELOPMENT REPORT 2005: TOWARDS THE RISE OF WOMEN IN THE ARAB WORLD 180 (2006) [hereinafter THE ARAB HUMAN DEVELOPMENT REPORT 2005]; *see also* Stratton, *supra* note 140, at 216–17 (1992) (“Even non-reserving States Parties to the Women’s Convention are bound only to submit periodic reports on their compliance with the treaty to CEDAW. The treaty contains no provision for individual or inter-State complaints to the Committee. CEDAW itself meets for shorter periods and has fewer enforcement mechanisms Another barrier to implementation of the Women’s Convention stems from the number of reservations to its substantive provisions” (citations omitted)).

international human rights law since it has weak implementing mechanisms and is encumbered with reservations.”¹⁶² CEDAW has effectively failed to ensure women’s equality under the nationality laws of some states parties.

The CRC similarly fails to provide a clear roadmap for protecting stateless women and girls who are vulnerable to exploitation, including child marriage. Article 7 of the CRC requires that every child be registered immediately after birth and that every child is entitled to nationality.¹⁶³ In contrast to CEDAW, the CRC has a relatively robust enforcement mechanism for treaty implementation,¹⁶⁴ but its vague wording allows countries to perpetuate gender discriminatory nationality laws.¹⁶⁵ Although the CRC affirms the right to a nationality, the plain language of the treaty does not indicate on what basis the female child’s nationality is to be determined. The treaty simply includes aspirational language that a child has the “right to acquire a nationality,” but does not set forth *how* a child acquires it.¹⁶⁶ Countries such as Burma or Jordan, both of which refuse to recognize some stateless populations, would not be compelled to confer nationality on stateless girls. Thus, a girl’s nationality remains derivative of the laws operating in the country where she resides—if she indeed has legal status in a country. Furthermore, the CRC establishes only that eighteen should be the upper limit in determining a child’s age of majority; national governments are free to lower the age of majority if they deem it appropriate, which results in significant discretion to decide the minimum age for marriage.¹⁶⁷

In particular, the CRC emphasizes the need to strengthen the family unit, which at times conflicts with, and perhaps subordinates, the rights of girls to make their own autonomous decisions about marriage.¹⁶⁸ Kirsten Backstrom notes that the CRC overlooks the potential cultural discrimination that a girl encounters from her own family members, who often are the primary actors in such cultural practices as forced marriage, forced labor, and even dowry death and honor killings.¹⁶⁹ The CRC only speaks of the “best interests of the child” within the context of cultural identity and community practices.¹⁷⁰ Thus, the

162. THE ARAB HUMAN DEVELOPMENT REPORT 2005, *supra* note 161, at 180.

163. CRC, *supra* note 98, art. 7.

164. Ladan Askari, *The Convention on the Rights of the Child: The Necessity of Adding a Provision to Ban Child Marriages*, 5 ILSA J. INT’L & COMP. L. 123, 128, 134 (1998); Ruth Gaffney-Rhys, *International Law as an Instrument to Combat Child Marriage*, 15 INT’L J. HUM. RTS. 359, 359 (2011).

165. Askari, *supra* note 164, at 124.

166. CRC, *supra* note 98, art. 7.

167. *See* CRC, *supra* note 98, art. 1.

168. Backstrom, *supra* note 135, at 566–67.

169. *Id.* at 552, 576–78.

170. CRC, *supra* note 98, art. 29(c) (“The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.”).

CRC may allow states to justify cultural abuses against the girl-child “on the basis of social identity” as long as such abuses “occur within the confines of the family.”¹⁷¹

Finally, the Refugee Convention also leaves protection gaps for stateless women and girls, particularly because it has not been a successful mechanism for allowing gender discrimination to serve as a basis for a successful asylum claim, whether through nationality laws or child marriage. The Refugee Convention does not permit gender-based discrimination, without more, to provide a valid basis for a persecution claim.¹⁷² Women thus often have difficulty proving a refugee or asylum claim solely based on harmful treatment motivated by gender bias.

However, in 1991, the UNHCR published its first guidelines on the protection of refugee women, which put a greater focus on gender-based claims forming a nexus for a persecution claim.¹⁷³ Since then, there has been a concerted push by UNHCR, international aid organizations, and some countries’ development programs to account for gender-based violence and cultural practices or policies harmful to women in adjudicating an asylum or refugee claim.¹⁷⁴

As discussed above, legal measures often have been ineffective in stemming the growing trends of statelessness and child marriage, and, by extension, in helping to secure gender equality for the world’s most vulnerable populations. The next Part will examine the intersections between statelessness and child marriage at the national level, where domestic law dictates the terms by which a girl will be recognized as independent within her society—or whether she will be relegated to the shadows.

171. Backstrom, *supra* note 135, at 576–79 (citing CRC, *supra* note 98, art. 19). In contrast, CEDAW “urges the modification of *all* social and cultural conduct that discriminates against women on the basis of their sex,” even those norms that are rooted in the family unit. *Id.* at 579. Thus, relative to the operation of the CRC, CEDAW “appears to better understand the far-reaching measures that must be taken to combat cultural practices often ingrained in society.” *Id.*

172. See UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: GENDER-RELATED PERSECUTION WITHIN THE CONTEXT OF ARTICLE 1A(2) OF THE 1951 CONVENTION AND/OR ITS 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES 4 (2002), <http://www.unhcr.org/3d58ddef4.pdf> [<https://perma.cc/7N4L-94ZB>] (noting that it is “generally agreed” that gender-based discrimination does not, in and of itself, provide the basis for a well-founded fear of persecution); see also Jennifer P. Harris, *Refugee Women: Failing to Implement Solutions*, CTR. HUM. RTS. & HUMANITARIAN L., <https://www.wcl.american.edu/hrbrief/v7i3/refugee.htm> [<https://perma.cc/Y88C-8MQD>] (noting that “[w]omen have difficulty showing sexual discrimination and violence is ‘persecution’ on account of one of the five protected grounds . . . because those people who provide services to refugees commonly regard sexual violence as random”).

173. UNHCR, GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN (1991), <http://www.unhcr.org/3d4f915e4.pdf> [<https://perma.cc/P6VT-86MW>].

174. *Id.*; see also UNHCR, SEXUAL AND GENDER-BASED VIOLENCE AGAINST REFUGEES, RETURNNEES AND INTERNALLY DISPLACED PERSONS 30–32 (2003), <http://www.unhcr.org/3f696bcc4.pdf> [<https://perma.cc/ZQ6L-PM5G>] (outlining the multisector approach to addressing gender-based discrimination across UN agencies, NGOs, and host governments).

III.

CASE STUDIES: COUNTRIES AT THE INTERSECTION OF STATELESSNESS AND CHILD MARRIAGE

This Part examines the legal regimes in three countries facing protracted stateless situations, as well as high or rising incidences of child marriage: Jordan, Nepal, and Malaysia. These countries have significant protracted stateless populations and struggle with institutionalized gender inequality. Yet these countries represent three different paradigms for how statelessness and child marriage interact.

Although the incidence of child marriage is highest in other countries not considered here—mainly those in Africa¹⁷⁵—this Note focuses on Jordan, Nepal, and Malaysia because of the relatively large amount of data available on their stateless populations. This Note presents Jordan, Nepal, and Malaysia as illustrative examples of the intersections of statelessness and child marriage because all three have high numbers of displaced persons who have fled or are currently fleeing ethnic or political conflict. Because these countries often act as “host states,” their nationality laws are particularly important.¹⁷⁶

Furthermore, this Note seeks to take a geographically expansive look at the intersections between statelessness and child marriage, to the extent that relatively robust data is available over long periods of time. Jordan is located in the Middle East and North Africa (MENA), Nepal is in South Asia, and Malaysia is in Southeast Asia. These three countries have vastly different geographies, histories, cultures, and geopolitical concerns. They also have different population flows, in terms of both the numbers and identities of those who are displaced—some of whom have been stateless or displaced inside the country for years or even decades, and some of whom are new arrivals. Finally, the three countries vary regarding their incidences of child marriage. Jordan typically has not had a high incidence of early or forced marriage, but the increased refugee flow into the country has impacted the prevalence of marriage.¹⁷⁷ On the other hand, Nepal consistently has one of the highest rates of child marriage around the world.¹⁷⁸ And in Malaysia, child marriage is frequently practiced, particularly in rural parts of the country. Thus, these countries provide three different paradigms for examining the interaction of statelessness and child marriage, and how current international responses have failed to address these interrelated problems.

175. See *Child Marriage Facts and Figures*, *supra* note 99.

176. See Ben White et al., *Refugees, Host States and Displacement in the Middle East: An Enduring Challenge*, HUMANITARIAN EXCHANGE, Nov. 2013, at 20, www.alnap.org/pool/files/he-59-syria.pdf (describing challenges facing host states dealing with an influx of displaced refugees and stateless persons).

177. See *infra* notes 203–13 and accompanying text.

178. *Child Marriage Around the World: Nepal*, GIRLS NOT BRIDES, <http://www.girlsnotbrides.org/child-marriage/nepal/> [<https://perma.cc/M4FX-GJG2>].

A. *Jordanian Nationality and Marriage Laws*

Jordan has long been a host country for migrants, refugees, and stateless people. In addition to the Palestinians and Iraqis who have moved in and out of Jordan for decades, the ongoing Syrian conflict has sent thousands of Syrian refugees streaming across Jordan's borders each day.¹⁷⁹ At one point during the ongoing Syrian conflict, Jordanian officials estimated that 1.5 million Syrian refugees had flowed into the country since the conflict began.¹⁸⁰ As of 2015, it is estimated that more than one million Syrians currently reside in Jordan,¹⁸¹ over six hundred thousand of whom have registered as refugees with the UNHCR.¹⁸² When added to the existing population of Iraqis and Palestinians, this brings Jordan's total refugee and displaced population to 1.5 million.¹⁸³ For a country with only six million inhabitants, Jordan's refugee population represents a quarter of its overall population—"the equivalent of Germany taking in 20 million refugees."¹⁸⁴

In addition to this large influx of stateless people, Jordan itself maintains rigid nationality laws that discriminate on the basis of gender.¹⁸⁵ It confers nationality to any child "whose father holds Jordanian nationality,"¹⁸⁶ or to children *born* in Jordan "of a mother holding Jordanian nationality and of a father of unknown nationality or of a stateless father or whose filiation is not established."¹⁸⁷ Thus, a woman can confer citizenship on her children only if they are born in Jordan *and* if the father is stateless.¹⁸⁸ Because Jordan recognizes all but 130,000 Palestinian refugees as Palestinian nationals—and *not* as stateless individuals—this provision expressly excludes citizenship from

179. MIGRATION POLICY CTR., MPC - MIGRATION PROFILE JORDAN 3 (2013), http://www.migrationpolicycentre.eu/docs/migration_profiles/Jordan.pdf [<https://perma.cc/AG6N-3P4L>].

180. Tamer al-Samadi, *Jordan Braces for 1.5 Million Refugees, Interior Minister Says*, AL-MONITOR (Sept. 5, 2012), <http://www.al-monitor.com/pulse/ar/security/01/09/jordan-braces-for-15-million-syrian-refugees.html> [<https://perma.cc/RH3U-EHRC>].

181. Omer Karasapan, *Jordan's Syrian Refugees*, BROOKINGS INST. (Feb. 25, 2015), <http://www.brookings.edu/blogs/future-development/posts/2015/02/25-syrian-refugees-jordan-karasapan> [<https://perma.cc/HMW8-FGBB>] (noting that 600,000 Syrians have registered in Jordan, but the actual number of refugees is estimated to be twice that figure).

182. *Syria Regional Refugee Response*, UNHCR (Oct. 4, 2015), <http://data.unhcr.org/syrianrefugees/country.php?id=107> [<https://perma.cc/2N66-QYPJ>]; *see also* Marina Koren, *Jordan: Syrian Refugees are 10 Percent of Our Population*, NAT'L J. (Sept. 24, 2013), <http://www.nationaljournal.com/s/69853/jordan-syrian-refugees-are-10-percent-our-population> [<https://perma.cc/6PM5-L9V5>].

183. *Syria Regional Refugee Response*, *supra* note 182.

184. Steffan Huck, *The True Samaritans*, QANTARA (Aug. 19, 2015), <http://en.qantara.de/print/20953> [<https://perma.cc/B7AX-MH5T>].

185. *See* Law No. 6 of 1954 on Nationality, art. 3 (1954) (Jordan), <http://www.refworld.org/docid/3ae6b4ea13.html> [<https://perma.cc/F7U5-H4PW>].

186. *Id.* at art. 3(3); *see also* Elizabeth Whitman, *Jordan's Second-Class Citizens*, BOS. REV. (Oct. 14, 2013), <http://bostonreview.net/world/whitman-jordan-citizenship> [<https://perma.cc/GWD2-URBR>].

187. Law No. 6 of 1954 on Nationality, art. 3(4).

188. *Id.*

any children born to Jordanian mothers and Palestinian fathers.¹⁸⁹ Alba Amawi notes that children of a Jordanian woman and non-Jordanian man cannot live in Jordan unless they have a residence permit, and even then they are statutorily ineligible for government-sponsored public education, health care, or any lawful employment.¹⁹⁰

Furthermore, James Emanuel notes that in addition to being prohibited from conferring nationality on their children, Jordanian women are also “forbidden from passing nationality to their non[.]native spouses.”¹⁹¹ In contrast, Jordanian law specifically permits a Jordanian man’s foreign-born spouse to obtain citizenship “merely by [submitting] a written statement to the government.”¹⁹²

Jordan also has a complex history with international human rights instruments that address statelessness, migration, and gender equality. Although Jordan is not a signatory to either the statelessness conventions or the 1951 Refugee Convention, it has long been a host country for displaced persons and refugees relative to its neighboring countries.¹⁹³ It ratified the CRC in 1991.¹⁹⁴ Jordan is also a signatory to CEDAW, but it made a reservation to article 9’s prohibition on discriminatory nationality laws.¹⁹⁵ In doing so, “Jordanian authorities claim that the Kingdom is not bound by this provision” regarding gender equality in nationality laws.¹⁹⁶ Given the significant number of displaced persons, nonnationals, and stateless individuals living in the country, the consequences of Jordan’s reservation to article 9 impacts more

189. *Jordan*, INT’L OBSERVATORY ON STATELESSNESS, <http://www.nationalityforall.org/Jordan> [<https://perma.cc/JBN9-TH4B>].

190. Alba Amawi, *Gender and Citizenship in Jordan*, in *GENDER AND CITIZENSHIP IN THE MIDDLE EAST* 158, 162–64 (Suad Joseph ed., 2000) (“The children of a Jordanian woman, however, cannot acquire her nationality or residency status. Consequently, these children are deprived of all rights, including enrollment in the school system, social entitlements, and[,]or political rights. Indeed, they are not even registered in their Jordanian mother’s passport, which is stamped ‘Children are not included due to the different nationality of the father.’”).

191. James Emanuel, *Discriminatory Nationality Laws in Jordan and Their Effect on Mixed Refugee Families* 4 (Univ. of Notre Dame, Program on L. & Hum. Dev., Student Research Papers #2012-4), <http://www3.nd.edu/~ndlaw/prog-human-rights/student-research-papers/NationalityLawsInJordan.pdf> [<https://perma.cc/AG94-D7YP>] (describing Article 8 of Jordan’s Law No. 6 of 1954 on Nationality).

192. *Id.*

193. *Jordan: 2015 UNHCR Country Operations Profile*, UNHCR, <http://www.unhcr.org/pages/49e486566.html> [<https://perma.cc/MM8L-G6MN>] (noting that “Jordan continues to demonstrate hospitality, despite the substantial strain on national systems and infrastructure”).

194. UNICEF, *JORDAN: MENA GENDER EQUALITY PROFILE*, *supra* note 160, at 2.

195. *Id.* at 1.

196. Emanuel, *supra* note 191, at 14; *see also* *Declarations, Reservations and Objections to CEDAW*, *supra* note 160; *Status of CEDAW*, *supra* note 153.

than sixty-five thousand Jordanian-national women¹⁹⁷ and as many as five hundred thousand children.¹⁹⁸

These restrictions have important political effects in Jordan. Jordanians refuse to grant hundreds of thousands of Palestinians from the Gaza Strip legal status because they anticipate that these Palestinians will someday return to Gaza.¹⁹⁹ Fearing that granting nationality will present a permanent and durable solution for Palestinians and upset Jordan's "demographic balance,"²⁰⁰ Jordanians continue to balk at affording any legal status to certain Palestinians, thus perpetuating decades of Palestinian statelessness, discrimination, and inequality.²⁰¹

Although Jordan's minimum marriage age is eighteen for both men and women, many marriages have been permitted where girls are as young as fifteen.²⁰² Historically, Jordan has not experienced high rates of early marriage, but as of 2009, the overall marriage age in Jordan was rising.²⁰³ UN reports describe an increase in child marriages among displaced Syrians living in and around refugee camps in Jordan.²⁰⁴ Child marriage is more common in Syria, with refugees reporting that inside Syria, more than half of all girls are married before they turn eighteen.²⁰⁵

197. See Emanuel, *supra* note 191, at 1.

198. *Id.*; see also CATHERINE WARRICK, LAW IN THE SERVICE OF LEGITIMACY: GENDER AND POLITICS IN JORDAN 106 (2009).

199. Dario Sabaghi, *Born and Bred Without Rights: Gaza Strip Refugees in Jordan*, PEACE DIRECT (July 10, 2105), <http://reliefweb.int/report/jordan/born-bred-without-rights-gaza-strip-refugees-jordan> [<https://perma.cc/QD9D-PPH6>] (quoting the UN Relief Works Agency, which explains that "ex-Gazans lack legal status in Jordan and are denied many of the basic services and rights afforded to pre-67 refugees, including access to state schools, government employment, and healthcare").

200. Daoud Kuttab, *Jordan Eager to Represent Jordanian-Palestinian Refugees*, AL-MONITOR (Jan. 22, 2014), <http://www.al-monitor.com/pulse/originals/2014/01/jordan-rights-representation-palestine-refugees.html#ixzz3owyc0dGK> [<https://perma.cc/QS8Z-SFGL>] (noting that ex-Gazan refugees are denied citizenship because "many conservative Jordanians fear that the country's original citizens might become a minority in their own country").

201. *Id.*

202. UNICEF, JORDAN: MENA GENDER EQUALITY PROFILE, *supra* note 160, at 2; see also Rana Hussein, *New Personal Status Law Strengthens Jordanian Families*, JORDAN TIMES (Sept. 28, 2010) (noting that out of over 67,000 marriages in 2008, around 9,000 (or 13 percent) involved girls between the ages of fifteen and eighteen).

203. DEP'T OF STATISTICS, KINGDOM OF JORDAN, JORDAN POPULATION AND FAMILY HEALTH SURVEY: 2009, at 62 (2009) (noting that the "median age at first marriage has steadily increased, from 20.7 years among women currently age[s] 45–49 to 23.3 years among women currently age[s] 25–29").

204. Brenda Stoter, *Teenage Syrian Girls Wed 'for Protection'*, AL JAZEERA (Nov. 12, 2013), <http://www.aljazeera.com/indepth/features/2013/11/teenage-syrian-refugees-wed-protection-201311101497543146.html> [<https://perma.cc/3HV8-G64L>].

205. UN WOMEN, GENDER-BASED VIOLENCE AND CHILD PROTECTION AMONG SYRIAN REFUGEES IN JORDAN, WITH A FOCUS ON EARLY MARRIAGE 29 (2013), <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2013/7/report-web%20pdf.pdf> [<https://perma.cc/2JP5-98LG>] (noting that 51 percent of female respondents married when still children versus 13 percent of male respondents).

News reports indicate that inside Jordan, Syrian refugee families are forcing their teenage girls to marry Jordanian men for “protection” inside the camps.²⁰⁶ In fact, a field study conducted by UN Women reveals that as displacement becomes more protracted, there is a greater incidence of forced labor for boys and early marriage for girls.²⁰⁷ One sheikh reported that, because “[p]oor refugees cannot pay the dowry anymore and there isn’t much paperwork,” more people are getting married.²⁰⁸ This confirms the parallels that exist between forced labor—which can come in the form of child sex slavery—and forced marriage. While the former phenomenon is firmly situated in the public realm of regulation, the latter is considered private and even sacred. But both phenomena are driven forward by the uncertainty of conflict, instability, and statelessness.

Other reports indicate that inside the camps, hundreds of women and girls were sold into marriage under the guise of a temporary arrangement, some as young as fourteen.²⁰⁹ These so-called “pleasure marriages” only last a few days or hours. Aid workers report that men had traveled from Saudi Arabia and other countries to Syrian refugee camps. They offer a dowry to a girl’s family and offer to support the girl until they can formally be married outside of the camp.²¹⁰ “Then they would have sex with [the girls] and divorce them one week later,” or “would leave and change their phone numbers.”²¹¹ The aid workers further noted that “many Syrian girls have been impregnated and abandoned in this way.”²¹² Yet the practice is still common, as many desperate families inside the camps see forced marriage as the only opportunity for their daughters to escape the camps.²¹³

As this example shows, forced marriage may be another form of sexual exploitation, given the girl’s lack of decisional autonomy. These early marriages are conducted entirely outside of the Jordanian legal system, arranged as “informal marriages” conducted by imams and sheikhs.²¹⁴ UNICEF officials warn that these marriages will lead not only to health risks for the young girls and their children but also could put the girls’ legal status in danger in cases of divorce or domestic disputes.²¹⁵ The lack of legal recognition could

206. *Id.* at 3.

207. *Id.* at 2.

208. Stoter, *supra* note 204.

209. Ruth Sherlock & Carol Malouf, *Syrian Girls ‘Sold’ into Forced Marriages*, TELEGRAPH (Jan. 23, 2013), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9821946/Syrian-girls-sold-into-forced-marriages.html>.

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Jordan: Early Marriage a Coping Mechanism for Syrian Refugees*, IRIN NEWS (July 19, 2012), <http://www.irinnews.org/report/95902/jordan-early-marriage-a-coping-mechanism-for-syrian-refugees> [<https://perma.cc/29NM-JA98>].

215. *Id.*

also render the now-married young woman's children stateless, should the shaky protection given by these temporary marriages collapse.

The United Nations' gender research and policy office recently conducted a comprehensive assessment of the challenges facing displaced Syrian women in Jordan.²¹⁶ Although it was unable to gather empirical evidence showing that Syrian refugees are marrying at an earlier rate in Jordan than in Syria, it noted that "the sense of economic and physical insecurity" that contributes to child marriage is particularly acute during displacement.²¹⁷ In fact, the study found that in Jordan it was more likely for a young Syrian girl to be married to an older man, and in many cases, a Jordanian man, who was perceived as "more capable" of providing stability and security.²¹⁸ This is necessarily tied to the prospect of nationality and citizenship, as Jordanian men can easily pass on their nationality to their spouses.

But the risks of statelessness and child marriage are not simply confined to Syrians inside Jordan; indeed, Jordanian women who are unable to pass on their nationality to their children are pushing their girls to get married at a young age—and to a Jordanian man—because there are so few alternatives available to children who have no national identification. This is especially difficult for women who are the sole custodians of their children. The UNHCR interviewed one Jordanian mother of six who, after her Egyptian husband died, took over the dual roles of caretaker and breadwinner for the family.²¹⁹ Because her children were not considered Jordanian under the law, she was required to pay twelve times the cost of a Jordanian citizen for education, and had to take on several extra jobs to keep her children in school.²²⁰ Acknowledging the severe strain on her family, she said, "we all now live as though we were dead" because she chose to marry a non-Jordanian man.²²¹

Another Jordanian woman who married a Palestinian man said that when she received her marriage certificate, Jordanian authorities stamped it with a note indicating that she was prohibited from passing her citizenship on to her children.²²² Now, her three daughters are all stateless.²²³ After she divorced him, her Palestinian ex-husband absconded with the girls' temporary

216. UN WOMEN, *supra* note 205, at 3.

217. *Id.*

218. *Id.*

219. UNHCR, CRTD-A REGIONAL DIALOGUE ON GENDER EQUALITY, NATIONALITY AND STATELESSNESS 4 (2012), <http://www.unhcr.org/4f33ea656.pdf> [<https://perma.cc/HHD5-5VTU>] [hereinafter UNHCR, CRTD-A REGIONAL DIALOGUE]; see also Zahra Albarazi, *Punished for Not Having a Jordanian Father*, TILBURG UNIV.: STATELESSNESS PROGRAMME (Feb. 7, 2013), <http://statelessprog.blogspot.com/2013/02/punished-for-not-having-jordanian-father.html> [<https://perma.cc/TU3F-WKMR>] (discussing other stories of Jordanian women who have struggled to support their children by being unable to transmit their nationality to them).

220. UNHCR, CRTD-A REGIONAL DIALOGUE, *supra* note 219, at 4.

221. *Id.*

222. *Id.*

223. *Id.*

identification cards, leaving no evidence to show that she is their mother.²²⁴ Without identification cards, the girls must pay for expensive private school and do not qualify for the state's health care benefits.²²⁵ The UNHCR interviewed several other women in similar situations, and found that, in addition to exclusion from education, health care, and social services, such nationality discrimination resulted in depression, anxiety, posttraumatic stress disorder, and increased risk-taking behavior among stateless women in Jordan.²²⁶

In sum, although Jordan generally has not faced a high incidence of child marriage, the tremendous influx of refugees and displaced persons from Syria and elsewhere—coupled with the protracted existence of stateless Palestinians inside Jordan—presents unique pressures on Jordan that have manifested in part in its nationality laws. This Section sought to highlight gendered nationality laws in Jordan that reflect the ever-changing and volatile refugee situation and the desire of Jordanians to exclude certain persons from gaining nationality through matrilineal descent, thus contributing to a new generation of stateless individuals inside Jordan.

B. Nepali Nationality and Marriage Laws

Like Jordan, Nepal has a large population of refugees, displaced persons, stateless individuals, and those at risk of statelessness. Unlike Jordan, however, Nepal has a strikingly high incidence of child marriage, discussed below. And unlike Jordan's immediate challenges with the recent and staggering influx of Syrian refugees crossing into and through the country, Nepal's stateless population of Bhutanese refugees of Nepali descent have been living inside camps in Nepal for decades. In this way, Nepal's Bhutanese stateless are similar to the Gazan Palestinians living inside Jordan. This Note seeks to highlight the dynamics at play in a country, like Nepal, with high rates of both child marriage and statelessness. Furthermore, as in Jordan, the UNHCR has maintained an active and ongoing presence inside Nepalese camps, and so there is greater capacity to collect data on large populations of stateless individuals. This is particularly valuable, given the dearth of data and information concerning stateless populations in general. Thus, with the presence of refugee camps in Nepal in which stateless individuals reside, it is much easier to access the long-standing stateless populations to better understand their experiences over a protracted period of time.

Nepal, which is among the poorest countries in the world, has particularly serious issues of statelessness, gender discrimination, and child marriage. More than half of the country's population lives on \$1.25 per day, further

224. *Id.*

225. *Id.*

226. *Id.*

contributing to the pressures on families to marry off their daughters early.²²⁷ While it never signed the refugee or statelessness conventions, Nepal ratified the CRC in 1990²²⁸ and CEDAW in 1991, both without reservations.²²⁹ Yet despite its ratification of these human rights instruments, Nepal's discriminatory nationality laws, poor education system, and pervasive gender inequality leave women, particularly stateless women, subject to severe insecurity.

In the mid-1990s, Nepal had an estimated 3.4 million stateless persons.²³⁰ Nepal's Interim Constitution, promulgated in 2007, formally recognized equality among the sexes, and the Nepal Citizenship Act of 2006 significantly revised the discriminatory laws by establishing that both a Nepali mother or father can confer citizenship to their children.²³¹ While the Carter Center maintains that 2.1 million people in Nepal currently lack legal status,²³² the UNHCR estimates that due to these recent nationality law reforms, there are actually closer to eight hundred thousand persons inside the country that lack citizenship documentation.²³³

227. Hanna Ingber, *Child Marriages Burden Young Nepalis*, PULITZER CTR. ON CRISIS REPORTING (Oct. 31, 2011), <http://pulitzercenter.org/reporting/nepal-child-marriage-women-education-maternal-health> [https://perma.cc/4SKB-5NVR].

228. *See Status: Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION, (Jan. 10, 2016) https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&lang=en [hereinafter *Status of CRC*]; *see also* Depository Notification, C.N.147.1993.TREATIES-5 (Mar. 11, 1993) (amendments to article 43 (2)), <https://treaties.un.org/doc/Publication/CN/1993/CN.147.1993-Eng.pdf> [https://perma.cc/9E8F-CAV3]; Depository Notification, C.N.322.1995.TREATIES-7 (Nov. 7, 1995) (amendment to article 43 (2)), <https://treaties.un.org/doc/Publication/CN/1995/CN.322.1995-Eng.pdf> [https://perma.cc/K4BW-FEJE].

229. *See Status of CEDAW*, *supra* note 153.

230. *Nepal*, INT'L OBSERVATORY ON STATELESSNESS, <http://www.nationalityforall.org/Nepal> [https://perma.cc/A5ZL-35K8].

231. UNDP NEPAL, *THE INTERIM CONSTITUTION OF NEPAL 14* (2009), <http://www.dor.gov.np/documents/Interim.Constitution.Bilingual.UNDP.pdf> [https://perma.cc/7SZY-JYUD]; Pema Abrahams & George Varughese, *Stateless in New Nepal: Inclusion Without Citizenship Is Impossible*, ASIA FOUND. (May 23, 2012), <http://asiafoundation.org/in-asia/2012/05/23/stateless-in-new-nepal-inclusion-without-citizenship-is-impossible/> [https://perma.cc/NW7L-ZAZ6]; Astha Sharma Pokharel, *FAQs on Citizenship (What Makes CA Members Uncomfortable About Women's Rights?)*, CHAUKATH FEMINIST BLOG (Dec. 28, 2014), <https://chauthnetwork.wordpress.com/2014/12/28/faqs-on-citizenship-what-makes-ca-members-uncomfortable-about-womens-fundamental-rights/> [https://perma.cc/L2D2-HF6U].

232. CARTER CTR., *THE CARTER CENTER'S FOURTH INTERIM STATEMENT ON THE ELECTION COMMISSION OF NEPAL'S VOTER REGISTER WITH PHOTOGRAPH PROGRAM 15* (2012), <http://www.cartercenter.org/resources/pdfs/news/pr/nepal-072612-fourth-interim-full-statement%20-voter-registration-eng.pdf> [https://perma.cc/NA4T-YDJ8] (estimating that approximately 2.1 million people may lack "citizenship certificates").

233. *Nepal: 2013 UNHCR Country Operations Profile*, UNHCR, <https://web.archive.org/web/20131031002054/http://www.unhcr.org/pages/49e487856.html>; *see also* Paul White, *Reducing de Facto Statelessness in Nepal*, FORCED MIGRATION REV., Apr. 2009, at 28 (2009), <http://www.fmreview.org/FMRpdfs/FMR32/28-29.pdf> [https://perma.cc/N3WV-2JT2].

Still, there are significant problems with implementing Nepal's 2006 citizenship law, which does nothing to solve the "blatant discrimination" of Nepal's citizenship regulations.²³⁴ One such problem is lax enforcement by district officers who often require a woman to provide the father's citizenship to register children, despite the gender-neutral nature of the law.²³⁵ Like in Jordan, Nepali women may not convey citizenship through *jus sanguinis* if their husband is a foreigner; yet the opposite is permitted of men with foreign wives.²³⁶

Local activists note that despite the new citizenship laws, children of widows, "abandoned" women, and women married to nonnationals are consistently denied citizenship,²³⁷ and women married to nonnationals are "literally stripped of [their] national identit[ies]."²³⁸ Thus, despite the gains made on paper with the passage of the Citizenship Act, local officials often adhere to the old laws and ask only for the father's nationality.²³⁹

Against this legal backdrop, girls in Nepal are at significant risk of child marriage. According to the International Commission for Research on Women, 41 percent of Nepali women between ages twenty and twenty-four were married before the age of eighteen.²⁴⁰ This rate puts Nepal among the top twenty countries with the highest incidence of child marriage.²⁴¹ In targeted surveys, rural residents noted that "villagers consider a girl as a 'family object' to be given away to another family; therefore, the earlier the better, and cheaper, too."²⁴² In the rural region of Terai, for example, 11 to 20 percent of

234. White, *supra* note 233.

235. *Id.* (noting that local authorities are "reluctant to implement [the new laws] citing a lack of procedural directives, and so problems with birth registration and consequently citizenship certificates continue for children of unmarried mothers, unknown fathers, those abandoned by their father and those whose father denies the relationship"); see also Sara Shneiderman, *Nepal's Citizenship Challenges: Gender Sovereignty in the Himalayas*, ASIA PACIFIC MEMO (Feb. 12, 2015), <http://www.asiapacificmemo.ca/nepal-citizenship-gender> [<https://perma.cc/LU2U-ZVX4>] (noting that the law "was hailed as a landmark achievement until tested in practice. When women applied for their children's citizenship certificates, several found their Chief District Officer unwilling to implement the law. They took to the streets and to the courts, several of which have recently ruled in favor of issuing citizenship through the mother's name").

236. Pokharel, *supra* note 231 (noting the "fear" among Nepali officials that if women married to foreigners were permitted to pass along citizenship to their children, "foreign men [would] use [the] opportunity to infiltrate Nepali politics and economy").

237. Memorandum from Human Rights Watch to the Office of the High Comm'r for Human Rights, U.N., *Discrimination Against Women and Children in Nepal's Citizenship Laws*, <http://www.ohchr.org/Documents/Issues/Women/WRGS/RelatedMatters/OtherEntities/HumanRightsWatch.doc> (last visited Jan. 11, 2016).

238. Naresh Newar, *Nepali — But Not in the Eyes of Nepal*, INTER PRESS SERV. (Aug. 3, 2013), <http://www.ipsnews.net/2013/08/nepali-but-not-in-the-eyes-of-nepal/> [<https://perma.cc/YQ65-G2N9>].

239. White, *supra* note 233.

240. See *Child Marriage Facts and Figures*, *supra* note 99.

241. *Id.*

242. AUSAID ET AL., *Solutions to Ending Child Marriage in South Asia: Nepal*, in *CHILD MARRIAGE IN SOUTHERN ASIA: POLICY OPTIONS FOR ACTION* 17 (2012),

girls are married before fourteen years of age.²⁴³ Although Nepal's Country Code formally permits males and females to marry at age eighteen with parental consent, and at age twenty without consent,²⁴⁴ a UNICEF study found that 80 percent of Muslim girls in Nepal, 70 percent living in hilly regions, and 56 percent living in other rural areas, were all married before the age of fifteen.²⁴⁵

These risk factors are particularly acute for the thirty thousand female Bhutanese refugees of Nepalese ethnicity who have been living in camps in Nepal for decades.²⁴⁶ After being stripped of their Bhutanese citizenship and forced to flee the country in the early 1990s, most Bhutanese refugees in Nepal lack identity documents.²⁴⁷ Like in Jordan, refugees in Nepal are not lawfully permitted to work in the country, and so women are often confined to camps.²⁴⁸ In addition, Bhutanese women experience significant levels of gender-based violence inside the camps.²⁴⁹ The government of Nepal perpetuates discrimination against Bhutanese women by refusing to register children born of a refugee mother and a nonrefugee father.²⁵⁰ This affects a child's ability to receive rations of food and clothing and renders them ineligible for repatriation back to Bhutan—effectively rendering the child stateless.²⁵¹ For example, Human Rights Watch interviewed one woman who became pregnant after being raped inside a refugee camp, but who could not identify her rapist.²⁵² Because she could not name her child's father, her child was not allowed to register in the camps, and thus was unable to receive aid.²⁵³

http://reliefweb.int/sites/reliefweb.int/files/resources/Child_Marriage.pdf [https://perma.cc/XD96-6YJV].

243. *Id.*

244. *Id.*

245. *Id.*

246. INT'L CATHOLIC MIGRATION COMM'N EUR., *Bhutanese Refugees in Nepal*, in WELCOME TO EUROPE! A COMPREHENSIVE GUIDE TO RESETTLEMENT 59 (2013), http://www.resettlement.eu/sites/icmc.ttp.eu/files/ICMC%20Europe-Welcome%20to%20Europe_0.pdf [https://perma.cc/TD4Y-66TT] (describing international efforts since 2007 to resettle the 108,000 Bhutanese refugees to third countries, of which only 30,000 now remain); see also *Stateless Refugee Children from Bhutan Living in Nepal: Testimony of Bill Frelick to a Joint Briefing for the Congressional Children's Caucus and the Congressional Human Rights Caucus on the Status of Stateless Children*, HUM. RTS. WATCH (Feb. 14, 2007), <https://www.hrw.org/news/2007/02/14/stateless-refugee-children-bhutan-living-nepal> [https://perma.cc/F7CT-RTZK].

247. *Id.*

248. *Id.* (describing that a young woman living in a Bhutanese refugee camp states that women “do not get full opportunities compared to men,” and a student notes that Bhutanese refugees cannot go outside the camps to work).

249. HUMAN RIGHTS WATCH, *BHUTAN/NEPAL: TRAPPED BY INEQUALITY: BHUTANESE REFUGEE WOMEN IN NEPAL* 29 (2003), <https://www.hrw.org/reports/2003/nepal0903/nepal0903.pdf> [https://perma.cc/UW35-FEH3].

250. *Id.* at 70.

251. *Id.*

252. *Id.* at 29.

253. *Id.*

The CEDAW Committee made several key recommendations to Nepal to repeal gender discriminatory laws, including those found in the Interim Constitution, and to pass legislation and bolster programs to prevent and reduce the incidence of child marriage.²⁵⁴ One of the main recommendations was to help reduce the attrition of girls from school.²⁵⁵ However, the Nepalese government has not acted on these recommendations.

C. Malaysian Nationality and Marriage Laws

Malaysia can be a particularly challenging environment for stateless and displaced persons to seek stability. Not only has Malaysia refused to sign the Refugee Convention and statelessness conventions but it also “lacks a legislative and administrative framework to address refugee matters.”²⁵⁶ The UNHCR also notes the “absence of any substantive engagement by the authorities” of Malaysia, which presents particular risks and difficulties for stateless individuals.²⁵⁷ In light of these administrative gaps at the national level, the UNHCR has stepped in as the main provider of protection and processing for refugees and displaced persons flowing into Malaysia—many of whom, like Sakinah Kahtu, are stateless and without a nationality.²⁵⁸ Malaysia thus exemplifies how statelessness interacts with the rise of child marriage in a country that tends not to deal with migration as a protection issue at all.

Despite its refusal to ratify either the refugee conventions or the statelessness conventions, Malaysia is a host country to over two hundred thousand refugees, stateless persons, and other persons of concern.²⁵⁹ Yet Malaysia has no process by which it makes asylum and refugee-status determinations, leaving many of its displaced population vulnerable to abuse and exploitation.²⁶⁰ Malaysia acceded to both the CRC and CEDAW in

254. Comm. on the Elimination of Discrimination Against Women, Concluding Observations of the Committee on the Elimination of Discrimination Against Women, ¶ 27, U.N. Doc. CEDAW/C/NPL/CO/4-5 (July 29, 2011), <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NPL-CO-4-5.pdf> [https://perma.cc/G62C-KTSA] (“While welcoming the overall increase in gender parity in primary and secondary education, the Committee is concerned about the minimal increase in female enrolment, the very high rate of drop out among girls, the urban/rural disparities in access to education and illiteracy rates, and the low literacy rate of female adults. The Committee is further concerned about the very low number of female teachers at all levels of education.”).

255. *Id.*

256. *Malaysia: 2015 UNHCR Subregional Operations Profile — South-East Asia*, UNHCR, <http://www.unhcr.org/pages/49e4884c6.html> [https://perma.cc/2P48-63XB] [hereinafter *Malaysia: UNHCR Profile*].

257. *Id.*

258. *Rohingya Women and Children Brave the Seas to Flee Myanmar*, *supra* note 1.

259. *Malaysia: UNHCR Profile*, *supra* note 256.

260. See Lathheefa Beebi Koya, *Statelessness in Malaysia*, in SUHAKAM AFTER 5 YEARS: STATE OF HUMAN RIGHTS IN MALAYSIA 57 (S. Nagarajan ed., 2006) (stating that Malaysia has not ratified either of the statelessness conventions, and thus has no policy in place to determine statelessness or deal with the influx of stateless persons into Malaysia).

1995,²⁶¹ but attached a host of reservations to both treaties—which many believe calls into question the Malay government’s commitment to gender equality and child protection.²⁶² In particular, Malaysia made a reservation to article 9 of CEDAW regarding the equality of women and men with respect to the nationality of their children.²⁶³ It also maintains its reservation to article 16’s prohibition on child marriage, declaring that “under the Syariah law and the laws of Malaysia,” the minimum age of marriage is sixteen for girls and eighteen for boys.²⁶⁴ However, activists and aid groups note that this age limit is often overlooked, as many families can obtain written permission from Islamic courts in most jurisdictions.²⁶⁵ Furthermore, although it is a signatory to the CRC, Malaysia also maintains several reservations to its implementation, including reservations related to non-discrimination (article 2), nationality and citizenship (article 7), and compulsory primary education (article 28).²⁶⁶

Indeed, the Malaysian government’s own census data indicates that the incidence of child marriage is growing in the country.²⁶⁷ In 2012, for instance, “there were around 1,165 applications for marriage in which one party, usually the bride, [was] younger than the legal marrying age.”²⁶⁸ In the state of Kedah alone, the number of marriage applications in which a girl was underage jumped by more than a third in two years, and over 90 percent of those applications involved girls under sixteen.²⁶⁹

The risks of child marriage are especially acute for the thirty thousand ethnic Rohingya seeking asylum in Malaysia as of 2011, including 20,800 registered with the UNHCR.²⁷⁰ The stateless Rohingya fled Burma over the course of several decades and have since been renounced as citizens by the

261. See *Status of CRC*, *supra* note 228; *Status of CEDAW*, *supra* note 153.

262. The government of Malaysia “declares that Malaysia’s accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia.” *Declarations, Reservations and Objections to CEDAW*, *supra* note 160.

263. See *id.*; see also *Status of CEDAW*, *supra* note 153.

264. *Declarations, Reservations and Objections to CEDAW*, *supra* note 160; see also Voice of the Children, *Child Marriage in Malaysia, A Child Rights Issue*, GIRLS NOT BRIDES (May 24, 2013), <http://www.girlsnotbrides.org/tackling-child-marriage-in-malaysia-a-child-rights-activists-perspective/> [<https://perma.cc/BEZ6-ZGR6>] (summarizing information under subheading “What does Malaysian law say in regard to child marriage?”).

265. Voice of the Children, *supra* note 264; *Introduction of Child Marriage*, SISTERS IN ISLAM (June 21, 2012), <http://www.sistersinislam.org.my/news.php?cat.41> (noting that the state of Perak does not even follow the minimum-age requirement).

266. *CRC Reservations: Malaysia*, UNICEF, http://www.unicef.org/malaysia/17982_crc-reservations-malaysia.html [<https://perma.cc/HD68-57GE>].

267. Hariati Azizan, *Child Marriages on the Rise*, STAR ONLINE (Oct. 6, 2013), <http://www.thestar.com.my/News/Nation/2013/10/06/Child-marriages-on-the-rise-1022-applications-approved-in-2012-compared-to-900-in-2011.aspx>.

268. *Id.*

269. See Voice of the Children, *supra* note 264.

270. *Myanmar: Rohingyas in Malaysia Seek Education, Opportunities*, IRIN NEWS (June 8, 2011), <http://www.irinnews.org/report/92933/myanmar-rohingyas-in-malaysia-seek-education-opportunities> [<https://perma.cc/X84K-7FLL>].

Burmese government.²⁷¹ Reports indicate that underage Rohingya “‘mail-order’ brides” are smuggled into Malaysia from Burma to be wed to refugees.²⁷²

At the same time, non-Rohingya noncitizens are also at risk of being rendered stateless inside Malaysia. The UN Committee on the Rights of the Child recently found that children born in Malaysia are at risk of not being registered at birth and recommended that “the State party improve the birth registration system of non-Malaysian children born in Malaysia. . . . Meanwhile, children without official documentation should be allowed to access basic services, such as health and education, while waiting to be properly registered.”²⁷³

In light of these differences across geography, history, and incidence of child marriage, this Note seeks to illustrate the interactions between statelessness and child marriage in varying contexts as embodied through the examples of Jordan, Nepal, and Malaysia. The varying contexts that give rise to a higher incidence of child marriage—coupled with the large stateless populations inside each country—must be considered when developing solutions to these problems. There is no “one-size-fits-all” approach, and, as discussed below, any efforts to dismantle gender inequities and provide empowerment opportunities for young girls must be multifaceted.

IV.

A COMPREHENSIVE APPROACH

This Note cautions that the aforementioned international efforts to eradicate child marriage must be prudent. Any efforts to implement a universal approach will fail in the statelessness context. The existing programs, as currently envisioned, are predicated on a girl’s legal status in relation to the state. But the international community cannot simply assume that all girls and women have a legal identity. This Part identifies possible solutions for adequately addressing this problem, including amending international legal instruments and redoubling efforts focused on evidence gathering, birth registration, and psychosocial services for stateless women and girls.

Scholars note that international relations and development policy and practice have failed to meaningfully develop “the link between women’s rights

271. *Id.*

272. Maher Sattar, *Rohingya Refugees Import ‘Mail-Order’ Brides*, AL JAZEERA (Mar. 17, 2013), <http://www.aljazeera.com/indepth/features/2013/03/201331291132937760.html> [<https://perma.cc/3C7U-CKKJ>].

273. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Malaysia, ¶ 45, U.N. Doc. CRC/C/MYS/CO/1 (Feb. 2, 2007), http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_MYS_CO_1.pdf [<https://perma.cc/8PWY-8D5E>].

and the rights of the female child.”²⁷⁴ This is partly because separate human rights treaties cover women’s equality and children’s rights, both of which operate differently and confront systemic enforcement problems. However, over time, the international community has increasingly come to understand that women’s rights and children’s rights are not mutually exclusive, and that young women and girls suffer a myriad of abuses based on their gender, such as female infanticide, female genital cutting, bride burning, dowry death, honor killings, sex trafficking and prostitution, child pornography, and early, child, and forced marriage.²⁷⁵ This Note seeks to go beyond the connections between age and gender to examine the issues of statelessness and child marriage as inextricably intertwined.

In describing the distinction between formal and substantive equality, Valorie Vojdik reminds us that formal equality is based on “the notion that likes ‘should be treated alike’ and requires that men and women be treated the same to the extent that they are similarly situated.”²⁷⁶ In contrast, she notes that “substantive equality considers the effects of state action upon women, recognizing that women are often differently situated from men” for a variety of reasons, including entrenched and systematic discrimination due to prevailing gender biases and sex stereotypes.²⁷⁷ Therefore, to overcome ingrained social views about the value of girls in society, programs aimed at giving girls agency in and of themselves would provide the most effective avenue for change—in contrast with the vague, poorly enforced, and state-centric international framework currently in place.

As for the statelessness context, although extensive scholarship has been devoted to critiquing the current international legal regime as ineffective in reducing statelessness, there is a dearth of analysis regarding the intersections between statelessness—which is exacerbated by gendered nationality laws—and the cycle of child marriage.²⁷⁸ This lack of attention to both phenomena in

274. Backstrom, *supra* note 135, at 541; *see also* Savitri Goonesekere, Int’l Child Dev. Ctr., UNICEF, Women’s Rights and Children’s Rights: The United Nations Conventions as Compatible and Complementary International Treaties, at 6 (Innocenti Occasional Papers, Child Rights Series No. 1, Sept. 1992).

275. Backstrom, *supra* note 135, at 542 (noting that all of these gender-based practices are inflicted on girls because they are both female *and* children, “both positions of vulnerability,” which result in “dual discrimination” based on both age and gender).

276. Valorie K. Vojdik, *Conceptualizing Intimate Violence and Gender Equality: A Comparative Approach*, 31 FORDHAM INT’L L.J. 487, 500–01 (2008).

277. *Id.* at 501; *see also* Sepper, *supra* note 68, at 592 n.21.

278. Still, the UNHCR has acknowledged that improved research and data collection would help provide a better understanding of the links between statelessness and gender discrimination. UNHCR, REPORT OF THE REGIONAL WORKSHOP ON STATELESSNESS AND THE RIGHTS OF WOMEN AND CHILDREN (2011), <http://www.refworld.org/pdfid/50f674c42.pdf> [https://perma.cc/SL4U-UQQD]. In many cases, a comprehensive analysis is linked to a lack of information on the causes of statelessness, protection problems experienced by stateless persons, and existing capacities in building a response. The UNHCR has noted that “the absence of a clear assessment in some countries impeded effective planning of responses, underlining the importance of ongoing work on surveys, registration

tandem is likely due to two main factors. First, most scholarship examining gender and statelessness focuses on other forms of exploitation that can result from statelessness.²⁷⁹ This includes sex trafficking, sex slavery, forced labor, and domestic servitude.²⁸⁰ In doing so, most scholarship describes statelessness as a modality through which illicit and criminal conduct may thrive, including prostitution and child pornography.²⁸¹ It also includes normative assessments of how governments must work within the international community to enforce antitrafficking laws to ensure that girls are not forced into sex work or other types of forced labor.²⁸²

Understandably, many of the programs developed to address child marriage focus on community-based activities that include awareness-raising, deeper engagement with men and boys to combat entrenched stereotypes of women's roles in the private sphere, and incentives to keep girls in school.²⁸³ However, these programs implicitly assume that the women and girls they intend to reach have legal status in the countries in which they reside. But, as discussed above, stateless women and girls often face additional challenges that contribute to the pressure to marry. They are uprooted from their communities and face systematic discrimination due to their lack of legal identity. Thus, when developing legal reforms and humanitarian relief projects aimed at reducing child marriage, policy makers, development groups, and civil society must not forget the six million stateless women and girls who remain in the shadows, and whose exploitation may be severely underreported.

According to the Africa Alliance for Women's Reproductive Health Rights, an "international standard for the minimum age for marriage" should be

and population censuses." Exec. Comm. of the High Comm'rs Programme, UNHCR, *Progress Report on Statelessness 2009*, U.N. Doc. EC/60/SC/CRP.10, at 1 (May 29, 2009). Where numbers of stateless persons are available, they are based on estimates rather than on mappings of specific populations. Given that stateless persons are, by definition, outside of any country's legal framework, specific data are hard to come by. UNHCR, *STATISTICAL YEARBOOK 2009: TRENDS IN DISPLACEMENT, PROTECTION AND SOLUTIONS* (2010), <http://www.unhcr.org/4ce532ff9.html> [<https://perma.cc/C3LM-QZUW>]; see also UNHCR, *REGIONAL EXPERT ROUNDTABLE ON GOOD PRACTICES FOR THE IDENTIFICATION, PREVENTION AND REDUCTION OF STATELESSNESS AND THE PROTECTION OF STATELESS PERSONS IN SOUTH EAST ASIA 2* (2011), <http://www.refworld.org/docid/4d6e09932.html>.

279. See Linda K. Kerber, *The Stateless as the Citizen's Other: A View from the United States*, 112 AM. HIST. REV. 1 (2007); Milbrandt, *supra* note 36; David Weissbrodt & Clay Collins, *The Human Rights of Stateless Persons*, 28 HUM. RTS. Q. 245 (2006).

280. See Milbrandt, *supra* note 36, at 93.

281. See Julia O'Connell Davidson, *Moving Children? Child Trafficking, Child Migration, and Child Rights*, 31 CRITICAL SOC. POL'Y 454, 459 (2011).

282. See Backstrom, *supra* note 135, at 582.

283. *Child Marriage: Policy Options*, COUNCIL ON FOREIGN RELATIONS, http://www.cfr.org/peace-conflict-and-human-rights/child-marriage/p32096#/?cid=otr_marketing_use-child_marriage_infoguide#policy-options [<https://perma.cc/U4WJ-VA8T>]; see also *How Can We End Child Marriage?*, GIRLS NOT BRIDES, <http://www.girlsnotbrides.org/how-can-we-end-child-marriage/> [<https://perma.cc/8HWC-C5NM>]; *Planning Ahead for Girls' Empowerment and Employability (PAGE)*, INT'L CTR. RES. ON WOMEN, <http://www.icrw.org/where-we-work/planning-ahead-girls%E2%80%99-empowerment-and-employability-page> [<https://perma.cc/XKD8-VZS9>].

the “starting point” in addressing child marriage.²⁸⁴ This begs the question of whether CEDAW and the CRC are appropriate mechanisms through which countries could agree on one universal minimum age. Although a minimum age, be it eighteen or fifteen, would undoubtedly reduce any ambiguity and provide an important tool for the international community to “name and shame” countries into adhering to their international obligations, a universal standard is impracticable and perhaps too blunt a concept. In fact, Annie Bunting notes that cultural differences between Western and non-Western jurisdictions are frequently cited as a barrier to the adoption of international treaties, and that “assumptions underlying much of the international effort to address early marriage are [W]estern—assumptions about childhood and adolescence.”²⁸⁵ Any comprehensive approach to eradicating child marriage must therefore look beyond simply setting a single standard for all countries to follow, and instead take into account the unique challenges that girls face in different places.

Looking forward to the UN’s 2030 eradication goal, scholars and practitioners are calling for a multifaceted approach to preventing and reducing the incidence of child marriage. This includes implementing direct aid programs, increasing education and employment opportunities for girls, and encouraging development of less discriminatory religious views concerning the rights of women.²⁸⁶ Practitioners advocate for the “Five-E” approach that includes programs to: (1) empower girls with information about the harmful effects of child marriage and develop their confidence; (2) educate parents and community leaders about the harmful effects of child marriage, resulting in a pledge not to marry any girls before the age of eighteen; (3) enhance girls’ access to high-quality education to help them develop the knowledge and skills to advocate for themselves; (4) provide economic incentives to parents to increase the value of the girl in the eyes of her family; and (5) encourage legal reforms, such as new laws prohibiting child marriage, or implementation and enforcement of existing laws.²⁸⁷ With these reforms, advocates hope to “end child marriage in a generation.”²⁸⁸

Although all of these efforts—if properly designed and effectively implemented—would be helpful in delaying marriage, they may not apply in the context of statelessness, where displaced and undocumented girls and

284. IPAS AFRICAN ALL. FOR WOMEN’S REPRODUCTIVE HEALTH RIGHTS, A HANDBOOK FOR ADVOCACY IN THE AFRICAN HUMAN RIGHTS SYSTEM: ADVANCING REPRODUCTIVE AND SEXUAL HEALTH 29 (2006).

285. Annie Bunting, *Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue*, 14 SOC. & LEGAL STUD. 17, 33 (2005).

286. Thompson & Glinski, *supra* note 21.

287. *Id.*

288. *Id.*; see also *Statelessness Fact Sheet*, YAPI INT’L, www.yapi.org/childrens-rights/statelessness [<https://perma.cc/KRN3-JKR3>] (discussing “[n]ew programs initiated by government agencies and community based organizations” to help families register stateless children, including new technology and increased understanding of, and access to, birth registration).

women are starting from a much more basic level. Many of them have been unable to attend school, travel, or receive health care. They are without a stable community to which they have the right to remain and reside. And many are subject to terrifying forms of exploitation, deception, and abuse. Thus, any proposals to prevent child marriage among stateless women and girls must include a robust humanitarian component, which considers the physical insecurity and psychological needs of stateless girls as well as their economic, social, and political autonomy.

Programs to reduce child marriage among stateless women and girls must not only build on the broader economic and educational efforts rooted in traditional community-based approaches but they also must address stateless girls' physical security, increased need for protection inside camps, birth registration, and mental health services. For example, last year the UNHCR launched an ambitious campaign to end statelessness around the globe within ten years.²⁸⁹ A key prong of this endeavor is robust efforts to "remov[e] gender discrimination from nationality laws so that women can pass on their nationality to their children on an equal basis as men."²⁹⁰ The UNHCR notes that "challenges also arise in relation to registering children born out of wedlock or to parents whose religious marriages have not been formally registered."²⁹¹ These efforts aimed at reaching recently married women, who are having children of their own, should be integrated with the 2013 UN General Assembly resolution on combating child marriage. This would not only multiply efforts and maximize resources but would also provide important interventions to displaced and stateless persons.

As a first step, any program should include comprehensive efforts to facilitate birth registration procedures for those children that are currently eligible for registration under the law. Too often, children are born into statelessness simply because their families do not have the money to pay for registration fees, are unable to travel to urban centers to secure proper documentation, or do not have adequate information about how to register their children.²⁹²

As a policy matter, birth registration is a universal priority among advocates for stateless persons. The Refugee Studies Centre at the University of Oxford has made several recommendations to eliminate and reduce statelessness, including an effort to achieve universal birth registration.²⁹³ This

289. See UNHCR, ENDING STATELESSNESS WITHIN TEN YEARS, *supra* note 38.

290. *Id.* at 21.

291. *Id.* at 10.

292. *Statelessness Fact Sheet*, *supra* note 288; see also Laura van Waas, *Every Child Belongs*, TILBURG UNIV.: STATELESSNESS PROGRAMME (Feb. 12, 2014), <http://statelessprog.blogspot.com/2014/02/every-child-belongs.html> [<https://perma.cc/E94Z-AUDN>] (discussing the importance of increased information-sharing and better communication efforts in raising awareness about birth registration).

293. Milbrandt, *supra* note 36, at 97.

could be achieved by providing mobile registration teams, as stateless individuals often do not know where or how to obtain identification. For example, the International Justice Mission has successfully created global mobile registration clinics for stateless persons; these could be scaled up in rural areas where many marginalized and indigent populations reside.²⁹⁴

Similarly, Jay Milbrandt advocates for an international identification card system that would seek to register and document stateless individuals as well as provide them with resources once they are documented.²⁹⁵ This system would emulate the now-defunct Nansen Passport system that was used to identify and register refugees during the mid-twentieth century.²⁹⁶ In Milbrandt's view, the new identification card would "serve the same basic purpose of communicating a stateless person's name, residence, birthdate, and other vital information."²⁹⁷ It also would serve as a feedback mechanism to provide stateless persons with microfinance loans and communicate important announcements about natural disasters or public health concerns.²⁹⁸

But the international community cannot achieve any gains or reach displaced or stateless persons inside a country without the consent and partnership of the country itself. Therefore, the final—and critical—component to effectively and permanently reducing statelessness and child marriage is changing the role of the state itself. Through creative grant mechanisms or incentivizing structures, UN bodies working in conjunction with the UNHCR can help channel recommendations from human rights bodies into real action. This could include providing "continuing education for government personnel who encounter stateless individuals," as has been proposed inside the United States.²⁹⁹ At the very least, UN agencies should work together in implementing these two discrete campaigns to end child marriage and eliminate statelessness by funding efforts to train local officials, community leaders, and governments on best practices regarding birth registration, gender inequities in nationality laws, and the unique and heightened vulnerabilities facing stateless women and girls.

CONCLUSION

This Note has sought to examine statelessness and its intersection with early and forced marriage. Although child marriage gained international stature as a human rights abuse in a very different manner than statelessness, the two phenomena can no longer be viewed in silos. As described above, the

294. *Id.*

295. *Id.*

296. *Id.* at 99–102.

297. *Id.* at 98–99.

298. *Id.* at 99–102.

299. Maryellen Fullerton, *Intersection of Statelessness and Refugee Protection in U.S. Asylum Policy*, 2 J. MIGRATION & HUM. SEC. 144, 162 (2014).

consequences of statelessness can perpetuate the practice of child marriage. Conversely, child marriage can perpetuate statelessness in countries that continue to have gender-discriminatory nationality laws. Therefore, attempts to prevent or eradicate one of these phenomena necessarily implicate the other. In other words, to prevent statelessness among women and girls, countries must be willing to acknowledge the underlying factors that influence the two regimes, including the devaluation of women and girls, poverty, and deeply ingrained patriarchal views and sex stereotypes.

In his 2013 report to the UN General Assembly, Secretary-General Ban Ki-Moon proclaimed, “The practice of child marriage must be ended everywhere.”³⁰⁰ The international community must not forget that child, forced, and early marriages have direct links to the plight of stateless persons around the globe. Stateless individuals live in the shadows, vulnerable to the most serious forms of exploitation and abuse. If the international community is serious about advancing the status of women and girls in societies across the globe, it must include stateless persons as part of those efforts.

300. *A Life of Dignity for All*, *supra* note 28, ¶ 85.

