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Notes from the Joint Workshop of the European Network on Statelessness and the Western Balkan Legal Aid Network

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1. About the Networks

NGOs from the Western Balkan region that are providing free legal aid have agreed to formalize and strengthen regional ties and promote cross-boundary co-operation. Representatives of [Praxis](#) (Serbia), [Civil Rights Programme Kosovo*](#), [Association "Vasa prava"](#) (Bosnia and Herzegovina), [Legal Centre](#) (Montenegro), [Macedonian Young Lawyers Association](#) and [Information Legal Centre](#) (Croatia) formalized their co-operation by establishing the Western Balkan Legal Aid Network (WeBLAN). The cooperation of these organizations dates back to 2008 when as UNHCR implementing partners they commenced the implementation of the regional project aimed at the promotion of social inclusion of marginalized communities in the territory of the Western Balkans.

WeBLAN's aim is to contribute to:

- the prevention and reduction of statelessness in the region,
- reduction of the number of persons at risk of statelessness,
- support for the social inclusion of Roma, Ashkali and Egyptian population and other marginalized groups,
- improving access to public services and to justice,
- prevention and combating of discrimination affecting marginalized groups and
- strengthening the regional ties and promote cross-border cooperation to issues linked to social inclusion of marginalized groups in Western Balkan.

In order to meet these goals, WeBLAN is providing assistance in civil registration procedures, jointly lobbying for the prevention of statelessness and access to basic rights, as well as sharing best practices.

WeBLAN member organizations are part of the [European Network on Statelessness](#) (ENS), a civil society alliance committed to address statelessness in Europe providing trainings and expert advice, as well as a forum for a research, monitoring and exchange of information on statelessness. ENS works in partnership with other organisations and encourages regional and

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

Best Practices for Roma Integration
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international institutions to address statelessness within their respective mandates. ENS also urges countries in Europe to adopt policies to prevent and reduce statelessness, and to provide protection to stateless persons. In order to build capacity among policy makers and civil society organisations in Europe, the ENS provides training and expert advice, as well as a forum for dedicated research, monitoring and exchange of information on statelessness.

For the purpose of the workshop, the WeBLAN members filled in a research template, previously developed jointly with ENS, containing a description and analysis of the main problems, challenges, legal gaps and on-going activities in the Western Balkans respective countries aimed at prevention and reduction of statelessness. The conducted research and related analysis done by the six WeBLAN members served as a basis for workshop presentations and discussion.

Analysis of national legislation and the situation in practice has been conducted for each country in the Western Balkans region, in order to comprehend the extent of the problem related to exercise of the right to a nationality and to establish who the persons and groups at risk of statelessness are, and what the profile of this population is.

2. Discrimination and Statelessness in the Western Balkan countries

All countries in the Western Balkans region share certain common problems that lead to risk of statelessness. A common characteristic for all countries is untimely registration of the fact of birth of children. The obstacles to registration of child's birth are similar: lack of documentation of parents, lack of information, giving birth at home, traditional way of life of persons of Roma ethnicity, etc. Additional problems are caused by the illegal nature of housing or settlements, destruction or displacement of registries, and other issues.

International conventions relevant for statelessness in the Western Balkans:

- All jurisdictions except Kosovo passed the [1954 Convention relating to the Status of Stateless Persons](#). This Convention defined a stateless person as one who is “not considered as a national by any State under the operation of its law” (Article 1).
- The [1961 Convention on the Reduction of Statelessness](#) has been adopted by all jurisdictions except the Former Yugoslav Republic of Macedonia¹ and Kosovo. Article 1 states that “State shall grant its nationality to a person born in its territory who would otherwise be stateless”. This can be done at birth or through an application process with the specific conditions prescribed by the Convention.
- The [European Convention on Nationality](#) has been ratified by Bosnia and Herzegovina, Montenegro and the former Yugoslav Republic of Macedonia. Article 4 states that “everyone has the right to a nationality, statelessness shall be avoided, and no one shall be arbitrarily deprived of his or her nationality”.

In addition, the European Court of Human Rights has ruled that nationality is part of social identity.

¹ Expected in 2013.

Bosnia and Herzegovina

Problems in civil registration occur mainly because of the lack of awareness about rights. There is no official data on the number of people without citizenship, but it is estimated that most are members of the Roma minority. Additional problems are caused by the destruction of birth registries during the wars.

Montenegro

The 2011 census identified a certain number of persons without a citizenship, and 542 unregistered people were identified during the survey in Konik camp in Podgorica. There is no definition of the rights of people without citizenship – only their right to acquire citizenship based on a certain period of time passed in Montenegro.

Montenegro (alongside the Former Yugoslav Republic of Macedonia – see below) is among the rare countries that have prescribed facilitated naturalization of stateless persons. The more favourable conditions are reflected in omitting the required knowledge of language. Besides, a stateless person does not have to fulfil conditions related to accommodation and guaranteed source of income in the amount that provides for material and social security. However, one of the reasons for which stateless persons would not be able to benefit from facilitated naturalization is precisely absence of the statelessness determination procedure.

Kosovo

Article 29 of the Law on Citizenship states that "All persons who on 1 January 1998 were citizens of the Federal Republic of Yugoslavia and on that day were habitually residing in Republic of Kosova shall be citizens of Republic of Kosova and shall be registered as such in the register of citizens irrespective of their current residence or citizenship". This is an important norm for the prevention of statelessness, especially for refugees in the region. However, there is possible indirect discrimination based on the "particular situation" of certain groups of people, including Roma, Ashkali and Egyptian communities. Administrative Instruction on implementation of the Law (2011) foresees late registration for persons who are not able to provide any written evidence.

Research conducted at the end of 2011, which involved all civil registration centers in Kosovo, concluded that there was a large discrepancy regarding the implementation of laws and procedures by civil status registration offices.

The Former Yugoslav Republic of Macedonia

The government did not sign the [1961 Convention on the Reduction of Statelessness](#). The national regulation stipulates that the stateless person must reside in the country for the period of six years in order to start the procedure for obtaining citizenship (rather than the usual 8 years minimum). However, this regulation is not being applied since the procedure for determining statelessness does not exist, which in practical terms equates stateless persons with other foreigners seeking citizenship.

Stateless persons have no access to health and education systems and cannot be employed. According to the Ministry of Labour and Social Policy, there are 470 stateless persons, mostly Roma, Ashkali and Egyptian population coming from Ex-Yugoslav states, who were not informed about the regulation and therefore did not apply for citizenship. In addition, parents without birth registration are unable to register the birth of their children.

Croatia

According to the 2011 census, 749 people in Croatia are stateless while approximately 2,900 persons are of unknown nationality. There are no affirmative measures for stateless persons in obtaining citizenship. The Roma population is experiencing difficulties in registering the birth of children born at home.

Serbia

People at risk of statelessness are mostly Roma. According to UNHCR research from 2009, 6.8% of Roma population in Serbia faces this risk. Lack of documentation or awareness of regulations, birth at home and discrimination are the most common factors which lead to statelessness. There are also persons with undetermined citizenship, who possess birth registration but their citizenship is not stated. Besides the legally invisible people, there are persons who had citizenship but lost it in the meantime or lost the proof of its possession. According to the Law on Residence from 2011, Roma who live in the settlement will be able to register at the address of the Centres for Social Work.

3. Nationality and statelessness and the prevention and reduction of statelessness

It is estimated that there are 12 million stateless persons in the world (600,000 in Europe). Statelessness impacts not only individuals, but communities and even states as it can contribute to conflict. There are many international obligations towards stateless persons – the most important ones are defined in the [1954 Convention relating to the Status of Stateless Persons](#). This Convention defines a stateless person as one who is “not considered as a national by any State under the operation of its law”.

Statelessness in the Western Balkans

The procedure for determining statelessness does not exist in any of the Western Balkan jurisdictions.

	Definition of stateless persons	Travel documents that can be issued to a stateless person	Facilitated naturalisation of stateless persons
Bosnia and Herzegovina	X	X	
Croatia	X	X	
Kosovo*	X	X	
FYR Macedonia	x		X
Montenegro			X
Serbia		X	

De jure statelessness - A person who is not considered as a national by a state under the operation by its law is de jure stateless. According to UNICEF, 50 million children are born each year without being registered but not all of them are at risk of statelessness.

De facto statelessness or ineffective nationality - There is no clear, generally accepted definition in international law and practice. There is great diversity in usage of this term and erroneous interpretations are also frequent by all types of actors. De facto statelessness does

not evoke any protection obligation under the 1954 Convention (or any other relevant international instrument).

UNHCR and experts suggest that many persons commonly referred to as *de facto* stateless actually fulfill the conditions to be considered as *de jure* stateless under the 1954 Convention. It is recommended to limit the use of these concepts and use the legally correct term “stateless” instead.

4. Statelessness determination and protection of stateless persons

Statelessness can be a reason for migration, especially forced migration. Persons can be in their “own country” or not in their “own country”, in the first case the links to the country of residence are strong and they should be given citizenship, in other situation (referred mostly to the migrants) they should be protected during their stateless status.

There are five strategic steps and recommendations based on 1954 Statelessness Convention and other relevant international legal instruments:

- a. **International obligations.** States should accede and implement the relevant international treaties. Since the provisions in international law are often limited in scope and do not always respond to actual protections needed, states are encouraged to implement soft law principles and recommendations for higher standards.
- b. **Visibility.** Stateless persons are often invisible “legal ghosts”. This is a key reason why this phenomenon is frequently under-estimated and disregarded. Three key areas to improve the visibility of statelessness and create effective protection mechanisms include: statistics, statelessness legislation and training/mainstreaming.
- c. **Identification.** An effective and protection-oriented stateless status determination procedure should be in place which is regulated by specific legal provisions. A legal status should be created for applicants for stateless status (until a final decision is taken), and expulsion measures should be suspended.
- d. **Protection status.** Statelessness is usually an enduring problem; therefore stateless persons should be granted a protection status that enables them to conduct a normal, dignified and productive life in the country of residence on a long-term basis. This should include: residence (under a scheme similar to that applied to refugees), identify document, unrestricted access to the labour market, unrestricted access to education, access to public relief and social care, travel document, etc.
- e. **Durable solutions.** In contrast to the problems of refugees, stateless persons have only one durable solution: the acquisition of a nationality. Stateless persons should therefore have facilitated access to the nationality of the country of residence.

5. Challenging statelessness through international strategic litigation

- a. **Procedures.** Certain issues should be addressed by empowering disadvantaged groups to use the legal safeguards. The application of the existing legal protections should be advanced through litigation before national regional and international tribunals. Pilot cases could be in function to achieve broad results for large affected groups.

- b. **Challenges.** Judges are often unfamiliar with the antidiscrimination and international law instruments and are reluctant to apply them, proceedings take a long time and the cost of litigation is high.

List of participants

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Additional resources

Addressing Statelessness in the Western Balkans – ENS and WeBLAN Joint Workshop, Ivanka Kostic, Executive Director of Praxis, 26 April 2013, <http://www.statelessness.eu/blog/addressing-statelessness-western-balkans-%E2%80%93-ens-and-weblan-joint-workshop>

Litigation, legal aid & law clinics, 7 May 2013, Laura van Waas, Statelessness Programme, Tilburg University, <http://www.statelessness.eu/blog/litigation-legal-aid-law-clinics>

Best Practices for Roma Integration, www.bpri-odihr.org