



FACULTY OF LAW  
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**The Right to be (Un)Seen**  
Means for Enactment of Human Rights  
in Situations of Encampment

JAMM07 Master Thesis

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*„If the eyes are the window to the soul,  
could irises be the key that unlocks one’s identity?  
The Anglo-Jordanian technology company IrisGuard thinks so.“*  
Alison Buckholtz & Andrew Raven  
»Eyeing a More Secure Future for Refugees«

*“Precisely because of the global expansion of human rights,  
it has become all the more difficult to understand how certain subjects can be denied even  
the most taken-for-granted rights. The problem strikes us as a “blind spot in the system  
of rights”, and as a blind spot, it denotes an area that escapes our understanding.”*  
Ayten Gündoğdu  
»Rightlessness in an Age of Rights –  
Hannah Arendt and the Contemporary Struggle of Migrants«

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## **Abstract**

The implementation of iris scan technology in the context of humanitarian financial assistance in UNHCR-run refugee camps raises an array of legal questions. While the collection and storage of biometrical data in other contexts is often accompanied by a critical discussion about data protection and privacy concerns, the use of such data in humanitarian settings is often left uncontested. The in-depth legal doctrinal as well as socio-legal analysis conducted in this thesis shows that the normative framework in place is significantly fragmented. In this legally blurred environment, using the concept of a right to have rights coined by Hannah Arendt serves as a touchstone to examine the factual access to justice for inhabitants of Zaatari Refugee Camp.

In order to enable the analysis of the prevailing dynamics, the relationships between the Jordanian State, the UNHCR and the people living in the camp had to be scrutinized. While the relationship between the UNHCR and the inhabitants turns out to be the one least governed by law, most implications for the people of concern to UNHCR result from the activities of the organization. Present repercussions resulting from the use of iris scan for monetary assistance constitute a violation of the right to privacy. Repercussions resulting from this use of new technologies in the future can have unforeseen impacts on the life of the people affected. The means to enact human rights for those in situations of encampment are rather limited. Taking non-legal factors, such as fear of negative consequences, into consideration renders it very unlikely that governance measures imposed are effectively challenged. In conclusion, the right to have rights until today did not materialize for those lacking citizenship of the place they are in. This is exemplified in the situation scrutinized by the lack of factual access to justice, the lack of being able to claim one's rights.

## Zusammenfassung

Die Implementierung von Iris-Erkennung im Rahmen humanitärer finanzieller Unterstützung in UNHCR-geführten Flüchtlingslagern wirft eine ganze Reihe an rechtlichen Fragen auf. Während das Sammeln und die Speicherung von biometrischen Daten in anderen Kontexten oft von einer kritischen Diskussion über Datenschutz und Privatsphäre begleitet wird, bleibt die Nutzung solcher Daten in humanitären Situationen häufig unhinterfragt. Die eingehende rechtsdogmatische sowie rechtssoziologische Analyse in dieser Arbeit zeigt, dass der bestehende normative Rahmen stark fragmentiert ist. In diesem rechtlich unscharfen Umfeld fungiert das von Hannah Arendt formulierte Konzept vom Recht, Rechte zu haben als Prüfstein, um den faktischen Zugang zum Recht für Bewohner:innen des Flüchtlingslagers Zaatari zu untersuchen. Um eine Analyse der herrschenden Dynamiken zu ermöglichen, mussten die Beziehungen zwischen dem jordanischen Staat, dem UNHCR und den Menschen, die in dem Camp leben, untersucht werden. Während sich das Verhältnis zwischen dem UNHCR und den Bewohner:innen als das am wenigsten rechtlich geregelte herausstellt, sind die Aktivitäten der Organisation am folgenreichsten für die Menschen im Lager. Aktuelle Auswirkungen, die aus der Nutzung von Iris-Erkennung für finanzielle Unterstützung resultieren, stellen eine Verletzung des Rechtes auf Privatsphäre dar. Die Auswirkungen, die sich aus dieser Art der Nutzung neuer Technologien ergeben, können unvorhergesehenen Einfluss auf das Leben der betroffenen Menschen in der Zukunft haben. Für diejenigen, die sich in Lagersituationen befinden, sind die Möglichkeiten zur Durchsetzung ihrer Menschenrechte sehr begrenzt. Werden nicht-rechtliche Faktoren, wie die Furcht vor negativen Konsequenzen, berücksichtigt, erscheint es äußerst unwahrscheinlich, dass verhängte administrative Maßnahmen angefochten werden. Zusammenfassend ist festzustellen, dass das Recht, Rechte zu haben sich bis heute für diejenigen, die nicht die Staatsangehörigkeit ihres Aufenthaltsortes besitzen, nicht materialisiert hat. Dies wird beispielhaft deutlich in der untersuchten Situation hinsichtlich des faktischen Zugangs zum Recht, der Unmöglichkeit die eigenen Rechte einzufordern.

## Preface

It is impossible to name all people that have contributed to this thesis in various ways. Through professional and private entanglements as well as through academic and journalistic research and critical perspectives. Those who did in their professional capacities are mentioned with their names, either in here or in the references. In order to keep the private entanglements private, I omit the names and just acknowledge their marvelous contributions.

First of all, I would like to thank Leila Brännström for agreeing to be my supervisor although the endeavour appeared slightly vague in the beginning, rendering the path to go hard to predict. An even more heartfelt thank you, Leila, for accompanying me all the way, with continuous inspiration and persisting patience.

I would also like to thank Markus Gunneflo for chairing my thesis' defense in the most fruitful way: initiating a vibrant discussion during which valuable new perspectives on my work emerged, formulating implications I could sense but not grasp before.

Going back in time a little bit, I would like to thank Gregor Noll for initially encouraging me to dive into a topic which I had the feeling but no certainty if it even *is* a topic. And in the same breath suggesting momentarily who might be best to further consult.

Very warm & grateful thoughts and feelings are dedicated to my friends.

Those who I spent my time in Sweden with, making the studies intriguing and allowing me to feel at ease. Those who kept spare mattresses, rooms, keys for me to always feel welcomed and sheltered when being in Berlin. Those who are continuously holding on, no matter if it is doubts lurking around or bright sparkles.

A huge, emotional wave of gratitude goes to my family. For keeping up optimistically with my pathway, despite it not always being straight. For showing all various kinds of support and ceaseless trust in my decisions. For being there.

## Abbreviations

ACHPR	The African Court on Human and People’s Right
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIA	Central Intelligence Agency
DII	Demographically Identifiable Information
ECOSOC	United Nations Economic and Social Council
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EURODAC	European Asylum Dactyloscopy Database
HRC	Human Right Council
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IEEE	Institute of Electrical and Electronics Engineers
IHRC	International Human Rights Clinic
ILO	International Labor Organization
IOM	International Organization for Migration
ISO	International Organization for Standardization
JRP	Jordan Response Plan
LSE	London School of Economy
MoU	Memorandum of Understanding
NGOs	Non-Governmental Organizations
NRC	Norwegian Refugee Council
OHCHR	Office of the United Nations High Commissioner for Human Rights
PI	Privacy International



PII	Personally Identifiable Information
PRS	Protracted Refugee Situation
PSD	Jordanian Public Security Directorate
SRAD	Syrian Refugee Affairs Directorate
TWAIL	Third World Approaches to International Law
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNHCR Statute	Statute of the Office of the United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNTS	United Nations Treaty Series
UPR	Universal Periodic Review
US	United States of America
VCLT	Vienna Convention on the Law of Treaties
VCLTIO	Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations
WFP	World Food Program

# Introduction

## 1.1 Background

The interest for the issues dealt with in this thesis was raised by learning of the implementation of iris scan technology for humanitarian monetary assistance by the United Nations High Commissioner for Refugees (UNHCR) and the World Food Program (WFP) in Zaatari Refugee Camp, Jordan in 2016. Witnessing the enthusiastic presentation<sup>1</sup> and almost<sup>2</sup> unanimously affirmative perception<sup>3</sup> of the use of iris scan for humanitarian purposes, concern regarding human rights implications and potential infringements affecting the people living in Zaatari arose.

Still, there was an unruly feeling accompanying these concerns: are there not more urgent topics to deal with?<sup>4</sup> Would it not be more appropriate to scrutinize a situation in which harm is intentionally inflicted on people?<sup>5</sup> An initial reason for staying with the topics chosen was my own background. As a person raised and educated in Central Europe, I aimed at avoiding the notion of pointing to human rights violations taking place in other regions of the world instead of dealing with those occurring in close proximity. Albeit this might appear contradictory at first sight, as Zaatari Refugee Camp is located in Jordan, I would claim it is not. Despite its geographic location, the

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<sup>1</sup> *WFP Introduces Iris Scan Technology To Provide Food Assistance To Syrian Refugees in Zaatari*, 6<sup>th</sup> October 2016, <https://www.wfp.org/news/news-release/wfp-introduces-innovative-iris-scan-technology-provide-food-assistance-syrian-refu> (visited 28<sup>th</sup> January 2019).

<sup>2</sup> Remarkable exceptions in this regard are the news organization *The New Humanitarian* (formerly IRIN News) critically covering crisis and the related humanitarian action (<http://www.thenewhumanitarian.org/in-depth/humanitarian-technology>, accessed 24<sup>th</sup> May 2019), collaborative efforts made by the International Committee of the Red Cross (ICRC) and Privacy International (PI) as well as by scholars such as KRISTIN BERGTORA SANDVIK/KATJA LINDSKOV JACOBSEN/SEAN MARTIN McDONALD, *Do no harm: A taxonomy of the challenges of humanitarian experimentation*, in: *International Review of the Red Cross* (2017), Vol. 99 (1), p. 319-344 (332); KATJA LINDSKOV JACOBSEN, *The Politics of Humanitarian Technology: good intentions, unintended consequences and insecurity* (2015), p. 76 with regard to the use of iris recognition technology in cash assistance for Syrian refugees based in urban areas in Jordan.

<sup>3</sup> CORINNA FREY/MARIAN GATZWEILER, *How tech can bring dignity to refugees in humanitarian crisis*, in: *The Conversation*, [https://theconversation.com/how-tech-can-bring-dignity-to-refugees-in-humanitarian-crises-94213?utm\\_source=facebook&utm\\_medium=facebookbutton](https://theconversation.com/how-tech-can-bring-dignity-to-refugees-in-humanitarian-crises-94213?utm_source=facebook&utm_medium=facebookbutton) (visited 22<sup>nd</sup> September 2019); DARIO LEDESMA, *How ATMs are helping Syrian refugees in Jordan* (2017), in: *The Borgen Project*, <https://borgenproject.org/tag/unhcr-biometric-identity-management-system/> (visited 22<sup>nd</sup> September 2019); ADAM SHEIKH ET AL, *Reach Project 2017 Jordan, Case Study: UNHCR Jordan's biometric cash assistance program for Syrian refugees* (2017), <http://reachprojectuoft.com/new-page-4> (visited 22<sup>nd</sup> September 2019).

<sup>4</sup> Which there are always.

<sup>5</sup> Such as human rights violations committed in the Syrian conflict, to remain in the same geographical area, as archived documentations by the impressive project *Syrian Archive*, <https://syrianarchive.org/>, show.

technologies used as well as the organizations<sup>6</sup> and people<sup>7</sup> implementing them are originating from<sup>8</sup> and driven by interests<sup>9</sup> of states in the Western world. Taking these entanglements and potential implications into consideration, I am convinced that it is necessary to critically assess these practices from a human rights perspective.

In order to understand the use and *de facto* accessibility of international human rights for inhabitants of UNHCR-run refugee camps, it appeared advisable to determine the normative framework<sup>10</sup> of the camp. This turned out to be more complicated than expected and led to rather vague results at the first attempt. Similarly, the examination of data protection laws in place turned out to be not very fruitful. Both phenomena – planned and managed refugee camps and biometrics used for identification purposes – were not just recently discovered. Still, both areas appear to be surprisingly little regulated by international law. In all fairness it has to be acknowledged, that neither humanitarian actors nor legislative bodies are the only ones lagging behind in handling technological developments.<sup>11</sup> Likewise, the people living in Zaatari are not the only one's affected by potential protection gaps in this area. Still, the appearance of biometrics for everyday use in a legally blurred environment inhabited by individuals belonging to one of the most marginalized groups gives cause to take a closer look. This seems crucial to me, as this area bears the notion of being well-protected because it is overseen by the dedicated UN body.

In relation to this, I am interested in calling the notion of new technologies as an almost magical tool in the humanitarian context into question by scrutinizing potential human rights violations caused by the use of these humanitarian tools.<sup>12</sup> This

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<sup>6</sup> Part of the new technology used in the context of iris scan-based monetary assistance by WFP is WFP building blocks, developed as a project of the WFP Innovation Accelerator, a company based in Munich, Germany.

<sup>7</sup> Two of the actors quite invested in the implementation of digital biometrics within the UNHCR are Volker Schimmel and Karl Steinacker, both current or previous UNHCR officials, both to my knowledge coming from one of the German-speaking countries. Volker Schimmel was in his role as a senior field coordinator for UNHCR in Amman/Jordan one of the driving forces behind the implementation of iris scan. Karl Steinacker has worked for more than three decades in the “aid industry” and was dedicated to introduce biometrics in the humanitarian field, <https://www.karl-steinacker.digital/humanitarian-aid>.

<sup>8</sup> IrisGuard UK Ltd being a company registered in the United Kingdom.

<sup>9</sup> For further information in relation to UNHCR consider this very insightful analysis of how the main UNHCR donor countries determine the organisation's activities: JACOB STEVENS, *Prisons of the Stateless – The Derelictions of UNHCR* (2006), in: *New Left Review*, Vol. 42, pp. 53-67.

<sup>10</sup> For a definition and delimitation of the term *normative framework*, see Chapter 1.3.3.

<sup>11</sup> The term *digital age* has not made it yet to conventional encyclopaedias, such as the *Encyclopaedia Britannica*.

<sup>12</sup> KATJA LINDSKOV JACOBSEN, *The Politics of Humanitarian Technology: good intentions, unintended consequences and insecurity* (2015), p. 1.

questioning is not an end in itself; it rather attempts to scratch the surface of the widespread perception of techno-fixes being beneficial for all stakeholders involved.<sup>13</sup> This varies from the way increased surveillance measures, including the collection of personal and biometrical data, are discussed and judicially examined since the beginning of the millennium. The dichotomy between security concerns and the right to privacy is overtly present; the obvious clash of competing interests demands for striking a balance between them. The handling of the use of biometrics in the humanitarian realm until now provides for a different starting point. For long, conflicting interests seem to be simply absent, contradictions purportedly non-existent. The motivation for the research at hand is the conviction, that this notion should not go uncontested, but rather be put under scrutiny.

For this endeavor, the *right to have rights*<sup>14</sup> coined by the political theorist and philosopher Hannah Arendt seems to provide a valid touchstone for critically enquiring the factual abilities of Zaatari's inhabitants to challenge the acts of governance<sup>15</sup> they are facing.

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<sup>13</sup> KRISTIN BERGTORA SANDVIK/MARIA GABRIELSEN JUMBERT/JOHN KARLSRUD/MAREILE KAUFMANN, *Humanitarian Technology: a critical research agenda*, in: *International Review of the Red Cross* (2014), Issue No. 893, pp. 219-242 (220).

<sup>14</sup> HANNAH ARENDT, *The Decline of the Nation-State and the End of the Rights of Man*, in: *The Origins of Totalitarianism* (1951/2017), p. 349 - 396.

<sup>15</sup> For a definition and delimitation of the term *governance*, see Chapter 1.3.3.

## 1.2 Research Question

Keeping the described background in mind, the research question I will answer in my thesis is the following:

*Do the normative framework and resulting governance structures in UNHCR refugee camps in Jordan provide for a right to have rights enjoyed by its inhabitants, allowing to challenge the use of iris scan technology for cash assistance?*

These sub-questions will be addressed in order to enable a thorough answer of the research question above:

*What does a contemporary interpretation of Arendt's 'right to have rights' entail regarding its practical application?*

*How does the existing normative framework in Zaatari Refugee Camp form the relations between its inhabitants and the two major entities governing them – the Jordanian State and the UNHCR?*

*Do the existing governance structures in Zaatari allow for informed consent by its inhabitants regarding the use of iris scan technology?*

*Do the rules and guidelines governing the implementation of iris scan technology in Zaatari protect camp inhabitants from repercussions of the governance tool?*

*Do the existing governance structures in Zaatari provide the inhabitants with means of enactment of their rights?*

## 1.3 Delimitations and Terminology

In the following I will present and explain the delimitations regarding the geographical place in focus as well as the people subjected to the governance measures discussed. Subsequently, relevant legal terms are explained and, where necessary, defined for the purpose of the thesis. The explanations and definitions of technical terms and concepts are inserted in the text whenever they appear for the first time.

### 1.3.1 The Place

The specific place in question is Zaatari Refugee Camp<sup>16</sup> in Jordan. This geographically specified place serves as an example of a broader phenomenon, namely people on the run living in refugee camps. In the following I will determine which of those places are included by defining the general term *refugee camp*. The definition will likewise be

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<sup>16</sup> The nominations *Zaatari Refugee Camp*, *Zaatari Camp* and *Zaatari* will be used interchangeably, not referring to *Zaatari Village*.

valid for the term *camp*, they will be used interchangeably. Subsequently I will acknowledge and justify the chosen delimitation to focus on UNHCR-run refugee camps in this thesis.

A general definition of the term and concept *refugee camp* in international law is lacking. The major treaty related to refugees, the *Convention Relating to the Status of Refugees*,<sup>17</sup> does not mention camps as a potential measure in dealing with international displacement. Neither is the administration of refugee camps enshrined in the mandate of the UNHCR. This lacuna is quite concerning, as naming a place a *refugee camp* according to *Maja Janmyr* “may confer an array of legal, political and bureaucratic implications for refugee protection.”<sup>18</sup> Roughly one third of the individuals registered as refugees under the 1951 Convention live in planned and managed camps, in total numbers close to five million people in 2017. This number increased by 1.5 million within two years. In addition, approximately one million people are living in self-settled camps.<sup>19</sup> Albeit attempting not to fall into the trap of talking numbers instead of people,<sup>20</sup> this short statistical reference should provide sense for the number of people directly affected by the potential implications mentioned by Janmyr. In a *Camp Management Toolkit* collaboratively issued by the International Organization for Migration (IOM), the Norwegian Refugee Council (NRC) and the UNHCR

“[t]he term camp is used [...] to refer to a variety of camps or camp-like settings and temporary settlements including planned or self-settled camps, collective centres, reception and transit centres, and evacuation centres established for hosting displaced persons. It applies to rural or urban settings, to ongoing and new situations, to those resulting from conflict or natural disasters, in other words, wherever displaced people are compelled to find shelter in temporary places.”<sup>21</sup>

This definition appears to be quite broad, as it includes both camps that are run by humanitarian organizations or states on the one end of the spectrum (planned camps) to those who are established and run by refugees (self-settled). As these two forms tend to be perceived as partly opposite concepts, for example with regard to autonomy of its inhabitants,<sup>22</sup> this broad definition does not seem to fit the purposes of the thesis at hand. A more suitable definition can be reached when adding the concept of *encampment*. Encampment “refers to a policy which requires refugees to live in a

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<sup>17</sup> *Convention Relating to The Status of Refugees*, 28<sup>th</sup> July 1951, entry into force 22<sup>nd</sup> April 1954, 189 UNTS 137, hereinafter: Refugee Convention, 1951 Convention.

<sup>18</sup> MAJA JANMYR, *Protecting Civilians in Refugee Camps* (2013), p. 103.

<sup>19</sup> UNHCR, *Global Trends Forced Displacement 2017* (2018), p. 60, table 5.

<sup>20</sup> As Kilian Kleinschmidt, former head of Zaatari Refugee Camp, puts it: “Zahlen, Statistik und Logistik sind ganz große Instrumente der Entmenschlichung“ [„Numbers, statistics and logistics are very powerful instruments of dehumanization.“] in: KATRIN ZEUG, „Arroganz des Helfens“ – Interview mit Kilian Kleinschmidt, <https://enorm-magazin.de/arroganz-des-helfens> (accessed 25<sup>th</sup> May 2019).

<sup>21</sup> IOM/NRC/UNHCR, *Camp Management Toolkit* (2015), p. 9.

<sup>22</sup> OLIVER BAKEWELL, *Encampment and Self-Settlement*, in: ELENA FIDDIAN-QASMIYEH/GIL LOESCHER/KATY LONG/NANDO SIGONA (EDS), *The Oxford Handbook of Refugees & Forced Migration* (2014/2016), pp. 127-138 (132).

designated area set aside for the exclusive use of refugees.”<sup>23</sup> Requiring its inhabitants to live in an area for their exclusive use appears to be an euphemistic expression for the restriction of the freedom of movement of the people living in this area.<sup>24</sup> Thus, for the purpose of this thesis, a refugee camp shall be defined as *a designated area where refugees live under conditions of restricted freedom and a measurable level of institutionalized governance*.

After defining what the term *refugee camp* shall mean for the purpose of this thesis, a delimitation has to be made to ensure that the scope of inquiry is narrow enough to remain feasible while at the same time broad enough to bear some relevance.

The delimitation identified to serve these requirements best is to only take UNHCR-managed refugee camps into consideration.

In order to further narrow down the field of inquiry, it might seem tempting to - in addition to the organizational - introduce a geographical delimitation insofar as only considering refugee camps located in the Middle East.<sup>25</sup> Albeit there are certain characteristics unique to the situation in the Middle East,<sup>26</sup> this temptation will be partly resisted for the following reason: sound socio-legal and legal-anthropological research focusing on UNHCR-governed camps up until now was mostly conducted on the African Continent. Without assuming unlimited transferability of these findings to the situation in the Middle East and specifically Jordan, the fact that it is the same entity running the camps appears to bear some comparability. Thus, Zaatari Refugee Camp and the specific situation in the Middle East will be the focus of this thesis, while taking scholarship which evolved from research regarding UNHCR-run refugee camps in other parts of the world into account. The normative specificities of the situation in Zaatari Refugee Camp will be addressed especially when discussing the normative framework in place in Chapter 2.

### **1.3.2 The People**

The question, how to call those who are the subjects of this thesis might seem to be easy to answer when scrutinizing the situation in a specific refugee camp like Zaatari, with an allegedly ‘homogenous’ population that shares a common status. Things are already in this regard not as easy as they seem: Jordanian authorities draw distinctions

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<sup>23</sup> OLIVER BAKEWELL, *Encampment and Self-Settlement*, in: ELENA FIDDIAN-QASMIYEH/GIL LOESCHER/KATY LONG/NANDO SIGONA (EDS), *The Oxford Handbook of Refugees & Forced Migration* (2014/2016), pp. 127-138 (129).

<sup>24</sup> MAJA JANMYR, *Protecting Civilians in Refugee Camps* (2013), p. 104.

<sup>25</sup> *Middle East* mostly refers to a region consisting of the following countries: Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, Syria, Turkey, the United Arab Emirates and Yemen, at times Cyprus and Northern Cyprus are included.

<sup>26</sup> GEORGE RIACH/ZOE JAMES, *Strengthening the rule of law on the margins: experiences from Za’atari refugee camp, Jordan* (2016), in: *The Int’l Journal of Human Rights*, Vol. 20, No. 4, pp. 549 – 566 (551).

between Syrian refugees and Palestinian refugees fleeing the conflict in Syria.<sup>27</sup> Thus, the main sources and backgrounds of this thesis have to be taken into consideration in order to define the widespread term *refugee* for the purpose of this thesis and throw a light on some additional designations.

Variations of understandings and usage of the term *refugee* exist both in the spatial and the temporal perspective. Some argue it should only be applied to those who fulfil the criteria named in Art. 1 A (2) 1951 Refugee Convention:

the term ‘refugee’ shall apply to any person who [...] owing the well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.

Although people fleeing war might be perceived as “the very model of refugees”<sup>28</sup>, they are not *per se* included in this definition, as war, armed conflict or indiscriminate effects of violence are not explicitly mentioned in it. Albeit there are most likely people among those fleeing the Syrian war who fulfill the criteria listed in Art. 1 A (2) Refugee Convention, the purported majority could not rely on qualifying as refugees under the 1951 Convention, as they are lacking “the well-founded fear of being persecuted” for *individual* reasons.

Without further delving into the potential protection gaps this creates, it can be stated that applying the definition of the term *refugee* as enshrined in the Refugee Convention would not serve the purpose of this thesis. In order to avoid the xxx use, it could be considered to straightforward not use the term at all. But the physical space that will be analyzed is named a *refugee* camp, one of the institutions involved is the UN Refugee Agency. It therefore appears to be artificial and somehow unavoidable to use the term. Thus, a definition compatible with the situation scrutinized and the sources used has to be elaborated.

A hint leading to a broader approach in defining the term *refugee* can be found in Arendt’s work: she claims that “stating a difference between the stateless person and the refugee” is one of “varied efforts of the legal profession to simplify the problem.”<sup>29</sup> Focusing on the practical dimension, Arendt draws attention to “the fact that ‘all

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<sup>27</sup> HUMAN RIGHTS WATCH, *Not Welcome - Jordan’s Treatment of Palestinians Escaping Syria* (2014), Report, <https://www.hrw.org/report/2014/08/07/not-welcome/jordans-treatment-palestinians-escaping-syria>; UNHCR, *Submission by the UNHCR For the Office of the High Commissioner for Human Rights’ Compilation Report*, Universal Periodic Review, 3<sup>rd</sup> Cycle, 31<sup>st</sup> Session, March 2018, Annex p. 8.

<sup>28</sup> ANDREAS ZIMMERMANN/CLAUDIA MAHLER, *Art. 1 A, para. 2 Definition of the Term ‘Refugee’/Définition du Terme ‘Réfugié’*, in: ID. (ED), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol – A Commentary* (2011), pp. 281-465 (370, para. 315).

<sup>29</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 367, fn. 28.



refugees are for practical purposes stateless”<sup>30</sup> and thus introduces the term *de facto* statelessness.<sup>31</sup>

A similar approach can be found in *A Study of Statelessness*<sup>32</sup> published by the UN in 1949 defining *stateless persons de facto* as:

[...] persons who, having left the country of which they were nationals, no longer enjoy the protection and assistance of their national authorities, either because these authorities refuse to grant them assistance and protection, or because they themselves renounce the assistance and protection of the countries of which they are nationals.<sup>33</sup>

The UN in this study proposed a treatment of *refugees* similar to *stateless persons de jure* and *de facto*.<sup>34</sup> This approach appears to fit the purpose of this thesis quite well, as the analysis will less evolve around different legal status’ of persons but rather the *de facto* implications the situation is conferring upon the inhabitants of a UNHCR-run refugee camp. Thus, the term *refugee* will be used in this broader understanding.

According to the abovementioned considerations, the term *de facto stateless* will be used interchangeably with the term *refugee*.

In the literature used, there is the suggestion to employ the term *migrant*, as it appears to be juridical neutral and could therefore be used as an umbrella term not bearing specific legal implications.<sup>35</sup> While the abovementioned difficulties could be tackled this way, reservations against this use are raised due to the fact that the term has a negative connotation at least in the European public realm.<sup>36</sup> Thus, it will not be used in this thesis.

The term *inhabitants* will be used for those who are residing or did reside in Zaatari Refugee Camp.

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<sup>30</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 367, fn. 28, citing JOHN HOPE SIMPSON, *The refugee problem: report of a survey* (1939).

<sup>31</sup> IBID, p. 365.

<sup>32</sup> UN AD HOC COMMITTEE ON REFUGEES AND STATELESS PERSONS, *A Study of Statelessness* (1949).

<sup>33</sup> IBID, Introduction, III. De jure and de facto stateless persons.

<sup>34</sup> IBID, Introduction, IV. “Stateless persons” and “Refugees”.

<sup>35</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 4.

<sup>36</sup> DAVID MARSH, *We deride them as ‘migrants’: Why not call them people?*, in: *The Guardian*, 28<sup>th</sup> August 2015, <https://www.theguardian.com/commentisfree/2015/aug/28/migrants-people-refugees-humanity> (visited 2<sup>nd</sup> May 2019).

### 1.3.3 Some Definitions

In the following I will provide some short clarifications and definitions relevant for this thesis. While the terms *nationality/citizenship* are related to the legal status of the people concerned, *governance* and *normative framework* rather focus on organizational questions.

#### Nationality/Citizenship

The legal understanding of the two terms can be divided into two major approaches. According to the first, *citizenship* describes the political rights and duties on the municipal, national level, while *nationality* is understood to describe the concept of personal jurisdiction and diplomatic protection by a State in the international realm – a view, that is endorsed by the International Law Commission.<sup>37</sup>

The second approach, widespread amongst human rights law scholars, is rather pragmatic: the terms are closely linked, at times overlapping, and thus hard to distinguish.<sup>38</sup> In the material used in here, both terms appear, partly in the overlapping sense. Arendt tends to use the term nationality in the sense of national origin and the term citizenship in sense of the legal status conferred. The 1954 Convention speaks about nationality when mentioning the legal status. Thus, for the purpose of this thesis, the second approach will be adopted; the terms *nationality* and *citizenship* will be used interchangeably, mostly matching with the use of the terms in the respective sources.

#### Governance

The term *governance* in general bears an array of meanings, depending on the discipline it is used in.<sup>39</sup> As it is deemed to be a term that “means what I choose it to mean”,<sup>40</sup> the way in which and why *governance* is used in this thesis has to be shortly specified. By default, a definition will be derived from within law context. The question of why the term is used more precisely is the question why not the term *government* is used. The most straightforward way to put it is, that while “government refers to political institutions, governance refers to processes of rule wherever they occur.”<sup>41</sup> The situation scrutinized in this thesis involves the Jordanian State. In this regard, the term government could be used to describe the measures applied in Zaatari Refugee

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<sup>37</sup> ALICE EDWARDS, *The meaning of nationality in international law in an era of rights*, in: ID./LAURA VAN WAAS (eds.), *Nationality and Statelessness under International Law* (2014), pp. 11-43 (13).

<sup>38</sup> IBID, p. 14.

<sup>39</sup> MARK BEVIR, *Governance: A very short introduction* (2012), p.2; in order to obtain a rough idea of the variety of contexts in which *governance* is used, one might also take a look at the listed *fields* in the Wikipedia Series on Governance, <https://en.wikipedia.org/wiki/Governance> (accessed 23<sup>rd</sup> August 2019).

<sup>40</sup> ROD RHODES, *Governance*, in: PETER CANE/JOANNE CONAGHAN, *The New Oxford Companion to Law*, (Current Online Version 2009).

<sup>41</sup> MARK BEVIR, *Governance: A very short introduction* (2012), p. 3.

Camp. Only scrutinizing the situation from this perspective would miss out on another vital actor in the Camp: the UNHCR.<sup>42</sup> UNHCR itself teams up with partners both from the non-governmental sector as well as private companies. Thus, it is not only political (state) institutions that play a role and therefore participate in processes of rule in Zaatari. As the term *governance* provides the language to discuss situations where governing is happening regardless the actor, it serves the purpose of this thesis best.

### **Normative Framework**

Somehow similar to the differentiation between the terms *government* and *governance*, another differentiation needs to be mentioned with regard to the terms *legal* and *normative* framework. The adjective *legal* indicates that something is “connected to the law” or describes something “allowed or required by law”.<sup>43</sup> Thus, *legal* framework refers to the set laws providing legal guidance in a specific situation, the applicable laws. The adjective *normative* describes something “relating to rules, or making people obey rules, especially rules of behavior”.<sup>44</sup> In delineation to *legal*, the term *normative* appears to be more inclusive, covering as well rules which are not laws in the formal sense, but still inform and influence the behavior of people as well as institutional actors. As the situation in Zaatari Refugee Camp appears to be regulated by different kind of laws as well as guidelines and other soft law mechanisms, the broader meaning of *normative* fits the questions discussed in this thesis better than the term *legal*. Thus, the *normative framework* shall be used as an umbrella term including all rules and provisions in place contributing to the governance of the camp.

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<sup>42</sup> The question, to which extent being governed by UNHCR informs the life of people in Zaatari, is part of the analysis conducted in this thesis.

<sup>43</sup> *Oxford Advanced American Dictionary*, [https://www.oxfordlearnersdictionaries.com/definition/american\\_english/legal](https://www.oxfordlearnersdictionaries.com/definition/american_english/legal).

<sup>44</sup> *Cambridge Dictionary*, <https://dictionary.cambridge.org/de/worterbuch/englisch/normative>.

## 1.4 Research

In the following, the State of the Art regarding the different topics discussed in this thesis will be shortly depicted. Subsequently I will provide a brief overview regarding its expected contributions.

### 1.4.1 State of the Art

The right to have rights, after being almost ignored or plagiarized for more than 30 years,<sup>45</sup> has received quite a lot of scholarly attention during the last decades. Both publications in the fields of political theory<sup>46</sup> and philosophy<sup>47</sup> provide different perspectives on and interpretations of Arendt's nowadays famous. Little research was done in relation to the right to have rights in the field of international law. A recent approach can be found in Alison Kesby's *The Right to Have Rights – Citizenship, Humanity, and International Law*, where she is examining the situation of *de facto* stateless and their right to have rights.<sup>48</sup>

The normative framework and governance structures prevalent in UNHCR administered refugee camps are empirically researched by (legal) anthropologists,<sup>49</sup> social scientists<sup>50</sup> and geographers.<sup>51</sup> Their research was conducted mostly with a geographic focus on situations of encampment on the African Continent. In-depth research in this regard with a focus on the situation in the Middle East is mostly related to the specific situation of Palestinian refugee camps. As they – if governed by an international organization – fall under the responsibility of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA), no further attention will be drawn to the State of the Art in this field.

Analysis of the legal situation with a focus on the protection of those living in the camps and responsibilities of those who run them, was thoroughly done by Maja Janmyr in her study *Protecting Civilians in Refugee Camps – Unable and Unwilling States, UNHCR and International Responsibility*.

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<sup>45</sup> STEPHANIE DEGOOYER, *The Right...*, in: STEPHANIE DEGOOYER/ALASTAIR HUNT/LIDA MAXWELL/SAMUEL MOYN, *The Right to Have Rights* (2018), pp. 9 f.

<sup>46</sup> A huge corpus of work has been presented by SEYLA BENHABIB since the 1990es, beginning with *The Reluctant Modernism of Hannah Arendt* (1996), leading to her most recent publication named *Exile, Statelessness, and Migration* (2018); another example from the field of political science is AYTEN GÜNDOĞDU'S *Rightlessness in an Age of Rights* (2015).

<sup>47</sup> As critical endeavours building on Arendt's approach, GIORGIO AGAMBEN'S *Homo Sacer* (1998) and JACQUES RANCIÈRE'S *Disagreement: Politics and Philosophy* (1999) shall be mentioned.

<sup>48</sup> ALISON KESBY, *The Right to Have Rights – Citizenship, Humanity, and International Law* (2012), p. 47.

<sup>49</sup> Such as GUGLIELMO VERDIRAME/BARBARA HARRELL-BOND, *Rights in Exile – Janus-Faced Humanitarianism* (2005); GUGLIELMO VERDIRAME, *The UN and Human Rights – Who Guards the Guardians?* (2011); MICHEL AGIER, *Managing the Undesirables – Refugee Camps and Humanitarian Government* (2011).

<sup>50</sup> Such as KATHARINA INTHETVEEN, *Die Politische Ordnung des Flüchtlingslagers* (2010).

<sup>51</sup> Such as JENNIFER HYNDMAN, *Managing Displacement – Refugees and Politics of Humanitarianism* (2000).

Legal research in the field of the use of new technologies and human rights in humanitarian action is rather limited, but potentially evolving fast.<sup>52</sup> Besides discussion and criticism in the tech- and blog-sphere, in-depth coverage of the topic can be mostly found in reports of NGOs.<sup>53</sup> Likewise there is very limited research with regard to the relationship between the implementation of new technologies and existing governance structures in refugee camps and the use of biometrics by the UNHCR.<sup>54</sup>

#### 1.4.2 Expected Contribution

The expected contribution of this thesis is to gain insights into potential shortcomings and challenges caused by the interplay of UNHCR camp governance and the implementation of biometrical technology. By connecting these two interrelated, but up until now rarely jointly scrutinized, topics with Arendt's request for a right to have rights, attention shall be drawn to potential persisting and emerging *de facto* protection gaps in this area. With the use of new technologies in humanitarian settings as a starting point, my thesis shall also contribute on a more general level: Arendt's claim that human rights bear little significance for those who lost, or never enjoyed, the protection of a state of their own will be gauged in a contemporary, legally informed and empirically grounded manner.

Not aiming at providing solutions or even comprehensively analyzing all potentially related legal issues, the contribution of this thesis is rather to provide a point of departure for critically engaging with the issues raised.

#### 1.5 Method and Material

In Chapter 1 *The Right to Have Rights – An Introduction*, I will present Hannah Arendt's right to have rights as a theoretical political concept and deduct an understanding of it suitable for its application in contemporary practical settings.

Subsequently, I will provide an overview of relevant international human rights codification that took place over the course of the second half of the last century by establishing exemplified, relevant *lex lata*. In addition, I will shortly depict the shift in societal perception regarding the concept of human rights during the same period. This overview serves as a precondition for determining to which extent the situation of

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<sup>52</sup> KRISTIN BERGTORA SANDVIK/MARIA GABRIELSEN JUMBERT/JOHN KARLSRUD/MAREILE KAUFMANN, *Humanitarian Technology: a critical research agenda*, in: *International Review of the Red Cross* (2014), Issue No. 893, pp. 219-242 (219).

<sup>53</sup> MASSIMO MARELLI (ICRC), *Handbook on Data Protection in Humanitarian Action*; GUS HOSEIN/CARLY NYST (Privacy International), *Aiding Surveillance – An exploration of how development and humanitarian aid initiatives are enabling surveillance in developing countries*; PRIVACY INTERNATIONAL/ICRC, *The Humanitarian Metadata Problem: “Doing No Harm” in the Digital Era*; BEN PARKER, *New UN deal with the data mining firm Palantir raises protection concerns*, 5<sup>th</sup> February 2019, <http://www.thenewhumanitarian.org/news/2019/02/05/un-palantir-deal-data-mining-protection-concerns-wfp> (accessed 3<sup>rd</sup> June 2019).

<sup>54</sup> KATJA LINDSKOV JACOBSEN, *On Humanitarian Refugee Biometrics and New Forms of Intervention* (2017), in: *Journal of Intervention and Statebuilding*, Vol. 11, No. 4, pp. 529-551 (529).

refugees regarding a right to have rights today diverges from Arendt's diagnosis 70 years ago.

In Chapter 2 *Zaatari – An Example of UNHCR Camp Governance*, the normative framework governing UNHCR-run refugee camps will be analyzed by using legal doctrinal research. Subsequently, I will draw on empirical socio-legal research to enhance the examination of the relationships formed by the normative framework in place. The relevant relationships being discussed are those between Jordan and the UNHCR, Jordan and Zaatari inhabitants and UNHCR and Zaatari inhabitants. These relationships can be imagined as a triangle and are shaped by “power dynamics, practices and interactions.”<sup>55</sup> A socio-legal approach towards the situation shall enable an understanding of what determines each of these relationships as well as what kind of effects each one has on the respective other two.

In Chapter 3 *Iris Scan – a Governance Tool*, I will first provide the technological background knowledge needed to grasp and analyze the implications of iris scan implementation in Zaatari Refugee Camp. Subsequently I will use legal doctrinal method to analyze the existing laws regulating the practice in question. To cope with the relatively small amount of *lex lata* in this context and in order to provide the most coherent analysis of the situation, socio-legal method will complement my research.

UN guidelines and policies related to the implementation of iris scan will be taken in consideration to scrutinize their capacities in limiting potential negative effects of this governance tool. To enable the determination of present and future repercussions of iris scan implementation, I will include non-legal material qualitatively describing experiences with the technology, such as reports from journalists focusing on the intersection between new technologies and humanitarianism.

In this context I would like to point to an unconventional source used: a documentary film on the implementation of iris scan in Jordan.<sup>56</sup> The material itself shows flaws in accessibility for readers who do not speak Arabic, as the Arabic-spoken text in the film is only summarized by the interviewer instead of being subtitled. To compensate this shortcoming and ensure consistency between the summaries and the testimonies given, the respective text is included in Annex C in English translation for work purposes. The use of this rather unusual material appears to be justified by the value it adds to the legal analysis applied. This value is described by Janmyr as preventing legal positivism remaining an “abstract bastion” by securing a relation to reality.<sup>57</sup> Janmyr emphasizes the proneness of international law to face huge gaps between

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<sup>55</sup> KJERSTI LOHNE/KRISTIN BERGTORA SANDVIK, *Bringing Law into the Political Sociology of Humanitarianism* (2017), in: *Oslo Law Review*, vol. 4 no. 1, pp. 4-27 (10).

<sup>56</sup> YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, <https://www.youtube.com/watch?v=oUt18Hpg15w> (visited 28<sup>th</sup> January 2019).

<sup>57</sup> MAJA JANMYR, *Protecting Civilians in Refugee Camps* (2013), p. 76; it does not seem to be too farfetched to suggest that Arendt was concerned with a similar abstractness.

human rights provisions and actual implementation.<sup>58</sup> It has to be acknowledged that the documentary does not to meet requirements placed on scientific qualitative empirical material. Still, I decided to use the film to take experience into account, as *Guglielmo Verdirame* and *Barbara Harrel-Bond* ask lawyers to do in order to enhance the potential of the use of law for social change.<sup>59</sup> I consider this decision to be justified for two reasons: the chosen practical approach to the right to have rights as well as the absence of empirical studies on the questions and location dealt with demand for the legal analysis to be enriched by accounts from the people living in the situation.

In Chapter 4 *Challenging Governance – Human Rights and Means for Enactment*, I will first establish the *lex lata* available with regard to potential human rights violations and thus apply legal positivistic method. After scrutinizing if the implementation of iris scan technology amount to a violation of related human rights such as the right to privacy, the means available for enactment will be assessed. The form of enactment considered is access of Zaatari inhabitants to courts. In order to determine the *de facto* access, empirical material and findings obtained from the analysis of the existing governance structures and resulting relationships will be taken into consideration. When discussing the *de facto* existence of a right to have rights for people living in Zaatari, the interplay of *lex lata*, soft law and other mechanisms will be analyzed through the lens of Arendt's theory. To enrich this discussion, contemporary approaches to the right to have rights from critical legal research and political theory will be applied. This constitutes a humble attempted of merging these, often distinct, fields of inquiry and the bemoaned absence of socio-legal approaches to the field of humanitarianism.<sup>60</sup>

In Chapter 5 *Findings & Conclusion* the findings of the research conducted will be presented and the resulting conclusions will be discussed.

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<sup>58</sup> IBID.

<sup>59</sup> GUGLIELMO VERDIRAME/BARBARA HARRELL-BOND, *Rights in Exile* (2005), Preface, p. xii.

<sup>60</sup> KJERSTI LOHNE/KRISTIN BERGTORA SANDVIK, *Bringing Law into the Political Sociology of Humanitarianism* (2017), in: *Oslo Law Review*, vol. 4 no. 1, pp. 4-27 (5).

# 1 The Right to Have Rights – An Introduction

Exactly 70 years ago Hannah Arendt mentioned a *right to have rights* for the first time in an article published in the summer edition of the *Modern Review*.<sup>61</sup> She took up parts of her article including the nowadays well-known phrase in Chapter Nine of her book *The Origins of Totalitarianism*<sup>62</sup>, published two years later.<sup>63</sup>

In the course of this Chapter, the context and content of the phrase as well as its use for practical purposes within this thesis will be portrayed. Subsequently, relevant developments of international law and especially international human rights law since 1951 will shortly be depicted, as *the age of rights*<sup>64</sup> was just about to begin at the time *The Origins of Totalitarianism* was published.

## 1.1 Arendt's Right to Have Rights

The context in which Arendt coined the nowadays well-known idiomatic expression of “*a right to have rights*”<sup>65</sup> was, beside her own statelessness,<sup>66</sup> the aftermath of the Second World War.<sup>67</sup> In Chapter Nine, *The Decline of the Nation-State and the End of the Rights of Men*, she describes developments since the beginning of the 20<sup>th</sup> century affecting various “groups of people to whom suddenly the rules of the world around them had ceased to apply.”<sup>68</sup> The process of how these rules have ceased to apply and the different mechanisms how these groups have been excluded from what Arendt calls an *organized community* are depicted in detail with regard to the different status’ and national situations.<sup>69</sup>

“The existence of a right to have rights” only received attention “when millions of people emerged who had lost and could not regain these rights”.<sup>70</sup> The rights Arendt refers to were termed by her as *The Rights of Man* deriving from the *Declaration of The*

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<sup>61</sup> HANNAH ARENDT, ‘*The Rights of Man*’: *What are they?*, in: *Modern Review*, vol. 3 no. 1 (Summer 1949), p. 24-37 (30).

<sup>62</sup> HANNAH ARENDT, *The Decline of the Nation-State and the End of the Rights of Man*, in: *The Origins of Totalitarianism* (1951/2017), p. 349 - 396.

<sup>63</sup> The vast majority of related literature is referencing the second appearance, it will be done the same way in this thesis.

<sup>64</sup> This term appeared probably most prominently as the title of LOUIS HENKINS’ book *The Age of Rights* (1990), the expression itself dates back to the 18<sup>th</sup> century (see Preface *The Age of Rights*).

<sup>65</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 388.

<sup>66</sup> SEYLA BENHABIB, *Exile, Statelessness, and Migration* (2018), p. 103.

<sup>67</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 2.

<sup>68</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 350.

<sup>69</sup> *IBID*, p. 351; Instead of discussing the existing differences, the overarching similarities of the process should be put in focus. The increased diversification of people by creating and maintaining categories was and is highly criticized. It suggests that the individual cases and conditions have to be treated separately. In turn, the conclusions can only be valid for a specific group of people sharing common characteristics with regard to their status, background and so forth. Such specialization is inevitably preventing a discourse laying bare structural deficits and misconceptions. Without the exposure of structural shortcomings, any coherent and effective conceptualization of new ways to address these issues is prevented from taking place.

<sup>70</sup> *IBID*, p. 388.



*Rights of Man and Citizen*<sup>71</sup> during the French Revolution in 1789. Without engaging in comparative analysis regarding the similarities and differences between the Rights of Man and contemporary human rights, the practice of contemporary scholars to depict the former as a notionally outdated version of the latter will be applied in this thesis. Differences resulting from human rights codification since the 1950s will be further depicted below when presenting the legal developments. Important for the context at hand is the fact that they were as well perceived as inalienable, purportedly independent from any government.<sup>72</sup> Still, as Arendt points out: in the moment a person lacked a protecting government, their inalienability appeared to vanish dramatically.<sup>73</sup> Thus, the question if this process is no longer taking place due the institutionalization of international human rights in various ways, will be answered in this thesis.

The right to have rights is termed by Arendt as living “in a framework where one is judged by one’s actions and opinions.”<sup>74</sup> This framework is further described by her as “a community willing and able to guarantee any rights whatsoever,” the polity.<sup>75</sup>

In the following I’ll present my own, contemporary interpretation of the right to have rights. Instead of considering the bundle of various, at times overlapping, at times contradicting, interpretations of the right to have rights by scholars from various disciplines, I apply a rather literal interpretation of the term from a juridical perspective. Arendt in her own specification of what a right to have rights means, uses the expressions “to be judged”<sup>76</sup> and later on mentions the very loss of an environment guaranteeing “any rights whatsoever”<sup>77</sup> as the calamity faced by a huge number of individuals in the first half of the 20<sup>th</sup> century. These two expressions, to *guarantee* rights and to be *judged*, are linguistically closely linked to the context of judicial powers. This allows for the interpretation, that the right to have rights, besides its political, social and philosophical connotations, asks for a system that enables each individual to demand and achieve the enforcement of one’s rights. Or, as *Shahram Khosravi* puts it: “in other words, the right to claim one’s rights.”<sup>78</sup> Thus, for the purpose of applying Arendt’s right to have rights on the contemporary, practical situation at hand, the focus shall

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<sup>71</sup> ASSEMBLÉE NATIONALE, *Déclaration des droits de l’homme et du citoyen*, 26<sup>th</sup> August 1789.

<sup>72</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 381.

<sup>73</sup> IBID.

<sup>74</sup> IBID, p. 388.

<sup>75</sup> IBID, p. 389; referring to Aristotle identifying two of “the most essential characteristics of human life” being the ability to speak and think as well as being a *zoon politikon*, the ‘political animal’, one might be inclined to assume, that for Arendt the right to have rights only takes place in the public, political sphere. Taking this assumption serious, the right to have rights could be perceived as poorly fitting the purpose of this thesis. In 4.1.1 *Right to Privacy* I will show, that conceptualizing this right simply as “the right to be left alone” does not properly represent its content. Thus, the perceived dichotomy between being part of a polity and privacy does not exist in such a form that would hinder the attempted analysis to be fruitful.

<sup>76</sup> IBID, p. 388.

<sup>77</sup> IBID, p. 389.

<sup>78</sup> SHAHRAM KHOSRAVI, *‘Illegal’ Traveller*, (2010), pp. 121-122.

be on the *de facto* judicial means available to ensure this right. More specifically, I will scrutinize the abilities of Zaatari inhabitants to access courts in order to claim their rights.

Albeit Arendt introduced the right to have rights partly as a fundamental critique of human rights, this critique was not meant to deny the potential of human rights in general.<sup>79</sup> She rather criticized the situation as she observed it and argues for the urgent need of acknowledgement and transformation.<sup>80</sup> I attempt to make use of the term in a similar way, focusing on the enactment of rights in a refugee camp today. Not using it to dismiss the concept of universal human rights, but to carve out potential remaining shortcomings.

Towards the end of the Chapter in which Arendt introduces the right to have rights, she concludes that if *humanity* has replaced *nature*, “the right of every individual to belong to humanity should be guaranteed by humanity itself.” This logic assumption appears to provide some argumentative relief – until reading the next sentence, in which Arendt indicates that it “is by no means certain whether this is possible.”<sup>81</sup>

In 1951, Arendt was concerned about the fact that the “seemingly stability of the surrounding world” led to the characterization of those lacking protection as unfortunate exceptions, an anomaly in an otherwise well-functioning system.<sup>82</sup>

Subsequently, the “critical task of reading back and forth”<sup>83</sup> between Arendt’s work and the contemporary situation, shall provide insight if a “blind spot in the system of rights”<sup>84</sup> is present in UNHCR refugee camps today. If answered affirmative, exposing it as far as possible outside of an “area that escapes our understanding”<sup>85</sup> is the aim of the application of Arendt’s concept in this thesis.

## 1.2 Societal and Legal Developments Regarding Human Rights

In 1951, Arendt depicted not only the legal and factual situation of human rights as ineffective, they were also perceived to be quite unpopular in the political sphere. As Arendt puts it, “no statesman, no political figure of any importance” would take the societies and individuals advocating for human rights serious, neither did any party in Europe dare to incorporate a new declaration of human rights into their agenda.<sup>86</sup>

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<sup>79</sup> According to GÜNDOĞDU, p. 51 f, this is mainly the difference between the conclusions drawn by Arendt and GIORGIO AGAMBEN’s outcome of engagement (and appropriation) of Arendt’s right to have rights, GIORGIO AGAMBEN, *Homo Sacer* (1998), p. 11.

<sup>80</sup> SEYLA BENHABIB, *Exile, Statelessness, and Migration* (2018), p. 106.

<sup>81</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 390.

<sup>82</sup> *IBID*, p. 350.

<sup>83</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 6.

<sup>84</sup> SEYLA BENHABIB, *The Rights of Others* (2004), p. 163.

<sup>85</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 11.

<sup>86</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 382.

This notion towards human rights and those who pursue to enhance their dispersal and acceptance has clearly changed over the last 70 years.<sup>87</sup> As one of the earliest examples of explicit dedication to modern human rights in international politics,<sup>88</sup> Samuel Moyn names Jimmy Carter's expressed dedication to human rights during presidential inauguration speech.<sup>89</sup> Not only is there a lack of distancing as perceived by Arendt at the time she wrote *The Origins of Totalitarianism*. On the contrary, the just inaugurated President announced to base future U.S. foreign policies on an "abiding respect for individual human rights."<sup>90</sup> Not only did western politicians get more inclined to identify human rights as cornerstones of their agendas, the nature of the "societies formed for the Rights of Man [...] sponsored by marginal figures"<sup>91</sup> evolved into a sector of well-established Non-Governmental Organizations (NGOs).

This development was paralleled by an increasing codification effort of international human rights norms. Arendt was aware - and skeptical<sup>92</sup> - about the aspirational Universal Declaration of Human Rights<sup>93</sup> issued in 1948. But she simply could not refer to any international binding agreement on human rights at her time, as international human rights treaties were concluded only in the decades after.<sup>94</sup>

In the following, the overall most prominent ones as well as some specifically related to the right to have rights will be depicted.

The *International Covenant on Civil and Political Rights*<sup>95</sup> and the *International Covenant on Economic, Social and Cultural Rights*<sup>96</sup>, both adopted in 1966 and entered into force in 1976, in conjunction with the UDHR and their respective Optional Protocols are named the International Bill of Human Rights.<sup>97</sup> Both Covenants provide for the creation of UN monitoring bodies. According to Art. 28 ICCPR, the treaty is monitored by the Human Rights Committee (HRC). The HCR is assessing the human rights situation in the Member States through State reports (Art. 40 ICCPR) and, in case a State is as

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<sup>87</sup> SAMUEL MOYN, *The Return of the Prodigal: The 1970s as a Turning Point in Human Rights History*, in: JAN ECKEL/ID., *The Breakthrough* (2014), p. 1-14 (2).

<sup>88</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 7.

<sup>89</sup> SAMUEL MOYN, *Human Rights in History*, in: *The Nation*, 11<sup>th</sup> August 2010, <https://www.thenation.com/article/human-rights-history/?print=1> (visited 30<sup>st</sup> April 2019)

<sup>90</sup> JIMMY CARTER, *Inaugural Address* (transcript), 48<sup>th</sup> Presidential Inauguration 20<sup>th</sup> January 1977, <https://www.inaugural.senate.gov/about/past-inaugural-ceremonies/48th-inaugural-ceremonies/> (visited 30<sup>th</sup> April 2019).

<sup>91</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 382.

<sup>92</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 7.

<sup>93</sup> A/RES/217(III), *Universal Declaration on Human Rights*, 10<sup>th</sup> December 1948, hereinafter: UDHR.

<sup>94</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2018), p. 5.

<sup>95</sup> *International Covenant on Civil and Political Rights*, 16<sup>th</sup> December 1966, entry into force 23<sup>rd</sup> March 1976, 999 UNTS 171, hereinafter: ICCPR.

<sup>96</sup> *International Covenant on Economic, Social and Cultural Rights*, 16<sup>th</sup> December 1966, entry into force 3<sup>rd</sup> January 1976, 993 UNTS 3, hereinafter: ICESCR.

<sup>97</sup> MANFRED NOWAK, *CCPR Commentary* (2005), 2<sup>nd</sup> revised edition, Introduction, para. 1.

well signatory to the *Optional Protocol to the ICCPR*,<sup>98</sup> by receiving individual complaints (Art. 1 OP ICCPR). The ICESCR is monitored by the Committee on Economic, Social and Cultural Rights. The Committee was founded by the UN Economic and Social Council (ECOSOC) in 1985 to carry out the monitoring duties assigned to ECOSOC in Chapter IV ICESCR through State reports.<sup>99</sup>

Albeit these monitoring mechanisms in place, the formal enforcement of the Covenants on the international level is not perceived as being very strong.<sup>100</sup> They remain treaties between sovereign States. What Arendt called “*a sphere above the nations*”<sup>101</sup> is still not existent on a global scale. Such a sphere might be perceived as existing to some extent in the form of the European Union (EU). Still, the supranational structure of the EU does not necessarily focus on enhancing the formal enforcement of human rights in the first place.

A quite recent and comprehensive, albeit not located above the nations, but rather state-run instrument for human rights monitoring is the *Universal Periodic Review*.<sup>102</sup> The concept of the UPR was established as a part of the newly founded Human Rights Council’s<sup>103</sup> activities in 2006.<sup>104</sup> During the UPR, all states are reviewed on the basis and with regard to the *Charter of the United Nations*,<sup>105</sup> the UDHR, the human rights instruments the respective state is a party to as well as voluntary commitments made by the state (Art. A 1 UPR). Thus, the UPR provides for the most comprehensive monitoring of international human rights obligations of all UN Member States. The effectiveness of the enforcement mechanisms is questionable for similar reasons like the ones assigned to the ICCPR and ICESCR. Still, the UPR is more accessible for the civil society of the state under review. The demand to “ensure the participation of all relevant stakeholders” (Art. 3 lit. m UPR) provides the possibility of submission by inter alia NGOs, which will be taken into consideration for the review in the form of a summary prepared by the OCHCR according to Art. 15 lit. c UPR. Improvements of the human rights situation in the respective state will be followed up during the next UPR with regard to the recommendations issued during the previous.

Related to the question of enforcement, the three existing regional human rights courts have to be mentioned. The African Court on Human and People’s Rights (ACHPR), the European Court of Human Rights (ECtHR) and the Inter-American Court

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<sup>98</sup> *Optional Protocol to the International Covenant on Civil and Political Rights*, 16<sup>th</sup> December 1966, entry into force 23<sup>rd</sup> March 1976, 999 UNTS 171, hereinafter: OP ICCPR

<sup>99</sup> E/Res/1985/17.

<sup>100</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 7.

<sup>101</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 390 f.

<sup>102</sup> A/HRC/RES/5/1, *Institution-building of the United Nations Human Rights Council*, 19<sup>th</sup> June 2007, Annex I, hereinafter: UPR.

<sup>103</sup> A/RES/60/251, *Human Rights Council*, 15<sup>th</sup> March 2006, hereinafter: HRC.

<sup>104</sup> A/RES/60/251, *Human Rights Council*, 15<sup>th</sup> March 2006, para. 5 lit. e.

<sup>105</sup> UN, *Charter of the United Nations*, 1 UNTS XVI, 26<sup>th</sup> June 1945, entry into force 24<sup>th</sup> October 1945, hereinafter: UN Charter.

of Human Rights (IACtHR) ensure the compliance of their member states with the respective regional human rights treaties. Without going further into detail, it can be stated that the possibility of individual submissions for those within the jurisdiction of the respective regional human rights court appears to be among the most accessible human rights monitoring mechanisms outside the domestic realm.

Lastly, three Conventions codifying human rights related to the topics dealt with in this thesis are shortly discussed. Most prominently and widespread<sup>106</sup> the Refugee Convention and its *Protocol Relating to the Status of Refugees*<sup>107</sup>, removing the temporal (Art. 1 (2) 1967 Protocol) and potential geographical (Art. 1 (3) 1967 Protocol) limitations that were enshrined in the 1951 Convention. The Refugee Convention serves as the cornerstone of nowadays international refugee protection. Still, the right to asylum is not codified in the 1951 Convention but left to the discretion and domestic legislation of states.<sup>108</sup> Some problems caused by the rather narrow definition of who is entitled to international protection as a refugee under the 1951 Convention were already touched upon above. These shortcomings aside, the codification and widespread ratification of the Refugee Convention itself can be regarded as a development in the international realm compared to the situation in 1951.

Less known, but crucial with regard to the issue of statelessness - the core issue which led Arendt to discuss the shortcomings of human rights and coin the phrase of a right to have rights - are the *Convention Relating to the Status of Stateless Persons*<sup>109</sup> and the *Convention on the Reduction of Statelessness*.<sup>110</sup> Whilst both Conventions address issues related to statelessness, they have distinct aims. The former is acknowledging the fact that people are stateless and therefore likely to be in need of special protection to enjoy a minimum set of rights, which the state parties pledge to provide.<sup>111</sup> Thus, the Convention is dealing with and trying to tackle the effects and vulnerabilities statelessness creates. The latter has a rather progressive approach. The three major contexts in which statelessness occurs are listed and aim of the Convention is to reduce

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<sup>106</sup> With 19 Signatories and 146 Parties, status as of 16<sup>th</sup> May 2019, [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en).

<sup>107</sup> *Protocol Relating to the Status of Refugees*, 31<sup>st</sup> January 1967, entry into force 4<sup>th</sup> October 1967, 606 UNTS 267, hereinafter: 1967 Protocol.

<sup>108</sup> In this context reference shall be made to a persisting codification gap: Arendt criticised the absence of international codification of the right to asylum, this absence leading to a “shadowy existence”. In this regard the right to asylum “shares...the fate of the Rights of Men”, HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 367. While the substantive content of the Rights of Men got codified over the decades, the Right to Asylum did not.

<sup>109</sup> *Convention Relating to the Status of Stateless Persons*, 28<sup>th</sup> September 1954, entry into force 6<sup>th</sup> June 1960, 360 UNTS 117, hereinafter: 1954 Convention/Statelessness Convention.

<sup>110</sup> *Convention on the Reduction of Statelessness*, 30<sup>th</sup> August 1961, entry into force 13<sup>th</sup> December 1975, 989 UNTS 175, hereinafter: 1961 Convention/Reduction of Statelessness Convention.

<sup>111</sup> LAURA VAN WAAS, *The UN statelessness conventions*, in: ALICE EDWARDS/ID. (eds.), *Nationality and Statelessness under International Law* (2014), pp. 64-87 (71).

statelessness itself.<sup>112</sup> This shall be achieved by ensuring that Member States provide nationality to newborns (Art. 1-4 Reduction of Statelessness Convention), to those who lost it (Art. 5-9 Reduction of Statelessness Convention) and in situations of state succession (Art. 10 Reduction of Statelessness Convention). It might not come as a surprise that the Reduction of Statelessness Convention is the least ratified out of the three Conventions directly related to refugees and stateless persons. It not only demands for the protection of a minimum, core set of rights, but for granting nationality. Thus, this core domain of nation states is not yet restricted, despite the international codification efforts pursued.<sup>113</sup> Still, the depicted codification at least partly provides what Arendt was missing in the postwar period, when she portrayed the attempt to liquidate “statelessness once and for all by ignoring its existence”<sup>114</sup>, mourning the lack of any “internationally recognized and accepted procedure”<sup>115</sup> to address the issue. Without going deeper into the provisions of the two Conventions, the situation of *de facto*<sup>116</sup> statelessness mentioned in the Introduction has to be shortly resumed in here. There is the argument raised that due to the increased implementation of the 1954 Convention, the issue of *de facto* statelessness became quite predominantly obsolete.<sup>117</sup> If convincing, this would contravene my statement in the Delimitations where I consider *de facto* statelessness a still existing phenomenon and therefore applicable to also use it interchangeably with the term refugee. Instead of getting into the details of the two major arguments brought up, I might point to the acknowledgement that there is “a small grey area remaining” where *de facto* statelessness potentially persists: for those “*outside* their country of nationality and cannot invoke its diplomatic or consular protection.”<sup>118</sup> The fact, that they most likely fall under the international system of refugee protection<sup>119</sup> does not preclude their factual situation of being stateless for practical purposes. Thus, the perception of refugees being *de facto* stateless till today appears to be valid.

How much of an improvement the increased awareness of the international community is with regard to the factual situation of the people affected and the notion of

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<sup>112</sup> IBID, p. 73f.

<sup>113</sup> PETER J. SPIRO, *Citizenship, nationality, and statelessness*, in: VINCENT CHETAIL/CÉLINE BAULOZ (EDS.), *Research Handbook on International Law and Migration* (2014), pp. 281-302 (285).

<sup>114</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 365.

<sup>115</sup> IBID, p. 362.

<sup>116</sup> The counterpart of *de facto* is *de jure*. As something being “according to the law”, *de jure* statelessness describes situations in which a person was explicitly stripped of her or his nationality or never acquired one according to any citizenship laws in a country.

<sup>117</sup> LAURA VAN WAAS, *The UN statelessness conventions*, in: ALICE EDWARDS/ID. (EDS.), *Nationality and Statelessness under International Law* (2014), pp. 64-87 (80f).

<sup>118</sup> IBID, p. 81.

<sup>119</sup> IBID, p. 81.

their plight being an “unfortunate exception in an otherwise sane and normal rule”<sup>120</sup> will be discussed in Chapter 4.

The short presentation of international human rights law codification related to the issues dealt with in this thesis is non-exhaustive, but rather aims at depicting the most obviously related developments. On behalf of the numerous provisions that can be found in international human rights law related to the topic of refuge and statelessness, Art. 9 *Convention on the Elimination of All Forms of Discrimination Against Women*<sup>121</sup> should be mentioned. CEDAW is primarily associated with protection and enhancement of women’s rights. But it contains a provision relevant to the problem at hand: numerous children are born into statelessness due to patriarchal laws of how nationality is conferred in their country of birth.<sup>122</sup> Compliance with the provision of granting women equal rights with men regarding the nationality of their children (Art. 9 (2) CEDAW) would immediately result in reduction of statelessness.<sup>123</sup>

### 1.3 Conclusion

The analysis of Arendt’s right to have rights in the contemporary context and with regard to the topic at hand lead to a rather judicial interpretation. More precisely, it shall be used to scrutinize the means available for claiming one’s right in the very practical sense, in other words: the *de facto* judicial means accessible.

The non-exhaustive presentation of some of the relevant Conventions as well as a short summary of the societal developments clearly depict a massive evolvement between 1951 and today, both with regard to codification, integration and societal perception of human rights. This development in mind, the question arises, if Arendt’s right to have rights is applicable and needed in a contemporary situation like the one in Zaatari Refugee Camp? What potential meaning does the right to have rights bear in this regard and what are possible contributions of the concept in an attempt to challenge the governance present in the camp? To sum up, the question is, what are the outcomes of the *lex lata* progress in the international realm – how and to which extent is the progress depicted in this chapter relevant for those who are *de facto* stateless today?

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<sup>120</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 350.

<sup>121</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, 18th December 1979, entry into force 3<sup>rd</sup> September 1981, 1249 UNTS 13, hereinafter: CEDAW.

<sup>122</sup> RADHA GOVIL/ALICE EDWARDS, *Women, nationality and statelessness – The Problem of unequal rights*, in: ID./LAURA VAN WAAS (eds.), *Nationality and Statelessness under International Law* (2014), pp. 169-193 (169ff).

<sup>123</sup> UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2018*, 8<sup>th</sup> March 2018, <https://www.refworld.org/docid/5c8120847.html> (accessed 17<sup>th</sup> Mai 2019) p. 3.

## 2 Zaatari – An Example of UNHCR Camp Governance

In the following I will scrutinize the normative framework governing Zaatari.

The analysis of this framework will be conducted to provide a basis for the subsequent analysis of the governance tool iris scan (Chapter 3) and the possibilities of challenging the use of this tool relying on human rights provisions (Chapter 4). The specific situation in UNHCR-run refugee camps might be best described as a constellation forming a triangle. A triangle consisting of the host state on whose territory the camp is located, the people living in the camp and the UNHCR administering the camp.

After providing the necessary background information about the camp itself, the general and the site-specific norms governing UNHCR's mandate and presence in Jordan will be analyzed (2.2 The Normative Framework). Subsequently I will examine the three respective bilateral relationships mentioned. Finally, I will draw conclusions on how their interplay is creating a site-specific governance situation and discuss it.

### 2.1 Background

Zaatari Refugee Camp in Jordan was found in 2012 in response to the influx of refugees who fled war in neighboring Syria. It is located close to the Jordan-Syria border in the north of the country. During the first six years of its existence, 461.000 people passed through the camp.<sup>124</sup> Currently, close to 80.000 persons live in Zaatari.<sup>125</sup> It thereby constitutes Jordan's 4<sup>th</sup> biggest "city"<sup>126</sup> and is among the biggest refugee camps in the world.<sup>127</sup>

Zaatari is under joint administration of the UNHCR and the Syrian Refugee Affairs Directorate (SRAD).<sup>128</sup> SRAD as part of the Jordanian Public Security Directorate (PSD)

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<sup>124</sup> UNHCR Factsheet *Jordan – Zaatari Refugee Camp* (February 2018), p. 1, <https://reliefweb.int/report/jordan/zaatari-refugee-camp-factsheet-february-2018> (visited 13<sup>th</sup> May 2019).

<sup>125</sup> UNHCR Factsheet *Jordan – Zaatari Refugee Camp* (February 2019), p.1, <http://reporting.unhcr.org/jordan> (visited 13<sup>th</sup> May 2019).

<sup>126</sup> Calling a place of encampment a "city" is perceived by some as a dangerous "new normalcy" as it appears as an attempt to normalize life in a prolonged situation of deprivation of freedom of movement among other defects, JEFF CRISP, *A Camp and Not A City*, in: *Refugees International Blog*, 9<sup>th</sup> October 2015, <https://www.refugeesinternational.org/blog/zaatari-camp-and-not-city> (accessed 3<sup>rd</sup> June 2019).

<sup>127</sup> GERALDINE RENAUDIÈRE, *When Camps Become Home: Legal Implications of The Long-Term Encampment in Zaatari*, in: *Allegra Lab*, 25<sup>th</sup> February 2015, <http://allegralaboratory.net/when-camps-become-home-legal-implications-of-the-long-term-encampment-in-zaatari/> (accessed 13<sup>th</sup> June 2019).

<sup>128</sup> UNHCR Factsheet *Jordan – Zaatari Refugee Camp* (February 2019), p.1, <http://reporting.unhcr.org/jordan> (visited 13<sup>th</sup> May 2019); the exact divide of labour between SRAD and UNHCR appears to be hard to determine. According to UNHCR sources it has changed over time, but even in UNHCR publications that occurred in temporal proximity, the designations differ. Contrary to describing the situation as "joint administration", the UNHCR Factsheet *Jordan* (March 2019) on p. 2 portrays SRAD as being in charge of management and coordination of the camp, while UNHCR is "supporting" them. Other sources either name UNHCR to be responsible for the administration of the camp while SRAD is responsible for security, JESSICA WATKINS, *Policing and Protection for Syrian Refugees in Jordan*, in: *sada – Middle East Analysis* (Carnegie), 16<sup>th</sup> October 2018, <https://carnegieendowment.org/sada/77511> (visited 13<sup>th</sup> May 2019), or label SRAD to be exclusively administratively responsible, ZEYNEP SAHIN



is overseeing security within the camp and at its perimeters and thus serves as a police force.<sup>129</sup> The UNHCR is present with 73 staff members, 64 of them national staff. In addition, five governmental partners and 31 humanitarian partners are involved in the maintenance of the camp.<sup>130</sup> This does not include actors from the private sector. Although temporary in theory, it is by now obvious, that Zaatari Refugee Camp hosts what UNHCR defines as a Protracted Refugee Situation.<sup>131</sup>

## 2.2 The Normative Framework

The analysis of the web of rules will be conducted in a general manner but include the specificities characterizing the situation in Jordan and thus Zaatari Refugee Camp.

To be able to provide a coherent picture of the legal situation and its spatial deviations, first general regulations governing UNHCR activities will be provided.

Subsequently, Jordan's relation to the 1951 Refugee Convention and its normative implications regarding UNHCR's presence in Jordan will be presented and discussed.

### 2.2.1 UNHCR's General Authority

The general authority of the UNHCR regarding their activities derives from two different sources.<sup>132</sup> The first are the founding resolutions issued by the General Assembly, creating the UNHCR as a subsidiary organ of the General Assembly based on Art. 22 UN Charter.

The UNHCR was established by a General Assembly resolution as of 1<sup>st</sup> January 1951.<sup>133</sup> It's mandate is specified in the *Statute of the Office of the United Nations High Commissioner for Refugees* (UNHCR Statute)<sup>134</sup> as to “assume the function of providing international protection” (§ 1) by various means specified under § 8 UNHCR Statute. The UNHCR was originally established for a duration of three years with the possibility for the mandate to be extended.<sup>135</sup> After decades of repeated prolongation, the General

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MENCUTEK, *Refugee Governance, State and Politics in the Middle East* (2019), p. 198. As in the majority of sources the UNHCR appears to be at least one of the actors responsible for administration in Zaatari Camp and throughout the Zaatari-specific factsheets UNHCR is responsible for Camp Coordination as well as leading in all areas relevant in daily life, such as protection, health, shelter, basic needs and livelihood.

<sup>129</sup> JESSICA WATKINS, *Policing and Protection for Syrian Refugees in Jordan*, in: *sada – Middle East Analysis* (Carnegie), 16<sup>th</sup> October 2018, <https://carnegieendowment.org/sada/77511> (visited 13<sup>th</sup> May 2019).

<sup>130</sup> UNHCR Factsheet *Jordan – Zaatari Refugee Camp* (February 2019), p.2, <http://reporting.unhcr.org/jordan> (visited 13<sup>th</sup> May 2019).

<sup>131</sup> As a Protracted Refugee Situation, hereinafter PRS, according to UNHCR counts a situation “in which 25.000 or more refugees from the same nationality have been in exile for five consecutive years or more in a given asylum country”, UNHCR, *Global Trends Forced Displacement 2017* (2018), p. 22.

<sup>132</sup> ERIK ROXSTRÖM/MARK GIBNEY, *The Legal and Ethical Obligations of UNHCR*, in: NIKLAUS STEINER/MARK GIBNEY/GIL LOESCHER (eds.), *Problems of Protection – The UNHCR, Refugees, and Human Rights* (2003), Routledge, New York/London, p. 38.

<sup>133</sup> GA/Res/319(IV), *Refugees and stateless persons*, 3<sup>rd</sup> December 1949, para. 1.

<sup>134</sup> GA/Res/428(V), *Statute of the Office of the United Nations High Commissioner For Refugees*, 14<sup>th</sup> December 1950, Annex.

<sup>135</sup> GA/Res/319(IV), *Refugees and stateless persons*, 3<sup>rd</sup> December 1949, Annex, para. 9.

Assembly in § 9 Resolution 58/153 in 2003 replaced the temporal limitation with the provision that the UNHCR should be in place “until the refugee problem is solved”.<sup>136</sup> The mandate to run refugee camps is not explicitly mentioned in the UNHCR Statute. The second general source of authorization derives from Art. 35, 36 Refugee Convention. In Art. 35 (1) Refugee Convention, the general duty of the Contracting States to cooperate with the UNHCR “in the exercise of its functions” is stated. This cooperation entails the provision of information and statistical data by the Contracting States with regard to the condition of refugees, the implementation of the convention and the legal situation governing refugees (Art. 35 (2) Refugee Convention). Art. 36 Refugee Convention establishes a duty to report national legislative efforts ensuring the proper application of the convention. This provision overlaps partly with Art. 35 (2) c Refugee Convention, asking states to provide information regarding “laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.”

### 2.2.2 UNHCR’s Presence in Jordan

A specialty<sup>137</sup> of the situation regarding refugees and subsequently the governance of refugee camps by humanitarian agencies in the Middle East is, that most countries in the region are not signatory states to either the 1951 Refugee Convention or the 1967 Protocol.<sup>138</sup> The reluctance of becoming a State Member to the Convention is mainly rooted in the approach of these countries regarding the presence of Palestinian refugees on their territory. The main responsibility for Palestinian refugees is assumed by the UNRWA.<sup>139</sup> The states in the region - among them Jordan with the highest absolute number of Palestinians present on the state’s territory<sup>140</sup> - aim at avoiding any unforeseeable legal changes with regard to this situation.<sup>141</sup> Instead, the respective countries signed bilateral Memoranda of Understanding with the UNHCR after some years of its factual presence.<sup>142</sup> The *Memorandum of Understanding between the Hashemite*

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<sup>136</sup> GA/Res/58/153, *Implementing actions proposed by the United Nations High Commissioner for Refugees to strengthen the capacity of his Office to carry out its mandate*, 22<sup>nd</sup> December 2003, para. 9.

<sup>137</sup> At second glance, this is not too unusual: while the 1951 Convention has 146 parties, roughly 75% of the countries worldwide, six out of the top ten refugee hosting countries (<https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/global-refugee-crisis-statistics-and-facts/>) are party to the convention. Turkey, the country hosting most refugees today, signed the 1967 Protocol stipulating that the Convention “shall only [apply] to persons who have become refugees as a result of events occurring in Europe” (United Nations Treaty Collection, Status of Treaties, Chapter 5, No. 5). In the current situation, this reservation almost entirely precludes the application of the Convention with regard to refugees in Turkey.

<sup>138</sup> GEORGE RIACH/ZOE JAMES, *Strengthening the rule of law on the margins: experiences from Za’atari refugee camp, Jordan* (2016), in: *The Int’l Journal of Human Rights*, Vol. 20, No. 4, pp. 549 – 566 (551).

<sup>139</sup> GUY S. GOODWIN-GILL/JANE MCADAM, *The Refugee in International Law* (2007), p. 152.

<sup>140</sup> ISSAM SALIBA, *Refugee Law and Policy: Jordan*, in: *Library of Congress – Legal Reports* (2016), <https://www.loc.gov/law/help/refugee-law/Jordan.php> (visited 21<sup>st</sup> March 2019).

<sup>141</sup> GHIDA FRANGIEH, *Relations between UNHCR and Arab Governments: Memoranda of Understanding in Lebanon and Jordan*, in: RIBALE SLEIMAN HAIDAR (ED.), *The Long-Term Challenges of Forced Migration*, LSE Middle East Centre Collected Papers, Vol. 6 (9/2916), p. 38.

<sup>142</sup> *IBID*, p. 37.

*Kingdom of Jordan and UNHCR (MoU)*<sup>143</sup> was signed in 1998 and remains in effect till today.<sup>144</sup> The only retrievable, unofficial translation of the Arabic original is lacking the translation of the Preamble but refers to the Preamble of “the Cooperation Agreement” which is *the Agreement Between the Government of the Hashemite Kingdom of Jordan and the United Nations High Commissioner for Refugees*<sup>145</sup> concluded a year prior to the MoU. The Cooperation Agreement entails a more detailed set of provisions. Nevertheless, the UNHCR as well as scholars dealing with the situation in Jordan solely refer to the MoU. Thus, the additional provisions enshrined in the Cooperation Agreement will not be included in the analysis in this my thesis. Still, due to the absence of an official complete English translation of the MoU, reference will be made to the unofficial translation of the MoU with regard to provisions and to the Cooperation Agreement with regard to the Preamble. The Arabic text of the MoU Preamble contains a paragraph excluding Palestinian refugees from those eligible for protection by the UNHCR. This exclusion is missing in the Preamble of the Cooperation Agreement. With regard to the Palestinian refugees already registered with UNRWA, this exclusion appears to be logical. As mentioned above, the case might be somewhat different with regard to those Palestinians fleeing conflict in neighboring countries, most prominently Syria.

The legal nature of Memoranda of Understanding in international law remains unclear<sup>146</sup> and depends on such indicators as the intent behind it and the phrasing in the specific case. Thus, the MoU at hand has to be analyzed in order to determine its legal nature.

The MoU was concluded between the Jordanian State and an International Organization, the UNHCR. Therefore, the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (VCLTIO)<sup>147</sup> would provide guidance for interpretation purposes – as it is still lacking the thirty-fifth instrument of ratification or accession as required in Art. 85 (1) VCLTIO, it is not yet in force. Except the State of Palestine, none of the states in the Middle East has ratified or accessed the Convention.<sup>148</sup> Thus, for determining the legal status of the MoU at hand, one might be inclined to refer to the Vienna Convention

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<sup>143</sup> Memorandum of Understanding between the Government of the Hashemite Kingdom of Jordan and UNHCR, in: *The Official Gazette of the Hashemite Kingdom of Jordan* 4277, 3<sup>rd</sup> May 1998 (included as Annex A).

<sup>144</sup> UNHCR, *Submission by the UNHCR for the OHCHR’s Compilation Report*, UPR, 3<sup>rd</sup> cycle, 31<sup>st</sup> session, March 2018, p.1.

<sup>145</sup> UNHCR, *Agreement Between the Government of the Hashemite Kingdom of Jordan and the United Nations High Commissioner for Refugees*, 30<sup>th</sup> July 1997, <https://www.refworld.org/docid/3ae6b3a124.html> (accessed 22<sup>nd</sup> March 2019), hereinafter: Cooperation Agreement.

<sup>146</sup> JAN KLABBERS, *International Law* (2017), 2<sup>nd</sup> ed, p. 47.

<sup>147</sup> Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 21<sup>st</sup> March 1986, not yet in force, A/CONF.129/15.

<sup>148</sup> UNITED NATIONS TREATY COLLECTION, Depositary Chapter XXIII, Law of Treaties, 3. VCLTIO.

on the Law of Treaties (VCLT).<sup>149</sup> Besides the fact, that agreements between States and International Organizations according to Art. 3 VCLT are not within the scope of the Convention, Jordan is not a Member State to this Convention either.

Referring to the rules of interpretation codified in Art. 31-33 VLCT still appears to be legitimate, as they are identified being international customary law.<sup>150</sup> The same rules are enshrined in Art. 31-33 VLCTIO, which likewise is considered reflecting in huge parts customary international law.<sup>151</sup> According to Art. 38 (1) lit. b Statute of the International Court of Justice<sup>152</sup>, international custom shall be applied for dispute solution. Thus, for the purpose of determining the legal nature of the MoU, the general rules on treaty interpretation as enshrined in Art. 31 VLCTIO will be applied as being customary international law.

In general, the particular designation of an agreement does not bear any relevance for its classification as a treaty (Art. 31 (1) VLCTIO). According to some, Memoranda of Understanding are the one exception to this general insignificance; choosing “Memorandum of Understanding” as a designation generally emphasizes the mutual intend of the signatories not to be bound.<sup>153</sup> This perception is challenged by others with reference to the ICJ<sup>154</sup> and at times even called a misunderstanding. As apparently a unanimous answer to this question was not reached, the MoU at hand has to be interpreted in order to determine the intention of the signatories regarding its legal nature. First, the ordinary meaning as well as the object and purpose have to be taken into account (Art. 31 (1) VLCTIO). The repeated use of ‘*agreed*’ throughout the Articles points to an intend to assign binding force to the MoU.<sup>155</sup> The object and purpose of the MoU is to establish the “terms and conditions under which the Office, within its mandate, shall be represented in the country” (Preamble MoU, para. 4).

Taking the context of the MoU into consideration allows for referencing to the Cooperation Agreement which was concluded to pave the way for the MoU. While the signatures of the MoU are not included in the document available, the Cooperation Agreement was signed by the Foreign Minister of Jordan. According to Art. 7 (2) lit. a VLCTIO, the Minister of Foreign Affairs does not have to produce appropriate full powers (Art. 7 (1) lit. a VLCTIO) but is considered to be entitled to represent a state and conclude binding treaties by virtue of her function. The MoU itself is said to be

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<sup>149</sup> *Vienna Convention on the Law of Treaties*, 23<sup>rd</sup> May 1969, entry into force 27<sup>th</sup> January 1980, 1155 UNTS 331.

<sup>150</sup> CHANG-FA LO, *Treaty Interpretation Under the Vienna Convention on the Law of Treaties* (2017), p. 42.

<sup>151</sup> JAN KLABBERS, *International Law* (2017), 2<sup>nd</sup> ed, p. 45.

<sup>152</sup> *Statute of the International Court of Justice*, 18<sup>th</sup> April 1946, hereinafter: ICJ Statute.

<sup>153</sup> ANTHONY AUST, *Modern Treaty Law and Practice* (2007), 2<sup>nd</sup> edition, p. 49.

<sup>154</sup> JAN KLABBERS, *International Law* (2017), 2<sup>nd</sup> ed, p. 47.

<sup>155</sup> ANTHONY AUST, *Modern Treaty Law and Practice* (2007), 2<sup>nd</sup> edition, p. 33.

signed by the Jordanian Ministry of Interior.<sup>156</sup> The Minister of Interior is not exempted from the need to produce full powers. As it even remains unclear if the MoU was signed by the sitting Minister or a regular employee of the Ministry, the signatory from the Jordanian side does not allow for a determining conclusion regarding the attempted binding force of the MoU itself. Still, the signature of the Minister of Foreign Affairs in the preceding Cooperation Agreement might serve as an indicator in this regard.

Attention should be drawn to the fact that the Cooperation Agreement entails provisions regarding the settlement of disputes (Art. XVI). The provision includes a reference to the ICJ for appointing an arbitrator in case the two arbitrators appointed by the parties did not appoint a third one acting as the chairman in the arbitration process. The arbitral award shall serve as the final adjudication of a dispute and therefore appears to have binding force. This can be interpreted as indicating a will of the signatories to conclude a binding agreement. The same should be applicable for the MoU, as it can be seen as the successor or complement of the Cooperation Agreement.

According to Art. 31 (3) VCLTIO, other relevant rules might be taken into consideration for interpretation purposes. In this regard, reference made to the Refugee Convention in Art. 1 MoU bears some importance. Albeit being a mere reference for definition purposes on the face of it, namely to reproduce the definition of the term 'refugee' from Art. 1 Refugee Convention, the reference serves as an indication that the MoU, despite of its limited content, should fulfil purposes that are covered for other states by being Member States to the Refugee Convention, a legally binding treaty.

Lastly, albeit the MoU is not registered in the United Nations Treaty Database, attention should be shortly drawn to the definition of Memoranda of Understanding included in the Glossary of the UN Treaty Handbook.<sup>157</sup> The definition is criticized to be "quite wrong in appearing to regard MOUs [...] as treaties."<sup>158</sup> This might, in conjunction with the fact that the MoU is not registered in the Treaty Database, advise to regard it as non-binding. Taking the entire definition into consideration still allows for a different outcome. According to the Handbook, the term MoU "is often used to denote a less formal instrument", which would support the perception just

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<sup>156</sup> LUIGI ACHILLI, *Syrian Refugees in Jordan: a Reality Check* (2015), in: *Migration Policy Centre/Policy Brief 2/2015*, p. 3, ref. 8.

<sup>157</sup> "The term memorandum of understanding (M.O.U.) is often used to denote a less formal international instrument than a typical treaty or international agreement. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. An M.O.U. typically consists of a single instrument and is entered into among States and/or international organizations. For example, the United Nations usually concludes M.O.U.s with Member States in order to organize its peacekeeping operations or to arrange United Nations conferences. The United Nations considers such M.O.U.s concluded by the United Nations to be binding and registers them ex officio." in: UNITED NATIONS TREATY SECTION OF THE OFFICE OF LEGAL AFFAIRS, *Treaty Handbook* (2012, rev. ed.), p. 68.

<sup>158</sup> ANTHONY AUST, *Modern Treaty Law and Practice* (2007), 2<sup>nd</sup> edition, p. 26.

mentioned. But the definition concludes by saying that the UN considers MoU concluded by the UN as binding.<sup>159</sup> As the UNHCR is one of the two signatories and part of the United Nations System, the intent from at least one side for the MoU to be binding, can be answered in the affirmative. Read in conjunction with the aforementioned indicators derived from the interpretation of the MoU with regard to its legally binding nature, the same conclusion can be drawn with regard to the intent of the Jordanian side. Thus, the MoU for the purpose of this thesis will be considered to be legally binding between the Parties.

Reports about changes to the MoU in 2014<sup>160</sup> in response to the increased influx of Syrians cannot be ultimately validated as the official publication of the amendment is lacking.<sup>161</sup> Reportedly, the amendment mainly allocates extended time frames. According to Art. 3 MoU, UNHCR previously had to determine the asylum status of a refugee within seven days, in exceptional cases the entire procedure should not exceed a month. This period appears to be extended to 90 days.<sup>162</sup> The validity of the refugee identification card was extended to one year. This would broaden the sojourn allocated to recognized refugees within Jordan from six month (Art. 5 MoU) to a year.<sup>163</sup> The possible impact of these purported amendments will be discussed in more detail when scrutinizing the relationship between the inhabitants of Zaatari Refugee Camp and the Jordanian State.

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<sup>159</sup> UNITED NATIONS TREATY SECTION OF THE OFFICE OF LEGAL AFFAIRS, *Treaty Handbook* (2012, rev. ed.), p. 68.

<sup>160</sup> KHETAM MALKAWI, *Gov't, UNHCR sign amendments to cooperation memo*, in: *The Jordan Times*, 31<sup>st</sup> March 2014, <http://www.jordantimes.com/news/local/gov%E2%80%99t-unhcr-sign-amendments-cooperation-memo> (visited 7<sup>th</sup> Mai 2019).

<sup>161</sup> INTERNATIONAL HUMAN RIGHTS CLINIC (IHRC, Harvard)/NORWEGIAN REFUGEE COUNCIL (NRC), *Registering Rights* (2015), p. 36, ref. 9.

<sup>162</sup> KHETAM MALKAWI, *Gov't, UNHCR sign amendments to cooperation memo*, in: *The Jordan Times*, 31<sup>st</sup> March 2014, <http://www.jordantimes.com/news/local/gov%E2%80%99t-unhcr-sign-amendments-cooperation-memo> (visited 7<sup>th</sup> Mai 2019).

<sup>163</sup> ISSAM SALIBA, *Refugee Law and Policy: Jordan*, in: *Library of Congress – Legal Reports* (2016), <https://www.loc.gov/law/help/refugee-law/Jordan.php> (visited 21<sup>st</sup> March 2019).

## 2.3 Relationships

The following analysis of the three different relationships in Zaatari formed by the normative framework in place will mainly focus on implications that the MoU is creating, adding relevant additional sources where indicated. The influence of international human rights law will mainly be discussed in Chapter 4.

### 2.3.1 Relationship between Jordan and UNHCR

The relationship between the Jordanian State and the UNHCR is mostly governed by the MoU providing the normative framework for the organization's activities in the country. Despite its quite basic, fragmented nature, it still provides valuable insight into the division of labour between Jordan and the UNHCR with regard to refugees present on Jordanian territory. In the following, the cornerstones of this division will be discussed without determining their influence onto the refugees themselves. This will be done in more detail in the next two sub-chapters.

The general authority of the UNHCR to conduct activities in Jordan is stated in Art. 2 MoU, as providing "international protection to persons falling within its mandate". As the mandate itself is not further specified in Art. 2 MoU, it is likely that reference shall be made to the mandate as enshrined in the Resolutions establishing the UNHCR and the UNHCR Statute.

Two areas of concern are explicitly mentioned in the MoU. The first is evolving around the responsibility for conducting interviews with asylum seekers in order to determine their status as to whether they fall under Art. 1 Refugee Convention (Art. 3 MoU) and subsequently find durable solutions. Durable solutions are considered to be either voluntary repatriation or resettlement in a third country (Art. 5 MoU). The option to legally be granted asylum and thus residence with the prospect of being "assimilated" (Art. 1 para. 2 UNHCR Statute) in Jordan is explicitly excluded by limiting the sojourn of recognized refugees in the country to six months. This is perceived as establishing the character of Jordan to be a transit country for refugees rather than a country of long-term asylum and residence.<sup>164</sup>

The second major responsibility of the UNHCR is providing assistance to "needy refugees" (Art. 11 MoU). This assistance covers activities such as providing shelter, humanitarian cash assistance, health care services and education.<sup>165</sup>

Reading these provisions in conjunction, it is not exaggerated to state that the major overall responsibility for refugees on Jordanian territory lies with the UNHCR rather than with the Jordanian State itself. This responsibility might be mitigated in a situation in which the joint emergency mechanism to provide humanitarian aid in times of

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<sup>164</sup> GHIDA FRANGIEH, *Relations between UNHCR and Arab Governments: Memoranda of Understanding in Lebanon and Jordan* (2016), in: RIBALE SLEIMAN HAIDAR (ED.), *The Long-Term Challenges of Forced Migration*, LSE Middle East Centre Collected Papers, Vol. 6 (9/2016), p. 38.

<sup>165</sup> UNHCR Factsheet *Jordan* (March 2019), p. 2f, <https://data2.unhcr.org/en/documents/details/68925> (visited 13<sup>th</sup> May 2019).

large influx (Art. 12 MoU) is established. As by now, this joint mechanism does not seem to be created in a legally binding way, despite the fact that the Syrian refugee influx in recent years most likely would be deemed as a situation invoking Art. 12 MoU.

One might argue that the Jordan Response Plan 2018-2020<sup>166</sup> serves as such an emergency mechanism. The JRP combines short-term and longer-term solutions to strengthen local and national resilience capacities and thus attempts to address the needs of Syrian refugees and local populations likewise. Without going further into detail, it can be stated that the JRP is a humanitarian and developmental policy, not a legislative approach. Thus, it does not legally change the distribution of responsibility between Jordan and the UNHCR diverging from the MoU. The same is true for other changes in Jordanian practice in the face of the influx of people from Syria. Despite the purported amendments to the MoU concerning time frames and the interference of Jordanian authorities with UNHCR registration practices regarding Syrians<sup>167</sup>, the overall determination of Jordan to maintain the MoU as the legal framework governing refugee policies in the country is not in question.<sup>168</sup>

Thus, UNHCR is responsible for both legal as well as socioeconomic questions concerning Zaatari inhabitants.

Legal scholars and practitioners as well as legal anthropologists agree that this extensive shift of responsibility from the host country to the UNHCR creates a “surrogate state”.<sup>169</sup> This substitute for the host state is likely to entail an array of protection gaps, as some state-like responsibilities and entitlements (such as refugee status determination and governance) are transferred, while others (such as judicial responsibility) are not.<sup>170</sup> This *de facto* international administration<sup>171</sup> is labelled a “legal anomaly”,<sup>172</sup> lacking a formal legal framework regarding responsibilities.<sup>173</sup> In which ways this “humanitarian government”<sup>174</sup> has an effect on the ability of Zaatari inhabitants to challenge the governance they are facing will be further discussed in Chapter 4.

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<sup>166</sup> MINISTRY OF PLANNING AND INTERNATIONAL COOPERATION, *Jordan Response Plan for The Syria Crisis 2018-2020*, <http://www.jrpsc.org/> (accessed 25<sup>th</sup> May 2019), hereinafter: JRP.

<sup>167</sup> GHIDA FRANGIEH, *Relations between UNHCR and Arab Governments: Memoranda of Understanding in Lebanon and Jordan* (2016), in: RIBALE SLEIMAN HAIDAR (ED.), *The Long-Term Challenges of Forced Migration*, LSE Middle East Centre Collected Papers, Vol. 6 (9/2016), p. 39.

<sup>168</sup> *IBID*, p. 41.

<sup>169</sup> MICHAEL KAGAN, “We live in a country of UNHCR” *The UN surrogate state and refugee policy in the Middle East* (2011), *UNHCR New Issues in Refugee Research*, Research Paper No. 201, p. 1.

<sup>170</sup> *IBID*, p. 1.

<sup>171</sup> GUGLIELMO VERDIRAME, *The UN and Human Rights – Who Guards the Guardians?* (2011), p. 269.

<sup>172</sup> MICHAEL KAGAN, “We live in a country of UNHCR” *The UN surrogate state and refugee policy in the Middle East* (2011), *UNHCR New Issues in Refugee Research*, Research Paper No. 201, p. 1.

<sup>173</sup> GUGLIELMO VERDIRAME, *The UN and Human Rights* (2011), p. 272.

<sup>174</sup> MICHEL AGIER, *Managing the Undesirables* (2011), p. 5.



### 2.3.2 Relationship between Refugees and Jordan

The domestic Jordanian law in place to govern the relationship between refugees and the host state is rather concise. Art. 21 (1) Jordanian Constitution<sup>175</sup> contains the *non-refoulement* principle by stating that “political refugees shall not be extradited on account of their political principles or their defence of freedom.”

Further provisions specifically addressing the situation of non-nationals are found in Law No. 24 on Residency and Foreigners’ Affairs<sup>176</sup>. According to Art. 2 Law No. 24 it is valid for all foreigners regardless of their specific status. Some provisions are naming refugees, especially with regard to provisions regulating their movement inside Jordan. There is no provision regulating the admission of refugees into Jordan.<sup>177</sup>

No domestic legislation exists with regard to refugee status determination.

The MoU itself is considered falling short of guaranteeing most of the rights enshrined in the Refugee Convention.<sup>178</sup> Exceptions are Art. 1 and Art. 2 MoU. Art. 1 MoU explicitly refers to the definition of who counts as a refugee enshrined in the 1951 Convention. As the definition in Art. 1 A (2) Refugee Convention is considered to be customary law, the definition applies to Jordan anyways.<sup>179</sup> Art. 2 MoU provides for the *non-refoulement* principle. Albeit this is one of the fundamental principles in relation to refugee protection, in its submission to the Universal Periodic Review 2018, Human Rights Watch criticizes increased numbers of deportation and collective expulsion since 2016.<sup>180</sup>

According to Art. 5 MoU, the treatment of refugees has to follow international accepted standards, but the sojourn of recognized refugees in Jordan is limited to six months, presumably extended for Syrians up to a year. The abovementioned JRP, while acknowledging the constant exhaustion of any of the two time-limits allocated, might be rather classified as a written version of the so-called “regime of tolerance”<sup>181</sup>

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<sup>175</sup> *Constitution of the Hashemite Kingdom of Jordan*, adopted on 1<sup>st</sup> January 1952, in: Arab Law Quarterly, 1992, Vol. 7, No. 4, pp. 272-289, English version with Amendment of 2016 retrievable at: [constituteproject.org/constitution/Jordan\\_2016?lang=en](https://constituteproject.org/constitution/Jordan_2016?lang=en)

<sup>176</sup> *Law No. 24 of 1973 on Residence and Foreigners’ Affairs*, 1<sup>st</sup> January 1973, English version retrievable at: [refworld.org/docid/3ae6b4ed4c.html](https://www.refworld.org/docid/3ae6b4ed4c.html).

<sup>177</sup> ISSAM SALIBA, *Refugee Law and Policy: Jordan*, in: *Library of Congress – Legal Reports* (2016), <https://www.loc.gov/law/help/refugee-law/Jordan.php> (visited 21<sup>st</sup> March 2019).

<sup>178</sup> GHIDA FRANGIEH, *Relations between UNHCR and Arab Governments: Memoranda of Understanding in Lebanon and Jordan* (2016), in: RIBALE SLEIMAN HAIDAR (ED.), *The Long-Term Challenges of Forced Migration*, LSE Middle East Centre Collected Papers, Vol. 6 (9/2016), p. 37.

<sup>179</sup> ANDREAS ZIMMERMANN/CLAUDIA MAHLER, *Art. 1 A, para. 2 (Definition of the Term ‘Refugee’/Définition du Terme ‘Réfugié’)*, in: ID. (EDS.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol – A Commentary* (2011), pp. 281-465 (298).

<sup>180</sup> HUMAN RIGHTS WATCH, *Submission to the Universal Periodic Review of Jordan* (2018), 3<sup>rd</sup> cycle, 31<sup>st</sup> session, <https://www.hrw.org/news/2018/03/28/submission-universal-periodic-review-jordan> (visited 13<sup>th</sup> May 2019).

<sup>181</sup> GHIDA FRANGIEH, *Relations between UNHCR and Arab Governments: Memoranda of Understanding in Lebanon and Jordan* (2016), in: RIBALE SLEIMAN HAIDAR (ED.), *The Long-Term Challenges of Forced Migration*, LSE Middle East Centre Collected Papers, Vol. 6 (9/2016), p. 39.

adopted by Jordan in reaction to the factual prolonged presence of refugees in the country. The tolerance applied entails refraining from punishment by default for exceeding the timeframe allocated and provisional humanitarian measures without codifying long-term perspectives.<sup>182</sup> Thus, it does not provide legal entitlement for those exceeding the allocated time frame.

Art. 7 MoU provides free access to the Jordanian courts of law to refugees and entails both the right of litigation and the right to obtain legal assistance in the same way nationals do, where possible. Albeit the access to courts is provided for, the insecure and unstable situation created by the limited timeframe allocated bears a constant risk for refugees to be arrested due to immigration law violations.<sup>183</sup> This has to be kept in mind when assessing the effective possibilities of access to the judicial system of Jordan for inhabitants of Zaatari.

Instead of in-depth discussing all potential conflicts between the governance methods explicitly and implicitly enshrined in the MoU and the rights of Zaatari inhabitants, one exemplification of existing factual contradictions shall be depicted.

Jordan has signed and ratified the ICCPR.<sup>184</sup> To answer the question, if human rights enshrined in the Covenant can be enjoyed by the inhabitants of Zaatari, the applicability has to be determined. According to Art. 2 (1) ICCPR, all individuals within its territory and under the jurisdiction of the state party are entitled to enjoy the rights enshrined in the Covenant. With regard to the personal scope of application, the legal personality of an individual is explicitly not allowed to determine the level of protection ensured by the state.<sup>185</sup> On the contrary, the wording in Art. 2 (1) ICCPR (“individual” instead of “person”) was mainly chosen to render the “recognition of a person before the law” insignificant for the purpose of the Covenant.<sup>186</sup>

The territorial scope of application appears to be two-folded. There is the question, if both elements – territory *and* jurisdiction – have to be fulfilled for invoking the responsibility of the respective state. This question has been answered by the HCR in its case law by focusing on the object and purpose of the treaty, broadening the scope of application in certain cases, even if one of the two elements is missing.<sup>187</sup> As Zaatari Refugee Camp is located on Jordanian soil, the criterion of territory is clearly fulfilled. The question might arise, if the requirement of Jordan exercising jurisdiction over the inhabitants of Zaatari is met as well. In general, states have responsibility for individuals subject to their sovereign authority, and thus have the responsibility to ensure

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<sup>182</sup> IBID, p. 39.

<sup>183</sup> IBID, p. 40.

<sup>184</sup> UNTS, *Status of Treaties*, Chapter IV, No. 4, status as of 21<sup>st</sup> May 2019, Signature 30<sup>th</sup> June 1972, Ratification 28<sup>th</sup> May 1975, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en).

<sup>185</sup> MANFRED NOWAK, *CCPR Commentary* (2005), 2<sup>nd</sup> revised edition, Art. 2 CCPR, para. 23.

<sup>186</sup> IBID, para. 24.

<sup>187</sup> IBID, para. 30.

the obedience to the Covenant towards them. An exception to this rule results from the lack of jurisdiction regarding “internal” violations of the Covenant taking place within international organizations present on the state’s territory.<sup>188</sup> Albeit UNHCR as a subsidiary organ of the UN is considered an international organization, this exemption from responsibility does not materialize in relation to Zaatari inhabitants, as they are not members of the UNHCR and therefore not within the organization.

All inhabitants of the camp who hold a foreign citizenship are subjected to personal jurisdiction of a foreign state due to their nationality. This does not interfere with the applicability of the ICCPR. One purpose of the phrasing of Art. 2 (1) ICCPR was to preclude state responsibility for those individuals over whom a state is holding personal jurisdiction, but the violations of ICCPR rights take place on foreign territory, under foreign sovereignty.<sup>189</sup> Thus, Zaatari inhabitants are subject to Jordan’s jurisdiction in the sense of Art. 2 (1) ICCPR and therefore both the territorial as well as the judicial scope of application are fulfilled.

After the applicability of the ICCPR in general was confirmed, attention shall be drawn to the contradiction between the MoU and Zaatari inhabitants’ rights mentioned above. Art. 19 (2) ICCPR states the right to freedom of expression, including the right to “impart information and ideas of all kinds”. As stated above, Art. 4 MoU completely prohibits refugees under UNHCR protection to give interviews to the media. Art. 19 (2) ICCPR is not included in the list of non-derogable rights, which even in times of emergency do not allow for restrictions (Art. 4 (2) ICCPR). In Art. 19 (3) ICCPR, permission to restrict the exercise of the right to freedom of expression is granted with certain limitations. The reasoning provided in Art. 4 MoU, to protect security and foreign relations of the Jordanian government, on first sight might seem to fall under Art. 19 (3) lit. b ICCPR, namely the purpose of protection of national security. But the absolute prohibition of expressing oneself in media interviews enshrined in Art. 4 MoU appears to not meet the requirements for restriction mentioned in Art. 19 (3) ICCPR, namely the requirement of “being necessary”. Part of necessity is, that the restriction needs to be proportionate.<sup>190</sup> Without going into detail, reference can be made to the requirement that the restriction “may not become the rule.”<sup>191</sup> The statutory *per se* exclusion of all refugees registered with the UNHCR from the public sphere of all media coverage with regard to their individual viewpoints and potential criticisms appears to establish a rule in the aforementioned sense. Instead of providing points of reference for the permissibility of state interference in specific, exceptional cases, the provision establishes a “vague statutory authorization”<sup>192</sup> and thus

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<sup>188</sup> IBID, para. 28.

<sup>189</sup> IBID, para. 28.

<sup>190</sup> IBID, para. 47.

<sup>191</sup> IBID, para. 47.

<sup>192</sup> IBID, para. 46.

exceeds the permissible extent of restriction of the right to freedom of expression. This example might recall what Arendt wrote about the rights and freedoms allocated to those in an internment camp in a democratic society: even if the freedom of opinion is granted, it “is a fool’s freedom, for nothing they think matters anyhow.”<sup>193</sup> Arendt’s sarcastic tone clearly criticizes a position of democratic society from which ‘their’ thoughts are considered to not bear too much significance to the rest of society. The fact that the opinions of Zaatari’s inhabitants according to the MoU not only do not matter but are also prohibited to reach the public sphere outside the camp is a violation of Art. 19 (2) ICCPR regarding the inhabitants’ right to freedom of expression. Thus, the MoU concluded between the Jordanian State and the UNHCR contains a blatant violation of the human rights of people of concern to UNHCR. Which are the reason behind UNHCR’s presence on Jordanian territory and therefore the reason behind the conclusion of the treaty in the first place.

### **2.3.3 Relationship between Refugees and UNHCR**

The relationship between the inhabitants of Zaatari Refugee Camp and the UNHCR is the one least regulated in the MoU. This appears to be unsettling in several regards. Prior to discussing them, the provisions in place will be shortly depicted.

The entire process regarding status determination from interviews to granting (or denying) legal refugee status is conducted by the UNHCR (Art. 3 MoU). While present on Jordanian territory, UNHCR takes the responsibility “to provide international protection and assistance for needy refugees” (Art. 11 MoU), thus being responsible for them in the socio-economic sense. The task to find durable, long-term solutions for the people of UNHCR’s concern, according to Art. 5 MoU comprising of either repatriation or resettlement, complete what is called the “UNHCR’s triptych of a refugee’s life” starting with flight.<sup>194</sup> The resettlement enshrined in Art. 4 para. 2 MoU bears a special connotation. At the core of the provision is the duty of asylum seekers and refugees to observe Jordanian laws and refrain from embarrassing the government. In case of violation, the UNHCR “would endeavour to resettle recognized refugees”. Resettlement itself does not bear the connotation of punishment. But the preconditions for requiring it in the context of this specific provision make it seem to be positioned closer to deportation due to violation of laws in the host state than resettlement in the best interest of the refugee. Thus, Art. 4 MoU indirectly assigns some kind of law enforcement power to the UNHCR, as the organization is *de facto* responsible for punishing occurring violations of Jordanian laws and MoU regulations, perpetrated by those under their auspices.

The UNHCR Statute does not say much about the relation between the organization and the refugees under its mandate. There are provisions regarding dispute solution

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<sup>193</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 387.

<sup>194</sup> GUGLIELMO VERDIRAME, *The UN and Human Rights* (2011), p. 270.

such as that “the High Commissioner shall request the opinion of the advisory committee on refugees if it is created”<sup>195</sup> for “any controversy regarding the international status of these persons” (Art. 1 para. 2 UNHCR Statute). Albeit causing effects for “these persons”, the Executive Committee with its annual formal sessions does not appear to function as a mediator between the UNHCR and individuals living in UNHCR-run refugee camps. The inhabitants do not have any participatory access to it. The lack of provisions in the UNHCR Statute regulating the relationship between people under the auspices of the UNHCR and the organization itself might not be too surprising at second glance. Neither the Resolutions by which the UNHCR was created nor the Statute contain the task of administrating refugee camps. Likewise, no additional regulations regarding the relation between refugees and the UNHCR can be found in the Refugee Convention itself.

To summarize, the provisions governing the relationship between the inhabitants of Zaatari and the UNHCR appear somehow to be rather side effects of the attempt to frame the relation between Jordan and the UNHCR than substantive regulations created to frame this relationship itself. The unsettling notion mentioned above results from the contrast between the absence of regulation and the factual nature of the relationship between the inhabitants of Zaatari and UNHCR. This factual nature is less accidental but a result of the other two edges of the triangle. Especially the shift of state responsibilities from the Jordanian State to the UNHCR allows for describing the situation as “living in a State of UNHCR”.<sup>196</sup> The absence of a formal legal framework to govern these state-like responsibilities further is also observed by legal anthropologists, stating that “law, both domestic and international, plays a surprisingly minor role in the assumption and exercise of governmental powers by UNHCR in refugee camps.”<sup>197</sup>

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<sup>195</sup> The Advisory Committee was created in 1951 and existed till 1954, since 1958 the Executive Committee is fulfilling the same functions, <https://www.unhcr.org/excom/announce/3b4f09faa/background-executive-committee.html> (visited 23<sup>rd</sup> May 2019).

<sup>196</sup> KATARZYNA GRABSKA, *Brothers or Poor Cousins? Rights, Policies and the Well-being of Refugees in Egypt*, in: ID/LYLA MEHTA (EDS), *Forced Displacement – Why Rights Matter* (2008), pp. 71-92 (87).

<sup>197</sup> GUGLIELMO VERDIRAME, *The UN and Human Rights – Who Guards the Guardians?* (2011), p. 269.

## 2.4 Conclusion

The entire normative framework in place to govern the situation in Zaatari Refugee Camp can be described as a continuous re-distribution of powers, shifting practical and administrative responsibilities from the Jordanian State to UNHCR without shifting legal responsibility to the same extent. This situation is called a legal anomaly, a legal *sui generis*<sup>198</sup> and characterized by some as *de facto* international administration.<sup>199</sup> The lack of a formal legal framework creates huge protection gaps,<sup>200</sup> as the UNHCR is the main entity exercising power in the camp without provisions in place for being held accountable accordingly. It seems to be almost unavoidable that this exercise of power, as governmental power in general, leads to human rights violations.<sup>201</sup> Albeit being already very fragmented with regard to norms governing the relation between Jordan and the UNHCR, the legal entitlements for those who are primarily governed, the inhabitants of Zaatari Refugee Camp, are widely absent. While the relationship with the UNHCR it is mostly not regulated, legal restrictions governing the relationship with Jordan enshrined in the MoU amount to violation of human rights (as exemplified Art. 19 (2) ICCPR) the inhabitants are entitled to. The provision providing access to courts for refugees in the MoU will be discussed with regard to the *de facto* possibilities to make use of it in Chapter 4.

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<sup>198</sup> GEORGE RIACH/ZOE JAMES, *Strengthening the rule of law on the margins: experiences from Za'atari refugee camp, Jordan* (2016), in: *The Int'l Journal of Human Rights*, Vol. 20, No. 4, pp. 549 – 566 (549).

<sup>199</sup> GUGLIELMO VERDIRAME, *The UN and Human Rights – Who Guards the Guardians?* (2011), p. 269.

<sup>200</sup> *IBID*, p. 272.

<sup>201</sup> GUGLIELMO VERDIRAME/BARBARA HARRELL-BOND, *Rights in Exile* (2005), p. 17; the site-specific analysis of human rights violations in relation to iris scan technology will be done in Chapter 4.

### 3 Iris Scan – A governance tool

In the course of fulfilling its mandate to provide basic needs to those who are living under its auspices, the UNHCR in cooperation with the World Food Program (WFP), the primary provider of food assistance in Zaatari Refugee Camp, introduced iris scan technology for cash assistance procedures in the camp in 2016.<sup>202</sup>

In this chapter, first the technology and its implementation, including accounts on the overall security of iris scan and resulting data collection, will be discussed.

Second, the rules and guidelines governing this specific situation will be analyzed.

Third, present and potential future repercussions resulting from the use of iris scan as a tool for governance will be portrayed.

#### 3.1 The Technology and Its Implementation

To enable a thorough discussion of the use of iris scan, the technology itself as well as some affiliated technical terms and concepts have to be shortly depicted and explained. Subsequently, the way of implementation of iris scan for cash assistance in Zaatari Refugee Camp will be described.

##### 3.1.1 Technological terms and concepts

The term *technology* can describe an almost indefinite number of technics. For the purpose of this thesis, it shall be understood as focusing on “novel, mostly digital and web-based information and communication technologies.”<sup>203</sup> In order to emphasize this notion, the term *new technologies* will be used interchangeably.

The technology scrutinized in this chapter is commonly known as *iris scan*. This term is partly misleading, as it blurs the lines between two distinct methods related to ocular-based biometric techniques: *iris* recognition and *retinal scan*.<sup>204</sup> Iris recognition pictures the unique pattern of the colored circle around the pupil by using a digital camera and illuminating the iris with infrared light.<sup>205</sup> Retinal scan obtains the unique blood vessel pattern forming the neural part responsible for vision<sup>206</sup> in a tissue at the back of the eye by “casting an unperceived beam of low-energy infrared light into a

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<sup>202</sup> WFP Introduces Iris Scan Technology To Provide Food Assistance To Syrian Refugees in Zaatari, 6<sup>th</sup> October 2016, <https://www.wfp.org/news/news-release/wfp-introduces-innovative-iris-scan-technology-provide-food-assistance-syrian-refu> (visited 28<sup>th</sup> January 2019).

<sup>203</sup> KRISTIN BERGTORA SANDVIK/MARIA GABRIELSEN JUMBERT/JOHN KARLSRUD/MAREILE KAUFMANN, *Humanitarian Technology: a critical research agenda*, in: *International Review of the Red Cross* (2014), Issue No. 893, pp. 219-242 (220).

<sup>204</sup> TRACY STAEDTER, *Iris Identification* (2003), <https://www.technologyreview.com/s/401849/iris-identification/> (accessed 4<sup>th</sup> June 2019).

<sup>205</sup> FOROUZAN GOLSHANI, *Digital Biometrics*, in: BORKO FURHT (ED), *Encyclopedia of Multimedia* (2008), 2<sup>nd</sup> edition, p. 162; STEPHEN MAYHEW, *Explainer: Iris Recognition*, in: *Explaining Biometrics*, <https://www.biometricupdate.com/201206/explainer-iris-recognition/>.

<sup>206</sup> AGNIESZKA LICHANSKA, *Retina and Iris Scans*, in: K. LEE LERNER/BRENDA WILMOTH LERNER (ED), *Encyclopedia of Espionage, Intelligence, and Security* (2004), Vol. 3, p. 15.

person's eye".<sup>207</sup> Thus, the two methods examine different parts of the eye and use different technology. Assessments of their intrusiveness and potential harm differ. Although not uncontested with regard to potential risks for the iris, iris recognition is generally perceived the less intrusive technique.<sup>208</sup> Despite these differences, the term *iris scan* is the prevalent one used in literature, even where the distinctiveness of the two methods is discussed. For the sake of coherency between the sources used and the writing, it will be used in the same way in this thesis.

Definitions of *Biometrics* differ in their focus. A rather broad approach "refers to a cluster of technologies that have all been preoccupied with the measurement of the body in order identify, classify, evaluate and regulate target subjects."<sup>209</sup> This definition by *Joseph Pugliese* provides for including techniques that preceded what is defined as biometrics by the *International Organization for Standardization*, being the "automated recognition of individuals based on their behavioral and biological characteristics."<sup>210</sup> Adding the term *digital* to *biometrics* emphasizes the use of automated technological means, including algorithms.<sup>211</sup> Linking biometrics and identity by default is contested by some, claiming that "biometrics is about recognition, not identity."<sup>212</sup> This might be true when looking at the mere technological aspect of biometrics. Still, in the moment of their implementation it was their impact on identity which raised privacy concerns.<sup>213</sup> As this chapter is concerned especially with the implementation of iris scan and potentially resulting human rights violations, namely the right to privacy discussed in Chapter 4, the relationship between *identity* and *identification* shall be shortly discussed.

The concept and meaning of *identity* are a field for perennial, probably endless examination in various disciplines, while *identification* received way less attention.<sup>214</sup> State

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<sup>207</sup> RAWLSON KING, *Explainer: Retinal Scan Technology*, in: *Explaining Biometrics*, <https://www.biometricupdate.com/201307/explainer-retinal-scan-technology>.

<sup>208</sup> AGNIESZKA LICHANSKA, *Retina and Iris Scans*, in: K. LEE LERNER/BRENDA WILMOTH LERNER (ED), *Encyclopedia of Espionage, Intelligence, and Security* (2004), Vol. 3, p. 16.

<sup>209</sup> JOSEPH PUGLIESE, *Biometrics: Bodies, Technologies, Biopolitics* (2010), p. 10.

<sup>210</sup> INTERNATIONAL STANDARD, ISO/IEC 2382-37, *Information technology – Vocabulary – Part 37: Biometrics* (2017), 2<sup>nd</sup> edition, para. 3.1.3.

<sup>211</sup> "Digital biometrics refers to measurements on physiological or behavioral characteristics of a person, generally obtained through automated technological means, for determining or verifying the identity of a person. Physiological biometrics is the data gathered from direct measurement of the human body, obtained by means of various procedures and algorithms that can uniquely identify the individual. Examples include finger-print, hand geometry, iris, retinal, vein, voice, and facial imaging." FOROUZAN GOLSHANI, *Digital Biometrics*, in: BORKO FURHT (ED), *Encyclopedia of Multimedia* (2008), 2<sup>nd</sup> edition, p. 160.

<sup>212</sup> JAMES L. WAYMAN, *Biometrics in Identity Management Systems* (2008), in: *IEEE Security&Privacy*, Vol. 6, Issue 2 (March/April), pp. 30-37 (32).

<sup>213</sup> IBID.

<sup>214</sup> SIMON A. COLE, *De-neutralizing Identification: S. & Marper v. United Kingdom, Biometric Databases, Uniqueness, Privacy and Human Rights*, in: ILSÉN ABOUT/JAMES BROWN/GAYLE LONERGAN, *Identification and Registration Practices in Transnational Perspective*, pp. 77-97 (77).



authorities and corporations employing *identification* practices carefully emphasized their distinctiveness from *identity* matters, marking them as neutral procedures not touching upon one's identity.<sup>215</sup> I would like in brief point to a shift of perception towards the relationship between identity and identification in the humanitarian field. The first of the quotes prepended to this thesis quite brightly illustrates this shift: „If the eyes are the window to the soul, could irises be the key that unlocks one's identity?“<sup>216</sup> While it can be assumed that at times identity and identification are unconsciously used interchangeably, the reference to the soul indicates that it is about indeed about a person's identity in the social, psychological, philosophical sense – as the soul is not too much subject matter of judicial considerations but rather belongs to the sphere of the mentioned disciplines. This is where the lines between identity and identification blur. Significantly, when digital biometrics are used. As Irma van der Ploeg puts it: “Identification, or establishing identity, can either be limited to looking at (and believing) the passport presented, or it can be an extremely complex, increasingly invasive process which really does deserve the name ‘investigation’.”<sup>217</sup> The previously claimed neutrality of identification measures appears not even considered desirable anymore in relation to “the most vulnerable”.<sup>218</sup>

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<sup>215</sup> IBID.

<sup>216</sup> ALISON BUCKHOLTZ/ANDREW RAVEN, *Eyeing a More Secure Future for Refugees* (2019), International Finance Cooperation – World Bank Group, [https://www.ifc.org/wps/wcm/connect/news\\_ext\\_content/ifc\\_external\\_corporate\\_site/news+and+events/news/cm-stories/secure-future-refugees](https://www.ifc.org/wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/news/cm-stories/secure-future-refugees).

<sup>217</sup> IRMA VAN DER PLOEG/ISOLDE SPRENKELS, *Migration and the Machine-Readable Body: Identification and Biometrics*, in: HUUB DIJSTELBLOEM/ALBERT MEIJER (EDS), *Migration and the New Technological Borders of Europe* (2011), pp. 68-104 (p. 88).

<sup>218</sup> A far-reaching development in this regard can be witnessed in apps like Taqanu, naming the over 60 million refugees and displaced people worldwide their main target group and ensuring their ‘basic human right to a digital ID’ (<https://www.taqanu.com/impact>) by verifying conventional means of identification with “someone's digital footprint as the source of identity”, BALÁZS NÉMETHI (founder), in: ADELE PETERS, *This App Helps Refugees Get Bank Accounts By Giving Them A Digital Identity*, 4.10.2017, <https://www.fastcompany.com/40403583/this-app-helps-refugees-get-bank-accounts-by-giving-them-a-digital-identity> (accessed 13<sup>th</sup> June 2019).

### 3.1.2 Implementation

Iris scan for purposes of monetary assistance was implemented in Zaatari in 2016.<sup>219</sup> Attempts are made to enable inhabitants to sustain themselves. There is an allowance for private, small-scale businesses on the camps main market street<sup>220</sup> as well as the implementation of a *Cash for Work* program matching inhabitants of the camp with humanitarian actors in need of human labor.<sup>221</sup> Still, most of the inhabitants of Zaatari Refugee Camp are dependent on monetary assistance.

The technology identifying individuals by picturing their iris is at the core of the main payment system for the inhabitants in the camp implemented in 2016. Instead of using cards, cash or vouchers, beneficiaries receive the monthly amount of monetary assistance “on their iris”. The iris registered is in principle the one of the head of household.<sup>222</sup> Thus, it is only the head of household who is able to spend the money in one of the two cooperating supermarkets and four dedicated bread selling points in the camp.<sup>223</sup>

The software to enable the payment process called EyePay<sup>224</sup> is provided by the UK-based company IrisGuard.<sup>225</sup> IrisGuard presents itself as a humanitarian-motivated company with “the bold objective to provide financial inclusion and authorization of transactions for refugees and vulnerable populations”.<sup>226</sup> A former head of the British Secret Intelligence Service MI6<sup>227</sup>, Richard Dearlove<sup>228</sup>, and former US Homeland Security Advisor to George W. Bush<sup>229</sup>, Frances Townsend<sup>230</sup>, are members of the Advisory Board. IrisGuard is providing its software for “free” while earning 1% from each

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<sup>219</sup> WFP Introduces Iris Scan Technology To Provide Food Assistance To Syrian Refugees in Zaatari, 6<sup>th</sup> October 2016, <https://www.wfp.org/news/news-release/wfp-introduces-innovative-iris-scan-technology-provide-food-assistance-syrian-refu> (visited 28<sup>th</sup> January 2019).

<sup>220</sup> JOI LEE, *Syria's war: Inside Jordan's Zaatari refugee camp*, 1<sup>st</sup> April 2018, <https://www.aljazeera.com/indepth/inpictures/syria-war-jordan-zaatari-refugee-camp-180326115809170.html> (visited 28<sup>th</sup> January 2019).

<sup>221</sup> UNHCR, *Cash for Work in Zaatari Camp* (August 2017), <https://data2.unhcr.org/en/documents/details/62306> (visited 28<sup>th</sup> January 2019).

<sup>222</sup> BETHAN STATON, *Eye spy: biometric aid system trials in Jordan*, in: *The New Humanitarian*, 18<sup>th</sup> May 2016, <https://www.thenewhumanitarian.org/analysis/2016/05/18/eye-spy-biometric-aid-system-trials-jordan> (accessed 26<sup>th</sup> May 2019).

<sup>223</sup> UNHCR Factsheet *Jordan – Zaatari Refugee Camp* (February 2019), p.3, <http://reporting.unhcr.org/jordan> (visited 13<sup>th</sup> May 2019).

<sup>224</sup> *Eyepay® empowering financial inclusion*, <https://www.irisguard.com/node/86> (accessed 3<sup>rd</sup> June 2019).

<sup>225</sup> UNHCR, *Iris scan helps Syrian refugees in Jordan receive UN supplies with in 'blink of eye'*, 6<sup>th</sup> October 2016, <https://refugeesmigrants.un.org/iris-scan-helps-syrian-refugees-jordan-receive-un-supplies-%E2%80%98blink-eye%E2%80%99> (visited 28<sup>th</sup> January 2019).

<sup>226</sup> *Why IrisGuard?*, <https://www.irisguard.com/> (accessed 26<sup>th</sup> May 2019).

<sup>227</sup> STEPHANIE HANKEY/MAREK TUSZYNSKI, *Efficiency and Madness* (2017), p. 24.

<sup>228</sup> YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 5.05, <https://www.youtube.com/watch?v=oUtl8Hpg15w> (visited 28<sup>th</sup> January 2019).

<sup>229</sup> STEPHANIE HANKEY/MAREK TUSZYNSKI, *Efficiency and Madness* (2017), p. 24.

<sup>230</sup> YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 5.05, <https://www.youtube.com/watch?v=oUtl8Hpg15w> (visited 28<sup>th</sup> January 2019).

transaction conducted. Assuming all money Zaatari's inhabitants receive for food assistance is spent,<sup>231</sup> this provides for roughly 25.000 \$ revenue for IrisGuard per month.

The different actors involved in the transactions are vividly visualized in each EyePay-receipt (Annex B).<sup>232</sup> The plain depiction of the beneficiary's identification number might be noticed as a disturbing detail, putting in question the purported protection of privacy as well as securitization issues. Its impact will be discussed as part of Present Repercussions (3.3). The transaction itself is processed via WFP Building Blocks. Building Blocks is a blockchain-based<sup>233</sup> technology run by the WFP. IrisGuard as well as the UNHCR and WFP publicly claim that the data collected and processed is entirely fraud protected. *Volker Schimmel*, a senior UNHCR field coordinator based in Jordan who was mainly involved in the implementation of the iris payment system in the refugee camps,<sup>234</sup> ensures that the software is based on a so-called "trust no-one design".<sup>235</sup> Trust no-one, or zero trust,<sup>236</sup> means that the component of trusting someone (i.e. the coder) or something (i.e. a network) is entirely erased from the process of securitization of data. Those who engage with data collection and the highest reachable level of securitization more critically put the security of the personal data collected in question. In the situation at hand it is a private company providing the software for the data collection conducted. *Marek Tuszynski*<sup>237</sup> points to the fact that proprietary software, meaning software of which the code is not fully disclosed for reasons of copyright protection, is inevitably based on trust.<sup>238</sup> Trust is required insofar as only the coder and those who have access to the entire code know the exact composition and therefore the level of encryption enshrined in a software. This provides the possibility to include an invisible backdoor in the code, through which later on the owner of the software can access the data collected, and which is hard to impossible

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<sup>231</sup> Each person living in Zaatari receives 23 Jordanian Dinar, which equates 32 US Dollar, per month as food assistance (see Factsheet *Jordan – Zaatari Refugee Camp* (February 2019), p.3).

<sup>232</sup> The receipt included Annex B depicts a transaction that took place in a supermarket in UNHCR-run Azraq refugee camp in Jordan. As reportedly (see Factsheet *Jordan – Zaatari Refugee Camp* (February 2019), p.3) the same technology is used in Zaatari by now, the receipt might serve as an example, although not obtained in Zaatari Refugee Camp itself.

<sup>233</sup> A more detailed introduction to blockchain technology and its implications is provided when presenting repercussions resulting from its use, see Chapter 3.3.1.

<sup>234</sup> BETHAN STATON, *Eye spy: biometric aid system trials in Jordan*, in: *The New Humanitarian*, 18<sup>th</sup> May 2016, <https://www.thenewhumanitarian.org/analysis/2016/05/18/eye-spy-biometric-aid-system-trials-jordan> (accessed 26<sup>th</sup> May 2019).

<sup>235</sup> VOLKER SCHIMMEL, in: YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 9.08, <https://www.youtube.com/watch?v=oUt18Hpg15w> (visited 28<sup>th</sup> January 2019).

<sup>236</sup> EVAN GILMAN/DOUGH BARTH, *Zero Trust Networks* (2017), Chapter 1 Zero Trust Fundamentals.

<sup>237</sup> Marek Tuszynski is a co-founder of the NGO Tactical Technology Collective "working at the intersection of technology, human rights and civil liberties", <https://tacticaltech.org/pages/about-us/> (accessed 26<sup>th</sup> May 2019).

<sup>238</sup> MAREK TUSZYNSKI, in: YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 9.30, <https://www.youtube.com/watch?v=oUt18Hpg15w> (visited 28<sup>th</sup> January 2019).

to be detected by the user of the software.<sup>239</sup> Neither the existence nor the non-existence of an invisible backdoor could be proofed. The implications of this need to trust as well as additional security risks are further discussed when examining future repercussions (3.3.2).

## 3.2 Rules and Guidelines

In the following the rules and guidelines in place governing data collection in Zaatari Refugee Camp will be depicted and critically discussed.

### 3.2.1 Jordanian Law

Jordanian domestic law to date does not have any data protection laws in place, consequently no data protection authority is mandated to deal with issues evolving around data and privacy.<sup>240</sup>

Art. 18 Jordanian Constitution mentions privacy but is exclusively concerned with the protection of means of communication. Protection from attempts to obtain, store and use personal data is not mentioned.<sup>241</sup> As no additional domestic legislation touching upon data security is in place, the collection of data by the UNHCR and its partnering organizations is not explicitly regulated under Jordanian domestic law.

### 3.2.2 UNHCR Guidelines

The UNHCR issued its first edition of a *Policy on the Protection of Personal Data of Persons of Concern to UNHCR*<sup>242</sup> in 2015 in order to ensure consistency with the 1990 UNGA “*Guidelines for the Regulation of Computerized Personal Data Files*”<sup>243</sup> and other international instruments concerning the protection of personal data and individuals’ privacy.”<sup>244</sup>

Acknowledging the “particularly vulnerable position of persons of concern to UNHCR”,<sup>245</sup> the personal data collected is perceived being generally sensitive, thus requiring careful handling in accordance with the UNHCR Data Protection Policy. The scope of application includes all persons of concern to the UNHCR (para. 1.3), who are defined as those “whose protection and assistance needs are of interest to the UNHCR”,<sup>246</sup> including refugees, asylum-seekers and stateless persons.

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<sup>239</sup> YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 9.20, <https://www.youtube.com/watch?v=oUtl8Hpg15w> (visited 28<sup>th</sup> January 2019).

<sup>240</sup> PRIVACY INTERNATIONAL, *State of Privacy Jordan* (as of January 2019), <https://www.privacyinternational.org/state-privacy/1004/state-privacy-jordan> (accessed 22<sup>nd</sup> May 2019), Overview.

<sup>241</sup> IBID, Right to Privacy.

<sup>242</sup> UNHCR, *Policy on the Protection of Personal Data of Persons of Concern to UNHCR* (May 2015), hereinafter: UNHCR Data Protection Policy/Policy.

<sup>243</sup> A/Res/45/95, *Guidelines for the Regulation of Computerized Personal Data Files*, 14<sup>th</sup> December 1990.

<sup>244</sup> UNHCR Data Protection Policy, para. 1.1.

<sup>245</sup> IBID, para. 1.2.

<sup>246</sup> IBID, p. 11.

In the following, the basic principles enshrined in the UNHCR Data Protection Policy regarding the collection and processing of personal data will be shortly depicted. Instead of analyzing the Policy comprehensively, attention shall be drawn to selected provisions. This is to enable discussion of potential shortcomings and contradictory practices with regard to the collection and processing of personal data, namely iris image covered by the sub-category of biometric data.<sup>247</sup>

The basic principles enshrined in para. 2.1 UNHCR Data Protection Policy appear to be effectively congruent with basic principles relevant in international data protection.<sup>248</sup>

In the following list, each basic principle is shortly described, followed by the respective denomination and numeration in the UNHCR Data Protection Policy in parentheses:

- (i) processing personal data requires a legitimate basis and has to be conducted in a fair and transparent manner (legitimate and fair processing, para. 2.2)
- (ii) collection of data has to serve a specific purpose (purpose specification, para. 2.3)
- (iii) processing of personal data should to be necessary and proportionate to the purpose (necessity and proportionality, para. 2.4)
- (iv) personal data should be accurate and updated where necessary (accuracy, para. 2.5)
- (v) rights of the data subject to information, access, correction, deletion and objection should be respected (respect for the rights of the data subject, para. 2.6)
- (vi) confidentiality of the personal data has to be maintained at all times (confidentiality, para. 2.7)
- (vii) ensuring the confidentiality/integrity by appropriate technical and organizational means (security, para. 2.8)
- (viii) accountability for compliance with the Policy is ensured by a monitoring structure (accountability and security, para. 2.9)

An important principle of the legitimate processing of data is the consent obtained from the data subject by UNHCR (para. 2.2.(i)). Consent is defined for the purpose of the Policy as “any freely given and informed indication of an agreement by the data subject [...] which may be given either by a written or oral statement or by a clear affirmative action.”<sup>249</sup> Its importance is also emphasized by the senior UNHCR officer Schimmel by calling informed consent “a fundamental principle” the UNHCR always obeys to.<sup>250</sup> The possibilities for me to obtain insight into how UNHCR practically

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<sup>247</sup> IBID, p. 11.

<sup>248</sup> LEE A. BYGRAVE, *Data Protection Pursuant to the Right to Privacy in Human Rights Treaties* (1998), in: *International Journal of Law and Information Technology*, Vol. 6, No. 3, pp. 247-284 (250).

<sup>249</sup> UNHCR Data Protection Policy, p. 9.

<sup>250</sup> VOLKER SCHIMMEL, in: YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 3.15, <https://www.youtube.com/watch?v=oUtl8Hpg15w> (accessed 28<sup>th</sup> January 2019).

ensures informed consent in Zaatari were very limited. Thus, inhabitants of the camp interviewed in a documentary film about the implementation of iris scan are the source of information in this question: when asked if they had to sign papers or were asked for permission when their iris images were taken, they unanimously answered “no”.<sup>251</sup> This absence of written or oral consent might be explained by a broad interpretation of affirmative action as one way of providing consent according to the UNHCR Data Protection Policy. As the exact circumstances in the moment the image was obtained cannot be determined for the people interviewed in the documentary, a lack of consent cannot be assumed. Still it appears to be questionable if the requirement of consent given by the data subject in a free and informed manner can be met under the circumstances described by the people interviewed, as it seems they did not fully comprehend what exactly they were consenting to.

A related potential contradiction enshrined in the Policy shall be mentioned: while being named a fundamental principle UNHCR is going by, consent is only named one out of four, alternative, legitimate bases for processing personal data in para. 2.2 UNHCR Data Protection Policy. While the first two of those non-cumulative requirements appear to be potentially related to the data subject,<sup>252</sup> the second two clearly focus on the UNHCR mandate and security reasons (2.2 iii, iv Policy). This means, that even if consent in the situations described was not given by affirmative action, its absence does not render the data collection being in violation with the UNHCR Data Protection Policy. With this in mind, it is not easily comprehensible how the respect for “the data subject’s right to information, access, correction, deletion and objection” (para. 2.6) can be assured. It rather points to another approach of labeling the situation at hand. Authors termed the collection, storage and processing of biometrical data in relation to the situation, but also when examining questions of biometrics and refugees in general, as trials<sup>253</sup> or experiments.<sup>254</sup> Pugliese states, that it appears to be almost impossible to provide biometrics voluntarily in a situation of refuge.<sup>255</sup> Thus, considering that the inhabitants of Zaatari gave consent by affirmative action appears to be quite unlikely under the circumstances described.

The data subject should also be able to request the data collected and have the option to object, correct or delete it. The rights are limited by the Policy itself. First, the data

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<sup>251</sup> YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 0.46/2.50/3.01/3.22/3.32, <https://www.youtube.com/watch?v=oUtl8Hpg15w> (accessed 28<sup>th</sup> January 2019); for translation see Annex C.

<sup>252</sup> Beside consent, the “vital or best interest of the data subject” (ii) is mentioned. How this interest is determined is not explicated.

<sup>253</sup> CHRISTINA ZUR NEDDEN/ARIANA DONGUS, *Getestet an Millionen Unfreiwilligen*, 17th December 2017, <https://www.zeit.de/digital/datenschutz/2017-12/biometrie-fluechtlinge-cpams-iris-erkennung-zwang> (accessed 25<sup>th</sup> May 2019).

<sup>254</sup> MAREK TUSZNYNSKI, in: YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 10.10, <https://www.youtube.com/watch?v=oUtl8Hpg15w> (visited 28<sup>th</sup> January 2019).

<sup>255</sup> JOSEPH PUGLIESE, *Biometrics: Bodies, Technologies, Biopolitics* (2010), p. 103.

subject requesting correction or deletion (para. 3.3) as well as objecting the processing of personal data (para. 3.4) has to provide proof and legitimate grounds respectively. Beside the content-, and thus subject-related requirements, these rights might be also restricted for reasons outside the sphere of the data subject. Safety and security of the UNHCR (para. 3.7(i)(a)) as well as overriding operational needs of UNHCR's mandate (para. 3.7(i)(b)) provide legitimate reasons for limitation. Still, these limitations have to be based on consultations with the data protection officer (para. 3.7). The existence of this position alongside with the data controller, the data processor and the data protection focal point<sup>256</sup> provide for the classification of the UNHCR Data Protection Policy as providing for "relatively strong monitoring mechanisms" when compared to other data protection attempts in the realm of the UN.<sup>257</sup> Without questioning this assessment, the aforementioned examples provide strong reasons to doubt that the factual scope and effectiveness of data protection provided by the Policy sufficiently protect Zaatari inhabitants' rights.

### **3.3 A Governance Tool**

After depicting its implementation and related guidelines in place, the use of iris scan for monetary assistance in Zaatari Refugee Camp will be analyzed with regard to its implications as a tool of governance. This analysis will be done by flashing out present repercussions (3.3.1) as well as potential future repercussions (3.3.2) for the inhabitants of the camp. Future repercussions in this context illumine potential implications of the new technology looming on the horizon quite visibly.

#### **3.3.1 Present Repercussions**

As a first present repercussion, the interplay between and consequences of the implementation of iris scan for cash assistance in Zaatari and a domestic Jordanian policing measure shall be portrayed.

Until 14<sup>th</sup> July 2014, refugees from Syria staying in urban areas and registering with UNHCR received an Asylum Seeker Certificate (ASC) without any additional status documentation needed.<sup>258</sup> The ASC both enabled the holder to access food and cash assistance provided by UNHCR and its humanitarian partners and served as a precondition for obtaining a Service Card from the Jordanian Ministry of Interior (MoI Service Card). The MoI Service Card provided access to health care and education, served as a permit for refugees to stay in urban areas and was a precondition to obtain a work permit.<sup>259</sup> While some of these services were done away with towards end of 2014

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<sup>256</sup> UNCHR Data Protection Policy, p. 9.

<sup>257</sup> KINFE MICHAEL YILMA, *The United Nations data privacy system and its limits* (2019), in: *International Review of Law, Computers & Technology*, Vol. 33, No. 2, p. 224-248 (240).

<sup>258</sup> LUIGI ACHILLI, *Syrian Refugees in Jordan: a Reality Check* (2015), in: *Migration Policy Centre/Policy Brief 2/2015*, p. 5.

<sup>259</sup> ZEYNEP SAHIN MENCUTEK, *Refugee Governance, State and Politics in the Middle East* (2019), p. 199.

anyways, the focus in here shall be on a related government order in mid 2014, asking UNHCR to no longer issue ASCs to refugees who left camps without proper bail out documentation.<sup>260</sup> Bail out in this context describes the procedure to obtain the permission from Jordanian authorities to leave an UNHCR-run refugee camp permanently. The determination of who is entitled to bail out from a camp is conducted by SRAD.<sup>261</sup> The threshold for bail out was raised beginning of 2015, followed by the introduction of obligatory biometric scanning by police for non-nationals living in urban areas.<sup>262</sup> According to a security officer, this biometric identification includes iris scan taken by SRAD.<sup>263</sup> In this context it is relevant to keep in mind that SRAD is one of the two partners responsible for the joint administration of Zaatari Refugee Camp. Thus, the same entity carrying out mandatory registration procedures of non-nationals outside the camps might have access to the biometrical data collected through iris scan for cash assistance inside *inter alia* Zaatari Refugee Camp.

In order to answer the question if SRAD can access the biometrical data from inside Zaatari refugee camp, the requirements for such access, namely the classification of SRAD in the terms of UNHCR Data Protection Policy, need to be determined.

This determination can be carried out from two angles. The first is the position of SRAD within the governance structure of Zaatari Refugee Camp.<sup>264</sup> While SRAD acted as an implementing partner in 2015,<sup>265</sup> it is named as the second entity of the joint administration of the camp in 2018.<sup>266</sup> For implementing partners, the UNHCR Data Protection Policy requires an agreement (para. 5.3) to allow for access to data collected. The shared responsibility for the overall administration of the camp most likely equates SRAD's authorizations to access the data stored with those of the UNHCR itself. One could argue, that the implementation of iris scan technology for cash assistance does not increase any risk of repercussion, as the image of the iris is already among the biometrics used for registration purposes by the UNHCR.<sup>267</sup> Thus, the data collected during cash assistance procedures does not cause any additional repercussions than the registration of the iris itself. This is only true insofar, as the mere fact

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<sup>260</sup> LUIGI ACHILLI, *Syrian Refugees in Jordan: a Reality Check* (2015), in: *Migration Policy Centre/Policy Brief 2/2015*, p. 5.

<sup>261</sup> IBID, p. 6; according to more recent sources, the bail out procedure was entirely suspended in 2015, ZEYNEP ŞAHİN MENCÜTEK, *Refugee Governance, State and Politics in the Middle East* (2019), p. 200.

<sup>262</sup> LUIGI ACHILLI, *Syrian Refugees in Jordan: a Reality Check* (2015), in: *Migration Policy Centre/Policy Brief 2/2015*, p. 6

<sup>263</sup> ZEYNEP ŞAHİN MENCÜTEK, *Refugee Governance, State and Politics in the Middle East* (2019), p. 199.

<sup>264</sup> As mentioned above, the official role of SRAD in the governance structure of the differs depending on the sources consulted. As the focus in this paragraph is on the definition of SRAD in relation to UNHCR's Data Protection Policy, the take of the UNHCR on SRAD's role shall be the relevant.

<sup>265</sup> UNHCR, *Global Appeal 2015 Update Jordan*, p. 5.

<sup>266</sup> UNHCR Factsheet *Jordan – Zaatari Refugee Camp* (February 2019), p.1, <http://reporting.unhcr.org/jordan> (visited 13<sup>th</sup> May 2019).

<sup>267</sup> UNHCR, *Refugee Registration and Profiling in Jordan*, p. 2, <https://data2.unhcr.org/en/documents/download/73834>.



and the date of registration could be obtained from the initial registration, less so the factual duration of presence of the individual concerned in the camp. The factual stay in the camp matters in the moment a non-national in an urban area registers (or is forced to register) with SRAD according to the obligation introduced in 2015. People who left the camp after 2014 will be send back to the camp if met by security officers.<sup>268</sup> Information showing the factual stay in an UNHCR-run camp can be deducted when accessing the data obtained during the use of iris scan for grocery shopping. Recalling the information contained in the EyePay receipt,<sup>269</sup> it might not even be necessary to access the data stored on the WFP blockchain Building Blocks. The beneficiary carrying a receipt which includes the identification number is sufficient. But according to the just mentioned classification of SRAD as part of the administration of Zaatari Refugee Camp, it appears very likely that this branch under the auspices of the Public Security Directorate in Jordan can access the biometrical data collected in the process of grocery shopping in Zaatari Refugee Camp without complications.

This might contradict with the second angle from which to look at SRADs potential classification for data protection purposes when focusing on SRADs identity as part of the Jordanian law enforcement authorities. According to para. 6.3.1 Policy, UNHCR may transfer personal data in appropriate circumstances to national law enforcement agencies related to crimes. This transfer is being safeguarded by additional requirements (para. 6.3.2). Thus, transferring or sharing data with SRAD would be subjugated to tightened requirements compared to the requirements for sharing data with SRAD as a part of Zaatari joint administration. From the sources available, is it impossible to finally determine how SRAD is categorized by the UNHCR with regard to these questions. The depicted insecurity and seemingly unavoidable contradictions do not allow for the conclusion that SRAD is excluded from accessing personal data collected under the auspices of the UNHCR and thus the repercussions described are likely to occur.

Another present repercussion of the use of iris scan as a governance tool is its interrelation with a fundamental right in international refugee law, which is enshrined in Art. 2 (1) MoU and pronounced by most commentators<sup>270</sup> as well as UNHCR<sup>271</sup> as being part of customary international law: the principle of *non-refoulement*. While its qualification as customary law is questioned by some,<sup>272</sup> the obligation to comply with it in the situation in Zaatari both for the Jordanian authorities as well as for UNHCR is undoubted due to its inclusion in the MoU. Thus, returning refugees to Syria would amount to a violation of the *non-refoulement* principle as long as the causes for leaving

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<sup>268</sup> ZEYNEP SAHIN MENCUTEK, *Refugee Governance, State and Politics in the Middle East* (2019), p. 200.

<sup>269</sup> Annex B.

<sup>270</sup> GUY S. GOODWIN-GILL/JANE MCADAM, *The Refugee in International Law* (2007), p. 354.

<sup>271</sup> JAMES C. HATHAWAY, *The Rights of Refugees under International Law* (2005), p. 364.

<sup>272</sup> *IBID*, p. 363 f.

the country in the first place are still prevalent. Although there is lengthy discussion about the relation between *non-refoulement* and the right to asylum - which is not a right refugees are automatically entitled to under international law - it is a repercussion of iris scan practice that appears to impact *non-refoulement* in this specific case. As UNHCR-official Schimmel acknowledges, iris registration is mandatory for inhabitants of the camps, who would otherwise face the risk of “being thrown back to Syria.”<sup>273</sup> This statement appears to be a new level, or fall out of the scope, of UNHCRs policy to interrelate participation in biometric registration with humanitarian assistance. In an example related to repatriation of Afghan nationals living in Pakistan taking place from 2007 on, the mandatory participation in biometric screening processes to determine if the person would receive travel and reintegration assistance replaced the verification of identity documents.<sup>274</sup> The threat of being returned to Syria due to refusal of iris registration goes beyond this. Against the backdrop of this practice the question occurs, to which extent potentially given consent regarding the continuous data collection in the context of monetary assistance can be termed “free”.

The third example of a present repercussion concerns a function creep that occurred. A function creep describes a situation when data is used “in a way that was not foreseen nor consented to at the time the data was collected.”<sup>275</sup> Somehow, all repercussions can be classified as function creeps, as the purpose of biometric data collection in the realm of cash assistance is strictly speaking only the successful payment process in exchange for goods. The possibility of proper consent given in a situation of encampment is, as shown above, doubtful. Special about the case following is, that the unforeseen use of data happens also outside the reach of UNHCR.

As shown above, the determination of the lawful conditions under which biometrical data collected by UNHCR can be shared with implementing partners or third parties is at times complicated. Still, for the example at hand, both these issues are not the most intriguing part: monetary assistance for food in Zaatari Refugee Camp is provided by WFP and the blockchain technology used for EyePay is run by WFP, called WFP Building Blocks.<sup>276</sup>

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<sup>273</sup> VOLKER SCHIMMEL, in: YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 2.35, <https://www.youtube.com/watch?v=oUtl8Hpg15w> (visited 28<sup>th</sup> January 2019).

<sup>274</sup> FLEUR JOHNS, *Data, Detection, and the Redistribution of the Sensible in International Law*, in: *American Journal of International Law*, Vol. 111, Issue 1, pp. 57-103 (93).

<sup>275</sup> REBEKAH THOMAS, *Biometrics, Migrants, and Human Rights* (2005), in: *The Online Journal of the Migration Policy Institute*, <https://www.migrationpolicy.org/article/biometrics-migrants-and-human-rights> (accessed 25<sup>th</sup> May 2019).

<sup>276</sup> WFP, *Building Blocks – Blockchain for Zero Hunger*, <https://innovation.wfp.org/project/building-blocks>.

To retrieve a clear-cut definition of what a *blockchain* actually is appears to be quite challenging, as it is a dynamic field of technological development,<sup>277</sup> various forms of blockchains exist<sup>278</sup> and there is unclarity of what exactly the term describes.<sup>279</sup>

I attempt to give a short introduction of the concept that best fits the field and topic dealt with in this chapter.

In short, *blockchain* is described as “replicated databases that act as the ultimate books and records”.<sup>280</sup> Another term used for book is *ledger*, which is why blockchain technology is also referred to as inter alia *distributed ledger technology*.<sup>281</sup> Due to its variety, the best grasp might be provided if looking at the commons of blockchain technologies:

„1. A data store (database) that records changes in the data. Up to now they have most commonly been financial transactions, but you can store and record changes to any kind of data in a blockchain.

2. Replication of the data store across a number of systems in real time. ‘Broadcast’ blockchains, such as Bitcoin and Ethereum, ensure that all data is sent to all participants: everyone sees everything. Other technologies are more selective about where data is sent.

3. ‘Peer-to-peer’ rather than client-server network architecture. Data may be ‘gossiped’ to neighbours rather than broadcast by a single coordinator acting as the golden source of data.

4. Cryptographic methods such as digital signatures to prove ownership and authenticity, and hashes for references and sometimes to manage write-access.”<sup>282</sup>

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<sup>277</sup> ANGELA WALCH, *The Path of the Blockchain Lexicon (and the Law)*, in: *Review of Banking and Financial Law*, Vol. 36, Issue II (Spring 2017), pp. 713-765 (713).

<sup>278</sup> ANTONY LEWIS, *The Basics of Bitcoins and Blockchains* (2018), Part 0, Introduction.

<sup>279</sup> Merriam-Webster Dictionary offers both “a digital database containing information...that can be simultaneously used and shared within a large decentralized, publicly accessible network” but “also: the technology used to create such a database.”, <https://www.merriam-webster.com/dictionary/blockchain>.

<sup>280</sup> ANTONY LEWIS, *The Basics of Bitcoins and Blockchains* (2018), Part 0, Introduction.

<sup>281</sup> ANGELA WALCH, *The Path of the Blockchain Lexicon (and the Law)*, in: *Review of Banking and Financial Law*, Vol. 36, Issue II (Spring 2017), pp. 713-765 (719).

<sup>282</sup> ANTONY LEWIS, *The Basics of Bitcoins and Blockchains* (2018), Part 6, What is Common to Blockchain Technologies?.

Contrary to a public blockchain,<sup>283</sup> WFP Building Blocks is a permissioned<sup>284</sup> variation of Ethereum<sup>285</sup> blockchain.<sup>286</sup> While decentralization is one of the core features of public blockchain technology, a blockchain which is permissioned can by definition not operate decentralized in the same way. Instead, it “is a blockchain, in which transaction processing is performed by a predefined list of subjects with known identities,<sup>287</sup> the permissioned actors have to receive their permission from an authority.<sup>288</sup> The entity in case of WFP Building Blocks that oversees and manages the access to the information stored is WFP. Thus, the personal data collected is with WFP by default. This in mind, a partnership WFP recently entered with US-based, CIA-linked software company Palantir provides a strong indicator that a function creep might have occurred.<sup>289</sup> Reports on the use of Palantir Investigative Case Management software by US immigration authorities shows arrests happening due to data gathered in the application of the software.<sup>290</sup> Immigrant rights organizations call the activities unconstitutional, while Palantir’s assurance that the company does not participate in immigration matters but only supports cross-border criminal investigations was proven wrong by documents obtained through the Freedom of Information Act.<sup>291</sup>

The reason given for the partnership is, that WFP aims at better being able to analyze the huge amount of data obtained and improve the detection of “anomalies” in beneficiary locations and behavior by algorithm.<sup>292</sup> WFP denies any risk for the people of concern to the UNHCR receiving food aid by ensuring that the data provided to

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<sup>283</sup> Which core characteristic is the right of all participants to read *and* write and thereby contribute to the ledger, PAOLO TASCA/CLAUDIO J. TESSONE, *A Taxonomy of Blockchain Technologies: Principles of Identification and Classification*, in: *Ledger*, Volume 4 (2019), pp. 1-39 (28).

<sup>284</sup> PAOLO TASCA/CLAUDIO J. TESSONE, *A Taxonomy of Blockchain Technologies: Principles of Identification and Classification*, in: *Ledger*, Volume 4 (2019), pp. 1-39 (28).

<sup>285</sup> Blockchain technology got wider attention first due to its use for the so-called crypto-currency bitcoin. While in relation to bitcoin the technology is used to enable fraud-protected transactions, Ethereum provides “validation and distributed storage *and* processing of data and logic.” (emphasis by the author), ANTONY LEWIS, *The Basics of Bitcoins and Blockchains* (2018), Part 4, *Etherum, What is Etherum?*.

<sup>286</sup> RUSS JUSKALIAN, *Inside the Jordan refugee camp that runs on blockchain*, in: *MIT Technology Review »Blockchain«*, Issue May/June 2018.

<sup>287</sup> BITFURY GROUP/JEFF GARZIK, *Public versus Private Blockchain* (2015), p. 10, <https://perma.cc/F9YH-W4VD>.

<sup>288</sup> ANTONY LEWIS, *The Basics of Bitcoins and Blockchains* (2018), Part 6, *What is blockchain Technology?*.

<sup>289</sup> BEN PARKER, *New UN deal with data mining company Palantir raises protection concerns*, in: *The New Humanitarian*, 5<sup>th</sup> February 2019, <https://www.thenewhumanitarian.org/news/2019/02/05/un-palantir-deal-data-mining-protection-concerns-wfp> (accessed 25<sup>th</sup> May 2019).

<sup>290</sup> SAM BIDDLE/RYAN DEVERAUX, *Peter Thiel’s Palantir was used to bust relatives of migrant children, new documents show*, in: *The Intercept*, 2<sup>nd</sup> May 2019, <https://theintercept.com/2019/05/02/peter-thiels-palantir-was-use> (visited 21<sup>st</sup> May 2019).

<sup>291</sup> *IBID.*

<sup>292</sup> BEN PARKER, *New UN deal with data mining company Palantir raises protection concerns*, in: *The New Humanitarian*, 5<sup>th</sup> February 2019, <https://www.thenewhumanitarian.org/news/2019/02/05/un-palantir-deal-data-mining-protection-concerns-wfp> (visited 25<sup>th</sup> May 2019).

Palantir would consist only of DII and thus does not contain personal data.<sup>293</sup> In order to be able to understand the distinctions drawn regarding the different nature of data obtained and processed, the terms *personally identifiable information* (PII) and *demographically identifiable information* (DII) shall be shortly discussed.

PII is “information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means.”<sup>294</sup> This information can consist of a broad range of data, both such data that enables the direct identification of an individual, such as a name, or that enables indirect identification through conjunction with other data.<sup>295</sup> Digital biometrics serving as *identifiers* in identity management systems<sup>296</sup> belong to the group of PII. This data is generally considered sensitive, as it allows for the unique identification of a person. Drawing the line between PII and DII by retrieving a workable definition of DII appears to be surprisingly complicated.<sup>297</sup> DII is sometimes described as “anonymized” sets of aggregated data that do not allow for identification of the individual included in the data set, as the individual “disappears” in the sheer amount of demographic data. This appears to not be entirely true.<sup>298</sup> Rather, DII seems to be used as an umbrella term for data that on first sight does not allow for identification of individuals. The fact that identification of individuals is not possible instantly does not mean that individuals or specific groups are not re-identifiable.<sup>299</sup> This conceptual lack of clarity is worrying with regard to the reference made to DII. Actors in the humanitarian field state that - compared to PII - the demographic information stored and processed is less sensitive as it does not touch upon an individual’s privacy and security.<sup>300</sup> This assurance does not convince some of those who monitor the risks of increased data collection and the safeguards in place in the humanitarian sector. Privacy International, taking WFPs past data protection performance into consideration, warns that the deal entered with Palantir puts the “do no harm” imperative into question.<sup>301</sup> Others go even further,

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<sup>293</sup> IBID.

<sup>294</sup> NATHANIEL A. RAYMOND, *Beyond “Do No Harm” and Individual Consent: Reckoning with the Emerging Ethical Challenges of Civil Society’s Use of Data*, in: LINNET TAYLOR/LUCIANO FLORIDI/BART VAN DER SLOOT (EDS.), *Group Privacy* (2017), p. 72.

<sup>295</sup> IBID.

<sup>296</sup> Identifiers are defined as “attributes which serve principally to ‘identify’ you, that is to allow one to query (or ‘index into’) the database and retrieve some or all of your record”, JAMES L. WAYMAN, *Biometrics in Identity Management Systems* (2008), in: *IEEE Security&Privacy*, Vol. 6, Issue 2 (March/April), pp. 30-37 (34).

<sup>297</sup> NATHANIEL A. RAYMOND, *Beyond “Do No Harm” and Individual Consent: Reckoning with the Emerging Ethical Challenges of Civil Society’s Use of Data*, in: LINNET TAYLOR/LUCIANO FLORIDI/BART VAN DER SLOOT (EDS.), *Group Privacy* (2017), p. 75.

<sup>298</sup> IBID.

<sup>299</sup> IBID, p. 77.

<sup>300</sup> IBID, p. 76.

<sup>301</sup> BEN PARKER, *New UN deal with data mining company Palantir raises protection concerns*, in: *The New Humanitarian*, 5<sup>th</sup> February 2019, <https://www.thenewhumanitarian.org/news/2019/02/05/un-palantir-deal-data-mining-protection-concerns-wfp> (accessed 25<sup>th</sup> May 2019).

saying that “WPF is jumping headlong into something they don’t understand.”<sup>302</sup> This notion is supported when taking into consideration that DII still enables for identifying groups and thus making them targetable.<sup>303</sup> Furthermore, both the concept and methods of DII as well as its potential implications appear to be less explored<sup>304</sup> than PII. Thus, even if the data that Palantir has access to under this deal would only contain DII, it would not render the deal itself less worrying. After this example of an occurred function creep, I would like to examine a future repercussion likely following, as future repercussions are tomorrows versions of today’s already occurred function creeps.

### 3.3.2 Future Repercussions

The discussion of future repercussions resulting from the use of iris scan inevitably entails some predictions. My enquiry into potential future occurrences still will be based on robust indicators existing in the present. Thus, the following future repercussions are less prophetic presumptions but rather result from the analysis of the contemporary situation and predictions that can be drawn based on the research done. The field of future repercussions chosen concerns the security of the personal data collected through iris scan. The issue of trust mentioned in 3.1.2, exemplified by the threat of a backdoor potentially enshrined in the software provided by IrisGuard, another unintended potential access to the data stored shall be depicted.

As Schimmel, the UNCHR senior officer implementing iris scan technology in Jordan, acknowledges: “We don’t have NSA budgets. We have limited budgets compared to some of the entities that are interested in our data.”<sup>305</sup> The potential threat resulting from this interest and the likelihood of its occurrence will be evaluated in the following.

As shown, the host state might have chances to access the data due to the cooperation established with the UNHCR, such as the joint administration of Zaatari Refugee Camp. But most likely the entities Schimmel is referring to are rather related to the so-called destination countries,<sup>306</sup> such as the US and EU Member States. According to *Eric Töpfer*,<sup>307</sup> the increased interest of European secret services in cross-matching

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<sup>302</sup> IBID.

<sup>303</sup> LINDA RAFTREE, *WFP-Palantir and the Ethics of Humanitarian Data Sharing*, on: *Digital Impact*, <https://digitalimpact.io/a-discussion-on-wfp-palantir-and-the-ethics-of-humanitarian-data-sharing/> (accessed 25<sup>th</sup> May 2019).

<sup>304</sup> NATHANIEL A. RAYMOND, *Beyond “Do No Harm” and Individual Consent: Reckoning with the Emerging Ethical Challenges of Civil Society’s Use of Data*, in: LINNET TAYLOR/LUCIANO FLORIDI/BART VAN DER SLOOT (EDS.), *Group Privacy* (2017), p. 76.

<sup>305</sup> VOLKER SCHIMMEL, in: YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 7.54, <https://www.youtube.com/watch?v=oUtl8Hpg15w> (visited 28<sup>th</sup> January 2019).

<sup>306</sup> It has to be pointed out that countries labelled with this term are not the countries who host most refugees, UNCHR, *Global Trends 2017*, p. 17, fig. 4.

<sup>307</sup> Eric Töpfer is working as a researcher at the German Institute for Human Rights on homeland security and is responsible for reporting to the Fundamental Rights Agency.

databases to detect so-called “foreign fighters” can be named as an example for a group of entities highly interested in getting access to the data collected by UNHCR.<sup>308</sup> As a rather prominent example of potential databases to match with, the centralized European Asylum Dactyloscopy Database (EURODAC) should be mentioned. EURODAC is dedicated to enhance the capacities of EU Member States with regard to determining responsibilities regarding asylum applications based on and in accordance with the Dublin Regulations, namely *Dublin III*.<sup>309</sup>

In order to detect another example of potential interest in the biometrical data collected by UNHCR, one might refer to the US. In 2004 a list of recommendations on how to reform the United States Resettlement Program explicitly stated that obtaining biometric data of people potentially aiming to enter to the country is desirable.<sup>310</sup> In these recommendations, reference is made to the registration practices of the UNHCR. In Recommendation IV-3, the US government is advised to “encourage the UNHCR to work toward inclusion of biometric identifiers in registration documents and records wherever possible and should provide US funding for early UNHCR use of mobile fingerprint technology developed by the DHS [Department of Homeland Security].”<sup>311</sup> Albeit the recommendation is introduced as “enabling and improving resettlement”, it is immediately acknowledged that this goal will only be achieved in the long run. Instead of mentioning advantages of it for those who might profit from resettlement, the focus explicitly is put on “avoiding fraud, minimizing magnet effects and improving initial decisions about access.”<sup>312</sup> Without denying the value of long-term goals and perspectives, read together with the envisaged restrictive outcomes and the implementation of secret service technology, one is inclined to not perceive the request for increased biometric registration carried out by UNHCR as an entirely humanitarian endeavor. It does not seem to be farfetched to state that entities such as secret services and migration control agencies pursue interests which are determined by particular state interests, not by the best interest of people on the run. Perceived by some as “somewhat inevitable” due to the enhancement of “global

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<sup>308</sup> BETHAN STATON, *Eye spy: biometric aid system trials in Jordan*, in: *The New Humanitarian*, 18<sup>th</sup> May 2016, <https://www.thenewhumanitarian.org/analysis/2016/05/18/eye-spy-biometric-aid-system-trials-jordan> (accessed 26<sup>th</sup> May 2019).

<sup>309</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 26<sup>th</sup> June 2013, hereinafter: *Dublin III*.

<sup>310</sup> DAVID MARTIN, *The United States Refugee Admission Program: Reforms for a New Era of Refugee Resettlement* (2004), *Executive Summary*.

<sup>311</sup> *IBID*, p. 12.

<sup>312</sup> *IBID*.

interoperability between databases”,<sup>313</sup> the potential cross-matching of the database created by UNHCR/WFP with other databases constitutes a future repercussion of the use of iris scan in Zaatari today.

### 3.4 Conclusion

The examinations and discussions in the last three sub-chapters contain uncertainties to some extent. Claiming that this is not owed to negligent research, it points to the fact that all three dimensions discussed in relation to the use of iris scan technology as a governance tool, contain blurred aspects.

Starting with the determination of the technical terms and technological concepts related, already obtaining workable definitions for terms used by humanitarian actors such as the WFP and the UNHCR turned out to be complicated to impossible. This might be partly explained by the fact, that the technologies used are comparatively new. Besides the question, if such untested, non-defined technologies shall be implemented in environments hosting vulnerable populations, attention shall be drawn to the fact, that the novelty of the technology does not entirely absorb the lack of clarity. In 1973, a report by the Secretary's Advisory Committee on Automated Personal Data Systems, commissioned by the US Department of Health Education and Welfare, dealing with *standard universal identifiers*<sup>314</sup> came to the conclusion, that albeit not being per se “opposed to the concept of an [standard universal identifier] in the abstract”, “the dangers inherent in establishing an [standard universal identifier] without legal and social safeguards against the abuse of automated personal data systems far outweigh any of its practical benefits.”<sup>315</sup> The analysis of the rules and guidelines in place does not allow for the conclusion that such legal and social safeguards are implemented in Zaatari today. The selection of present and future repercussions resulting from the implementation of iris scan technology supports this notion. The occurrence of infringements on the rights of Zaatari Refugee Camp inhabitants already at present is likely to be increased in the future, as long as those responsible are lacking knowledge and awareness of the factual and potential short and long-term outcomes of the technology implemented.

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<sup>313</sup> REBEKAH THOMAS, *Biometrics, Migrants, and Human Rights* (2005), in: *The Online Journal of the Migration Policy Institute*, <https://www.migrationpolicy.org/article/biometrics-migrants-and-human-rights> (accessed 25<sup>th</sup> May 2019).

<sup>314</sup> In the report, standard universal identifier is described as “a systematically assigned label that, theoretically at least, distinguishes a person from all others”, followed by a listing of criteria to be met in order to fulfil this function, *Records, Computers and the Rights of Citizens*, Report of the Secretary's Advisory Committee on Automated Personal Data Systems (1973), retrieved at *Electronic Privacy Information Center*, <https://www.epic.org/privacy/hew1973report/>.

<sup>315</sup> JAMES L. WAYMAN, *Biometrics in Identity Management Systems* (2008), in: *IEEE Security&Privacy*, Vol. 6, Issue 2 (March/April), pp. 30-37 (36).



## 4 Challenging Governance – Human Rights and Means for Enactment

In this chapter, the ability of people living in Zaatari to challenge iris scan, the governance structures it imposes and thus resulting human rights violations will be discussed. To enable this discussion, the most relevant international human rights provisions with regard to iris scan practice will be depicted. In the second part of the Chapter, the potentially and factually available means for enactment will be scrutinized. A focus will be put on the accessibility of courts for Zaatari inhabitants in order to be able to effectively enforce their rights. Lastly, the situation faced will be discussed in light of the concept of a right to have rights coined by Arendt 70 years ago. Putting the existing means for enactment in perspective shall answer the question, if the developments in international human rights depicted in Chapter 1 provide for a right to have rights, and subsequently to enjoy their human rights, for Zaatari Refugee Camp inhabitants today.

### 4.1 Relevant human rights provisions

The overarching human right affected by the collection of biometrical data is the right to privacy. Therefore, its content and scope of application will be discussed with regard to data collection in the form of digital biometrics. In addition, attention will be drawn to potential infringements on the right to health.

#### 4.1.1 Right to Privacy

A way of describing the right to privacy is terming it “the right to be left alone”.<sup>316</sup> This seems to be in contradiction with Arendt’s perspective of ensuring one’s rights as a member of a political community. Thus, it could be argued, that using the right to have rights in this context contravenes Arendt’s intend when phrasing it. This concern shall be addressed in two dimensions. The first dimension is included in the right to privacy in its current understanding. It has to be acknowledged that the distinction between public and private life was often presented as being an antagonism.<sup>317</sup> This perception falls short of seeing the right to privacy in its entirety, the secrecy from the public only representing one aspect of the right to private life. This is for at least two reasons. First, the right to privacy includes private acts in public as well as those in the private sphere.<sup>318</sup> The second reason is, that the right to privacy, besides its core scope of protection, also serves as an important prerequisite for other human rights,

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<sup>316</sup> See as examples LOUIS D. BRANDEIS, *The Right to Privacy: On the Right to Be Let Alone* (1928/2014); RONALD J. KROTOSZYNSKI JR., *Privacy Revisited: A Global Perspective on the Right to be Left Alone* (2016).

<sup>317</sup> MANFRED NOWAK, *CCPR Commentary* (2005), 2<sup>nd</sup> revised edition, Art. 17, para 5.

<sup>318</sup> The term private sphere itself bears an array of philosophical as well as legal questions. The famous idiom that ‘also the private is political’ is used until today in various contexts, probably well-known with regard to intimate relationships and sexuality. It appears not mandatory for the purpose of this thesis to further delve into this question.

such as the freedom of expression. It is this function of the right to privacy serving as a precondition for the enjoyment of rights which form the fundamentals of democratic societies that would be overlooked characterizing public and private life as antagonists. Thus, applying the right to have rights to a situation involving the right to privacy is not contradictory.

The most widespread,<sup>319</sup> binding codification of the right to privacy in international human rights law can be found in Art. 17 ICCPR which states, that “no one shall be subjected to arbitrary or unlawful interference with his privacy” (Art. 17 (1) ICCPR) and provides for “the right to the protection of the law against such interference or attacks.” (Art. 17 (2) ICCPR).

As shown in Chapter 2 (2.3.2), the ICCPR is applicable to the situation in Zaatari Refugee Camp despite its legal anomalies. Besides the general applicability of the ICCPR, the material scope of application of Art. 17 ICCPR with regard to the situation at hand has to be determined.

The concept of privacy as an individual right dates back to the late 18<sup>th</sup> century.<sup>320</sup> In the beginning, it was solely understood as the “sphere of individual autonomy whose existence and field of action does not touch upon the sphere of liberty of others”<sup>321</sup>. It evolved over time, incorporating a wide range of aspects of the individual existence and autonomy of a person, such as identity, integrity and intimacy.<sup>322</sup>

The protection of personal data emerged as a sub-category of the protection of intimacy in face of “technological developments in electronic data processing.”<sup>323</sup> While today one might immediately think of the rather recent data collection and surveillance scandals, the first attention within the realm of the UN was drawn to it at the Teheran Conference celebrating the 20<sup>th</sup> Anniversary of the UDHR in 1968.<sup>324</sup> Already back then, the threat to privacy by electronic devices was acknowledged.<sup>325</sup> Albeit little obvious progress was made in the following years, the HRC addressed legal issues and shortcomings regarding data protection in General Comment 16,<sup>326</sup> demanding the implementation of essential data protection guarantees by states.<sup>327</sup> The

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<sup>319</sup> LEE A. BYGRAVE, *Data Privacy Law* (2014), p. 84.

<sup>320</sup> MANFRED NOWAK, *CCPR Commentary* (2005), 2<sup>nd</sup> revised edition, Art. 17 CCPR, para. 1.

<sup>321</sup> *IBID*, para. 3.

<sup>322</sup> *IBID*, paras. 16, 18, 20, 21.

<sup>323</sup> *IBID*, para. 21.

<sup>324</sup> KINFE MICHEAL YILMA, *The United Nations data privacy system and its limits* (2019), in: *International Review of Law, Computers & Technology*, Vol. 33, No. 2, pp. 224-248 (224).

<sup>325</sup> *IBID*.

<sup>326</sup> HRC, *General Comment No. 16*, 8<sup>th</sup> April 1988, HRI/Gen/1/Rev.9, Vol.1, para. 10.

<sup>327</sup> LEE A. BYGRAVE, *Data Protection Pursuant to the Right to Privacy in Human Rights Treaties* (1998), in: *International Journal of Law and Information Technology*, Vol. 6, No. 3, pp. 247-284 (252).

abovementioned *Guidelines for the Regulation of Computerized Personal Data Files*<sup>328</sup> are the major UN instrument regarding data protection until today.<sup>329</sup>

This outcome remained the last major effort in this regard until quite recently<sup>330</sup> – this time indeed sparked by the uncovering of large-scale surveillance and data collection conducted by both public and private actors, most prominently brought to public attention by the Snowden revelations.<sup>331</sup> In its aftermath, the position of the *Special Rapporteur on the Right to Privacy*<sup>332</sup> was created by the HRC on suggestion of the UNGA.<sup>333</sup> Appointed in July 2015, the current<sup>334</sup> Special Rapporteur Prof. Joseph Cannataci holds the mandate to gather information, study developments and make recommendations to ensure the right to privacy as enshrined in Art. 17 ICCPR and its protection against *inter alia* “challenges arising from new technologies”.<sup>335</sup>

The scope of Art. 17 ICCPR therefore includes protection against the measures at hand, namely both the collection and processing of biometrical data as well as rights to information, correction and deletion.<sup>336</sup> Recalling the shortcomings of the UNHCR Data Protection Policy as the only data protection safeguard in place concerning the implementation of iris scan technology for cash assistance<sup>337</sup> as well as the present and future repercussions resulting from it,<sup>338</sup> a violation of the right to privacy as enshrined in Art. 17 ICCPR has to be acknowledged.

#### 4.1.2 Right to Health

Another human right that is potentially affected by the use of iris scan for monetary assistance is the right to health. The right to health might be as well invoked in cases of one-time scans, but the requirement of scanning the iris whenever the head of the household has to buy groceries obviously multiplies the accounts of invasive technology applied to the body almost infinitely.

The right to health is enshrined in Art. 12 (1) ICESCR. The obligations enshrined in the ICESCR differ from those in the ICCPR insofar as the ICESCR provides for progressive realization in dependency on the resources of the state implementing them (Art.

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<sup>328</sup> See Chapter 3.2.2 *UNHCR Guidelines*.

<sup>329</sup> KINFE MICHEAL YILMA, *The United Nations data privacy system and its limits* (2019), in: *International Review of Law, Computers & Technology*, vol. 33, no. 2, pp. 224-248 (224).

<sup>330</sup> CARLY NYST/TOMAS FALCHETTA, *The Right to Privacy in the Digital Age* (2017), in: *Journal of Human Rights Practice*, Vol. 9, Issue 1, pp. 104-118 (104).

<sup>331</sup> MARC ROTENBERG, *Urgent Mandate, Unhurried Response: An Evaluation of the UN Special Rapporteur on the Right to Privacy* (2017), in: *European Data Protection Law Review*, Vol. 3, No. 1, pp. 47-70 (48).

<sup>332</sup> A/HCR/Res/28/18, *The Right to Privacy in the digital age*, 26<sup>th</sup> March 2015, para. 4.

<sup>333</sup> A/Res/69/166, *The Right to Privacy in the digital age*, 18<sup>th</sup> December 2014, para. 5.

<sup>334</sup> Although the initial mandate seemed expired as it was terminated to last three years and thus ended in 2018, this does not seem to prevent the Special Rapporteur from pursuing his mandate: <https://www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx> (accessed 21<sup>st</sup> May 2019).

<sup>335</sup> A/HCR/Res/28/18, *The Right to Privacy in the digital age*, 26<sup>th</sup> March 2015, para. 4 lit. a.

<sup>336</sup> MANFRED NOWAK, *CCPR Commentary* (2005), 2<sup>nd</sup> revised edition, Art. 17 CCPR, para. 23.

<sup>337</sup> See above 3.2.2 *UNHCR Guidelines*.

<sup>338</sup> See above 3.3.1 *Present Repercussions* and 3.3.2. *Future Repercussions*.

2 (1) ICESCR).<sup>339</sup> Without going further into detail, the conduct in question can be easily subsumed as being within the scope of the duty to respect one's right to health.<sup>340</sup> In this case, for realizing the right, no additional resources are needed, instead the authority has to just not interfere with the rights of the individual.<sup>341</sup>

Albeit iris recognition technology is deemed to be less intrusive than retina scan, there are reports both from within Zaatari Refugee Camp related to the use of EyePay<sup>342</sup> as well as from smartphone users using iris scan to unlock their phones.<sup>343</sup> Both complain about pain and other effects caused to their eyes while using the technology.<sup>344</sup>

The information that could be obtained in this regard was rather little. Therefore, potential ways of challenging a violation of the right to health will not be separately examined. Still, the recent usage of iris scan on such a large and frequent scale demands for scrutinization regarding infringements on the right to health and potential resulting violations of this right.

## 4.2 Means for enactment

After some general remarks regarding means for enactment of human rights, the access to courts for Zaatari inhabitants will be analyzed. Subsequently, the situation will be discussed applying Arendt's right to have rights to the situation at hand.

### 4.2.1 General remarks

The means for enactment of human rights are self-evidently not limited to courts. Still, for the purpose of this thesis, a focus on courts was chosen for two reasons.

First, a central issue of inquiry are the governance structures existing and imposed by the UNHCR in Zaatari Refugee Camp. Thus, considering other means of enactment, would risk absolving the UNHCR from its responsibilities.

Secondly, the access to the domestic court system in Art. 7 MoU is one of the few rights expressly conferred upon the inhabitants of Zaatari, while other means of enactment,

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<sup>339</sup> ECOSOC, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 11<sup>th</sup> August 2000, E/C.12/2000/4.

<sup>340</sup> OLIVIER DE SCHUTTER, *Economic, Social and Cultural Rights as Human Rights: An Introduction* (2013), p. 6, <https://sites.uclouvain.be/cridho/documents/Working.Papers/CRIDHO-WP2013-2-ODESchutterESCRights.pdf>.

<sup>341</sup> ECOSOC, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 11<sup>th</sup> August 2000, E/C.12/2000/4, para. 33.

<sup>342</sup> YASMIN FANSELOW, *Cashing in on Crisis? The Refugee Eye Scan Experiment*, redfish, min. 3.40/4.10, <https://www.youtube.com/watch?v=oUtl8Hpg15w> (visited 28<sup>th</sup> January 2019).

<sup>343</sup> STACEY LIBERATORE, *Is the galaxy S8 hazardous to eye sight? Samsung users claim iris scanner is causing eye discomfort*, 12<sup>th</sup> June 2017, in: <https://www.dailymail.co.uk/sciencetech/article-4597594/Samsung-users-say-iris-scanner-causing-eye-discomfort.html> (accessed 3<sup>rd</sup> June 2019).

<sup>344</sup> Albeit the higher intrusiveness of retinal scan was mentioned when describing the difference between iris recognition and retinal scan (3.1.1), this does not mean that iris scan itself is not intrusive, as it uses infrared light as well, just not beaming it as deep inside the eye as retinal scan, FOROUZAN GOLSHANI, *Digital Biometrics*, in: BORKO FURHT (ED), *Encyclopedia of Multimedia* (2008), 2<sup>nd</sup> edition, p. 162.

such as advocacy in civil society, are partly prohibited by the abovementioned prohibition to express oneself via interviews. Not meaning to approve this restriction, the examination of the question, if a right to have rights exists insofar as to enable inhabitants to challenge the use of iris scan technology seems to provide more fruitful, differentiated insights if focusing on a right actually provided for in the MoU.

No further attention will be paid to regional<sup>345</sup> or international human rights monitoring mechanisms. Jordan did not ratify the Optional Protocol to the ICCPR allowing individuals to bring claims before the HRC. A regional human rights court does not yet exist. Thus, the *de facto* abilities of Zaatari inhabitants to access Jordanian domestic courts will be discussed.

#### 4.2.2 Access to courts

In the 2018 UPR for Jordan, the German delegation to the Working Group positively mentioned the set-up of courts “to ensure access to justice for refugees, who were provided with legal advice, psychological support, and education and relief services.”<sup>346</sup> This observation seems to enhance Art. 7 MoU, providing refugees access to the Jordanian court system. Further information on which kind of courts the German delegation refers to and how they operate was unfortunately not retrievable. However, improving access to justice by the creation of *ad hoc* courts appears to address shortcomings occurring with regard to the mere capacities of the Jordanian court system – basically the number of cases and applicants the system is able to proceed. The questions asked in the context of this thesis have a different focus: they are less concerned with the factual capabilities of the court system but rather with the capabilities of camp inhabitants to access these courts in the first place. Thus, the main concern is less about the duration of a case or efficiency of the system, which could be tackled or at least improved by the set-up of *ad hoc* courts. It is rather about the *de facto* abilities and inabilities of the inhabitants of Zaatari to make use of the court system for the enforcement of their human rights.

From the examinations conducted in the previous chapters, three major obstacles regarding the access to Jordanian courts can be determined.

The first obstacle relates to the geographic location of the camp. Zaatari Refugee Camp is located in a desert, approximately 10 kilometers from the next town, Mafraq. Albeit this does not equate with the distances portrayed by Verdirame and Harrell-Bond with regard to Kenyan refugee camps,<sup>347</sup> the remote location and distance is likely to complicate physical accessibility to a court. Another obstacle in the spatial dimension is the encampment situation itself with regard to the ability of its

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<sup>345</sup> To examine, if jurisdiction of the ECtHR could be established due to the involvement of the UK-based company IrisGuard, would exceed the limits of this thesis by far.

<sup>346</sup> A/HRC/40/10, *Report of the Working Group on the Universal Periodic Review*, 2019, 40<sup>th</sup> session, para. 69.

<sup>347</sup> GUGLIELMO VERDIRAME/BARBARA HARRELL-BOND, *Rights in Exile* (2005), p. 182.

inhabitants to move. Albeit not explicitly stated in official documents and factsheets, Zaatari refugee camp is a confined space, surrounded by a perimeter fence including barbed wire.<sup>348</sup> Zaatari can be entered and left through “the gate of the camp.”<sup>349</sup> Thus, an allowance to pass the gate has to be obtained prior travelling. The conditions under which Zaatari inhabitants are able to pursue a travel permit differ depending on the purpose the permit is obtained for.<sup>350</sup> According to the International Labor Organization (ILO), Zaatari inhabitants can obtain a one-month-valid leave permit when registering their working permit with the employment office run by ILO and the UNHCR.<sup>351</sup> No information could be retrieved in relation to travel permits issued for administrative needs, such as filing a complaint with a court.

A second obstacle derives from unclarity regarding the liability of those who are potentially the perpetrators of human rights violations in an UNHCR-camp setting. This unclarity results from the triangle of relationships analyzed above. While the MoU shifts the responsibility from the Jordanian State to UNHCR, the relationship between the refugees and the UNHCR remains extensively unregulated. In addition, UNHCR staff enjoys immunity.<sup>352</sup> That means, while the responsibility and therefore activity mostly lies with the UNHCR, the judicial possibilities to hold this actor accountable in front of domestic courts for potential human rights violations remains quite limited.

A third obstacle is related to the legal status assigned to refugees in Jordan. As examined in Chapter 2, the presence on Jordanian territory even in case of granting refugee status by the UNHCR, remains legally uncertain due to the provisions enshrined in the MoU. Recent developments might lead to the conclusion that Jordan’s response to the large-scale arrival of people from Syria, as exemplified in the JRP, has eased the situation. But the ease derives from a regime of tolerance rather than from substantial improvement of the legal situation. The example of refoulement to Syria, first affecting Palestinians from Syria (but not exclusively), serves as evidence that the situation without a secured legal status remains fragile.<sup>353</sup> This fragility inevitably affects the *de facto* ability to make use of the domestic court system, as a person in limbo with regard

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<sup>348</sup> JEFF CRISP, *A Camp and Not A City*, in: *Refugees International Blog*, 9<sup>th</sup> October 2015, <https://www.refugeesinternational.org/blog/zaatari-camp-and-not-city> (accessed 3<sup>rd</sup> June 2019).

<sup>349</sup> UNHCR, *Operational Update Jordan March 2019*, p. 3.

<sup>350</sup> Albeit detailed information is difficult to obtain, a short overview is provided listing work permits, residence permits, camp bail out permits or medical reports as preconditions for travel permits, ZEYNEP SAHIN MENCUTEK, *Refugee Governance, State and Politics in the Middle East* (2019), p. 198.

<sup>351</sup> ILO, *Jordan’s first job centre for Syrian refugees opens in Zaatari camp*, 21<sup>st</sup> August 2017, [https://www.ilo.org/beirut/media-centre/news/WCMS\\_570884/lang--en/index.htm](https://www.ilo.org/beirut/media-centre/news/WCMS_570884/lang--en/index.htm) (accessed 3<sup>rd</sup> June 2019).

<sup>352</sup> GUGLIELMO VERDIRAME, *The UN and Human Rights– Who Guards the Guardians?* (2011), p. 271; *Privileges and Immunities*, para. 6.5 UNHCR Data Protection Policy.

<sup>353</sup> ZEYNEP SAHIN MENCUTEK, *Refugee Governance, State and Politics in the Middle East* (2019), p. 197.

to her or his legal status is naturally quite cautious to interact with the law enforcement authorities that inevitably pose a threat under such circumstances.

The limited access to the court system for inhabitants of Zaatari is found to have led to recourse to other forms of pursuing legal claims.<sup>354</sup>

These alternative ways, such as practice of law by religious leaders or the Syrian Family Clan Council,<sup>355</sup> are perceived as potential ways of legal empowerment, reincorporating international human rights and the rule of law in a situation where it would be otherwise absent.<sup>356</sup> Such a perception is criticized for several reasons,<sup>357</sup> some of the concerns and critical results also shared by those partially positive towards it.<sup>358</sup>

A shared observation is, that informal legal practices bear the potential of “facilitating legal disempowerment for certain demographics, including women.”<sup>359</sup> Without further delving into additional disadvantages, the decisive *lacuna* enshrined in these kind of alternative mechanisms of legal enforcement with regard to the questions at hand shall be depicted. While issues emerging among the inhabitants of the camp can be potentially solved by alternative means, issues emerging between the inhabitants and the UNHCR are unlikely to be dealt with in those fora. This realization is troubling when keeping in mind that a basic notion of human rights is to provide the individual protection against the acts of its government.<sup>360</sup> Thus, considering those alternative dispute solution practices as enforcing human rights and the rule of law has to be questioned, as one of the core dimensions of human rights is not at all covered. Therefore, the alternative avenues to pursue legal claims in Zaatari Refugee Camp will not be considered to provide access to courts in the sense of Art. 7 MoU.

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<sup>354</sup> GEORGE RIACH/ZOE JAMES, *Strengthening the rule of law on the margins: experiences from Za’atari refugee camp, Jordan* (2016), in: *The Int’l Journal of Human Rights*, Vol. 20, No. 4, pp. 549-566 (549).

<sup>355</sup> *IBID*, p.558.

<sup>356</sup> *IBID*, p.549.

<sup>357</sup> JENNIFER HYNDMAN, *Managing Displacement* (2000), p. 138; GUGLIELMO VERDIRAME, *The UN and Human Rights – Who Guards the Guardians?* (2011), p. 275.

<sup>358</sup> GEORGE RIACH/ZOE JAMES, *Strengthening the rule of law on the margins: experiences from Za’atari refugee camp, Jordan* (2016), in: *The Int’l Journal of Human Rights*, Vol. 20, No. 4, pp. 549-566 (562).

<sup>359</sup> *IBID*.

<sup>360</sup> JAN KLABBERS, *International Law* (2017), 2<sup>nd</sup> ed, p. 125.

### 4.2.3 A right to have rights

Recalling the understanding of Arendt's right to have rights as a literally judicial right, the right enabling one to demand the enforcement of all other human rights, the analysis of the means of Zaatari inhabitants to access Jordanian courts is deeply distressing.

The approach to term refugee camps *cities*, purportedly in order to acknowledge and improve the protracted encampment situation by claiming an evolution from an exceptional, temporary situation of humanitarian emergency into a "normal" living situation was mentioned above (Chapter 2.1).<sup>361</sup> One could assume that Arendt would follow this approach, as it seems that community, lost due to flight, is regained.<sup>362</sup> This notion has to be rejected in the light of the previous analysis of the normative framework in place, the access to justice for inhabitants of Zaatari, and Arendt's account on camps. In a situation where one lost home, Arendt forthright distinguishes between the continuation of one's life due to the right to have rights and the prolongation of one's life due to charity.<sup>363</sup> The latter clearly depicts the situation of inhabitants of Zaatari today. Despite the numerous codifications of human rights throughout the last decades, it appears to be still valid that "no law exists which could force the nations to feed them; their freedom of movement, if they have it at all, gives them no right to residence."<sup>364</sup>

The system of tolerance prevalent in Jordan<sup>365</sup> is a contemporary equivalent to what Arendt named "charity". Not claiming that the term *internment camp* used by Arendt can be entirely equated with the situation at hand, functions of and perceptions related to these two situations of encampment appear to be similar. Arendt states that camps already in the 1930s were "the only practical substitute for a nonexistent homeland", "the only 'country' the world had to offer the stateless".<sup>366</sup> This precariousness caused by lacking "a place in the world" is persistent till today.<sup>367</sup> And it might be no coincidence that a sentence said by refugees today reminds us of what Arendt

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<sup>361</sup> See 2.1 Zaatari - Background. It might be added that the critical view towards naming a refugee camp a city, as presented in Chapter 2.1, is not meant to disvalue situations in which refugee camps turned into cities or got integrated in an existing city, such as refugee camps inhabited by Palestinians in the Middle East, MICHEL AGIER, *Afterword: What Contemporary Camps Tell Us about the World to Come*, in: *Humanity*, Vol. 7, No. 3 Winter 2016, pp. 459-468 (465). Still, a major precondition for a place to be called a city from my point of view is the right of its inhabitants to move freely, thus precluding situations of continuous encampment.

<sup>362</sup> This notion is partly supported by calling the fragmentation of the judicial system in Zaatari as *Strengthening the rule of law at the margins* as done by GEORGE RIACH and ZOE JAMES.

<sup>363</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 387.

<sup>364</sup> *IBID.*

<sup>365</sup> GHIDA FRANGIEH, *Relations between UNHCR and Arab Governments: Memoranda of Understanding in Lebanon and Jordan* (2016), in: RIBALE SLEIMAN HAIDAR (ed.), *The Long-Term Challenges of Forced Migration*, LSE Middle East Centre Collected Papers, Vol. 6 (9/2016), p. 40.

<sup>366</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 371.

<sup>367</sup> ALISON KESBY, *The Right to Have Rights – Citizenship, Humanity, and International Law* (2012), p. 142.



wrote 70 years ago: “we live in a country of UNHCR’.”<sup>368</sup> This country of UNHCR of course could not exist back then, as UNHCR did not. But it indicates that UNHCR-run refugee camps might to some extent have taken up the role of the camps at Arendt’s time in a contemporary manner. Describing the situation as being perceived as a “surrogate state”<sup>369</sup> lead the authors of the paper quoted to the recommendation, that humanitarian actors shall focus more on preventing this perception to persist.<sup>370</sup> It can be stated that at least in the protracted refugee situation at hand, not only the perception persists, also the normative framework and governance structures indicate a factual state-like role of UNHCR.

Arendt’s criticism of the fundamental situation of rightlessness and her almost sarcastic stance on the practice of attempting to substitute one’s non-existent homeland with a camp clearly prevents from characterizing encampment situations today, and Zaatari Refugee Camp specifically, as communities providing for a right to have rights. But the right to have rights might be secured due to the “institutional and normative ascendancy of the human rights framework.”<sup>371</sup> This legal framework might have created universal personhood, replacing nationality as a precondition for benefitting from human rights at Arendt’s time.<sup>372</sup> This appears to be true when analyzing the international codifications of human rights on paper. Far from depicting anything close to a “post-national membership”,<sup>373</sup> even in the fragmented normative framework at hand the right to access domestic Jordanian courts is one out of a few rights explicitly awarded Zaatari inhabitants in the MoU. But the examination did not stop at that point. As shown in the analysis of *de facto* access to courts (4.2.2), the “discrepancy between formal guarantees of rights and the actually existing conditions of migrants”<sup>374</sup> cannot be ignored.

As it was shown that UNHCR in certain regards acts like a state, the existence of corresponding duties could not be obtained from the normative framework analysed. One could be inclined to assume existing duties with regard to the protection of human rights result from the fact that UNHCR took up a human rights-based approach to its activities.<sup>375</sup> To define what a human rights-based approach entails turns out to be

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<sup>368</sup> KATARZYNA GRABSKA, *Brothers or Poor Cousins? Rights, Policies and the Well-being of Refugees in Egypt*, in: ID/LYLA MEHTA (EDS), *Forced Displacement – Why Rights Matter* (2008), pp. 71-92 (87).

<sup>369</sup> AMY SLAUGHTER, JEFF CRISP, *A surrogate state? The role of UNHCR in protracted refugee situations* (2009), *UNHCR New Issues in Refugee Research*, Research Paper No. 168, p. 8.

<sup>370</sup> *IBID*, p. 10.

<sup>371</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 9.

<sup>372</sup> YASEMIN NUHOĞLU SOYSAL, *Limits of Citizenship: migrants and postnational membership in Europe* (1994), p 136.

<sup>373</sup> *IBID*.

<sup>374</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 10.

<sup>375</sup> DALLAL STEVENS, *Rights, needs, or assistance? The role of the UNHCR in refugee protection in the Middle East*, in: *The Int’l Journal of Human Rights* (2016), Vol. 20, No. 2, pp. 264-283 (272).

rather difficult, as different understandings are employed by different actors.<sup>376</sup> Instead of going into detail about the different definitions applied by actors in the development as well as humanitarian sector,<sup>377</sup> the focus shall be on a question significant for the situation at hand: does the implementation of a human rights-based approach result in UNHCR becoming a (state-like) duty-bearer with regard to human rights? Besides the absence of clear-cut accountability provisions towards Zaatari inhabitants, this question also seems to not have been answered on a more general level. It appears rather that states remain duty-bearers in relation to the humans present on their territory, while UNHCR is at best supporting the enforcement of human rights through capacity building.<sup>378</sup>

As reference to the state is made quite often with regard to human rights enforcement, a persisting contradiction in the field of international human rights has to be shortly addressed. While human rights first and foremost are conceptualized as rights of the individual towards and against the state,<sup>379</sup> it is the state who is still first and foremost responsible for realizing those rights.<sup>380</sup> This role emerges from the prevalent system of sovereign nation states. With the Peace of Westphalia, concluded in order to end the devastating Thirty Years' War in Europe, the modern nation state was created.<sup>381</sup> In order to establish peace, the independence of the newly created states was ensured by assigning sovereignty, meaning that no authority above the state exists.<sup>382</sup> The sovereign nation state was, for a long time, the only subject in international law.<sup>383</sup> The development of international human rights after World War II can be considered to have created an additional subject: the individual.<sup>384</sup> The societal and legal developments with regard to human rights have been depicted above (Chapter 1.2). Still, when scrutinizing the situation at hand it turned out that the only forum accessible for enacting one's rights for the individual in Jordan is Jordanian jurisdiction (Chapter 4.2.1). Thus, the individual as an independent subject in international human rights law appears to be still fragile and depended on the state for the *de facto* enforcement

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<sup>376</sup> *IBID*, pp. 270f.

<sup>377</sup> DALLAL STEVENS provides a comprehensive overview and insightful discussion of differing approaches to the concept in her paper.

<sup>378</sup> DALLAL STEVENS, *Rights, needs, or assistance? The role of the UNHCR in refugee protection in the Middle East*, in: *The Int'l Journal of Human Rights* (2016), Vol. 20, No. 2, pp. 264-283 (272).

<sup>379</sup> JAN KLABBERS, *International Law* (2017), 2<sup>nd</sup> ed, p. 113.

<sup>380</sup> PHILIP ALSTON/RYAN GOODMAN, *International Human Rights* (2013), p. 1047.

<sup>381</sup> JAN KLABBERS, *International Law* (2017), 2<sup>nd</sup> ed, p. 5; noteworthy seems the fact, that the Peace of Westphalia as well is listed as a precursor of the modern human rights regime, CHARLES R. BEITZ, *The Idea of Human Rights* (2009), p. 14.

<sup>382</sup> JAN KLABBERS, *International Law* (2017), 2<sup>nd</sup> ed, p. 69.

<sup>383</sup> Including few exceptions, such as the Holy Sea and the Maltese Order, JAN KLABBERS, *International Law* (2017), 2<sup>nd</sup> ed, p. 67.

<sup>384</sup> JAN KLABBERS, *International Law* (2017), 2<sup>nd</sup> ed, p. 107.

of its rights.<sup>385</sup> This dependency results from a persisting contradiction: while international (human rights) law is “a system for the constraint of state power [, it] is also a *product* of state power.”<sup>386</sup> Thus, Arendt’s demand for “a community willing and able to guarantee any rights whatsoever”<sup>387</sup> did not seem to have come into existence till today.

### 4.3 Conclusion

The answer to the question if international human rights law provides sufficient protection in the face of governance situations like Zaatari with a special focus on digital biometric tools used turns out to be two-folded.

As shown in 4.4.1, the international human rights regime only partly and rather recently tried to adapt to the challenges posed by the digital age and did not really keep pace so far. This almost inevitably leads to protection gaps in the international realm. These gaps are enlarged by the absence of effective enforcement mechanisms, especially for individual complaints. In a country where data protection laws are absent, and which is not in the realm and jurisdiction of one of the regional human rights protection systems, the preservation of the right to privacy is deemed difficile.

This situation is even aggravated regarding those living under the auspices of the UNHCR in an encampment situation. Their uncertain legal status inevitably prevents inhabitants to consult with the law enforcement authorities of the host country. The privileges and immunities of UNHCR staff as well as the mere dependency of Zaatari’s inhabitants on the UNHCR as their state-like authority *de facto* prevent the challenging of governance structures and practices with international human rights means. Thus, Arendt’s right to have rights in its practical sense still remains absent for those who have lost or never enjoyed the protection of their “own” government.

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<sup>385</sup> JACK DONNELLY, *The Relative Universality of Human Rights*, in: *Human Rights Quarterly* (2007), Vol. 29, No. 2, pp. 281-306 (283), JAN KLABBERS, *International Law* (2017), 2<sup>nd</sup> ed, p. 123.

<sup>386</sup> SUSAN MARKS, *State-Centrism, International Law, and the Anxieties of Influence*, in: *Leiden Journal of International Law* (2006), Vol. 19, No. 2, pp. 339-347 (346).

<sup>387</sup> HANNAH ARENDT, *The Origins of Totalitarianism* (1951/2017), p. 387.

## 5 Findings & Conclusion

In the following I will present the findings of the analysis conducted and present resulting conclusions. In addition to answering the research question and related sub-questions, I will also shortly provide an overview of the scalability of the findings.

The question, if the normative framework and resulting governance structures in UNHCR refugee camps in Jordan provide for a right to have rights enjoyed by its inhabitants, allowing to challenge the use of iris scan technology for cash assistance, has to be answered in the negative.

The right to have rights coined by Arendt 70 years ago, interpreted with regard to its contemporary, practical application, entails the ability for those *de facto* stateless due to displacement to challenge governance measures by judicial means, to claim their rights. The overview depicting the societal and legal developments with regard to international human rights shows a massive evolvement between 1951 and today, both with regard to codification and societal perception of the provisions and the concept.

When applying the results of this *lex lata* progress in the international realm with regard to those who live in situations of refugee encampment today, both on the normative and the factual level severe protection gaps surface.

The analysis of the normative framework in place governing the UNHCR-run refugee camp Zaatari, Jordan shows a fragmented set of rules not providing the legal certainty an existing right to have rights would ask for. I closely looked at three relationships in this governance structure, namely those between the Jordanian State, the UNHCR and the inhabitants of Zaatari Camp. Albeit all of them exist in the rather vague normative framework, the relationship between the UNHCR and the refugees is the least governed by legal norms. The rules governing the relation between the Jordanian state and the refugees rather put limitations on, than ensure rights of the people living in Zaatari. Due to the Memorandum of Understanding signed by Jordan and the UNHCR in 1998, the relationship between these two entities is comparatively better framed in the normative sense. This is not to say that it entails the level of clarity that might be expected in a situation of such complexity. Thus, the existing framework, while keeping all three actors of the triangle in limbo, has the most unsettling effects on the inhabitants of the camp. In this situation of legal uncertainty and unclarity with regard to rights and responsibilities, the implementation of iris scan for cash assistance purposes appears to be only partially governed by law.

The rules and guidelines in place substantively governing the implementation of iris scan, namely the UNHCR Data Protection Policy, in themselves show flaws, unclarity and wide margins of discretion with regard to the rights of those who's biometric data is collected and processed. This is true with regard to the consent of the persons of concern to the UNHCR as well as their possibilities of holding someone accountable

in case data breaches, function creeps and other violations of the rights enshrined in the Policy occur. The emphasis put on the consent of the people concerned cannot outweigh these flaws for several reasons. The lack of information and control by the individual over its biometrical data collected is one of the obstacles. With regard to the factual ways of implementation of iris scan in situations of encampment, further empirical research is needed, as only little, not scientifically validated, information is obtainable. Still, from the glimpses available it can be deduced that both the ways in which iris scan for monetary assistance was introduced to Zaatari inhabitants as well as the technology of the WFP blockchain technology used excludes those affected from being sufficiently informed and in control of their data.

In addition, free consent implies the possibility to not consent. As indicated *inter alia* by UNHCR officials, not consenting might cause negative effects. Thus, to ensure the consent's free characteristic, one has to have the option for taking legal action against potential negative consequences resulting from a refusal. Without judicial procedures in place, the precaution of consent itself is rendered ineffective. This points to the core issue with regard to the right to have rights in a judicial sense: the *de facto* available access to courts to claim one's rights.

Domestic Jordanian courts turned out to be the only available fora for the enactment of Zaatari inhabitants' rights. Accessing these courts is one out of very few rights refugees in Jordan are entitled to according to the MoU. The *de facto* access to these courts for Zaatari inhabitants is unlikely to materialize for several reasons resulting from the governance structures prevalent in the camp and the overall legal status of refugees in Jordan.

An explicit statement about the likelihood for Syrian refugees in Jordan to use their judicial rights in private lawsuits refers to their hesitance to do so as they "believe that locals are more powerful than them."<sup>388</sup> Through the lens of analysis of the existing governance structures and normative framework I was able to show that such hesitance is not only rooted in an perceived power disbalance between the local population and those comparatively new in the country, but as well in their precarious legal and political situation. This precariousness is determining both the relationship with the Jordanian state as well as with UNHCR. In such uncertainty, asserting one's rights is accompanied by the fear of retribution.<sup>389</sup>

The effects of the increased implementation of biometrical data is of course not limited to people on the run, just as the demand for biometric data as a precondition for accessing certain services (such as boarding an airplane) is not limited to *de facto*

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<sup>388</sup> ZEYNEP ŞAHİN MENCÜTEK, *Refugee Governance, State and Politics in the Middle East* (2019), p. 205.

<sup>389</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 10.

stateless persons.<sup>390</sup> Still, a decisive difference should not go unnoticed. *Louise Amoore* is throwing light on this difference by describing the opposite directions in which the biometrics obtained work for two different groups, in her example travellers:

“Whereas the trusted traveller biometrics tend to emphasize membership of (or inclusion in) a group based on pre-screening checks such as citizenship and past travel patterns, what I will call immigrant biometrics are based on ongoing surveillance and checks on patterns of behaviour. While for the trusted traveller the biometric submission is usually the end of the matter, the passport to ‘borders lite’ (if not to a borderless world), the risky traveller’s biometric submission is only the beginning of a world of perennial dataveillance where the border looms large.”<sup>391</sup>

Thus, the fact that digital biometrics are obtained also from other, less vulnerable, groups, shall not cover up the fundamental differences: the very impact of the biometrical data is different. This seems to point to an observation made by Joseph Pugliese, that the foundational question in biometrics, “Who are you?”, combined with “What are you?”, *inter alia* is answered by one’s geopolitical status.<sup>392</sup>

The enhancement of the increased limitation of human beings to their geopolitical and legal status by the collection of digital biometrics at the UNHCR is likely to result in severe future repercussions for Zaatari’s inhabitants, especially once they attempt to leave their current place of residence.

The situation of encampment in an UNHCR-run refugee camp shows the normative specificities as an important determining factor for the legal avenues available for people living in such camps. The same entity responsible for protection and livelihood but is at the same time holding legal and factual means of punishment. The analysis of the normative framework, underpinned by socio-legal research conducted by others, allows for the conclusion, that the role of UNHCR in situations of encampment amount to the organization acting as a surrogate state. Without suggesting that the sovereign nation state is an ideal model for the protection of human rights, a significant difference between the UNHCR and a democratic state has to be mentioned: from the information available, nothing close to separation of powers can be determined for UNHCR exercise of power. The absence of a “uniform set of procedural and substantive principles, based in law”<sup>393</sup> indicates that there are no established ways holding UNHCR accountable by the people of concern to the organization. Focusing on situations of encampment, a legal anomaly, and taking the shift of responsibility from the state to the UNHCR into consideration, the legal void in these situations is

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<sup>390</sup> Although portraying a digital identity as the precondition for a scenario in which a Syrian refugee living in Zaatari “could move – to Germany, or back to Syria” is showing a level of unawareness that is striking, RUSS JUSKALIAN, *Inside the Jordan refugee camp that runs on blockchain*, in: *MIT Technology Review »Blockchain«*, Issue May/June 2018.

<sup>391</sup> LOUISE AMOORE, *Biometric Borders: Governing mobilities in the war on terror* (2006), in: *Political Geography*, Vol. 25, pp. 336-351 (343).

<sup>392</sup> JOSEPH PUGLIESE, *Biometrics: Bodies, Technologies, Biopolitics* (2010), pp. 1f.

<sup>393</sup> DALLAL STEVENS, *Rights, needs, or assistance? The role of the UNHCR in refugee protection in the Middle East*, in: *The Int’l Journal of Human Rights* (2016), Vol. 20, No. 2, pp. 264-283 (273).

disturbing.<sup>394</sup> The question of “Who could monitor the monitor?”<sup>395</sup>, “Who guards the guardians?”<sup>396</sup>, with regard to humanitarian action still appears impossible to answer. Although the space and research conducted does not allow to further go into detail, I would like to point to a striking dichotomy.<sup>397</sup> According to the conclusions presented in here, the situation of encampment as one measure of humanitarian action allows for and manifests persisting protections gaps for *de facto* stateless, continuously preventing them from enjoying a right to have rights. An exactly opposing perception and characterization of humanitarian action appears to be the prevailing and portrayed one: humanitarian action itself is the nowadays version of the right to have rights Arendt asked for. Without having extended my research further in this direction, I can safely say that from my investigations of the interplay of biometrics, digital identity and humanitarian action, this notion appears to be prevalent. The language used often sets the provision of “the good” based on new technologies as improving the situation of the poorest of the poor, enabling them to access rights they would otherwise not be able to access due to their lack of identity. On the more general level, the widespread dedication of UN organizations as well as NGOs to pick up a human rights-based approach supports this notion of the humanitarian sector as the facilitator of a right to have rights. A notion I cannot support in the light of the findings of my research.

I would like to shortly address the transferability of the findings, their validity for other places in the geographical sense. The specific situation scrutinized is, roughly speaking, an entanglement between the Jordanian domestic laws, absence of international legal obligations regarding refugees resulting from human rights treaties, namely the 1951 Convention, an UNHCR-run refugee camp and the implementation of new technologies using biometrical data. In order to fully grasp the applicability of the findings in other settings, additional, probably comparative, research has to be conducted. Still, I would shortly like to list some indicators to show that the conclusions drawn are supposedly of importance to other situations as well. At the micro-level, the situation of refugees in Jordan but outside the camps, the conditions with regard to a right to have rights are similar: while refugees living in urban areas are not

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<sup>394</sup> JACOB STEVENS, *Prisons of the Stateless – The Derelictions of UNHCR*, in: *New Left Review*, Vol. 42, November/December 2006, pp. 53-67 (66).

<sup>395</sup> GUGLIELMO VERDIRAME/BARBARA HARRELL-BOND, *Rights in Exile* (2005), p. 17.

<sup>396</sup> GUGLIELMO VERDIRAME, *The UN and Human Rights – Who Guards the Guardians?* (2011).

<sup>397</sup> I am indebted to Markus Gunneflo for raising this perspective during the defence of my thesis. Him suggesting such a reading of the findings of my thesis made me realized that it was probably this contradiction between the prevailing perception of humanitarian situations and organizations as the one analysed in here and the factual conditions and legal implications for the people living in the situation that was a huge force in driving my curiosity in this research. Without being able to formulate it in this very apt way.

facing the downsides of encampment,<sup>398</sup> the other limitations and implications resulting from the blurred normative framework are likely to *de facto* harden the access to courts. Likewise, the UNHCR plays an important role in the life of refugees living in urban areas. Thus, the absence of safeguards to ensure the protection of rights towards the UNHCR is the same. This observation is similarly true for the situation faced by refugees in other states in the Middle East, as the absence of the international refugee protection framework and the position the UNHCR holds differs more in the details than in the general pattern. To draw a similar conclusion for the global level seems to be farfetched without further research. Still, the findings in this thesis<sup>399</sup> as well as conclusions drawn by other social-legal and anthropological researchers indicate, that even situations which are theoretically governed more intensely by international human rights law, there is a “perplexing persistence of rightlessness in an age of rights”<sup>400</sup> for those *de facto* stateless.

Thus, it has to be concluded that, despite a huge amount of international human rights codification took place during the past 70 years, Arendt’s mourning about the lack of a right to have rights as a pre-set for enjoying all other human rights is still valid. There appears to be little chances for the inhabitants of camps like Zaatari to challenge the governance measures forced upon them, like the use of iris scan technology, and the infringements such measures entail on their rights, such as the right to privacy. From the perspective of international human right law, this conclusion bears a disturbing notion: the situation examined at hand is not at first view located in a remote place with regard to its entanglement with international law – it is a place located under the auspices of the UNHCR. This demonstrates that using the right to have rights in the way Arendt did is still needed: to “interweave a radical critique of human rights with their radical rethinking.”<sup>401</sup> Despite the expansion of human rights, or rather because of it, a radical rethinking has to expose their factual use for those most in need of them. As expressed in one of the preceding quotations by Gündoğdu, the task is to expose the “blind spot in the system of rights” and make sure that it does not continue to “denote an area that escapes our understanding.” Not only with regard to states, but also with regard to actors in the humanitarian field supposedly doing no harm.

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<sup>398</sup> Namely the increased difficulties to access courts in the physical sense, as one first has to find a way to leave the camp which cease to apply for those already living in urban areas.

<sup>399</sup> The absence of a practical meaning of the right to privacy enshrined in Art. 17 ICCPR might serve as an indicator – it is one of the prominent international human rights treaties, as well in force in Jordan. Still, the chances for the individual to successfully enact the rights deriving from it are rather remote.

<sup>400</sup> AYTEN GÜNDOĞDU, *Rightlessness in an Age of Rights* (2015), p. 11.

<sup>401</sup> *IBID*, p. 14.



# Annex

## Annex A

### Memorandum of Understanding

Adaleh www.adaleh.com Tel/Fax: 06 5356652 Email: info@adaleh.com عدالة

مذكرة تفاهم بين الاردن و المفوضية السامية للامم المتحدة لشؤون اللاجئين لسنة 1998  
المنشورة على الصفحة 1463 من عدد الجريدة الرسمية رقم 4277 بتاريخ 1998/5/3

Memorandum of understanding between the Governm  
المنشورة  
Jordan and UNHCR 5 April 1998

حيث ان مكتب المفوضية السامية للامم المتحدة لشؤون اللاجئين قد انشى بموجب قرار الجمعية العامة للامم المتحدة 319 (د-4) في 3 كانون الاول 1 ديسمبر 1949 . وحيث ان النظام الاساسي للمفوضية السامية للامم المتحدة لشؤون اللاجئين الذي اعتمدهت الجمعية العامة للامم المتحدة بقرارها 428 (د-5) في 14 كانون الاول / ديسمبر 1950 ينص ضمن امور اخرى على ان تتولى المفوضية السامية للامم المتحدة لشؤون اللاجئين تحت سلطة الجمعية العامة مهمة تامين حماية دولية تحت رعاية الامم المتحدة للاجئين الذي يشملهم احكام النظام الاساسي والبحث عن حلول دائمة لمشكلة اللاجئين بمساعدة الحكومات وكذلك الهيئات الخاصة لذا وافقت على ذلك الحكومات المعنية على تسهيل اعادة هؤلاء اللاجئين الى اوطانهم بحسن اختيارهم او استيعابهم في مجتمعات وطنية جديدة . وحيث ان حكومة المملكة الاردنية الهاشمية والمفوضية السامية للامم المتحدة لشؤون اللاجئين قد وقعا على اتفاقية تعاون فيما بينهما في 30/تموز/يوليو 1997 . وحيث ان الاتفاق قد نص ضمن جملة امور على تمكين المفوضية من مباشرة انشطتها المتعلقة بالحماية الدولية والمساعدة الانسانية لصالح اللاجئين وكذلك الاشخاص الآخرين المشمولين بعنايتها في المملكة الاردنية الهاشمية ما عدا اللاجئين الفلسطينيين . و رغبة من حكومة المملكة الاردنية الهاشمية ومكتب المفوضية السامية للامم المتحدة لشؤون اللاجئين بوضع آلية يتم بموجبها التعامل مع الامور المتعلقة باللاجئين وكذلك الاشخاص المشمولين بعناية المفوضية . لذلك اتفقت حكومة المملكة الاردنية الهاشمية ومكتب المفوضية السامية للامم المتحدة لشؤون اللاجئين وفي روح من التعاون السوي على المسائل والامور المتضمنة في مذكرة التفاهم التالية .

#### المادة 1

لاغراض مذكرة التفاهم يكون تعريف اللاجئ كالاتي :  
اللاجئ هو شخص بسبب خوف له ما يبرره من التعرض للاضطهاد بسبب عرقه او دينه او جنسيته او انتمائه الى فئة اجتماعية معينة او آرائه السياسية خارج البلد التي يحمل جنسيته ولا يستطيع او لا يرغب في حماية ذلك البلد بسبب ذلك الخوف او كل من لا جنسية له وهو خارج بلد اقامته السابقة ولا يستطيع او لا يرغب بسبب ذلك الخوف في العودة الى ذلك البلد .

#### المادة 2

بغية تعزيز مؤسسة اللجوء في المملكة الاردنية الهاشمية وتمكين المفوضية السامية للامم المتحدة لشؤون اللاجئين من القيام بواجباتها في تقديم الحماية الدولية للاشخاص الواقعين تحت ولايتها اتفق الطرفان :  
أ . على وجوب احترام مبدأ عدم طرد او رد اي لاجئ يطلب اللجوء في المملكة الاردنية الهاشمية بساي صورة الى الحدود او  
الاقليم حيث تكون حياته او حريته مهددتان بسبب عرقه او دينه او جنسيته او انتمائه الى فئة اجتماعية معينة او  
بسبب آرائه السياسية .  
ب . على ان لا يشمل ذلك الاشخاص الذين يتم رفض طلباتهم من قبل مكتب المفوضية .

htrnled2:

18/05/2008

اتفق الطرفان على السماح لمكتب المفوضية بمقابلة ملتزمي اللجوء الذين يتم حجزهم بواسطة ا  
لامنية المختصة بسبب دخولهم اراضي المملكة الاردنية الهاشمية بطريقة غير مشروعة على ان ية  
لمفوضية بتحديد موقفه منهم بالقبول او الرفض خلال مدة لا تتجاوز سبعة ايام ما عدا الحالات الا  
لتي تستدعي اجراءات اخرى ولمدة لا تتجاوز الشهر .

#### لمادة 4

ترتب على ملتزمي اللجوء واللاجئين المعترف بهم واجبات نحو المملكة الاردنية الهاشمية خاصة  
بها بالالتزام بالقوانين والانظمة والتدابير المتخذة للمحافظة على النظام العام وعلى ملتزمي  
اللاجئين المعترف بهم عدم القيام باية نشاطات تخل بالامن او تسبب الاحراج في العلاقات بين  
الدول الاخرى والادلاء باية احاديث لوسائل الاعلام وفي حال مخالفتهم ذلك يعمل مكتب المفوض  
امين دخولهم لدولة ثالثة .

#### لمادة 5

ن منح اللجوء هو عمل انساني وسلمي في المقام الاول وعليه اتفق الطرفان على ضمان معاملة  
للجوء واللاجئين وفق المعايير الدولية المعترف بها واعطاء اللاجئ مركزاً قانونياً وفقاً للآتي :  
يقوم مكتب المفوضية بالعمل على ايجاد حل دائم للاجئ المعترف به اما بالعودة الطوعية لبلد  
بإعادة توطينه في بلد ثالث على ان لا تزيد الإقامة المؤقتة عن ستة اشهر .

#### لمادة 6

تفق الطرفان وحيثما ما كان ذلك ممكناً على معاملة اللاجئين معاملة لا تقل عن تلك الممنوحة لمو  
حيث ممارسة الشعائر الدينية والتربية الدينية لاولادهم ويليغي ان لا يكون هنالك تمييز بين اللاجئين  
حيث العرق او الدين او الوطن وبما لا يتعارض مع احكام الدستور الاردني وعلى ان لا تكون ه  
مخالفة للقوانين والانظمة المرعية والاداب العامة .

#### المادة 7

للاجئ حق التقاضي امام كافة المحاكم القائمة وفي سبيل التمتع في هذه المعاملة يكون حق  
والمعونة القضائية كل ما كان ذلك ممكناً وفق نفس المعاملة التي يتمتع بها المواطن .

#### المادة 8

ولكي ما يتمكن اللاجئ من توفير الحياة الكريمة لاسرته اتفق الطرفان على منح اللاجئ الموجود  
شرعية في المملكة الاردنية الهاشمية حق العمل لحسابه اذا كانت القوانين واللوائح المعمول به  
بذلك .

#### المادة 9

يمكن كذلك للاجئين الحاملين لشهادات معترف بها من قبل السلطات الاردنية المختصة والسرا  
ممارسة مهنة حرة ممارسة تلك المهنة اذا كانت القوانين واللوائح تسمح بذلك .

بغية ايجاد الحلول الدائمة لمشاكل اللجوء وفي سبيل تسهيل العودة الطوعية او اعادة التوطين في بلد ثالث  
اتفق الطرفان على اعفاء اللاجئين من غرامات تجاوز الإقامة وكذلك ضريبة المغادرة .

#### المادة 11

ولغايات توفير الحماية الدولية والحياة الكريمة للاجئين المحتاجين اتفق الطرفان على ان يستمر مكتب  
المفوضية في توفير تكاليف المعيشة من سكن واماكن وعلاج وذلك وفقاً للاسس المعمول بها في المفوضية .

#### المادة 12

وللاستجابة لحالات الطوارئ عند حدوث تفجعات للاجئين على نطاق كبير يتعاون الطرفان على الاستجابة  
السريعة لحالات الطوارئ ويشمل هذا الاتفاق انشاء آلية مشتركة للطوارئ والتعاون فيما بين اجهزة  
الحكومة الاردنية المختلفة والمفوضية لتوفير الغذاء والمياه والصرف الصحي والماوى والرعاية الطبية  
وتعزيز الامن الحسدي للاجئين وملتمسي اللجوء .

#### المادة 13

اتفق الطرفان على ان يتم التعامل مع المشاكل المتعلقة باللجوء واللاجئين من خلال مكتب التنسيق لدى  
وزارة الداخلية ويتعهد مكتب المفوضية السامية للامم المتحدة لشؤون اللاجئين بتزويد مكتب التنسيق بالطاقت  
اللازمه والامكانيات الفنية اللازمة لعمله وعلى ان يلتزم مكتب المفوضية باخبار مكتب التنسيق عن جميع  
حالات طلب اللجوء وبان تتم المخاطبات بخصوص قضايا اللجوء الانساني مع الجهات الامنية الاردنية من  
خلال مكتب منسق شؤون اللاجئين لدى وزارة الداخلية .

#### المادة 14

ولغايات المحافظة على مؤسسة اللجوء تنظر حكومة المملكة الاردنية الهاشمية في امر قيام آلية وطنية  
لتنظر في طلبات اللجوء .

واثباتا لما تقدم قام الممثلون الموقعون ادناه المعينون حسب الاصول من حكومة المملكة الاردنية الهاشمية  
والمفوضية السامية للامم المتحدة لشؤون اللاجئين بالتوقيع نيابة عن الطرفين .

**Memorandum of Understanding between the Government of Jordan and UNHCR**

5 April 1998

**UNOFFICIAL TRANSLATION**

**Preamble:**

The same preamble of the Cooperation Agreement was reproduced.

**Article (1):**

The definition of refugee as appeared in article (1) of the 1951 Convention was reproduced without the geographic and time limitations.

**Article (2):**

In order to safeguard the asylum institution in Jordan and to enable UNHCR to act within its mandate to provide international protection to persons falling within its mandate, it was agreed:

(1) that the principle of non-refoulement should be respected that no refugee seeking asylum in Jordan will be returned to a country where his life or freedom could be threatened because of his race, religion, nationality, membership of a particular social group or political opinion;

(2) above does not include persons whose applications for asylum were rejected by UNHCR.

**Article (3):**

It was agreed to allow UNHCR to interview asylum seekers who entered Jordan clandestinely and are being held by competent authorities UNHCR would make its determination within seven days except in exceptional cases requiring other procedures and the period should not exceed a month.

**Article (4):**

Asylum seekers and refugees are under a duty to Jordan and in particular they are required to observe laws, regulations and other arrangements required for public order.

Asylum seekers and refugees are under the duty not to take any activities violating security or embarrass government on its relations with other countries or giving interviews to the media. In the case of violation UNHCR would endeavour to resettle recognized refugees.

**Article (5):**

Asylum should be humanitarian and peaceful and therefore the two parties have agreed that asylum seekers and refugees should receive a treatment as per the international accepted standards. A refugee should receive legal status and UNHCR would endeavour to find recognized refugees a durable solution be it voluntary repatriation to the country of origin or resettlement in a third country. The sojourn of recognized refugees should not exceed six months.

**Article (6):**

It was agreed to accord refugees treatment as favourable as the accorded with respect to freedom to practice their religion and freedom as regards to religious education of



their children without discrimination as to race, religion or nationality and without contravening the constitution of Jordan provided that religious right are not contrary to the laws, regulations and public decency.

**Article (7):**

A refugee shall have free access to courts of law and in order to enjoy this treatment he has the right of litigation and legal assistance as accorded to the nationals where that is possible.

**Article (8):**

In order to enable a refugee to provide a living for his family it was agreed to accord refugee who is legally residing in Jordan to work for his own account whenever the laws and regulations permit.

**Article (9):**

Refugees holding degrees recognized by the competent Jordanian authorities could practice liberal professions if the laws and regulations permit.

**Article (10):**

In order to find durable solutions and to facilitate voluntary repatriation or resettlement in a third country it was agreed to except refugees from overstay fines and departure fees.

**Article (11):**

In order to provide international protection and assistance for needy refugees it was agreed that UNHCR would provide assistance in accordance with the regulations in force.

**Article (12):**

In order to respond to emergencies in the event of large influx it was agreed that the two parties will cooperate to provide quick response for emergencies including establishment of a joint emergency mechanism to make available food, water, sanitation, shelter and medical treatment and also to provide physical safety for refugees and asylum seekers.

**Article (13):**

It was agreed to deal with problems pertaining to asylum and refugees through the liaison office at the Ministry of Interior UNHCR Branch Office undertakes to provide the liaison office with required personnel and the technical facilities required for this work UNHCR B. O. undertakes to inform the liaison office of all asylum applications and all correspondences in respect of asylum should be through the liaison office at the Ministry of Interior.

**Article (14):**

In order to safeguard the asylum institution the Government of the Hashemite Kingdom of Jordan would consider the establishment of a national mechanism for status determination.

## **Agreement Between the Government of the Hashemite Kingdom of Jordan and the United Nations High Commissioner for Refugees**

30<sup>th</sup> July 1997

### **[Preamble]**

WHEREAS the Office of the United Nations High Commissioner for Refugees was established by the United Nations General Assembly Resolution 319 (IV) of 3 December 1949,

WHEREAS the Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the United Nations General Assembly in its resolution 428 (V) of 14 December 1950, provides, inter alia, that the High Commissioner, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities,

WHEREAS the Office of the United Nations High Commissioner for Refugees, a subsidiary organ established by the General Assembly pursuant to Article 22 of the Charter of the United Nations, is an integral part of the United Nations whose status, privileges and immunities are governed by the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946,

WHEREAS the Office of the United Nations High Commissioner for Refugees and the Government of the Hashemite Kingdom of Jordan wish to establish the terms and conditions under which the Office, within its mandate, shall be represented in the country,

NOW THEREFORE, the Office of the United Nations High Commissioner for Refugees and the Government of the Hashemite Kingdom of Jordan, in a spirit of friendly cooperation, have entered into this Agreement.

**Annex B**  
**EyePay-receipt**



## **Annex C**

### **Translation of Arabic-spoken text in**

#### **»Cashing in on Crisis? The Refugee Eye Scan Experiment« (2018)**

Report by Yasmin Fanselow (redfish) <https://www.youtube.com/watch?v=oUtl8Hpg15w>

The following translation is not meant to be literal, but content-focused for the purpose of reference to the core content of the statements.

#### **man in minute 0:46**

yasmin fanselow: When you started, were there any procedures or permission asked?

man: No, it was normal; they converted to the eye scan, so we converted with them.

#### **woman in minute 02:50**

yf: Where you supposed to provide consent or permission on this eye-scan thing?

woman: No, they just called upon us to take our eye-print.

#### **boy in minute 03:01**

yf: The first time you got registered, what did you do?

boy: First time I just went to the UN office and it worked immediately.

yf: Were you asked to sign a paper or something similar?

boy: No, it worked without a paper or anything.

#### **woman in minute 03:22**

yf: Was it necessary for you to agree or sign a paper?

woman: No, nothing.

yf: Do you know if there is any additional information they take?

woman: No, I don't know.

#### **boy in minute 03:32**

yf: Were you supposed to give a permission or consent?

boy: No, it just happens through the agency.

#### **women in minute 03:40**

woman: My eye hurts from this scanning, they say it's not good for the eye

second woman: No, it's ok!

woman: When I look at it, my eye instantly start filling in tears. There are people with problems regarding their eyes and in their case it takes a lot of time until it is actually working.

The VISA card was way better: to hand-in your VISA card is better than using the eye.

yf: Is it because of the pain?

Woman: Yes of course, it will be in tears.

#### **man in minute 04:10**

man: Don't widely open your eyes.

yf: Why?

man: Because if you widely open your eyes, the machine will sense the tears appearing in your eyes and the scan won't work.



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28<sup>th</sup> July 1951, entry into force 22<sup>nd</sup> April 1954

189 UNTS 137

*Convention on the Elimination of All Forms of Discrimination Against Women*

18th December 1979, entry into force 3<sup>rd</sup> September 1981

1249 UNTS 13

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30<sup>th</sup> August 1961, entry into force 13<sup>th</sup> December 1975

989 UNTS 175

*Convention Relating to the Status of Stateless Persons*

28th September 1954, entry into force 6th June 1960

360 UNTS 117

*Déclaration des droits de l'homme et du citoyen (Assemblée Nationale)*

26th August 1789

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16th December 1966, entry into force 23rd March 1976

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16th December 1966, entry into force 3rd January 1976

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