

## **Statelessness in Brazil: from invisibility to the invitation for becoming a citizen**

Recebido: 31-12-2018

Aprovado: 10-03-2019

Thiago Assunção<sup>1</sup>

### **Introduction**

According to the United Nations High Commissioner for Refugees, more than 10 million persons do not have nationality nowadays. Under the law, they do not belong anywhere. Without this fundamental tie with a state, the stateless persons have serious trouble for exercising their rights, accessing public services, and pertaining to a political community.

The question of statelessness is not much studied in Brazil and Latin America, in comparison with migrations and forced displacements. It is viewed almost as a residual legal issue, in face of the extreme poverty, natural disasters, armed conflicts and all sorts of persecutions, which cause millions of people to flee from their countries of origin worldwide. However, many stateless persons are also refugees, who were arbitrarily deprived of their rights for reasons of discrimination. Conversely, some refugees become stateless because of the persecution to which they are subject. Others are born stateless, inheriting a condition that they did not choose nor had any chance to overcome. And some people remain stateless by force of occupations and state successions, leading large groups to the limbo of pertaining nowhere. Therefore, statelessness represents a very serious issue for the people concerned, producing in some cases situations of severe insecurity and violence, causing forced displacements and in certain cases producing generations of unrooted children.

---

<sup>1</sup> PhD in International Law by the University of Sao Paulo - USP, with a period as visiting researcher at the University of Geneva (Switzerland). Masters in Peace Studies: Human Rights, International Cooperation and Policies of the European Union, at the University of Rome III (Italy). Assistant Professor of International Law and Human Rights, and Politics, State and Constitution at University Center of Curitiba - Unicuritiba and University Positivo - UP. GGF Fellow of the Global Public Policy Institute (Germany). Brasil. Contact: thiago\_assuncao@hotmail.com

Thus, the aim of this research is to understand the phenomenon of statelessness, in the light of the international literature and official documents on the subject. It will be examined the many causes and consequences of this phenomenon, as well as the current attempts to eradicate statelessness globally. Turning to South America, the paper focuses on initiatives which are pointing to the gradual establishment of a regional citizenship, starting with the free movement of individuals within the continent. Finally, it is closely analyzed the question of statelessness in Brazil, both before and after the adoption of a new migratory law in 2017.

### **Conceptualizing Statelessness**

Before talking about statelessness in Brazil, it is important to understand what exactly means the phenomenon of statelessness. Paul Weis, in a seminal book from 1979 asserts that “a person not having a nationality under the law of any State is called stateless, *apatride*, *apolide*, or *heimatlos*” (WEIS, 1979). In a pioneering work, Professor José F. M. Guerios from the Federal University of Paraná (UFPR, Brazil), analyzed in 1936 the term *apátrida* (stateless) in Portuguese. He discussed the subject before the Second World War, which revealed and multiplied the problem worldwide. In his view, from the adjective *apátrida* results the noun “*apatrídida*”<sup>2</sup> (statelessness), “which means etymologically ‘*sem pátria*’ [without homeland]” (GUERIOS, 1936).

Nowadays, the most authorized concept of statelessness is the one provided by the 1954 Convention Relating to the Status of Stateless Persons, for which stateless is “a person who is not considered as a national by any State under the operation of its law” (UN GENERAL ASSEMBLY, 1954). This concept is consolidated to the point that the International Law Commission has considered it as part of the customary international law (UNITED NATIONS, 2006), which means that it should be used by all states when dealing with the question of statelessness, even if they have not acceded to the convention (VAN WAAS, 2014).

Thus, what matters for the definition of statelessness is the existence or not of a formal bond of nationality, without consideration in principle to the effectiveness of this tie. Which means that, since nationality is the bond between the individual and the state, the absence of this legal tie is what is called statelessness.

---

<sup>2</sup> Nowadays in Portuguese the word used is *apatridia*, without accent.

Firstly, it is necessary to look to what is a “state” for the application of the definition. The criteria is asserted in the 1933 Montevideo Convention on Rights and Duties of States, which provides that a state must have a permanent population, a defined territory, a government and the capacity to establish relations with others states<sup>3</sup>. It is not necessary, for being a state, to have received large scale recognition, nor to have become a member of the United Nations<sup>4</sup>. Conversely, if the state of nationality ceases to exist under international law, that person would be automatically stateless, unless she has another nationality.

In order to establish whether an individual is or not, considered as a national under the operation of a state law, it is required a careful analysis on each individual case, since it is not just a matter of law, but also of facts, considering “a State may not in practice follow the letter of the law” (UNHCR, 2014). Thus, a meticulous analysis of the nationality legislation of the states to which the individual might have links is ought to take place.

The stateless condition is an exceptional situation. Thus, it is preferable to grant a nationality for those who do not have one, making available all the rights attached to the condition of being a citizen, then to recognize them as stateless (UNHCR, 2014). Nevertheless, a recognition and protection international framework was built to identify these persons and give them a legal status, guaranteeing minimal rights and a standard of treatment, while they do not count with a proper nationality.

Finally, the definition above applies whether the individual is inside or outside of his country of origin, habitual residence or former nationality. It does not matter if he/she crossed or not an international border, differently from the definition of refugee (UNHCR, 2010). However, an individual can be a refugee, and a stateless at the same time. When this is the case, the stateless refugee must benefit from the protection of the 1951 Convention on the Status of Refugees, in addition to the protection of the 1954 Statelessness Convention, since the former has in most circumstances a higher standard of protection, including the prohibition against *refoulement* (UNHCR, 2010).

---

<sup>3</sup> In addition, “once a State is established, there is a strong presumption in international law as to its continuity irrespective of the effectiveness of its government. Therefore, a State which loses an effective central government because of internal conflict can nevertheless remain a ‘State’ for the purposes of Article 1(1)”. (UNHCR, 2014).

<sup>4</sup> According to the UNHCR, “in making an Article 1(1) determination, a decision-maker may be inclined to look toward his or her State’s official stance on a particular entity’s legal personality. Such an approach could, however, lead to decisions influenced more by the political position of the government of the State making the determination rather than the position of the entity in international law”. (UNHCR, 2014).

However, the concept above describes just part of the problem, as many people do have the formal bond of nationality to a state, but they are not able to count on their country of nationality for any protection. That means they are not able to access the rights associated to their nationality, such as to return home from abroad, or to receive diplomatic protection or consular assistance. They would be called *de facto* statelessness, different from the *de juris* stateless, who are the only ones recognized by the international law. In any case, this distinction is not pacific, and to analyzed it properly would fall out of the scope of this paper.

### **Causes of Statelessness**

Statelessness has many different causes. First, it can be caused by the unintentional consequence of a negative conflict of nationality laws. The most common case is when a child is born in the territory of a country which has nationality law based on *jus sanguinis* (“by blood”), but her parents are nationals of a state which uses *jus soli* (place of birth) to concede nationality. In this case, the child will not be entitled to nationality from the country of origin of her parents, because she was not born in that territory, neither be entitled to the nationality of the country where she was born, because what matters for *jus sanguinis* countries is the nationality your parents have. Therefore, *jus sanguinis* principle is especially susceptible of generating statelessness.

Some scholars defend that it would be desirable to universally adopt the *jus soli* principle, since “every child is born somewhere, and this place of birth is usually relatively easy to establish” (UNHCR, 2010). Even if it could appear simple, in fact *jus soli* raises its own concerns, one of the most important being the possibility of an increase of the “birth tourism”, that is, a pregnant mother who chooses the country where she wants her child to be born, for nationality purposes<sup>5</sup>. As a matter of fact, a mix of both *jus sanguinis* and *jus soli* criteria is the rule in most countries, and lately, legal reforms have been made in some states, in order to avoid negative conflicts of law from which could result stateless persons.

There is a special concern globally about childhood statelessness. When a child is born stateless, this condition can affect her for many years, if not her entirely life. She will most

---

<sup>5</sup> In a world where inequality among rich and poor countries are huge, and life opportunities vary completely depending on where one is born, parents trying to improve their children future is not something to be blamed. At the same time, from the host state perspective, to have foreign people coming exclusively to give birth and so acquire its citizenship, without any effective link with the country, may appear for some a subversion of the nationality rules.

likely have problems to go to school, to receive health care, social assistance and other rights designed to protect children. “This is why a child’s right to acquire a nationality is laid down in numerous international instruments, including the almost universally ratified 1989 Convention on the Rights of the Child (CRC)” (GROOT, 2014). In addition, one of the most problematic issues generating stateless children nowadays is the lack of adequate birth registration. Birth registration is determinant to the establishment of nationality, because it is in this document that the place of birth and parentage of the child is registered. Yet, at least thirty percent of all births are not registered worldwide, affecting more than 40 million newborns each year (UNICEF, 2017). The most vulnerable children are the indigenous and the ones from particular minorities, such as isolated ethnic groups, children of refugees and internally displaced people, and children born from illiterate parents or undocumented immigrants (VAN WAAS, 2007). Causes of non-registration amount to parents’ lack of knowledge about the importance of registration, difficulties of time and resources to accede to registration, and in case of irregular migrants, fear of detention or deportation (NONNENMACHER, CHOLEWINSKI, 2014). Also, the state can be the cause of non-registration by imposing complex bureaucratic procedures, not providing this public service appropriately or even connecting civil registration with migratory law, discouraging or impeding irregular migrants from registering their children (NONNENMACHER, CHOLEWINSKI, 2014).

In addition, one of the biggest legal matters which still today causes statelessness are the legal differences provided in many nationality legislations between men and women. Reportedly, up to sixty countries in the world have gender-discriminatory nationality provisions (Global Campaign for Equal Nationality Rights, 2017). Situations of statelessness may arise, for instance, when the marriage with a non-national, by the wife, is “punished” with the loss of her original nationality. If the state of nationality of the husband does not provide the spouse with automatic conferral of nationality by marriage, she could become stateless. In the situation of divorce, some legislations provide that the nationality obtained through the marriage is lost, and in the case the person does not have another nationality or has lost the original one, she will be rendered stateless. It is the case of Vietnam, where more than 50,000 brides married foreigners since 2002, and some close richer countries (e.g. Taiwan) require that, in order to have naturalization by marriage, they renounce first their

Vietnamese nationality. But if the marriage does not go well and they have to divorce, they simply lose their newly acquired nationality and become stateless (MCKINSEY, 2007).

Another serious question is the deprivation of nationality which occurs when, by any reason, someone's nationality is taken away by the State. Persons who have achieved nationality by naturalization are more vulnerable to deprivation of nationality, considering there are often legal mechanisms to punish this "adopted citizens" if they do not correspond with righteous criteria specified by the legislation, such as not committing certain types of crimes, for example. It is the case in Brazil, where the 1988 Constitution states that it will lose Brazilian nationality the naturalized citizen who "had cancelled its naturalization, by judicial decision, due to activity harmful to the national interest" (BRASIL, 1988)<sup>6</sup>. Also, some states strip the citizenship of persons accused or condemned of terrorism.

One of the most serious situations that can lead to statelessness is when a state deliberately denies or withdraws the nationality of a person or group, on the grounds of any given difference, amounting to a form of discrimination. For instance, nationality can be used by a government for political reasons, when the state withdraws arbitrarily the individual's nationality based on political opinions (CLARO, 2015). The 1948 UDHR clearly states that "no one shall be arbitrarily deprived of his nationality (...)" (UN GENERAL ASSEMBLY, 1948). However, deprivation of nationality is still common for minority groups, which by any historical or political reason are discriminated inside a State and thus, the government will either denationalize them, or deny access to citizenship for the members of such group. The most well-known example is the Nazi persecution towards Jews and other minorities, part of whom were denationalized if not fiercely persecuted or exterminated. Existing groups facing this risk nowadays include Kurds in Iraq and Syria, the Rohingyas in Myanmar, many Haitians in Dominican Republic and the Lhotshampas in Bhutan.

Statelessness can be also caused by state succession. Whenever there is change in sovereignty of a given territory, the question of what happens to the population living in that territory imposes. In this case, it is necessary to establish transitory rules, as well as new ones, defining the criteria chosen to regulate both the access to nationality of the new state, as well as the adaptation for the inhabitants of the former state now living under a new state. One of the difficulties is that the decision making often overlooks certain people affected, either

---

<sup>6</sup> Article 12, § 4º, I. Original text: "§ 4º - Será declarada a perda da nacionalidade do brasileiro que: I - tiver cancelada sua naturalização, por sentença judicial, em virtude de atividade nociva ao interesse nacional". (BRASIL, 1988).

because of politic, ethnical or cultural differences, but also considering the complexity of the task, which can lead to unintended consequences caused by gaps in the legislation. Both the First<sup>7</sup> and the Second World Wars produced a big contingent of stateless people. Since the end of the Second War, the decolonization process led to the appearance of more than one hundred new states, and with the end of the Cold War, yet others became independent. A considerable amount of the today stateless persons are still from one of those complicated transitions. “The Estate Tamils in Sri Lanka, the Tatars in the Ukraine, the Bihari in Bangladesh and the ex-Russians in Latvia and Estonia are but a few examples” (VAN WAAS, 2008).

Finally, climate change can lead to low-lying island states to disappear in the future, due to the rise of the sea level. Nationals of Tuvalu, Kiribati, and other states may be forced to leave their country. The entire populations of those countries may become stateless (UNHCR, 2009).

### **Consequences of statelessness**

Statelessness is likely to have a critical impact on any person’s life. By making the individual legally invisible, it will essentially interfere on his/her capacity of developing and having a dignified life. Although it is not largely known, it is important to recognize that statelessness is not a minor procedural issue, but rather a concrete, substantial question of denial of a bundle of rights, affecting many aspects of the individual membership to the national and local community.

As Hannah Arendt eloquently affirms in her seminal work *Origins of Totalitarianism*, there are many losses involved when a person becomes stateless:

The first loss is the loss of their homes, and this meant the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the world. The second was the loss of any government protection; the stateless person was “out of legality altogether”. The calamity was that the stateless “do not belong to any community whatsoever”. They are reduced to the abstract nakedness of being nothing but human (ARENDR, 2012).

---

<sup>7</sup> One of the first examples of mass statelessness occurred in the heart of central Europe. After the end of First World War, with the dissolution of the Austro-Hungarian Empire, and the rearrangement of the European map, many people remained stateless. They were called literally *heimatlosen*, meaning “homeless” (VAN WAAS, 2008).

People without nationality, in a world where every human being still depends on the link to a nation-state to exercise rights, will face severe consequences on their daily lives. Their stateless condition, in the first place, means that they are not recognized as citizens by any country. Thus, they are likely to have no birth registration document, or if they do, that document does not give them access to a nationality. In this situation, they cannot get travel documents, as a passport, what will restrict their ability to travel abroad. Stateless persons also have legal to get married and raise their children. They normally have a critical issue with identity and sense of belonging, since they are citizens of nowhere, what can affect even their psychological and social wellbeing. It is indeed a situation that can lead to negative impacts on the mental health of the people affected<sup>8</sup>.

Stateless people face lack of access to formal education, what precludes their human development; find barriers to receive adequate health care, since documents are normally required to register in a health service and receive medical care; have many difficulties to access the labor market, with consequences for their livelihood and family life; have increased chances of being explored and suffer abuses, such as human trafficking and forced labour; face restrictions in order to register the birth of their children, involuntarily condemning them to the same hardships of their parents; have trouble in acquiring, maintaining and negotiating property rights, and even opening a simple bank account or getting a driver's license; are often denied access to social assistance, social security and retirement; have affected their ability to move freely, sometimes inside their country of residence, but especially to go to any other country. Stateless persons will not be able to participate in the government, by voting or standing for elections, and will not be authorized to work in the public service; they can be victims of mass expulsions and arbitrary detention; They can also be persecuted exactly for having denied access to nationality, being as a consequence marginalized and risking to face violence, what can lead to forced displacements. And the list could go on, since almost every aspect of the political, legal and social life of a stateless person can potentially be affected by their limbo condition. They have disappeared into the cracks of the law.

Although international human rights law should apply to all, citizens and non-citizens, there is a big distance from the theory and the practice. In this context, the specific stateless protection framework gains relevance, since there is a distance between the declaration of

---

<sup>8</sup> According to the UNHCR, statelessness can even “lead to depression, alcoholism, (domestic) violence and suicide” (UNHCR, 2012).



rights by human rights treaties, conceived by the states to confer rights mainly to their nationals, and the stateless people, whose plight falls into the gaps of national legal systems.

From the time they do not have a place in which they are legally welcome, considering they are “non-nationals” everywhere, stateless persons in context of migration are particularly vulnerable to arbitrary detention. They can either be considered simply irregular migrants, subject to criminalization for this fact alone, or the state can put them in administrative imprisonment until they manage to establish the person’s identity. And even when the country of origin is confirmed, being stateless will make impossible for the person deprived of liberty to be sent back to “his/her country”, since technically there is no country where to go back, or at least, with the obligation to accept him/her back.

Statelessness has a drastic impact on children. Apart from their initial lack of legal personality, which can cause since the beginning of life, insecurity regarding their citizenship status, and thus a troublesome relation with personal identity and belonging, stateless children can also be prevented to access education and child protection health programs. Moreover, stateless children “are particularly vulnerable to exploitation and abuse, including being trafficked, forced into hazardous labour and sexual exploitation, locked up alongside adults and deported” (UNHCR, 2012).

Stateless women also suffer specific hazards with their absence of nationality, since there is still today much gender-based discrimination across nationality laws. Those regulations may “discriminate against women when it comes to the ability of women to acquire, change or retain their nationality (typically upon marriage to a foreigner) or in relation to conferral of their nationality upon their children” (GOVIL; EDWARDS, 2014). Therefore, many women pay the price of this discriminatory treatment when it comes to access and exercise their citizenship. The biggest consequence in this case is to remain stateless, even when men in the same situation are not. For instance, if the woman marries with a stateless man in Brunei, Burundi, Iran, Nepal, Qatar, Somalia, Sudan and Swaziland, their children would be automatically stateless, since just the father passes on the nationality in these countries. The same situation can occur in relation to births out of marriage, when the women are not entitled by law to pass nationality alone, and the father do not recognize the child as yours.

Statelessness affects not only the concern person herself, with all the consequences stated above. It also affects the family of origin, which in many cases have to pass together

through the pain of seeing a beloved person's plight for belonging. It affects negatively also the local, regional and national societies where stateless people are inserted. Groups of stateless are often marginalized, stigmatized and isolated, what can cause the raise of conflicts, violence and human insecurity<sup>9</sup>.

And finally, statelessness can affect the relations between actors of the international system, as diplomatic disagreements over conflicts of nationality and issues between different states relating to migrant stateless mobility and permanence, what could even have consequences for the international peace and security.

From the state perspective, to have stateless persons is a problem because those are persons which the state cannot exercise any control, and in addition, they are unable to be expelled anywhere. For instance, the United Kingdom criminalized the action of asylum seekers destroying their own passports, since some would pretend to be stateless, in an attempt not to be deported by British authorities (GOVIL; EDWARDS, 2014). That is, for the state concerned, stateless persons can be considered dangerous by not upholding loyalty to the state, as far as legally they do not enjoy citizen's rights, and so they also would not have obligations in face of the state.

In fact, although not common, becoming stateless can be a free choice, if the domestic legislation allows that possibility. It is the curious case of Garry Davis, an American born gentleman, who after serving for the United States at World War II as a bomber pilot, decided to renounce to his American nationality, and declared himself a "citizen of the world"<sup>10</sup>, becoming a stateless person.

That is a different form to look at the question of statelessness, as the mere possibility of choosing to become stateless to escape state persecution, either a legitimate one, as the case of an investigation or accusation of a criminal offence; or as a way of escaping the arbitrary

---

<sup>9</sup> Such as the Rohingya people in Myanmar, which have been suffering systematic violence at least since 2012, with many thousands forced to flee for neighboring countries, constituting one of the most serious cases of displaced stateless people in the world nowadays.

<sup>10</sup> When Mr. Davis renounced American citizenship, and established in Paris in 1948, he created a movement called One World, which received support from Albert Einstein, Albert Camus and Jean Paul Sartre. He then created the International Registry of World Citizens, which started to issue "world citizen" passports. Since then, reportedly half a million passports have been issued (the service exists until today, Washington D.C. based), and "Burkina Faso, Ecuador, Mauritania, Tanzania, Togo, Zambia — have formally recognized the passport", allowing people to enter their territory with it, according to the NY Times. Mr. Davis died in 2013 aged 91, but not without leaving many stories and a persistent Utopian dream as legacy. (FOX, 2013). More information at <http://worldservice.org>

power of a dictatorial regime, could put the stateless condition in evidence in a dystopic future<sup>11</sup>.

In any case, stateless persons themselves are clearly the most affected by their legal condition, considering the precarious and vulnerable situation they are exposed to. Commenting on Hannah Arendt's analysis on the matter, Gibney explains that the contemporary situation is much different from the one viewed by her on the inter-war period, which was based on mass denationalization and expulsion of people from their homes. Nowadays the problem of the stateless is that many of them were not expelled from their countries, but face lack of recognition of their citizenship by the government of the state where they live (GIBNEY, 2014).

The insecure atmosphere connected to the uncertain legal status of being stateless is one of the hardest faces of the question. The stateless can turn easily into "disposable" individuals, even though in some cases not even deportation is possible, due to lack of travel documentation. It might be the case then of worse forms of territorial exclusion, such as the confinement "in detention centers, off-shore islands and even mass extermination camp [which] can make deportation look civilized" (GIBNEY, 2014).

Finally, by not having formal citizenship, stateless persons are not able to participate in the public life of a country, for example by voting or being voted, but also to express freely one's opinion, or being able to have a stake and influence somehow the direction of society. Indeed, not being able to participate anyway in the public sphere is a way of dehumanizing stateless persons, because what counts is not *who* they are – products of their thoughts and words – but rather *what* they are – their origin, ethnicity or migratory status (GIBNEY, 2014).

The objectification of stateless people led to the most terrifying consequences in the twentieth century, and although mass deprivation of nationality is not a main concern nowadays, many causes of statelessness seen above remain operating. Therefore, an international joint effort is necessary to eradicate statelessness worldwide.

### **International Actions and Campaigns to Eradicate Statelessness**

Considering states are the most relevant actors for ending or reducing statelessness, the UNHCR strongly promotes the states' accession to both the 1954 and 1961 Conventions

---

<sup>11</sup> That are already science fiction pieces which considerate a dystopic future where to be invisible in face of the power of the states would be an asset. One could think for instance about "1984", written by George Orwell, where the protagonist manages to escape from the Big Brother lens in order to build a personal insurrection.

on statelessness, which bring solutions to the question. Since the mid-1990's the Agency started to campaign for the goal of increasing the state parties to the Conventions, and another push was given in 2011<sup>12</sup> “leading to seventeen accessions to the 1954 Convention and twenty-two to the 1961 Convention between mid-2011 and July 2014” (MANLY, 2014).

Another important role of the UNHCR is helping to clarify the international standards about statelessness, since the concept is complex, and the Conventions have some tricky technicalities, which can lead to incomprehension of important nuances. As a matter of fact, there is a clear lack of knowledge from politicians and public officials about the solutions and responses already provided in the international law to solve statelessness.

In order to address this gap, in 2012 three UNHCR Guidelines on statelessness were published, about the definition of a stateless person; the procedures for determination of statelessness; and the status of stateless persons under national law. Those Guidelines were then united and superseded by the publication of the 2014 “Handbook on Protection of Stateless Persons under the 1954 Convention”, which today serves as a reference document for the practice of UNHCR operations and official understanding of statelessness globally (UNHCR, 2014).

Apart from its specific technical advice role and standard settings, the UNHCR has acted as a pivot institution for raising awareness on the problem of statelessness. A landmark occurred in 2011, when it was celebrated the 50th anniversary of the 1961 Convention. The media campaign launched by UNHCR that year “led to hundreds of reports in television, radio, print and electronic media on all continents” (MANLY, 2014). The organization itself promoted a concentrated effort to raise the theme in its offices and partners all over the world, organizing workshops, roundtables, country-level and regional meetings, as well as intensifying bilateral contacts with governments to emphasize the priorities, such as acceding to the 1954 and 1961 Conventions, reforming nationality laws, establishing stateless determination procedures, putting in place measures to guarantee children birth registration and issuing other nationality proofs to avoid statelessness (MANLY, 2014).

That activism led in December of the same year to the highest-level meeting about statelessness ever occurred, with 155 states represented, 72 with ministerial presence. The most important outcome was that several states pledged to accede to both treaties, as well as reforming their national laws and improving identification and determination procedures. The

---

<sup>12</sup> By the occasion of the fiftieth anniversary of the 1961 Convention on the Reduction of Statelessness.

extent to which states accomplished those promises is unclear<sup>13</sup>, but it was nevertheless an unprecedented raise of statelessness to the top of the states' political agenda.

In November 2014, the UNHCR launched a Global Action Plan to End Statelessness until 2024<sup>14</sup>. The plan brings ten specific actions, giving instructions on how to address the wide range of stateless causes (UNHCR, 2014). The ten actions proposed are the following:

Action 1: Resolve existing major situations of statelessness. Action 2: Ensure that no child is born stateless. Action 3: Remove gender discrimination from nationality laws. Action 4: Prevent denial, loss or deprivation of nationality on discriminatory grounds. Action 5: Prevent statelessness in cases of State succession. Action 6: Grant protection status to stateless migrants and facilitate their naturalization. Action 7: Ensure birth registration for the prevention of statelessness. Action 8: Issue nationality documentation to those with entitlement to it. Action 9: Accede to the UN Statelessness Conventions. Action 10: Improve quantitative and qualitative data on stateless populations (UNHCR, 2014).

Although the Plan does not bring any substantive news, it can be considered a powerful instrument for action, since it summarizes in a much clearer, objective and practical way, what should be done, mainly by the states, to solve statelessness.

The UNHCR also published a Special Report called "Ending Statelessness", a twelve pages document plenty of photos, maps, timelines and graphics, where along with basic facts and figures, the purpose of the campaign is explained, covering the impact of statelessness on everyday life of children and families, and pointing some general solutions (UNHCR, 2014). In the case of childhood statelessness, since ever a priority, in 2015 it was published the report "I Am Here, I Belong: The Urgent Need to End Childhood Statelessness" (UNHCR, 2015). In the same year, a series of "Good Practice" papers were published by UNHCR on some of the actions of the Global Plan<sup>15</sup>. This is an interesting way of providing effective examples and comparative tools for relevant stakeholders, helping them to better

---

<sup>13</sup> A compilation of the states pledges during the event was published by the UNHCR's Division of International Protection, facilitating close follow up. See: UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). **Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons**. UNHCR Ministerial Meeting to Commemorate the 60<sup>th</sup> Anniversary of the 1951 Convention Relating to the Status of Refugees and the 50<sup>th</sup> Anniversary of the 1961. Geneva, Palais des Nations, 7-8 December 2011, UNHCR, October 2012. Available at: <http://www.unhcr.org/commemorations/Pledges2011-preview-compilation-analysis.pdf> Accessed on: 20 June 2017.

<sup>14</sup> The campaign's website includes the publication of an Open Letter, signed by the former UN High Commissioner for Refugees António Guterres (now UN Secretary-General) and around thirty politicians and celebrities, including the UNHCR Special Envoy Angelina Jolie, who for years have been increasing awareness on refugees globally, calling for world action to end statelessness definitively.

<sup>15</sup> To date (2017), the Papers cover Actions 1: Resolving Existing Major Situations of Statelessness, 2: Ensuring that no child is born stateless, 3: Removing Gender Discrimination from Nationality Laws, 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons and 9: Acceding to the UN Statelessness Conventions. Available at: <http://www.refworld.org/statelessness.html> Accessed on: 20 Jun. 2017.

deal with the daily local challenges of statelessness. Finally, many videos were produced with real stateless persons from different parts of the world, what in our era of information technology has a great potential of stimulating alterity and reaching specially the newer generations<sup>16</sup>.

In sum, the campaign undoubtedly managed to bring the question to a much broader public opinion, turning the question of statelessness a more visible problem, revealing the human face of a problem that was seen before only as a legal matter. The actions are able to generate empathy and evoke solidarity, mobilizing people and organizations to require law and policy changes, increasing public funds and donations, and in certain cases, providing stateless persons themselves with information about their situation, and the possibility of asking for help.

In Brazil, the campaign of the UNCHR gained the support of Maha Mamo. Daughter of Syrian parents, her father is Christian, and the mother is Muslim, and considering interreligious marriages are not allowed in Syria, they went to Lebanon, where Maha was born. The problem is Lebanon does not apply *jus soli* as a rule, and thus she could not have Lebanese nationality, nor the Syrian one. Maha faced several difficulties to study, since some universities did not accept her for being stateless, even if in the end she managed to finish a university degree. After twenty years of suffering, Maha and her sister started to search for information about their condition and fight for their belonging, by writing to the embassies of many countries asking for help. The only one who gave a positive response was the Brazilian, since by that time the Brazilian government had an “open doors” policy towards Syrian refugees. She was allowed to come to Brazil with her family, and became a stateless refugee in the country. With an enthusiastic character, she started to raise her voice for the cause, being interviewed by newspapers and television channels, until the UNHCR decided to support her to speak as a stateless person in international events around the world. She has been helping to disseminate the hardships of being a stateless, and asking public support to help other stateless persons around the world. In her own words, “being stateless hurts much more when you know you are capable of doing so much”<sup>17</sup>.

---

<sup>16</sup> Available at: <http://www.unhcr.org/ibelong/> Accessed on 20 June 2017.

<sup>17</sup> UNHCR. Maha Mamo, a stateless refugee in Brazil, talks about the challenges of a life without nationality. Available at: <http://www.acnur.org/portugues/noticias/noticia/maha-mamo-refugiada-apatrida-no-brasil-fala-sobre-os-desafios-de-uma-vida-sem-nacionalidade/> Accessed on 20 Jun. 2017.

Therefore, the UNHCR campaign is producing interesting results, since it sparked a series of governmental, regional and international initiatives. For instance, more than 20,000 people received nationality documents in Thailand recently, in an initiative from the government to identify large stateless groups living in remote areas across the country, providing them a legal status (either citizenship or a residence permit) (JEDSADACHAIYUT; AL-JASEM, 2016).

In the meantime, dozens of debates, round-tables, seminars and public hearings about the subject are being held, some led by UNHCR, other by academic initiatives, which have been increasing awareness. Moreover, the United Nations human rights mechanisms are progressively addressing statelessness, either through the human rights treaty bodies (committees), via recommendations in the Universal Periodic Review, or by resolutions from the Human Rights Council (KHANNA; BRETT, 2013).

The global campaign is succeeding to attract more states to accede and ratify one or both the 1954 and 1961 Conventions on statelessness, as Georgia, Gambia, Belgium, Guinea, Colombia, Mozambique, Niger, Argentina, Peru (2014); El Salvador, Turkey, Belize, Italy (2015); Sierra Leone, Mali, Guine-Bissau (2016), and so on. Certainly, statelessness is and should be a concern of the international community as a whole, considering it is a global issue, being better addressed in a coordinated manner, and profit of the sharing of good practices by states and other relevant actors.

Nevertheless, it should be noted that improving awareness about the question and signing legal documents will not alone get to eradicate statelessness around the world, since many legislative gaps, discriminations and inaction from governments are still in place. Finally, considering the question of nationality is controlled historically by the states alone, and citizenship is seen only by the lenses of the nation-states, each one with their own interests, not always the persons are put in the first place, especially those individuals who are not considered part of the state in question.

### **Statelessness in Brazil**

The normative about access to nationality in Brazil is present in the Article 12 of the Federal Constitution of 1988. In relation specifically to statelessness, the legal provisions were limited, in the former Brazilian migratory law (Law 6.815/1980), to the concession of passport for a “foreigner” stateless and who was of “indefinite nationality” (BRASIL, 1980).

The Decree no. 86.715/1981, which regulated that law (now revoked), added that a stateless person, to obtain a visa for entering in Brazil, should be able to demonstrate that he/she could return to the country of origin or former residence, or enter in a third country (BRASIL, 1981). This in practice translated into a kind of safeguard required by the Brazilian state, with the objective to have a place where to deport or expulse the stateless in the cases provided by the law.

Even if there was a problem of lack of birth registration in Brazil years ago, which was practically eradicated, the issue did not use to lead to statelessness, configuring instead in relevant obstacles for the exercise of some rights (CLARO, 2015). In fact, there is today no major cause of statelessness in the country, mainly because anyone born in Brazilian territory is considered Brazilian (*jus soli*).

But it was not always like that. Around 200,000 Brazilian children were at risk of becoming stateless, after a change in the 1988 Constitution in 1994<sup>18</sup>. The revision amendment no. 3 of that year stated that, to obtain Brazilian nationality, the child born abroad to a Brazilian parent should reside in Brazil and opt by the Brazilian nationality, requiring it formally in the country (BRASIL, 1988).

The interpretation usually given is that the approval of the amendment was a lapse of the legislator with unintentional consequences. However, considering that by the time the country experienced a massive emigration wave, some politicians were concerned that the children being born abroad from Brazilian parents, would be growing without connection with the Brazilian traditions and culture (MOULIN, 2015). In this sense, requiring them to come back to acquire the nationality was a form of dealing (wrongly, as became evident) with the question.

The constitutional change sparked protests from part of the 3 million Brazilians living abroad, especially the ones who had no intentions to go back to Brazil and/or lived in countries with *jus sanguinis* tradition, such as Germany, Switzerland, Italy and Japan. In those countries, the children born to both Brazilian parents would be stateless at the time. They would not have the chance to leave the country of residence legally, nor to visit relatives in Brazil, since they would not have access to a travel document. The only case by which the

---

<sup>18</sup> For a full analysis of the case, see MOULIN, Carolina. Mobilizing Against Statelessness: the case of Brazilian Emigrant Communities. In: HOWARD-HASSMANN, Rhoda E.; WALTON-ROBERTS, Margaret (Eds.). **The human right to citizenship: a slippery concept**. Philadelphia: University of Pennsylvania Press, 2015.



child of a Brazilian could receive the nationality of the parent, was if at least one of the genitors was working abroad for the Brazilian government (BRASIL, 1988).

Considering that situation, Brazilian families living abroad created a campaign through the internet, called *Brasileirinhos Apátridas*, with a website to promote awareness about the problem<sup>19</sup>. Their case attracted attention of the civil society and media. Parents living abroad started to organize meetings, interviews and put pressure on Brazilian diplomats and lawmakers. Protests took place in several cities around the world, including in front of the UN Headquarters in Geneva.

Finally, the movement gained the National Congress when Senator Lúcio Alcântara proposed the amendment 272/2000, approved as Constitutional Amendment 54/2007, by which the child of a Brazilian mother or father born abroad, would be a Brazilian national, sufficing to be registered in the Brazilian competent consulate (BRASIL, 1988). The amendment puts an end on years of uncertainty for the parents who felt connected to their country of origin and wanted their children to have the chance to share their citizenship, and perhaps move freely to their country of origin in the future. As noted by Moulin, there were political reasons that allowed the change to pass in the National Congress. By the time, public opinion in Brazil was concerned with the mistreatment of Brazilians abroad, including tourists. Moreover, the political power of emigrants had risen, since “the number of Brazilian emigrants able to vote jumped from 104,660 in 2006 to 200,392 in 2010” (MOULIN, 2015).

Therefore, Brazil has changed its Constitutional provisions about nationality, avoiding new cases of statelessness from children of Brazilian parents (GODOY, 2010). The initiative was praised by the UNHCR, which cited the case in its compilation of good practices concerning the Global Action Plan to End Statelessness (UNHCR, 2015).

Additionally, the case of *Brasileirinhos Apátridas* reveals a well succeeded transnational civic engagement, by which persons of the same nationality of origin, virtually connected even if living in different countries, joined the same struggle, with positive results. In the opinion of Moulin,

the experience created a sense of community among Brazilian nationals in foreign territories and highlighted the fact that, despite their different social classes, life circumstances, and countries of residence, many of the problems and restrictions they faced were the same. The movement

---

<sup>19</sup> The website is still online up to now. BRASILEIRINHOS APATRIDAS. Available at: <http://brasileirinhosapatridas.org/> Accessed on: 06 Mar. 2019.

showed, consequently, the ability of territorially dispersed nationals to enact, collectively, a form of *transnational citizenship* that served their own interests and agendas (MOULIN, 2015).

It was the Law no. 9.474 from 1997, that is, the National Refugee Act, which first included protection for stateless persons in Brazil, but just in case they are also refugees. This is what stated in Article 1, item II, which requires the person without nationality to be out of his country of habitual residence, and to be uncappable or unwilling to return by force of a well-founded fear of persecution, on grounds of race, religion, nationality, social group or political opinion (BRASIL, 1997). This definition amounts to the concept of refugee of the 1951 Convention, which means the Brazilian state has recognized in 1997 only the protection of “stateless refugees”, not stateless persons who did not suffered any persecution.

However, Brazil has ratified both the 1954 and the 1961 Statelessness Conventions, incorporated in the national legislation in 2002 and 2015 respectively<sup>20</sup>. Consequentially, the 1954 Convention Relating to the Status of Stateless Persons imposes a duty of the state to recognize the stateless, conceding to the person in this condition, at least the same rights of the migrants in general (UN GENERAL ASSEMBLY, 1954). That is why, although the country did not recognize statelessness in a specific law, it had already the obligation to do so, since 22 May 2002, date of publication of the Decree n. 4.246 of 22 May 2002, which promulgated the 1954 Convention.

In the meantime, stateless residents in Brazil were identified by the government, which used to give them travel documents and guarantee the same rights and duties as regular migrants (GODOY, 2010). The Federal Police had the legal duty to register as stateless any foreigner whose travel document omitted the person’s nationality<sup>21</sup>. However, that did not constitute a statelessness determination procedure, with the application of appropriate mechanisms to ascertain if the concerned person really does not have the nationality of any state. Thus, Brazil remained for many years in violation of the international norms, lacking at the administrative level an appropriate mechanism to determine the condition of stateless of an individual, and considering stateless loosely anyone whose document did not make mention to a previous nationality.

---

<sup>20</sup> Decree 4.246/2002 enacted the 1954 Convention relating to the Status of Stateless Persons, while Decree 8.501/2015 enacted the 1961 Convention on the Reduction of Statelessness.

<sup>21</sup> Information provided by request of this author, through the Law of Access of Information (Law no. 12.527/2011), with the official response of the Brazilian Ministry of Justice dated 29 June 2017.

In 2011, the text of the 1954 Convention on Statelessness was used as basis for the Brazilian Judiciary to recognize the status of stateless of Mr. Andrimana Buyoya Habizimana, who came from Burundi and arrived in Brazil from South Africa, hidden in a cargo ship. He requested the status of refugee, what was denied by the Brazilian authorities. Burundi then informed he was not national of that country, and South Africa also did not accept his deportation. He remained in a legal limbo, until 2011 when the Federal Justice finally determined that the Brazilian state should confer him the status of stateless, based on the 1954 Convention and the constitutional principle of human dignity (BRASIL, TRF-5, 2011). That was a paradigmatic decision, which came to fill an important legislative gap, and at the same time raised awareness of the law operators to the possibility, and the need, to apply the text of international human rights treaties ratified by the country, independently of internal legislative inaction.

In November 2010, representatives of several governments of Latin America gathered in Brasilia, for the occasion of the 60 years of the UNHCR, and approved the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas. The document urged the countries of the continent to accede to the international instruments on statelessness, reviewing their national legislation to prevent and reduce situations of statelessness, and adopt comprehensive mechanisms for birth registration (UNHCR, 2010).

As a development in this direction, a draft of legislative proposal to establish a mechanism for determination of the condition of stateless was elaborated in 2011 by Luiz Paulo Barreto, then Secretary-Executive of the Ministry of Justice. The draft bill had several guarantees for the protection of stateless persons, and presented a definition of stateless person which included those who did not have effective nationality, broader therefore than the definition of the 1954 Stateless Convention (GODOY, 2010).

Another proposal was presented in 2014 by the National Secretary of Justice, Paulo Abrão, as result of a collaboration with the UNHCR Office in Brazil. The law project established rights and duties for the stateless in the country and designated the National Committee for Refugees (CONARE) as the appropriate organ to decide about the stateless determination. But none of the proposals arrived to be voted by the National Congress.

In December 2014, for the occasion of the 30<sup>th</sup> anniversary of the 1984 Cartagena Declaration, Governments of Latin America and the Caribbean met in Brasilia for a Ministerial Meeting, called Cartagena+30, where 28 countries and three territories adopted by

acclamation the Brazil Declaration and Plan of Action<sup>22</sup>. The event provided momentum for pressing the states to reform their legislations, in order to enhance the protection of refugees and stateless in the countries of Latin America. The Brazil Declaration brings an entire chapter dedicated to statelessness, with the intention of promoting cooperation between governments, the UNHCR and civil society for implementing actions to prevent stateless, protect stateless persons and solve the existing cases of statelessness<sup>23</sup>.

In 2016, the Decree no. 8.757/2016 facilitated the naturalization of migrants in Brazil, by revoking a series of requirements, such as demonstrating that the person speaks Portuguese by reading parts of the Constitution in front of a Judge, but most importantly, by removing the requirement that the immigrant should renounce his former nationality, in order to receive the Brazilian one, avoiding the risk of statelessness (BRASIL, 2016).

It remains in force, however, an unjustifiable Constitutional norm, which determines the loss of the Brazilian nationality, for those who acquire another nationality. The two exceptions are the recognition of an original nationality (such as decurrent from *jus sanguinis*); or the imposition of naturalization by the foreign law, for the Brazilian resident being able to remain in the territory, or exercise civil rights in the country concerned (BRASIL, 1988). Statelessness can result if by any reason, the new nationality is lost, until the Brazilian one is reacquired. The mere possibility of losing the Brazilian nationality, by acquiring another one, is incompatible with the increasing acceptance, all over the world, of the possibility of having double or multiple nationalities, since it is a matter of personal autonomy and individual identity.

In any case, the high-level events mentioned above, as well as the leading role of the Brazilian Government in their organization, in partnership with the UNHCR Office in the country, have certainly influenced the inclusion of statelessness in the new migratory law approved in 2017, as will be studied below.

---

<sup>22</sup> To a comprehensive analysis of the advancements contained in this Declaration concerning the eradication of statelessness, see MONDELLI. Juan Ignacio. La erradicación de la apatridia en el Plan de Acción de Brasil. *Agenda Internacional*, v. 22, n. 33, p. 129-148, 2015.

<sup>23</sup> The main actions provided are that the states: accede to both the 1954 and 1961 Stateless Conventions; harmonize internal legislations and practices on nationality with international standards; facilitate universal birth registration; establish effective statelessness status determination procedures; adopt legal protection frameworks that guarantee the rights of stateless persons; Facilitate naturalization; confirm nationality, for example, by facilitating late birth registration, providing exemptions from fees and fines and issuing appropriate documentation; and facilitate the restoration or recovery of nationality through legislation or inclusive policies. (REGIONAL REFUGEE INSTRUMENTS & RELATED, Brazil Declaration and Plan of Action, 2014).

## The New Legal Framework for Stateless Persons in Brazil

According to the Federal Police, until August 2017 there were 1,649 stateless persons with permanent residence in Brazil, 2 stateless refugees, one stateless with temporary residence and one provisory, totalizing 1,653 individuals<sup>24</sup>. Another 1,039 stateless persons had their register canceled by decease, 284 were naturalized as Brazilians and 31 were waiting for naturalization<sup>25</sup>. These numbers do not mean that an appropriate identification procedure of stateless persons was applied by the Brazilian authorities. As informed by the Department of Migrations of the Ministry of Justice, such a procedure was not in place until 29 June 2017<sup>26</sup>, what means that the state could be considering stateless persons, who in fact had another nationality. In fact, the former migratory legislation was completely silent about the stateless condition in the country, as seen above.

However, the discipline of statelessness in Brazil has changed completely, with the entry in force of the new migratory legislation (Law no. 13.445/2017), finally revoking the Statute of the Foreigner<sup>27</sup>. Two innovations are especially important. The first is the introduction of a new kind of visa for “humanitarian hosting” (*acolhida humanitária*)<sup>28</sup>. The visa will be granted for those “*stateless* or nationals of any country in situations of serious or imminent institutional instability, armed conflict, major disaster, environmental disaster or serious violation of human rights or international humanitarian law” (BRASIL, 2017).

This innovative migratory solution has its roots in the recent practice of the Brazilian state, to concede a special visa for humanitarian purposes, initially for the Haitians victims of a devastating earthquake in 2010. The *humanitarian visa* has helped to regularize the migratory situation of many Haitians who came to the country, allowing them to have access to work and essential public services. The initiative was then extended to people of Syrian origin in 2013, due to the lasting civil war in course in the country. In their case, the visa was conceded in Brazilians consulates around the Middle East, allowing them to fly legally to Brazil, and once in the country, apply for refugee status. The fact that the word “stateless”

---

<sup>24</sup> The Federal Police does not specify what they understand as “provisory”. Information provided by request of the author, through the Law of Access of Information, with the official response of the Brazilian Federal Police dated 29 August 2017.

<sup>25</sup> Information provided by request of the author, through the Law of Access of Information, with the official response of the Brazilian Federal Police dated of 29 August 2017.

<sup>26</sup> Information provided by request of the author, through the Law of Access of Information, with the official response of the Department of Migrations of the Ministry of Justice dated of 29 June 2017.

<sup>27</sup> As it was called the former migratory Law no. 6.815/1980, from the time of the military dictatorship.

<sup>28</sup> The term “acolhida” in Portuguese refers to host, received in a hospitable way.

was included in the provision of this new kind of visa, means that any stateless person in a situation of serious or imminent institutional instability, armed conflict, major disaster, environmental disaster or serious violation of human rights or international humanitarian law, will be able to apply for the *humanitarian visa*<sup>29</sup>, marking an important form of complementary protection.

The second crucial change introduced by the Law no. 13.445/2017, is the inauguration of an entire section about “protection of the stateless people and reduction of statelessness”, finally equipping Brazil with a dedicated normative for the stateless present or willing to live in the country. The text guarantees for the applicants the same “protective mechanisms and of social inclusion facilitation” of the 1954 Stateless Convention, in addition of those provided under the 1951 Refugee Convention and the National Refuge Act (BRASIL, 2017). Stateless persons resident in Brazil are now provided with all the rights applicable to migrants in general, without discrimination in relation to nationals, what include appropriate documents, public education and health, social assistance and social security, access to justice, right to work legally and enjoy labour rights, freedom to remain, leave, circulate and return to the national territory, and right to family reunion (BRASIL, 2017).

It is worth noting that the new migratory act only stated in its Article 26 that “regulation shall provide for the special protection institute of the stateless person, consolidated in a simplified naturalization process” (BRASIL, 2017). That meant there was a positive obligation for the government to create an infra-legal rule tackling the whole question. That was fulfilled with the adoption of the Decree no. 9.199/2017, which regulated the Law, and the edition of the Interministerial Ordinance no. 5 (February 2018), finally establishing the specific procedure to be followed by the stateless persons in the country.

To make if short, the new legislation advances a simple but effective solution for turning a stateless person into a full citizen of the country. According to Article 26 and its paragraphs, the procedure for recognition as stateless intends to verify, in the first place, if the person is a national of any state under its law. For that purpose, all information and documents from the applicant and other national and international organizations can be considered. Once recognized the situation of statelessness, it will be automatically offered for the applicant the possibility of acquiring the Brazilian nationality, through facilitated

---

<sup>29</sup> That would include, for instance, the Rohingya population from Myanmar, most of which are stateless, and who have been victims recently of fierce persecution in the country. Thousands have fled to Bangladesh, becoming refugees, what does not affect their stateless condition.

naturalization. In case the stateless person accepts this solution, the naturalization should occur in up to 30 days (BRASIL, 2017). The inclusion of this deadline is welcome, since the person concerned will not have to wait indefinitely for the state to take action, what could be the case otherwise. If the decision on the application is negative, the applicant can lodge an appeal, and if confirmed the denial, it is prohibited the devolution of the person to where his life, personal integrity or liberty is at risk, what copes with the principle of *non-refoulement*.

If the stateless person opts for not naturalizing in Brazil, permanent residence should be granted by the migratory authority. That means the individual will be able to stay in Brazil lawfully as a stateless person, what is especially useful for those who are waiting to receive another nationality from a third country. The loss of the condition of statelessness includes the cases of renounce, proof of falsification of the documents used for the application, or the existence of facts which, if known by the time of the recognition as stateless, would have taken to a negative decision (BRASIL, 2017).

In sum, the approval of a specific statelessness regulation in Brazil configures a very important development in the area, turning the country into a place where people in this situation can count with clear rules and appropriate solutions for addressing their case. Even if there are few stateless in Brazil to date, nothing precludes the possibility that stateless persons living in other countries start to consider coming to Brazil for benefiting from the protection of the new legislation. If on the one hand, this is compatible with the hospitality spirit build lately in the South American country, on the other, stateless persons will have to consider all the aspects of such an endeavor, especially the lack, for now, of appropriate social integration policies for migrants in general.

Moreover, migrations are frequently moved by economic demands, which includes the consideration, by potential migrants, of the opportunities offered in the prospective host country. Since Brazil is not in its best shape in this regard nowadays, it seems unlikely that the number of stateless persons coming to the country rises considerably, just to benefit from the facilitated naturalization procedure, or even to remain as recognized stateless. However, this is not impossible to occur in the future, and in any case, if something similar happens, Brazil has absolutely nothing to lose. It would contribute with its share for helping to solve an international issue with dramatic human consequences, which leaves entire families in a legal limbo, while the new arrivals could bring new competencies, experiences and cultural diversity.

Instead of a great number of newcomers, it is more likely that stateless persons already resident in Brazil will access the procedure to regularize their situation, gaining therefore legal recognition and the chance to have, perhaps for the first time in their life, a country to call their own, with all the entitlements of rights and participation that citizenship brings with it. In this sense, their existence would not be in the shadow anymore, and they will be able to study and work legally, as well as to integrate in equality of conditions with other Brazilian citizens.

In addition, the Brazilian foreign policy would benefit from the image of a state which cares about a relevant international issue which has been raised as priority by UNHCR, and has acted to improve the hosting conditions for stateless persons, in line with what is already required by international law, what can reinforce its positioning as an emerging power with humanitarian vocation, in a world full of injustices and contradictions.

### **Final Considerations**

As seen, statelessness is an intricate question which can cause exclusion and discrimination. There have been global efforts to eradicate this problem, mainly by asking states to adhere to international agreements and applying the recommended solutions. Although many states have been signing those Conventions, their effectiveness is limited if not adopted internally a statelessness determination procedure, in order to ascertain if the individual is, or is not national of a state. If the answer to this question is negative, in the end of the procedure, the person receives the status of stateless person, being able of accessing rights guaranteed for who remains in this condition. However, the ideal would be if this individual could finally obtain a nationality, being able to exercise his/her citizenship in the place of residence.

That was exactly what the Law no. 13.445/2017 did in Brazil. The country had ratified in 2002 the 1954 Convention on the status of stateless persons, however there was nothing in the internal legislation to implement it, leaving stateless persons in the limbo of invisibility. Now, an appropriate procedure was established, not only recognizing stateless persons as such, but also offering them a facilitated naturalization in Brazil. That can be seen, in practice, as in invitation for those who do not belong anywhere, to become part of the Brazilian society and contribute to its development. The approval of the law, in these terms, is in line with the construction of a Brazilian policy of hospitality in the country, which started with the



“humanitarian visas” for Haitians and Syrians, and is being currently tested through the reception of an increasing number of Venezuelans.

Therefore, the new Migratory Act brings the question of statelessness to a new phase in Brazil. With its entry in force, stateless persons can benefit from the rights guaranteed by the law, while waiting for the response of the application for recognition as a stateless person. After being recognized as a stateless person, the applicant can benefit from a facilitated naturalization process, being offered the Brazilian citizenship. By creating a statelessness determination procedure, and an innovative naturalization path, the new legislation puts Brazil as a reference in Latin America in terms of legal framework to address and solve cases of statelessness.

Individuals that had the bad luck of falling into the cracks of nationality laws, or were arbitrarily deprived of their citizenship, remaining uncovered of the fundamental protection of a national state, are now able to rebuild their lives in Brazil, having immediate access to essential rights. It is the case of Maha Mamo, whose inspiring history became worldwide known, being finally awarded the right to become a full member of the Brazilian society.

## References

ARCARAZO, Diego Acosta. Toward a South American Citizenship? The Development of a New Post-National Form of Membership in the Region. *Journal of International Affairs*, v. 68, n. 2, p. 213, 2015.

ARENDT, Hannah. *As origens do totalitarismo*. Trad. Roberto Raposo. São Paulo: Companhia das Letras, 2012.

BRASIL. *Constituição* (1988). Constituição da República Federativa do Brasil. Brasília, DF: Senado, 1988.

\_\_\_\_\_. Law no. 6.815 of 19 August 1980, defines the legal situation of the foreigner in Brazil, creates the National Immigration Council. *Diário Oficial da União*, Brasília, DF, 11 Nov. 1980.

\_\_\_\_\_. Law no. 9.474, 22 July 1997. Define mecanismos para a implementação do Estatuto dos Refugiados de 1951, e determina outras providências. *Diário Oficial da União*, Brasília, DF, 23 Sep. 1997.

\_\_\_\_\_. Decree n. 4.246 of 22 May 2002. Promulgates the Convention on the Status of Stateless Persons. *Diário Oficial da União*, Brasília, DF, 23 May 2002, Seção 1, p. 5.

\_\_\_\_\_. Decree n. 8.757, 10 May 2016. Amends Decree no. 86.715, from December 10, 1981, to dispose about the legal situation of the foreigner in the Federative Republic of Brazil. Available at: [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2016/Decreto/D8757.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Decreto/D8757.htm). Accessed on: 20 Set. 2017.

\_\_\_\_\_. Decree n. 86.715 of 10 December 1981. Regulates Law No. 6.815, of August 19, 1980, which defines the legal status of foreigners in Brazil, creates the National Immigration Council, and provides other measures. *Diário Oficial da União*, Brasília, DF, 11 Dec. 1981, Seção 1, p. 23496.

\_\_\_\_\_. Law n. 13.445 of 24 May 2017. Institutes the Migration Law. *Diário Oficial da União*, Brasília, DF, 25 May 2017, p. 1.

\_\_\_\_\_. Ministério da Justiça e Cidadania. *Brasil erradica casos de crianças sem registro civil de nascimento*. Available at: <http://www.brasil.gov.br/cidadania-e-justica/2015/11/brasil-erradica-sub-registro-civil-de-nascimento> Accessed on: 27 Sept. 2017.

\_\_\_\_\_. Tribunal Regional Federal. (5. Região). *Apelação/Reexame necessário 200984000065700*, Relator: Desembargador Federal Bruno Leonardo Câmara Carrá. Recife, 29 September 2011.

CLARO, C. A. B. Os 60 anos da Convenção da ONU sobre o Estatuto dos Apátridas e seus Reflexos na Legislação Brasileira. In: Carlos Alberto Marinho Cirino; Teresa Cristina Evangelista dos Anjos; Cleber Batalha Franklin. (Org.). *Direito e Cidadania*. 1ed. Boa Vista: Editora da UFRR, 2015, v. 1.

FOX, Margalit. Garry Davis, Man of no Nation Who Saw One World of No War, Dies at 91. *The New York Times*, New York, 28 Jul. 2013. Available at: [http://www.nytimes.com/2013/07/29/us/garry-davis-man-of-no-nation-dies-at-91.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/07/29/us/garry-davis-man-of-no-nation-dies-at-91.html?pagewanted=all&_r=0) Accessed on: 19 may 2017.

GIBNEY, Matthew. Statelessness and citizenship in ethical and political perspective. In: EDWARDS, A; WAAS, L. V. (Ed.) *Nationality and Statelessness under international law*. Cambridge: Cambridge University Press, 2014.

GLOBAL CAMPAIGN FOR EQUAL NATIONALITY RIGHTS. *Global overview*. Available at: <http://equalnationalityrights.org/countries/global-overview> Accessed on: 12 May 2017.

GODOY, Gabriel Gualano. Considerações sobre recentes avanços na proteção dos apátridas no Brasil. *Caderno de Debates Refúgio, Migrações e Cidadania*, v. 6, p. 61-72, 2010.

GROOT, Gerard-René de. Children, their right to nationality and child statelessness. In: EDWARDS, A; WAAS, L. V. *Nationality and Statelessness under international law*. Cambridge: Cambridge University Press, 2014, p. 144-168.

GUERIOS, José Farani Mansur. *Condição Jurídica do Apátrida*. Tese de concurso à cadeira de direito internacional privado da Faculdade de Direito do Paraná (UFPR). Curitiba, 1936.

JEDSADACHAIYUT Nantanee; AL-JASEM, Nadia. Overcoming statelessness in Thailand one case at a time. *UN HIGH COMMISSIONER FOR REFUGEES*, 24 Nov. 2016.

Available at: <http://www.unhcr.org/news/latest/2016/11/5836af624/overcoming-statelessness-thailand-case-time.html> Accessed on 22 June 2017.

KHANNA, Melanie J.; BRETT, Peggy. Making effective use of UN human rights mechanisms to solve statelessness. In: KHANNA, Melanie J.; VAN WAAS, Laura. *Solving Statelessness*. Oisterwijk: Wolf Legal Publishers, 2013.

MANLY, Mark. UNHCR's mandate and activities to address statelessness. In: EDWARDS, Alice; VAN WAAS, Laura. (Eds.). *Nationality and Statelessness under International law*. Cambridge: Cambridge University Press, 2014, p. 88-114.

MCKINSEY, Kitty. The stateless brides of Vietnam. *Refugees Magazine*, n. 147, 2007.

MONDELLI, Juan Ignacio. La erradicación de la apatridia en el Plan de Acción de Brasil. *Agenda Internacional*, v. 22, n. 33, p. 129-148, 2015.

MOULIN, Carolina. Mobilizing Against Statelessness: the case of Brazilian Emigrant Communities. In: HOWARD-HASSMANN, Rhoda E.; WALTON-ROBERTS, Margaret (Eds.). *The human right to citizenship: a slippery concept*. Philadelphia: University of Pennsylvania Press, 2015.

NONNENMACHER, S.; CHOLEWINSKI, R. The nexus between statelessness and migration. In: EDWARDS, Alice; VAN WAAS, Laura. *Nationality and Statelessness under International law*. Cambridge: Cambridge University Press, 2014. p. 247-264.

REGIONAL REFUGEE INSTRUMENTS & RELATED, *Brazil Declaration and Plan of Action*, 3 December 2014. Available at: <http://www.refworld.org/docid/5487065b4.html> Accessed on: 14 Nov. 2017.

GOVIL, Rhada; EDWARDS, Alice. Women, nationality and statelessness: the problem of unequal rights. In: EDWARDS, Alice; VAN WAAS, Laura. (Eds.). *Nationality and Statelessness under International law*. Cambridge: Cambridge University Press, 2014, p. 169-193.

UN GENERAL ASSEMBLY. Convention Relating to the Status of Stateless Persons, 28 September 1954. In: UNITED NATIONS. *Treaty Series*, New York, v. 360, p. 117, 1960. Available at: <http://www.refworld.org/docid/3ae6b3840.html> Accessed on: 4 Sept. 2017.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Convention relating to the Status of Stateless Persons*. 28 September 1954.

UN GENERAL ASSEMBLY. *Universal Declaration of Human Rights*, 10 December 1948, Article 15 (2). Available at: <http://www.refworld.org/docid/3ae6b3712c.html>. Accessed on: 10 Aug. 2017.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas*, 11 November 2010. Available at: <http://www.refworld.org/docid/4cdd44582.html> Accessed on: 14 Nov. 2017.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Global Action Plan to End Statelessness*, 4 November 2014. Available at: <http://www.refworld.org/docid/545b47d64.html> Accessed on: 20 Jun. 2017.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Good Practices Paper - Action 1: Resolving Existing Major Situations of Statelessness*, 23 February 2015. Available at: <http://www.refworld.org/docid/54e75a244.html>. Accessed 28 June 2017.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *I Am Here, I Belong: The Urgent Need to End Childhood Statelessness*, 3 November 2015. Available at: <http://www.refworld.org/docid/563368b34.html> Accessed on: 20 Jun. 2017.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Under the Radar and Under Protected*. The urgent need to address stateless children's rights. UNHCR, 2012.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Climate Change and Statelessness: An Overview*. 15 May 2009. Available at: <http://www.refworld.org/docid/4a2d189d3.html> Accessed on: 24 Oct. 2017.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *The Concept of Stateless Persons under International Law. Summary Conclusions*. Expert meeting organized by the Office of the United Nations High Commissioner for Refugees, Prato, Italy, 27-28 May 2010. Available at <http://www.refworld.org/docid/4ca1ae002.html> Accessed on: 30 set. 2017.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Handbook on Protection of Stateless Persons*. 30 June 2014. Available at: <http://www.refworld.org/docid/53b676aa4.html> Accessed on: 28 Apr. 2017.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Self-Study Module on Statelessness*, 1 October 2012. Available at: <http://www.refworld.org/docid/50b899602.html> Accessed on: 13 Oct. 2017.

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Special Report – Ending Statelessness*, 4 November 2014. Available at: <http://www.refworld.org/docid/572062254.html>. Accessed on: 20 Jun. 2017.

UNASUR. *Tratado Constitutivo de la Unión de Naciones Suramericanas*. Signed on 23 May 2008 in Brasília, Brasil. Quito: UNASUR, 2011.

UNHCR. Maha Mamo, a stateless refugee in Brazil, talks about the challenges of a life without nationality. Available at: <http://www.acnur.org/portugues/noticias/noticia/maha-mamo-refugiada-apatrida-no-brasil-fala-sobre-os-desafios-de-uma-vida-sem-nacionalidade/> Accessed on 20 Jun. 2017.

UNICEF. *The births of around one fourth of the global population of children under five have never been registered*. Available at: <https://data.unicef.org/topic/child-protection/birth-registration/> Accessed on: 19 May 2017.

UNITED NATIONS. Draft Articles on Diplomatic Protection with commentaries. In: INTERNATIONAL LAW COMMISSION. *Yearbook of the International Law Commission*, v. II, 2006. Available at: <http://www.refworld.org/docid/525e7929d.html>. Accessed 8 Aug. 2017.

VAN WAAS, Laura. The UN stateless conventions. In: EDWARDS, Alice; VAN WAAS, Laura. *Nationality and Statelessness under International law*. Cambridge: Cambridge University Press, 2014, p. 72.

\_\_\_\_\_. *Nationality Matters: Statelessness under International Law*. School of Human Rights Research Series, vol. 29. Tilburg: Intersentia, 2008.

\_\_\_\_\_. The children of irregular migrants: A stateless generation? *Netherlands Quarterly of Human Rights*, v. 25, n. 3, Sep. 2007.

WEIS, Paul. *Nationality and statelessness in international law*. Alphen aan den Rijn: Sijthoff & Noordhoff, 1979.

## **Statelessness in Brazil: from invisibility to the invitation for becoming a citizen**

### **Abstract**

Statelessness is a serious problem which affects millions of persons worldwide. Although it is not a new question, it was not sufficiently studied yet, specially in Brazil. This paper aims to fill this gap, by analyzing the concept, causes and consequences of statelessness. In addition, it will shed light on how the South American country deals with the persons without any nationality in its territory. The research shows how, from not addressing the question at all, Brazil passed to be a country with a newly adopted legislation on the matter, which not only recognizes stateless persons, but also offers them the Brazilian citizenship, providing an innovative solution to their plight.

**Keywords:** Nationality, statelessness, stateless persons, nationality, stateless, statelessness

## **Apatridia no Brasil: da invisibilidade ao convite para se tornar cidadão**

### **Resumo**

A apatridia é um problema grave que afeta milhões de pessoas em todo o mundo. Embora não seja uma questão nova, ainda não foi suficientemente estudada, especialmente no Brasil. Este trabalho visa preencher esta lacuna, analisando o conceito, as causas e as consequências da questão da apatridia. Além disso, busca desvendar como o país sul-americano lida com as pessoas sem nacionalidade em seu território. A pesquisa mostra como o Brasil passa do completo silêncio em relação à questão, a ser um país com uma recém-aprovada legislação sobre o assunto, a qual não apenas reconhece os apátridas, mas igualmente oferece a eles a cidadania brasileira, proporcionando uma solução inovadora para a questão.

**Palavra-Chave:** Nacionalidade, apatridia, apátridas, nationality, stateless, statelessness

## **Apatridia en Brasil: de la invisibilidad a la invitación a convertirse en ciudadano**

### **Resumen**

La apatridia es un problema grave que afecta millones de personas en todo el mundo. Aunque no es una cuestión nueva, todavía no es suficientemente estudiada, especialmente en Brasil. Este trabajo tiene la intención de suplir esa laguna, analizando el concepto, las causas y las consecuencias de la cuestión de la apatridia. También se busca revelar como el país suramericano trata a las personas sin nacionalidad en su territorio. La investigación muestra como Brasil ha pasado de lo silencio absoluto con relación a la cuestión, a un país con una recién aprobada legislación sobre el tema, la cual no solamente reconoce las personas apátridas, como les ofrece la ciudadanía brasileña, proporcionando una solución innovadora para la cuestión.

**Palabras clave:** Nacionalidad, apatridia, apátridas, nacionalidad, apátrida, apatridia