

## THE STATE OF STATELESS IN BRAZIL: FIGHTING STATELESSNESS BY INVOKING HUMAN RIGHTS<sup>1</sup>

### O ESTADO DA APATRIDIA NO ESTADO BRASILEIRO: COMBATENDO A AUSÊNCIA DE PÁTRIA INVOCANDO DIREITOS HUMANOS

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#### ABSTRACT

"You do not exist." For millions worldwide, statelessness is not just a legal classification, it is a lived reality of exclusion, rightlessness, and invisibility. This article investigates how Brazil confronts this condition within its borders and through its legal framework, assessing the country's compliance with international obligations under the 1954 and 1961 Statelessness Conventions. It explores how Brazil invokes broader human rights, particularly the rights of children and the right to non-discrimination, as tools to secure legal belonging and dignity. Grounded in doctrinal legal analysis and illustrated by emblematic cases such as the "Brasileirinhos Apátridas" and Maha Mamo the study evaluates Brazil's domestic reforms and situates its efforts within the regional context of the Americas. Is Brazil leading by example, or lagging behind in data and implementation? Combining legal critique with the perspective of personal lived experience, this article argues that effective responses to statelessness must fuse normative commitment with political will and inclusive legal design.

**Keywords:** Stateless, Human Rights, Nationality, Brazil, Children's Rights, Statelessness Conventions, Right to Non-Discrimination, Migration Law.

#### RESUMO

"Você não existe." Para milhões de pessoas ao redor do mundo, a condição de apátrida não é apenas uma classificação legal, é uma realidade vivida de exclusão, ausência de direitos e invisibilidade. Este artigo investiga como o Brasil enfrenta essa condição dentro de suas fronteiras e através de sua estrutura jurídica, avaliando o cumprimento das obrigações internacionais do país sob as Convenções sobre Apátrida de 1954 e 1961. A análise explora como o Brasil invoca direitos humanos mais amplos, especialmente os direitos das crianças e direito a não-discriminação, como ferramentas para garantir pertencimento legal e dignidade. Com base em uma análise jurídica doutrinária e ilustrado por casos emblemáticos como o dos "Brasileirinhos Apátridas" e de Maha Mamo, o estudo avalia as reformas domésticas brasileiras e situa seus esforços no contexto regional das Américas. O Brasil está sendo um líder exemplar ou deixando a desejar em termos de dados e implementação? Combinando crítica jurídica e experiência pessoal vivida, este artigo sustenta que respostas eficazes à apátrida devem unir compromisso normativo com vontade política e um desenho legal inclusivo.

**Palavras-chave:** Apátrida, Direitos Humanos, Nacionalidade, Brasil, Direito da Criança, Convenções sobre Apátrida, Direito a Não-Discriminação, Lei Nº 13.445/2017.

## 1. INTRODUCTION

Since the dawn of history, humans have gathered in groups. First for survival, now for connection. Today's communities often transcend borders, uniting around shared identities or perhaps struggles such as statelessness. Regardless of the reason people choose to associate, the fact of the matter is: we are all trying to 'survive' and, more importantly, we all long to belong.

1 Master Thesis for the LL.M: International and European Law – Track: International Law and Global Governance. Tilburg Law School, Department of Public Law and Governance, Tilburg University, The Netherlands, December 2022. <[show.cgi](#)>

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This article critically examines the state of statelessness in Brazil, assessing how the country's legal and policy frameworks interact with international obligations and human rights norms.

This article asks: What is the current state of statelessness in Brazil, and how does the country meet its international obligations to prevent and reduce statelessness while protecting the human rights of stateless persons? The choice to focus on one particular jurisdiction, i.e., the Brazilian, was made for many reasons.

First, statelessness entered my life not as a theoretical concern, but as a personal reality. The territory where I was born did not recognize me as its own; I belonged by blood, not by soil. But the right to belong, I would learn, was conditional. Without warning, I was rendered stateless by the very State that once identified me as a national. I became a *Brasileirinha Apátrida*<sup>3</sup>. It was not just a gap in documentation, but a disruption of identity, recognition, and rights.

Second, UNHCR data<sup>4</sup> show that the Americas have world's lowest disclosed number of stateless persons (136.585 divulged). Nonetheless, regionally it has shown great potential to eradicate statelessness<sup>5</sup> through good practices<sup>6</sup> and inclusive nationality laws, combining *jus soli* and *jus sanguinis*, both of which will be explained later on.<sup>7</sup> Within this context, Brazil stands out as a regional 'trailblazer'<sup>8</sup> having enacted a modern<sup>9</sup> and comprehensive migration law that prioritizes human rights while updating nationality and immigration rules.

3 The term will be explained in chapter 3.

4 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Global Trends: Forced Displacement in 2015*. 2015. Available at: <https://www.unhcr.org/576408cd7.pdf>. Accessed: 8 Nov. 2022. More recent and accurate numbers regarding the Americas were not amply available at the time of this article.

5 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). Remarks by Commissioner António Guterres, *Out of the Shadows: Ending Statelessness in the Americas Event*. Accessed: 8 Nov. 2022.

6 See, for instance, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *UNHCR Submission on Brazil: UPR 27th Session*. Sept. 2016. Available at: <https://www.refworld.org/docid/5a12b53d0.html>; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *UNHCR Submission for the Universal Periodic Review – Suriname – UPR 39th Session (2021)*. Feb. 2021. Available at: <https://www.refworld.org/docid/619518c77.html>; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *High-Level Segment on Statelessness: Results and Highlights*. May 2020. Available at: <https://www.refworld.org/docid/5ec3e91b4.html>.

7 INSTITUTE ON STATELESSNESS AND INCLUSION. *The World's Stateless Children*. Jan. 2017. p. 41. Available at: <https://www.refworld.org/docid/5f4e16ef4.html>. Accessed: 5 Nov. 2022.

8 JATOBA, Daniel; MARTUSCELLI, Patricia Nabuco. Brazil as a leader in the Latin American refugees' regime. *The Journal of International Relations, Peace Studies, and Development*, v. 4, n. 1, p. 4, 2018.

9 INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. *Situation of human rights in Brazil: Approved by the Inter-American Commission on Human Rights on February 12, 2021*. Available at: <https://www.oas.org/en/iachr/reports/pdfs/Brasil2021-en.pdf>. Accessed: 2 Nov 2022.

As a party to the 1954 Convention Relating to the Status of Stateless Persons<sup>10</sup> and the 1961 Convention on the Reduction of Statelessness<sup>11</sup> (hereinafter 1961 Convention), Brazil has incorporated into its migration law procedures, two essential tools in combating statelessness.<sup>12</sup> Namely, statelessness determination<sup>13</sup> and effective procedures for naturalization<sup>14</sup>.

Finally, Brazil has been held as a notable example of political will<sup>15</sup> through the social Movement of the 'Brasileirinhos Apátridas', which secured Constitutional amendment n. 54 (2007)<sup>16</sup> to resolve the statelessness of thousands of Brazilian children born abroad.

Despite regional and national efforts, UNHCR's Universal Periodic Review<sup>17</sup> (hereinafter UPR)<sup>18</sup> identified a major challenge: Brazil lacks a comprehensive, accurate and up-to-date database on stateless persons. In line with Action n. 10 of the Global Action Plan to End Statelessness (#IBelong)<sup>19</sup>, which seeks to improve quantitative and qualitative data on statelessness, this article aims to contribute by (1) analyzing international and Brazilian legal provisions; (2) assessing Brazil's compliance with its international obligations and (3) exploring how human rights, such as the rights of children or the right to non-discrimination can be invoked to claim nationality or security of residence.

## 2. NATIONALITY AND STATELESSNESS

10 UNITED NATIONS GENERAL ASSEMBLY. *Convention Relating to the Status of Stateless Persons*, 28 Sept. 1954. United Nations, Treaty Series, v. 360, p. 117. Available at: <https://www.refworld.org/docid/3ae6b3840.html>. Accessed: 9 Nov. 2022.

11 UNITED NATIONS GENERAL ASSEMBLY. *Convention on the Reduction of Statelessness*, 30 Aug. 1961. United Nations, Treaty Series, v. 989, p. 175. Available at: <https://www.refworld.org/docid/3ae6b39620.html>. Accessed: 9 Nov. 2022.

12 MOLNÁR, Tamás. A fresh examination of facilitated naturalization as a solution for stateless persons. In: VAN WAAS, Laura; KHANNA, Melanie (eds.). *Solving statelessness*. 2017. p. 227.

13 RED ANA – AMERICAS NETWORK ON NATIONALITY AND STATELESSNESS. *Statelessness in the Americas – State of the Art*. 2016. Available at: <https://www.youtube.com/watch?v=vv2bJM7pm3g>. Accessed: 12 Nov 2022.

14 RED ANA. *Statelessness in the Americas*, 2016.

15 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Statelessness Around the World*. Available at: <https://www.unhcr.org/statelessness-around-the-world.html>. Accessed: 1 Nov. 2022.

16 BRAZIL. *Constitution of Brazil*, 5 Oct. 1988. Article 12(I)(c), CA No. 54, 2007. Available at: <https://www.refworld.org/docid/4c4820bf2.html>. Accessed: 1 Nov. 2022.

17 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Brazil*. Nov. 2011. Available at: <https://www.refworld.org/docid/4ed361722.html>. Accessed: 7 Nov. 2022.

18 UPR is a mechanism of the UN Human Rights Council that reviews periodically each UN Member State on the human rights situation.

19 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Global Action Plan to End Statelessness*. 4 Nov. 2014. Available at: <https://www.refworld.org/docid/545b47d64.html>. Accessed: 6 Nov. 2022.

Nationality and statelessness are closely intertwined. Defining nationality reveals its role in linking an individual to a State, a link that enables rights and imposes obligations. By understanding the importance of nationality it is then possible to grasp the limitations that its absence truly sets. Indeed, there is an interesting reciprocity in importance within the topics of nationality and statelessness. Studying the latter, one can comprehend the relevance of the former and the far-reaching impact of losing it.

After World War II, representatives from all regions drafted the Universal Declaration of Human Rights<sup>20</sup> (hereinafter UDHR), a milestone guiding more than seventy human rights treaties. In its inaugural article, the UDHR assures that “all human beings are born free and equal in dignity and rights”<sup>21</sup>. Article 15(1)<sup>22</sup> safeguards the fundamental human right to a nationality, an essential gateway to the dignity guaranteed in UDHR’s first article. Indeed, it has been argued that “unless (nearly) all internationally recognized human rights are respected, a life of full dignity is unlikely to be a realistic possibility.”<sup>23</sup> After this landmark instrument, the concept of nationality has expanded- from what was held as a mere tool to ‘regulate relationships among sovereign states’<sup>24</sup>- to an identity through which individuals can proclaim the right to a nationality as, in fact, a human right.

Having a nationality may seem an automatic birthright, easily taken for granted. However, as this article will demonstrate, this is entirely not the reality for millions of people worldwide, according to The United Nations Refugee Agency<sup>25</sup> (hereinafter UNHCR<sup>26</sup>).

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20 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Universal Declaration of Human Rights*. Adopted 10 Dec. 1948. UNGA Res. 217 A(III). Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Accessed: 1 Sept. 2022.

21 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Universal Declaration of Human Rights*, 1948. Art. 1.

22 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Universal Declaration of Human Rights*, 1948. Art. 15(1).

23 DONNELLY, Jack; WHELAN, Daniel J. *International Human Rights*. 5. ed. Boulder: Westview, 2018. p. 26. (emphasis in original).

24 CHAN, Johannes M. M. The Right to a Nationality as a Human Right: The Current Trend Towards Recognition. *Human Rights Law Journal*, v. 12, p. 1, 1980.

25 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Statelessness Around the World*. Available at: <https://www.unhcr.org/ibelong/statelessness-around-the-world/>. Accessed: 2 Sept. 2022.

26 UNITED NATIONS GENERAL ASSEMBLY (UNGA). Res. 428 (Fifth Session, 14 Dec. 1950). By virtue of this and subsequent resolutions, UNHCR was granted the mandate to address statelessness by identifying stateless persons, protecting their rights, and preventing and reducing statelessness. See also: MANLY, Mark. UNHCR 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. 88-115.

In the absence of a nationality, the person is defined as being 'stateless'. Under international law and international customary law<sup>27</sup> this means that the person "is not considered as a national by any state under the operation of its law".<sup>28</sup> Beyond definitions, the importance of the issue of statelessness resides on the factual consequences that the lack of a nationality can impose on a person, e.g., the impediment to basic rights such as healthcare, education, employment and freedom of movement.<sup>29</sup>

As the aforementioned UDHR is not a legally binding document, the protected universal human right to a nationality is delegated<sup>30</sup> to the responsibility and sovereignty of states, which must align domestic law with international standards. Indeed, in Article 1 of The Hague Convention of 1930 is held that "it is for each State to determine under its own law who are its nationals"<sup>31</sup>. Nevertheless, state's sovereignty should not be an argument for unjust nationality laws, as the former article adds that such laws must be consistent with international conventions, custom, and generally recognised legal principles.

## 2.1. Nationality

The concept of nationality has well been explored and debated in literature<sup>32</sup> from a variety of branches of study<sup>33</sup> such as philosophy, sociology, history, even human security<sup>34</sup>. Each discipline offers its own specificities and perspectives.

The legal concept of nationality, along with passports and the rules governing acquisition and forfeiture of ones' status of 'national' were introduced with the intent

27 **INTERNATIONAL LAW COMMISSION (ILC)**. Draft Articles on Diplomatic Protection (with Commentaries). In: UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Supplement No. 10: Report of the International Law Commission*, 58th Session (2006) A/61/10. p. 49.

28 **UNITED NATIONS GENERAL ASSEMBLY (UNGA)**. *Convention Relating to the Status of Stateless Persons*. Art 1(1) adopted 28 Sept. 1954, entered into force 6 June 1960. United Nations Treaty Series, v. 360, p. 117.

29 **UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)**. *Ending Statelessness*. Available at: <https://www.unhcr.org/ending-statelessness.html>. Accessed: 3 Nov. 2022.

30 **HATHAWAY, Oona A.** International delegation and state sovereignty. *Law & Contemporary Problems*, v. 71, p. 115, 2008.

31 **LEAGUE OF NATIONS**. *Convention on Certain Questions Relating to the Conflict of Nationality Laws* (1930 Hague Convention). Art. 1.

32 See, for instance **ANNONI, Alessandra; FORLATI, Serena (eds.)**. *The Changing Role of Nationality in International Law*. London: Routledge, 2013.

33 **KINGSTON, Lindsey N.** Expanding statelessness scholarship: The value of interdisciplinary research and education. *Statelessness & Citizenship Review*, v. 1, p. 165, 2019.

34 See, for instance **VAN WAAS, Laura E.** The value of the human security framework in addressing statelessness. In: EDWARDS, Alice; FERNÁNDEZ, Carla (eds.). *Human Security and Non-Citizens*. Cambridge: Cambridge University Press, 2010. p. 49-81; **INSTITUTE ON STATELESSNESS AND INCLUSION (ISI); GLOBAL CITIZENSHIP OBSERVATORY (GLOBALCIT)**. *Instrumentalising Citizenship in the Fight Against Terrorism: A Global Comparative Analysis of Legislation on Deprivation of Nationality as a Security Measure*. Available at: [https://files.institutesi.org/Instrumentalising\\_Citizenship\\_Global\\_Trends\\_Report.pdf](https://files.institutesi.org/Instrumentalising_Citizenship_Global_Trends_Report.pdf). Accessed: 13 Oct. 2022.

to legally qualify and prove the connection between a person and a state.<sup>35</sup> Indeed, it has been argued<sup>36</sup> that nationality effectively connects individuals to the law, enabling them to invoke State protection and empowering the State to act on their behalf<sup>37</sup>. Without nationality, there are no reciprocal legal duties between the person and the State, and vice-versa.

The matter of nationality has traditionally been treated as a matter of State sovereignty and domestic concern.<sup>38</sup> Under this view, States have the sole legal authority to grant and withhold nationality.<sup>39</sup> In practice, such discretion has led to statelessness, often due to discriminatory laws or gaps in nationality laws.<sup>40</sup>

Birth is the generating factor for acquiring nationality. States typically confer nationality through the criteria of *jus soli* (law of the soil)<sup>41</sup>, which grants nationality by birth on the territory, or *jus sanguinis* (law of the blood)<sup>42</sup>, which grants nationality through descent from one or both parents.

Nationality can also be acquired or changed at a later stage of life. Two relevant principles are *jus domicilli* (law of residence)<sup>43</sup>, which some State utilize to grant nationality through naturalization<sup>44</sup>; and *jus nexi* or *nexus*<sup>45</sup>, which is a concept argued by Shachar<sup>46</sup> that consists essentially of ‘citizenship based on rootedness’. This principle could offer a pathway for those who are unable to claim ‘membership’<sup>47</sup> through the aforementioned territorial and parentage criteria but can still very much establish the existence of “real and genuine ties toward the political community”<sup>48</sup>.

35 VLIEKS, Caia. Nationality and statelessness in Europe: European law on preventing and solving statelessness. 2022. p. 3.

36 ANNUAL DIGEST. 1931–32, Case No. 115. Cited in: WEIS, Paul. *Nationality and Statelessness in International Law*. 2. ed. Dordrecht: Kluwer Academic Publishers Group, 1979. p. 162.

37 WEIS, Paul. *Nationality and Statelessness in International Law*. 2. ed. Dordrecht: Kluwer Academic Publishers Group, 1979.

38 VAN WAAS-HAYWARD, L. E. *Nationality matters: Statelessness under international law*. Antwerp: Intersentia, 2008. P. 17.

39 VLIEKS, Caia; BALLIN, Ernst Hirsch; RECALDE VELA, María José. Solving statelessness: Interpreting the right to nationality. *Netherlands Quarterly of Human Rights*, v. 35, n. 3, p. 158, 2017.

40 FOSTER, Michelle. The 1961 Convention on the Reduction of Statelessness: History, evolution and relevance. *Statelessness & Citizenship Review*, v. 4, n. 1, p. 188-193, 2022.

41 VAN WAAS-HAYWARD. *Nationality matters*, 2008. p.32.

42 VAN WAAS-HAYWARD. *Nationality matters*, 2008. p.33.

43 VAN WAAS-HAYWARD. *Nationality matters*, 2008. p.33.

44 States can determine, through their domestic legislation, the exact standards through which a person can qualify for naturalization, e.g., as mentioned, time of residence or knowledge of the language of a certain country. See further, DONNER, Ruth. Chapter 2: The principle of the “link” in nationality law. In: *Regulation of Nationality in International Law*. New York: Transnational Publishers, 1994. p. 33-34.

45 BALLIN, Ernst Hirsch. *Citizens' Rights and the Right to Be a Citizen*. (Developments in International Law, v. 66). Leiden: Brill Nijhoff, 2014. p. 83.

46 SHACHAR, Ayelet. Earned citizenship: Property lessons for immigration reform. *Yale Journal of Law & the Humanities*, v. 23, p. 110-113, 2011. See also: SHACHAR, Ayelet. *The Birthright Lottery: Citizenship and Global Inequality*. Cambridge: Harvard University Press, 2009.

47 VLIEKS. *Nationality and statelessness in Europe*, 2022. p. 18.

48 SHACHAR. *Earned Citizenship*, 2011.



Ultimately, regardless of the mode or timing of acquisition, nationality provides an intrinsic sense of belonging to a particular nation and community<sup>49</sup>.

### 2.1.1. International Legal Framework on Nationality

Under the League of Nations (LoN)<sup>50</sup>, the first international attempt to ensure nationality for all came with The Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930 Hague Convention)<sup>51</sup>. There, the right to a nationality was protected specifically for children<sup>52</sup> and married women<sup>53</sup>, whose status is often contingent on their husband<sup>54</sup>. Although few States ratified it<sup>55</sup>, the Convention marked an important turning point<sup>56</sup> in nationality law.

It is considered<sup>57</sup> that nationality is ultimately what defines a legal relationship between a state and its national, creating reciprocal rights and obligations. The International Court of Justice<sup>58</sup> (hereinafter ICJ) has defined nationality in the *Nottenbohn Case*<sup>59</sup>:

“a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”

Under international law, six of the core United Nations Human Rights Treaties, safeguard the right to a nationality<sup>60</sup>:

- 1) Article 5(d)(iii) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>61</sup> ensures the right to a nationality to all human beings, ‘regardless of race, colour, or national or ethnic origin’;

49 RODRIGUES, Paulo Cesar Villela Souto Lopes; GBEDEMAH, Stephen Edem. Nationality in Brazilian law. *Panorama of Brazilian Law*, v. 5, n. 7-8, p. 245, 2017.

50 LEAGUE OF NATIONS. The League of Nations was the first global intergovernmental organization, founded on 10 Jan. 1920 by the Paris Peace Conference. Popularly referred to as the “predecessor” of the United Nations, the organization had the objective of promoting “international cooperation” and achieving “international peace and security.” Available at: <https://www.ungeneva.org/en/library-archives/league-of-nations/covenant>. Accessed: 13 Nov. 2022.; See, also, HENIG, Ruth. *The Peace That Never Was: A History of the League of Nations*. London: Haus Publishing, 2019.

51 LEAGUE OF NATIONS. *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 Apr. 1930. *League of Nations Treaty Series*, v. 179, p. 89, n. 4137. Available at: <https://www.refworld.org/docid/3ae6b3b00.html>. Accessed: 13 Nov. 2022.

52 LEAGUE OF NATIONS. *Convention on Certain Questions Relating to the Conflict of Nationality Law* (1930 Hague Convention), arts. 12-17.

53 LEAGUE OF NATIONS. *Convention on Certain Questions Relating to the Conflict of Nationality Law* (1930 Hague Convention), arts. 8-11.

54 VLIEKS. *Nationality and statelessness in Europe*, 2022.

55 LEAGUE OF NATIONS. *Convention on Certain Questions Relating to the Conflict of Nationality Laws*. Adopted 12 Apr. 1930, entered into force 1 July 1937. *League of Nations Treaty Series*, v. 179, p. 89.

56 VLIEKS. *Nationality and statelessness in Europe*, 2022.

57 EDWARDS, Alice. The meaning of nationality in international law in an era of human rights: procedural and substantive aspects. In: EDWARDS, Alice; VAN WAAS, Laura (eds.). *Nationality and Statelessness Under International Law*. Cambridge: Cambridge University Press, 2014. p. 11.

58 INTERNATIONAL COURT OF JUSTICE (ICJ). Available at: <https://www.icj-cij.org/en>.

59 INTERNATIONAL COURT OF JUSTICE (ICJ). *Nottebohn Case (Liechtenstein v. Guatemala)*. [1955] ICJ Rep 4.

60 INSTITUTE ON STATELESSNESS AND INCLUSION. *The World's Stateless: Deprivation of Nationality*. Mar. 2020. p. 19. Available at: <https://www.refworld.org/docid/5f4e178c4.html>. Accessed: 13 Nov. 2022.

- 2) Article 18 of the Convention on the Rights of Persons with Disabilities (CRPD)<sup>62</sup> protects the liberty of movement and the right to acquiring and changing nationality;
- 3) Article 29 of the CMW<sup>63</sup> guarantees the right to a nationality for children of migrant workers;
- 4) Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>64</sup> grants women equal rights with men to acquire, change or retain their nationality, as well as with respect to the nationality of their children;
- 5) Article 24 (3) of the ICCPR<sup>65</sup> establishes that every child has the right to acquire a nationality;
- 6) Article 7 of the Convention on the Rights of the Child (CRC)<sup>66</sup> reiterates this right and obliges States to prevent child statelessness.

These instruments confirm that nationality is an enabling right<sup>67</sup>, essential for the enjoyment of other fundamental rights. Furthermore, the recurring focus on the rights of children and the protection of their right to a nationality underscores the importance of the discussion in chapter 4 of this article.

In the Inter-American Human Rights system, Article 20 of the American Convention on Human Rights<sup>68</sup> (hereinafter ACHR) guarantees the right to a nationality. The Inter-American Court of Human Rights (IACtHR) defines nationality as “the legal bond that guarantees individuals the full enjoyment of all human rights

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61 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*. 21 Dec. 1965. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>. Accessed: 6 Nov. 2022.

62 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Convention on the Rights of Persons with Disabilities (CRPD)*. 13 Dec. 2006. Available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>. Accessed: 6 Nov. 2022.

63 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: Resolution / Adopted by the General Assembly*. 18 Dec. 1990. A/RES/45/158. Available at: <https://www.refworld.org/docid/3b00f2391c.html>. Accessed: 7 Nov. 2022.

64 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Convention on the Elimination of All Forms of Discrimination Against Women*. 18 Dec. 1979. A/RES/34/180. Available at: <https://www.refworld.org/docid/3b00f2244.html>. Accessed: 7 Nov. 2022.

65 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *International Covenant on Civil and Political Rights*. 16 Dec. 1966. United Nations Treaty Series, v. 999, p. 171. Available at: <https://www.refworld.org/docid/3ae6b3aa0.html>. Accessed: 7 Nov. 2022.

66 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Rights of the Child: Resolution / Adopted by the General Assembly*. 14 Feb. 2013. A/RES/67/152. Available at: <https://www.refworld.org/docid/528b84524.html>. Accessed: 7 Nov. 2022.

67 INSTITUTE ON STATELESSNESS AND INCLUSION; UNICEF. *The Child's Right to a Nationality and Childhood Statelessness: Texts and Materials*. 18 Dec. 2020. p. 13.

68 ORGANIZATION OF AMERICAN STATES (OAS). *American Convention on Human Rights – “Pact of San José”*. Costa Rica, 22 Nov. 1969. Available at: <https://www.refworld.org/docid/3ae6b36510.html>. Accessed: 13 Nov. 2022.



as a member of the political community”<sup>69</sup>. Indeed, it has been stated<sup>70</sup> that the exercise of these human rights is frequently contingent upon having, at least, a legal identity.

In *The Origins of Totalitarianism*, Arendt (1976)<sup>71</sup> exposes the importance of nationality along with the danger of not having or losing one when she states that “survivors of the extermination camps, the inmates of concentration camps, could see (...) that the abstract nakedness of being nothing but human was their greatest danger.”

In practice, the elementary issue is that states determine nationality under their own laws. However, there is no international guarantee that these domestic provisions are consistent at granting a nationality to every individual. As a result, provisions can and do create statelessness.

## 2.2. Statelessness

UNHCR defines a stateless person as one “not considered a national by any State under the operation of its law”<sup>72</sup>. A person that, by this interpretation, qualifies as stateless, is referred to as *de jure* stateless.<sup>73</sup> In practical terms, a stateless person lacks legal membership in any country and are denied the rights and protections afforded to nationals. While the exact number of stateless people is unknown, The Office of the High Commissioner for Human Rights<sup>74</sup> (hereinafter OHCHR) estimates that approximately 12 million people worldwide are in this predicament.

In the very definition of a state is the intrinsic notion of protecting its citizens. Therefore, if the state is unable or even unwilling to do so, it has failed as a state.<sup>75</sup> Moreover, states’ sovereignty is limited to its territory and, thus, to the individuals

69 OPEN SOCIETY JUSTICE INITIATIVE. Inter-American Court of Human Rights affirms the human right to nationality and upholds the international prohibition on racial discrimination in access to nationality. Available at: <https://www.justiceinitiative.org/newsroom/inter-american-court-of-human-rights-affirms-the-human-right-to-nationality-and-upholds-the-international-prohibition-on-racial-discrimination-in-access-to-nationality>. Accessed: 9 Oct. 2022.

70 AZZAM, Fateh. Deprivation of nationality: A human rights perspective. In: INSTITUTE ON STATELESSNESS AND INCLUSION. *The World's Stateless: Deprivation of Nationality*. Mar. 2020. Available at: <https://www.refworld.org/docid/5f4e178c4.html>. Accessed: 8 Nov. 2022.

71 ARENDT, Hannah. *The Origins of Totalitarianism*. New ed. New York: Harcourt Brace Jovanovich, 1976. p. 300.

72 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). What is statelessness. Available at: <https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf>. Accessed: 18 July 2022.

73 RECALDE-VELA, María José. How can identity assert a claim to citizenship? In search of a safeguard against statelessness. Tilburg, 23 Aug. 2013. p. 1.

74 OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR). OHCHR and the right to a nationality: About nationality and human rights. 12 June 2020. Available at: <https://www.ohchr.org/en/nationality-and-statelessness>. Accessed: 13 Sept. 2022.

75 FERRIS, Elizabeth G. *The Politics of Protection: The Limits to Humanitarian Action*. Washington, D.C.: Brookings Institution Press, 2011.

within that territory's jurisdiction<sup>76</sup> and this 'limitation' can prove to be problematic<sup>77</sup> for stateless persons considering that the lack of an international legal framework that establishes any obligation for a state to grant nationality to specific individuals. In other words, "there is a clear dichotomy between the conception of nationality and a right thereto in (international) law."<sup>78</sup>

Statelessness is not only a personal hardship. It is a collective problem that affects many facets of society as a whole. It impacts the economy, considering that a stateless person is often unable to find employment; it affects public health, as they may be denied healthcare; education, marriage rights, political participation; and even the basic right to dignity in death, with a death certificate to prove, at least, that the person ever existed.<sup>79</sup> Moreover, the absence of nationality is also a human security concern<sup>80</sup>. Without legal recognition, people are more vulnerable to violence, discrimination, exploitation such as forced labor, human trafficking<sup>81</sup>, amongst others.

Statelessness is often described as a silent form of exclusion<sup>82</sup> and a product of the international order<sup>83</sup>. Addressing it requires action on the international legal front. While the fundamental (human) right to a nationality has long been discussed in international law<sup>84</sup>, efforts have not always focused specifically on solving and preventing the issue of statelessness.<sup>85</sup> The inaugural international response to this issue were the tailor-made 1954 Convention Relating to the Status of Stateless Persons (hereinafter 1954 Convention) designed to protect stateless people and the following 1961 Convention on the Reduction of Statelessness (hereinafter 1961

76 **AGARWAL, Aditi**. Sovereign state territory. *Academike*, NUALS, 2014. Available at: <https://www.lawctopus.com/academike/sovereign-state-territory/>. Accessed: 27 Oct. 2022.

77 **HENKIN, Louis**. Human rights and state sovereignty. *Georgia Journal of International and Comparative Law*, v. 25, p. 31, 1995.

78 **VLEIKS, Caia**. *Nationality and Statelessness in Europe: European Law on Preventing and Solving Statelessness*. 2022. p. 19.

79 **UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)**. Statelessness explained: What are the consequences. Available at: <https://www.unrefugees.org/news/statelessness-explained/>. Accessed: 6 Nov. 2022.

80 **OPEN SOCIETY FOUNDATIONS**. *Stateless*. Aug. 2011. Available at: <https://www.youtube.com/watch?v=poCUxsduHM4>. Accessed: 13 Aug. 2022.

81 See, for instance, **RIJKEN, Conny; et al.** *The Nexus Between Statelessness and Human Trafficking in Thailand*. v. 106. Oisterwijk, The Netherlands: Wolf Legal Publishers, 2015; **KINGSTON, Lindsey N.** Worthy of rights: Statelessness as a cause and symptom of marginalisation. In: *Understanding Statelessness*. London: Routledge, 2017. p. 17-34.

82 **TEDx TALKS**. Nowhere people: exposing a portrait of the world's stateless | Greg Constantine | TEDxEastEnd. 24 Feb. 2016. Available at: <https://www.youtube.com/watch?v=u9DD6MZj5Z4>. Accessed: 23 Oct. 2022.

83 **BRINHAM, Natalie**. *Statelessness: A modern history*. By Mira L. Siegelberg. Cambridge, MA: Harvard University Press, 2020.

84 See, for instance **SCOTT, James Brown**. Nationality: Jus soli or jus sanguinis. *American Journal of International Law*, v. 24, p. 58, 1930.; **GANCZER, Monika**. The right to nationality as a human right. *Hungarian Yearbook of International Law & European Law*, 2014, p. 15.; **BISSCHOP, W. R.** Nationality in international law. *American Journal of International Law*, v. 37, p. 320, 1943.; **EDWARDS, Alice; VAN WAAS, Laura (eds.)**. *Nationality and Statelessness Under International Law*. Cambridge: Cambridge University Press, 2014.

85 **VLEIKS, Caia**. *Nationality and Statelessness in Europe: European Law on Preventing and Solving Statelessness*. 2022. p. 15.

Convention) which aimed to prevent statelessness altogether. Despite criticism<sup>86</sup>, both conventions are regarded as cornerstones treaties in the effort to end statelessness.<sup>87</sup>

## 2.2.1. International Legal Framework on Statelessness

### 2.2.1.1. The 1961 Convention on the Reduction of Statelessness

The 1961 Convention<sup>88</sup> focuses on preventing statelessness, especially at birth. It obliges States to grant nationality to children born on their territory or to their nationals abroad when otherwise they would be stateless<sup>89</sup>. States are required to include safeguards in nationality laws to effectively prevent statelessness at any point in life by expressly prohibiting the loss of nationality through deprivation or renunciation. In its final provisions, the Convention gives instructions on how to avoid statelessness in the situation of state secession or transfer of territory.

While not the first treaty to address statelessness, the 1961 Convention was pioneer in demonstrating that multilateral agreements could prove efficient in paving a path forward into resolving nationality issues.<sup>90</sup> In 2014, when UNHCR launched its Campaign to End Statelessness in 10 Years there were 61 States party to the 1961 Convention.<sup>91</sup> This number is currently up to 78.<sup>92</sup>

Articles 1 to 10, of the 1961 Convention outline four main causes of statelessness: “by not obtaining a citizenship (art. 1, 2, 3, 4, 8, 9); by voluntarily renouncing his or her citizenship (art. 7); by having his or her citizenship removed (art. 5, 6); or by extinction of the state (art.10).”<sup>93</sup> One of the most fundamental stipulations made by this Convention was the requirement that children born without any other nationality, must acquire the nationality of their country of birth.

86 See, for instance **BLOOM, Tendayi**. *Problematising the conventions on statelessness*. 2013; **VAN WAAS**. *Nationality Matters*, 2008.

87 **ROBERTSON, Katie**. Practical measures to meaningfully implement Article 1(1) of the 1961 Convention on the Reduction of Statelessness in Australian law and practice. *Statelessness & Citizenship Review*, v. 4, p. 204, 2022.

88 For the purpose of this article, the choice to address first the 1961 Convention instead of the 1954 Convention, as the chronological order would, perhaps, suggest, was made due to the fact that the former focuses on preventing statelessness whereas the latter only becomes particularly relevant in the case that statelessness cannot be avoided and the stateless people would, then, need the protection provided by the latter Convention.

89 **UNITED NATIONS GENERAL ASSEMBLY (UNGA)**. *Convention on the Reduction of Statelessness*. 30 Aug. 1961. Art. 1.

90 **VAN WAAS-HAYWARD**. *Nationality Matters*, 2008. p. 41.

91 **UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)**. UN conventions on statelessness. Available at: <https://www.unhcr.org/un-conventions-on-statelessness.html>. Accessed: 17 Nov. 2022.

92 **UNITED NATIONS TREATY COLLECTION**. Refugees and stateless persons, Chapter V, Convention on the Reduction of Statelessness. New York, 30 Aug. 1961. Available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtidsg\\_no=V-4&chapter=5&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtidsg_no=V-4&chapter=5&clang=en). Accessed: 18 Nov. 2022.

93 **BLOOM**. *Problematising the conventions on statelessness*, 2013. p. 4.

#### 2.2.1.2. The 1954 Convention Relating to the Status of Stateless Persons

The 1954 Convention was designed to add more assertive actions in the fight against statelessness.<sup>94</sup> The priority to prevent statelessness was equally urgent as the need to improve the legal status for the existing stateless people worldwide, as well as the necessity to secure the enjoyment of their fundamental rights.

The 1954 Convention, defines a stateless person as a person who is “not recognized as a national by any state under the operation of its law”<sup>95</sup>. The UNHCR issued a series of guidelines<sup>96</sup> which clarify that a person is considered stateless from the moment the conditions in Article 1 (1) of the 1954 Convention are met.

Under the 1954 Convention, States must safeguard a number of rights for stateless people, more specifically with respect to the standards of treatment. The range of rights are not exhaustive but include the right to employment, housing and the right to education. Moreover, stateless persons are also entitled to travel documents, identity and administrative assistance in accordance with the 1954 Convention. At the time of the launch of the UNHCR Campaign to End Statelessness in 10 Years in 2014, 83 States were party to the 1954 Convention.<sup>97</sup> This number is currently up to 96.<sup>98</sup>

#### 2.2.1.3. The Brazil Declaration and Plan of Action

The 1984 Cartagena Declaration on Refugees<sup>99</sup> is a known regional refugee law landmark that broadened the definition of a refugee, and proposed new methods to address the humanitarian needs of internally displaced persons as well as the refugees. On its 30<sup>th</sup> anniversary in 2014, Latin America governments adopted the

94 VAN WAAS-HAYWARD. *Nationality Matters*, 2008. p. 41.

95 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Convention Relating to the Status of Stateless Persons*. 28 Sept. 1954. Art. 1.

96 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Guidelines on Statelessness No. 1: The Definition of "Stateless Person" in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons*. 20 Feb. 2012. HCR/GS/12/01. p. 9. Available at: <https://www.refworld.org/docid/4f4371b82.html>. Accessed: 2 Nov. 2022.

97 UNHCR. *UN conventions on statelessness*.

98 UNITED NATIONS TREATY COLLECTION. *Refugees and Stateless Persons, Chapter V, Convention Relating to the Status of Stateless Persons*. New York, 28 Sept. 1954. Available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=V-3&chapter=5&Temp=mtmsg2&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=V-3&chapter=5&Temp=mtmsg2&clang=en). Accessed: 18 Nov. 2022.

99 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Cartagena Declaration on Refugees*. Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama. Cartagena de Indias, Colombia, 22 Nov. 1984. Available at: <https://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>. Accessed: 17 Nov. 2022.

Brazil Declaration and Plan of Action, a roadmap<sup>100</sup> to end statelessness by 2024<sup>101</sup>, and strengthen protection for refugees, displaced, and stateless persons in the region.

The Brazil Declaration is a substantial, government-led process originated through regional consultations in Nicaragua, Ecuador, Argentina, amongst others.<sup>102</sup> The document built on regional frameworks such as the 1994 San José Declaration on Refugees and Displaced Persons.<sup>103</sup> It is considered<sup>104</sup> a landmark in the Americas for introducing concrete measures to combat statelessness.

The Brazil Plan of Action established eleven concrete programs, including “Eradicating Statelessness”, which calls for a number of actions, namely: 1) accession to the statelessness conventions; 2) the harmonization of internal legislation and practice on nationality with international standards; 3) the establishment of effective statelessness status determination procedures; 4) the adoption of legal protection frameworks that guarantee the rights of stateless persons.<sup>105</sup>

Another program, “Quality Asylum” seeks to improve status determination procedures, as well “as strengthen the capacity and knowledge of asylum authorities and introduce efficient management concepts and procedures”<sup>106</sup>.

Chapter 6 of the Plan of Action affirms the right to nationality as a fundamental human right. Participating States committed to eradicating statelessness within 10 years of the Declaration<sup>107</sup>.

100 **REGIONAL REFUGEE INSTRUMENTS & RELATED.** *Brazil Declaration and Plan of Action.* 3 Dec. 2014. Available at: <https://www.refworld.org/docid/5487065b4.html>. Accessed: 18 Oct. 2022.

101 **UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR).** *The Brazil Declaration.* Regional Refugee Instruments & Related: Brazil Declaration and Plan of Action. Available at: <https://www.unhcr.org/brazil-declaration.html>.

102 **INSTITUTE ON STATELESSNESS AND INCLUSION (ISI).** *The World's Stateless Children.* Wolf Legal Publishers, 2017. p. 44.

103 **REGIONAL REFUGEE INSTRUMENTS & RELATED.** *San José Declaration on Refugees and Displaced Persons.* 7 Dec. 1994. Available at: <https://www.refworld.org/docid/4a54bc3fd.html>. Accessed: 18 Nov. 2022.

104 **INSTITUTE ON STATELESSNESS AND INCLUSION (ISI).** *The World's Stateless Children.* Wolf Legal Publishers, 2017. p. 45. Available at: <https://www.refworld.org/docid/5f4e16ef4.html>.

105 **AMERICAS NETWORK ON NATIONALITY AND STATELESSNESS.** *Brazil Plan of Action.* Available at: <https://americasns.org/brazil-plan-of-action/>. Accessed: 17 Nov. 2022.

106 **REGIONAL REFUGEE INSTRUMENTS & RELATED.** *Brazil Declaration and Plan of Action.* 3 Dec. 2014. Available at: <https://www.refworld.org/docid/5487065b4.html>. Accessed: 1 Oct. 2022.

107 **BRAZIL DECLARATION.** A framework for cooperation and regional solidarity to strengthen the international protection of refugees, displaced and stateless persons in Latin America and the Caribbean. 4 Dec. 2014. Available at: <https://www.refworld.org/docid/5487065b4.html>.

A key strength of the Declaration is its follow-up mechanism. UNHCR issues periodic reports assessing the effectiveness of measures, such as the mentioned Quality Asylum, reviewing progress and identifying challenges.

### 3. STATELESSNESS IN BRAZIL

#### 3.1. Brazilian Nationality

Article 12 of Brazil's Federal Constitution<sup>108</sup> sets the criteria for acquiring nationality. Decree 389 of 1938<sup>109</sup> further defines nationality and the rights and obligations it entails. Brazilian nationality is acquired:

- I) By birth:
  - a) Birth on Brazilian territory (*jus soli*), even to foreign parents, unless the parents are serving a foreign government;
  - b) Birth abroad to a Brazilian parent serving the Brazilian State (*jus sanguinis*);
  - c) Birth abroad to a Brazilian parent (*jus sanguinis*), if registered with a Brazilian authority abroad, or, by relocating to Brazil and opting for nationality after age 18.
- II) By naturalization (...).

Article 12(I)(c) has undergone two significant amendments. Prior to these changes, children born abroad to a Brazilian parent could acquire nationality through foreign registration or by residing in Brazil before age 18 and formally opting for it.

The 1994 Constitutional Amendment (EC3/94)<sup>110</sup> removed the option of acquiring nationality solely through foreign registration, requiring residence in Brazil and a formal choice. This reform left more than 200,000 children<sup>111</sup> born abroad- to Brazilian parents- in *jus sanguinis*-only countries- without any nationality, a situation that became known as the *Brasileirinhos Apátridas* phenomenon.

In 2007, Constitutional Amendment EC54/07<sup>112</sup> closed this gap, restoring the right to nationality through *jus sanguinis* for children registered with a Brazilian authority abroad and removing the residence requirement.

108 **BRAZIL**. *Federal Constitution of Brazil*. Art. 12, Sections I and II. Available at: [https://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao.htm](https://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm). Accessed: 30 Aug. 2022.

109 **BRAZIL**. Decree No. 389, of 25 Apr. 1938. Regulates Brazilian nationality. Available at: [https://www.planalto.gov.br/ccivil\\_03/decreto-lei/del0389.htm](https://www.planalto.gov.br/ccivil_03/decreto-lei/del0389.htm).

110 **BRAZIL**. Constitution (1988). Constitutional Amendment No. 3, of 7 June 1994. Amends item "c" of section I, item "b" of section II, §1 and item II of §4 of Art. 12 of the Federal Constitution. *Lex: Legislação Federal e Marginália*. Brasília. Available at: [https://www.planalto.gov.br/ccivil\\_03/Constituicao/Emendas/ECR/ecr3.htm](https://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/ECR/ecr3.htm).

111 **GALVÃO, Vinícius Queiroz**. Lei deixa 200 mil filhos de brasileiros no exterior sem pátria. *Folha de São Paulo*, May 2007. Available at: <http://www1.folha.uol.com.br/fsp/cotidian/ff2005200701.htm>.

112 **BRAZIL**. Constitution (1988). Constitutional Amendment No. 54, of 20 Sept. 2007. Provides a new wording to item "c" of section I of Art. 12 of the Federal Constitution and adds Art. 95 to the Act of Transitional Constitutional Provisions, ensuring registration in consulates of Brazilians born abroad. *Lex: Legislação Federal e Marginália*. Brasília. Available at: [https://www.planalto.gov.br/ccivil\\_03/Constituicao/Emendas/Emc/emc54.htm](https://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc54.htm).



### 3.2. Legal Framework on Nationality and Statelessness in Brazil

Brazil is party to the two most prominent Conventions on the issue of statelessness that were discussed in the previous chapter, namely, the 1954 and the 1961 Conventions.<sup>113</sup> Therefore, the country has committed to incorporate their provisions into domestic law with the objective of preventing and reducing statelessness and of protecting stateless persons.

#### 3.2.1. Brasileirinhos Apátridas

The social Movement of the *Brasileirinhos Apátridas* emerged in the late 1990s, in response to the Constitutional Amendment 'n. 3 of 1994' which altered article 12 (I) (c) of the Brazilian Constitution and rendered stateless thousands of children born abroad to Brazilian parents in *jus sanguinis* countries. This Movement was initiated by a Brazilian journalist named Rui Martins<sup>114</sup>, and was composed by individuals affected by the amendment, i.e. the parents of the stateless children, who challenged the new composition of Article 12(I)(c) of the Constitution.

The movement drew media attention to this violation of the constitutional right to nationality. Activists organised protests at Brazilian consulates abroad and sent letters to the President and parliamentarians, urging constitutional reform.<sup>115</sup>

In 2000, a reform proposal reached the Senate. It was approved in 2007 as Constitutional Amendment n. 54 allowing Brazilian nationality for children born abroad through registration with a competent Brazilian authority.

Article 95<sup>116</sup> of the aforementioned Act of Transitional Constitutional Provisions was also amended. It allows children of Brazilian nationals born abroad between June 7, 1994 (date of the Amendment n. 3 of 1994) and 20 September 2007 (date of the Amendment n. 54 of 2007), to be registered at a Brazilian diplomatic or consular office, or in Brazil itself, if they establish residence in the country. This

113 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). States party to the statelessness conventions – as of 10 March 2021. Available at: <https://www.refworld.org/docid/54576a754.html>. Accessed: 10 Nov. 2022.

114 OLIVEIRA, Luiz Fernando de. Brasileirinhos apátridas. *DW Made for Minds*, 30 Nov. 2006. Available at: <https://www.dw.com/pt-br/2012-o-ano-dos-brasileiros-sem-p%C3%A1tria/a-2252946>. Accessed: 6 Oct. 2022.

115 SANT'ANNA, Luma Goularte; ROSSO, Maria Fernanda Pereira. Brasileirinhos apátridas: o caso dos filhos de brasileiros nascidos no exterior. *Revista de Direito Brasileira*, v. 1, n. 1, p. 453-467, 2011.

116 BRAZIL. Ato das Disposições Constitucionais Transitórias, Art. 95. Available at: [https://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao.htm#art95dct](https://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm#art95dct).

specifically enabled people born abroad in that time period to acquire Brazilian nationality.

The *Brasileirinhos Apátridas* campaign is viewed as a beacon of how social and political mobilisation can drive legal reform. With this change, thousands of children regained their once lost nationality and with it- an opportunity to belong.

### 3.2.2. Law nº 13445 – Migration Law

Throughout Brazil's history, four migration laws have been enacted, alternating between policies designed to encourage colonization and foreign labour, and those intended to restrict the entry of foreigners or curtail immigrant rights.<sup>117</sup> During Brazilian military period, the Statute of the Alien<sup>118</sup> was created with a strong sense of nationalism, focusing on Brazilian state's sovereignty and on Brazilian people's interests, placing the immigrant as a potential threat to the country.<sup>119</sup>

This approach shifted on May 24<sup>th</sup> 2017 when the *Statute of the Alien* was replaced by the Brazilian Migration Law n. 13445/2017<sup>120</sup>, shedding a new light on what was previously held as an authoritarian migration document. In conformity with the principal Conventions on statelessness, this new law has as cornerstone the principle of human dignity<sup>121</sup> and focuses on human rights by modernizing immigration and nationality rules.

Bearing this principle, the Migration Law aims to ensure equal rights and opportunities that Brazilian nationals have for foreigners. Moreover, in its Article 26, the law grants special protection for stateless persons, including a simplified process of entry, residence and naturalisation procedures. These procedures align with the Statelessness Conventions<sup>122</sup>, marking significant advances in Brazil's compliance with international obligations to prevent, reduce and protect against statelessness.

### 3.2.3. Maha Mamo

117 SEYFERTH, Giralda. Colonização, imigração e a questão racial no Brasil. *Revista USP*, n. 53, p. 117-149, 2002.

118 BRAZIL. Law No. 6815/1980. Statute of the Alien. Available at: [https://www.planalto.gov.br/ccivil\\_03/leis/l6815.htm](https://www.planalto.gov.br/ccivil_03/leis/l6815.htm).

119 CLARO, Carolina de Abreu Batista. Do Estatuto do Estrangeiro à Lei de Migração: avanços e expectativas. 2020. p. 1.

120 BRAZIL. Law No. 13.445, of 24 May 2017. Institutes the Migration Law. *Lex: Legislação Federal e Marginália*. Brasília. Available at: [https://www.planalto.gov.br/ccivil\\_03/ Ato2015-2018/2017/Lei/L13445.htm](https://www.planalto.gov.br/ccivil_03/ Ato2015-2018/2017/Lei/L13445.htm).

121 FARIA, Tatiane Gonçalves Mendes; BRASIL, Deilton Ribeiro. A situação dos apátridas na nova lei de migração brasileira: diálogo com os princípios da dignidade da pessoa humana e da fraternidade. *Revista Quaestio Iuris*, v. 12, n. 4, p. 23-42, 2019.

122 BARBOSA, Pedro Henrique de Faria; LORETO, Sylvio. The migration law and protection granted to stateless people: Brazilian alignment to international standard of human rights. *Brazilian Journal of International Law*, v. 15, p. 122, 2018.

Maha Mamo was born in Lebanon in 1988 to Syrian parents. Lebanese *jus sanguinis* law denied her nationality, and Syrian law excluded her because her parents' interreligious marriage was not recognised. Stateless from birth, she moved to Brazil in 2014 under a special visa programme for Syrian war survivors, gaining refugee status in 2016. This was Maha's chance to, in her words, 'be accepted as a human being'<sup>123</sup>. After the adoption of the 2017 Migration Law, she was formally recognised as stateless and, in October 2018, became the first person in Brazilian history<sup>124</sup> to acquire nationality through the Statelessness Determination Procedure<sup>125</sup>. Maha Mamo's case is an emblematic one that underscores the human impact of statelessness and the significance of rights-based legal reforms.

### 3.2.4. Provisionally Brazilian: Law n. 6015 of 1973

While Brazil has taken significant steps to protect stateless persons and to prevent and reduce statelessness, Notary Law No. 6.015/1973<sup>126</sup>, remains a potential legal pitfall. This law, which regulates the registration of persons, is detailed in defining the duties of notary officers and the rights of those they serve. However, because it is relatively unknown and often not explained to those affected, its provisions can unintentionally create situations of statelessness.

Article 32 stipulates that the birth certificates of Brazilians born abroad- whose parents are not serving Brazil- are valid as proof of nationality only if the birth is registered at a Brazilian consulate or, if not, if the individual resides in Brazil and opts for nationality before turning 18. Even then, this recognition is provisional: it remains valid for only four years after the age of majority, during which time the individual must confirm their choice of Brazilian nationality before a federal court. Failure to do so results in the cancellation of the registration and, consequently, the loss of nationality.

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<sup>123</sup> UNHCR. *UN conventions on statelessness*.

<sup>124</sup> VILELA, Pedro Rafael. Brasil reconhece condição de apátrida pela primeira vez na história. *Agência Brasil*, 25 June 2018. Available at: <https://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2018-06/brasil-reconhece-condicao-de-apatrida-pela-primeira-vez-na-historia>.

<sup>125</sup> As additional knowledge piece but also in proof of Brazil's good practices regarding statelessness, likewise with naturalization, Brazil has an electronic system of statelessness determination, namely through the following: BRAZIL. Electronic system for statelessness determination. Available at: <https://www.gov.br/pt-br/servicos/obter-reconhecimento-como-apatrida>.

<sup>126</sup> BRAZIL. Law No. 6.015, of 31 Dec. 1973. Provides for public records and other provisions. *Lex: Legislação Federal e Marginália*. Brasília. Available at: [https://www.planalto.gov.br/ccivil\\_03/Leis/L6015compilada.htm](https://www.planalto.gov.br/ccivil_03/Leis/L6015compilada.htm).

In practice, this creates an unstable framework for those covered by Article 12(c) of the Constitution. When individuals are unaware of the requirement, because of the law's obscurity and the lack of guidance from notary officers, they may inadvertently lose their nationality, effectively becoming stateless. This risk is not theoretical; it is one I have personally experienced.

### 3.3. Conclusions

After reviewing the state of statelessness in Brazil, it is possible to conclude that Brazilian authorities have taken significant steps and implemented effective measures, such as the Constitutional Amendment n. 54 of 2007. The Migration Law further aligned Brazil's domestic framework with international standards, explicitly protecting stateless persons and guaranteeing migrants rights. However, researchers have recurrently posed the question whether merely granting nationality ensures quality of life or the full enjoyment of rights.<sup>127</sup> This raises broader considerations of complementary human rights, such the right to non-discrimination and the rights of children, which may contribute to prevent and reduce statelessness.

## 4. INVOKING HUMAN RIGHTS

### 4.1. The Rights of Children

Article 7(1) of The United Nations Convention on the Rights of the Child<sup>128</sup> (hereinafter CRC), the most widely ratified human rights treaty<sup>129</sup>, protects every child's right to a nationality. States are required to ensure the implementation of this protected right "in accordance with their national law and their obligations under the relevant international instruments"<sup>130</sup> with the specific purpose of preventing childhood statelessness. Similar protection appears in other treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and

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127 BLITZ, Brad K.; LYNCH, Maureen. *Statelessness and the Benefits of Citizenship: A Comparative Study*. Oxford: Oxford Brookes University. VAN WAAS, Laura. *Nationality and Rights*. p. 19.

128 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Convention on the Rights of the Child*. 20 Nov. 1989. United Nations, Treaty Series, v. 1577, p. 3. Available at: <https://www.refworld.org/docid/3ae6b38f0.html>. Accessed: 16 Aug. 2022.

129 UNITED NATIONS CHILDREN'S FUND (UNICEF). *Convention on the Rights of the Child*. Available at: <https://www.unicef.org/child-rights-convention>. Accessed: 16 Aug. 2022.

130 CONVENTION ON THE RIGHTS OF THE CHILD (CRC). Art. 7(2).

Members of their Families (hereinafter CMW)<sup>131</sup>; the International Covenant on Civil and Political Rights (hereinafter ICCPR)<sup>132</sup>.

UNHCR<sup>133</sup> estimates that every ten minutes a child is born stateless. This growing problem demands urgent prevention. The 1961 Convention has strongly influenced the CRC: during drafting, it was recommended that Article 7<sup>134</sup>, which affirms a child's right to acquire nationality, should explicitly reference the Convention<sup>135</sup>.

Article 7 also affirms the child's right to immediate birth registration, aligning with one of the concrete measures in the Brazil Plan of Action's "Eradicating Statelessness" programme<sup>136</sup>.

Amongst Brazilian legal provisions is a specific law that protects children and teenagers (ages 0-18), namely, Law 8069 of 1990 called the Statute of the Child and Adolescent (*Estatuto da Criança e Adolescente*, hereinafter ECA)<sup>137</sup>.

Article 5 of the ECA prohibits all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression against children and adolescents, punishing by law any act or omission that violates their fundamental rights. This provides implicit protection for the right to non-discrimination.

However, the ECA only briefly mentions nationality in Article 52, paragraph 4, item 6, which concerns birth registration, without explicit safeguards to ensure nationality for all children. The absence of a dedicated provision on nationality within the child rights framework represents a notable gap, particularly in light of Brazil's obligations under international instruments such as the Convention on the Rights of the Child, which affirm every child's right to acquire a nationality. Addressing this omission could be a focal point for future legislative reform.

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131 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: Resolution / Adopted by the General Assembly*. 18 Dec. 1990. A/RES/45/158. Available at: <https://www.refworld.org/docid/3b00f2391c.html>. Accessed: 7 Nov. 2022.

132 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *International Covenant on Civil and Political Rights*. 16 Dec. 1966. United Nations, Treaty Series, v. 999, p. 171. Available at: <https://www.refworld.org/docid/3ae6b3aa0.html>. Accessed: 7 Nov. 2022.

133 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR).

134 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Convention on the Rights of the Child*. Adopted 20 Nov. 1989, entered into force 2 Sept. 1990. UNGA Res. 44/25 (CRC). Art. 7(1).

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136 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR). *Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean*. Brasília, 2014. p. 17. Available at: <https://www.acnur.org/prot/instr/5b5101644/brazil-declaration-and-plan-of-action.html?query=brazil%20declaration>. Accessed: 18 Aug. 2022.

137 BRAZIL. Law No. 8.069, of 13 July 1990. Dispõe sobre o Estatuto da Criança e do Adolescente e dá outras providências. *Diário Oficial da República Federativa do Brasil*. Brasília, DF.

## 4.2. The Right to Non-Discrimination

The right to non-discrimination is an essential right protected under Article 2 of the UDHR<sup>138</sup> which states that every person is entitled to all rights and freedoms “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, *national or social origin*<sup>139</sup>, property, birth or other status.” This prohibition on distinction and unequal treatment is echoed throughout several legally binding international instruments<sup>140</sup>, underscoring its universal relevance and foundational role in the protection of human rights.

One of the main causes of statelessness is discrimination. As noted, many international legal instruments protect the right to non-discrimination. Gender discrimination remains particularly persistent: to this day, 25 countries<sup>141</sup> still deny women the right to pass nationality to their children. Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>142</sup>, such provisions constitute a clear violation of human rights. Indeed, the persistence of such laws is not merely a legal shortcoming; it is an active perpetuation of statelessness.

## 5. CONCLUSION

*“Just one simple hope – that when I died I could get a death certificate, to prove that I ever existed.”<sup>143</sup>*

Elderly man from Ho Chi Minh City, stateless for 35 years

138 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Universal Declaration of Human Rights*. Art. 2. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

139 Emphasis is mine.

140 See, for instance, UNITED NATIONS GENERAL ASSEMBLY (UNGA). *International Covenant on Civil and Political Rights (ICCPR)*. Arts. 4, 20(2), 24, 26. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>; UNITED NATIONS GENERAL ASSEMBLY (UNGA). *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. Arts. 2(2), 10(3). Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>; UNITED NATIONS. *Committee on the Elimination of Discrimination Against Women (CEDAW)*. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>; UNITED NATIONS GENERAL ASSEMBLY (UNGA). *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>; UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Convention on the Rights of Persons with Disabilities (CRPD)*. Art. 28. Available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-28-adequate-standard-of-living-and-social-protection.html>.

141 GLOBAL CAMPAIGN FOR EQUAL NATIONALITY RIGHTS. The problem. Available at: <https://equalnationalityrights.org/the-issue/the-problem>. Accessed: 6 Nov. 2022.

142 UNITED NATIONS GENERAL ASSEMBLY (UNGA). *Convention on the Elimination of All Forms of Discrimination Against Women*. 18 Dec. 1979. United Nations, Treaty Series, v. 1249, p. 13. Available at: <https://www.refworld.org/docid/3ae6b3970.html>. Accessed: 2 Nov. 2022.

143 OHCHR. *Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 15*. 24 Nov. 2018. Available at: <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30-articles-30-articles-article-15>. Accessed: 10 Nov. 2022.



This article set out to analyse the current state of statelessness in Brazil by assess how it is meeting its obligations under international law to prevent and reduce statelessness and to protect the rights of stateless persons. The findings show a country that has taken meaningful steps, most notably through its nationality framework and the Migration Law, to provide protection, secure access to rights, and offer a path to belonging for those without a state. Yet, significant challenges remain. Gaps in legislation, the precarious position of certain groups such as children born abroad, and the persistence of discrimination continue to place individuals at risk of exclusion and statelessness.

Statelessness is not merely a legal condition; it is a profound denial of identity and participation in society. It strips individuals of the certainty of belonging, of a recognised place in the world. Addressing it is therefore not an act of generosity but one of justice, rooted in the recognition of our shared humanity. Brazil has the tools to strengthen its protections: by closing legislative gaps, ensuring effective implementation, and embracing complementary human rights such as non-discrimination and the rights of the child.

Laws alone will not end statelessness. A sustained commitment to awareness, advocacy, and action, both within institutions and in society at large is required. Only then can we ensure that no one in Brazil, or beyond its borders, is left invisible, unprotected, or without a home to call home.

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