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SIMONE PANTOJA BREEMAN
ANR 223653

Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons:

a legal and critical review of the Brazilian case

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Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons:

a legal and critical review of the Brazilian case

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by

SIMONE PANTOJA BREEMAN

Prof. Mr. Dr. Anna K. Meijknecht, Thesis Supervisor

Prof. Dr. Zahra Albarazi, Thesis Co-Supervisor

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The undersigned, appointed by the dean of the Tilburg University, have examined the Master Thesis entitled

Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons:

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presented by Simone Pantoja Breeman

a candidate for the degree of Master of Law, Programme International and European Public Law, Human Rights track

and hereby certify that, in their opinion, it is worthy of acceptance.

_____

Prof. Mr. Dr. A. K. Meijknecht
Thesis Supervisor

_____

Prof. Mr. Dr. N.M.C.P. Jägers
2nd Assessor – Member Examination Committee

_____

Prof. Mr. Drs. E. de Volder
2nd Assessor – Member Examination Committee

_____

Prof. Mr. Dr. Laura van Waas
2nd Assessor – Member Examination Committee

_____

Prof. Dr. Z. Albarazi
2nd Assessor – Thesis Co-Supervisor

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For all the stateless persons in the world to give them hope that, one day, they will no longer be invisible.

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LLM Zahra Albarazi, Thesis Co-Supervisor

ABSTRACT (ENGLISH)

Statelessness is a topic rarely discussed in Brazil and there is an explanation for this: overall, Brazil is not a country where this problem occurs on a large scale. Nevertheless, Brazil has committed to the international system of protection of human rights and, then, begins to address the issue of statelessness. Given this, this mater thesis aims to evaluate to what extent Brazilian laws and policies complies with its international commitments on identification, prevention and reduction of statelessness and protection of stateless persons? To achieve this, it was taken the Four-Pillar approach, designed by the United Nations, through the United Nations High Commissioner for Refugees, which established international standards on protection of stateless persons and identification, prevention and reduction of statelessness. Based on theoretical and legal framework, this research concluded that Brazil is very committed to statelessness issues, in accordance to the international standards, based on the human rights principles. It was found that identification of stateless persons remains a challenge, given the country's size and the lack of a legal determination procedure. On the other hand, there is a joint effort of several actors (Brazilian State, civil society and international institutions) to protect the rights of those who, being in the country, are already stateless. Besides, Brazil is committed to prevent and reduce existing cases of statelessness, as happened in “Brasileirinhos Apátridas”, a case approached in this piece because is a national successful example in the fight to eradicate statelessness, this nefarious phenomenon that, denying nationality to individuals, deprive them of the more fundamental "right to have rights".

KEY WORDS: Statelessness – UNHCR Four-Pillar Approach – Nationality – Brazil.

Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons:

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Identificação, Prevenção e Redução da Apatridia e a Proteção das Pessoas Apátridas:

uma análise crítico-legal do caso Brasileiro.

RESUMO (PORTUGUESE)

Apatridia é um tema pouco debatido no Brasil e há uma explicação para isso: o Brasil não é, em geral, um país que enfrenta em larga escala este problema. Apesar disso, o Brasil tem se compromissado com o regime de proteção internacional dos direitos humanos e, então, começa a abordar a questão da apatridia. Considerando isto, esta pesquisa de mestrado buscou verificar em que medida as leis e políticas públicas brasileiras estão em consonância com os compromissos internacionais assumidos pelo Brasil no que tange à identificação, prevenção e redução da apatridia e proteção das pessoas apátridas. Para alcançar isso, utilizou-se como paradigma o modelo de quatro-pilares, elaborado pela Organizações das Nações Unidas, por meio do Alto Comissariado das Nações Unidas para Refugiados, no que diz respeito à criação de normas internacionais de proteção aos apátridas e identificação, prevenção e redução dos casos de apatridia. Partindo das bases teóricas e fundamentos jurídicos, esta pesquisa concluiu que o Brasil está comprometido com as questões sobre apatridia em consonância com os padrões de proteção internacional dos direitos humanos. Verificou-se que a identificação dos apátridas permanece como um desafio, dada a dimensão do país e a ausência de um procedimento legal que permita a identificação do status de apátrida. Por outro lado, há um esforço conjunto de diversos atores (Estado Brasileiro, sociedade civil e instituições internacionais) para proteger os direitos daqueles que, estando em território nacional, vivam como apátridas. Além disso, o Brasil também se preocupa em prevenir e reduzir os casos existentes de apatridia, À exemplo do “Movimento dos Brasileirinhos Apátridas”, debatido neste trabalho por ser considerado um caso brasileiro de sucesso na luta pela erradicação da apatridia, fenômeno nefasto que, negando a nacionalidade aos indivíduos, priva-lhes do mais basilar “direito à ter direitos”.

PALAVRAS-CHAVE: Apatridia – Modelo de quatro-pilares da ACNUR – Nacionalidade – Brasil.

TABLE OF CONTENT

INTRODUCTION

Right to nationality goes unnoticed in the daily life for those who have it; right to nationality allows an individual exercise other rights of any nature; right to nationality is recognized as a human right; right to nationality is a fundamental right of all human being just by the fact of being human.

Nationality is the word (or world?) that is deeply studied in this research. Because usually is taken for granted, it is not commonly an issue that people reflect upon, however, right to nationality is denied for a considerable amount of people around the globe. Hence, the right to nationality is inherently related to the critical phenomenon of statelessness, an occurrence that is real and has been more and more addressed by the international community lately, albeit far from what would be satisfactory to face and overcome the problem.

Considering the importance of discussing and exchanging experiences and information to face this issue globally, this master thesis addresses the topic "*Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons: a legal and critical review of the Brazilian case"* and is a result of a research conducted during 2014-2015.

It is relevant to note that Brazil is not one of the most remarkable countries that comes to one's mind when thinking about statelessness, since there is no historical record of gross violation of this right. However, Brazil is a leader country and exercises substantial regional influence in the area where it is located, and, despite of having low occurrence rate, must address the issue of statelessness. Hence, Brazilian engagement is important not only to address statelessness issues within country frontiers, but also to face and solve statelessness in an international and global context.

Thus, this study aims to answer the following central research question: *To what extent Brazilian laws and policies complies with its international commitments on identification, prevention and reduction of statelessness and protection of stateless persons?*

From this central research question, some sub-questions were pursued during the research:

- What are the theoretical standards of statelessness? What does mean nationality, ‘right to nationality’ and statelessness for the purpose of this thesis? What are the causes and consequences of being a stateless person?
- What are the international legal documents (universal and regional) that grants the right to nationality and prevent statelessness? What is the main international legal framework to address statelessness?
- What are the existing Brazilian laws regarding statelessness currently? Considering the national legislation, is Brazil complying with the international legal framework regarding to statelessness?
- How to address and build an international response to statelessness issue?
- What are the Brazilian legal policies and which steps is Brazil taking to deal with statelessness issues? To what extent is Brazil complying with its international commitment on identification, prevention and reduction of statelessness and protection of stateless persons?

The findings of this research question and its sub-questions were fundamentally important to accomplish the goal of this study, that is*, verify to what extent Brazil, through its legislation and policies, complies with its international commitments regarding to identification, prevention and reduction of statelessness and protection of stateless person*.

To reach this goal, two steps were followed: first, a theoretical review about academic issues of statelessness was done to provide a general understanding of the question. At this point, academic matters were approached, such as definitions, causes and consequences of statelessness.

In addition, on the second part, a presentation of the Brazilian laws and policies on statelessness were described to identify and contextualize the current progress and setbacks of the country. While describing, it was also done an extensive theoretical and legal analysis based on the literature review, on the legal framework and on the Brazilian reality, to answer the research question in a consistent and critical approach.

To conclude this initial presentation, it is relevant to mention that this present research has a significant academic and social relevance. The first one is matched in the sense that it gathers information and provokes intellectual discussion of this still challenging topic. Regarding social relevance, this study is sharing a

reliable panorama of the current Brazilian policies and legal development on statelessness issues. It can be extremely useful to light national authorities' actions and base some future practices and decisions to deal with this problem and overcome the existing gaps and the nightmare of perpetuating 'invisible persons' who have been forgotten and are not able to exercise primary rights.

Methodologically speaking, this research is classified as theoretical, since it involves mainly the examination of the literature as a background to analyse and formulate arguments about the focused issue. Moreover, it can also be considered as descriptive and evaluative study case, because it aims to assess arguments and draw conclusions about the specific Brazilian case on statelessness.

To develop it, the main data was collected through two means: scanning scientific and reliable books, articles, publications and reports available publically and gathering official data through analysis of official documents or informal interviews with researchers and professionals.

Once collected, the data was carefully interpreted and analysed following the techniques of both methods, rational reconstruction and hermeneutical, in order to make a legal and critical review of the existing Brazilian rules and policies on identification, prevention and reduction of statelessness and protection of stateless persons.

PART 1

ACADEMIC PERSPECTIVE

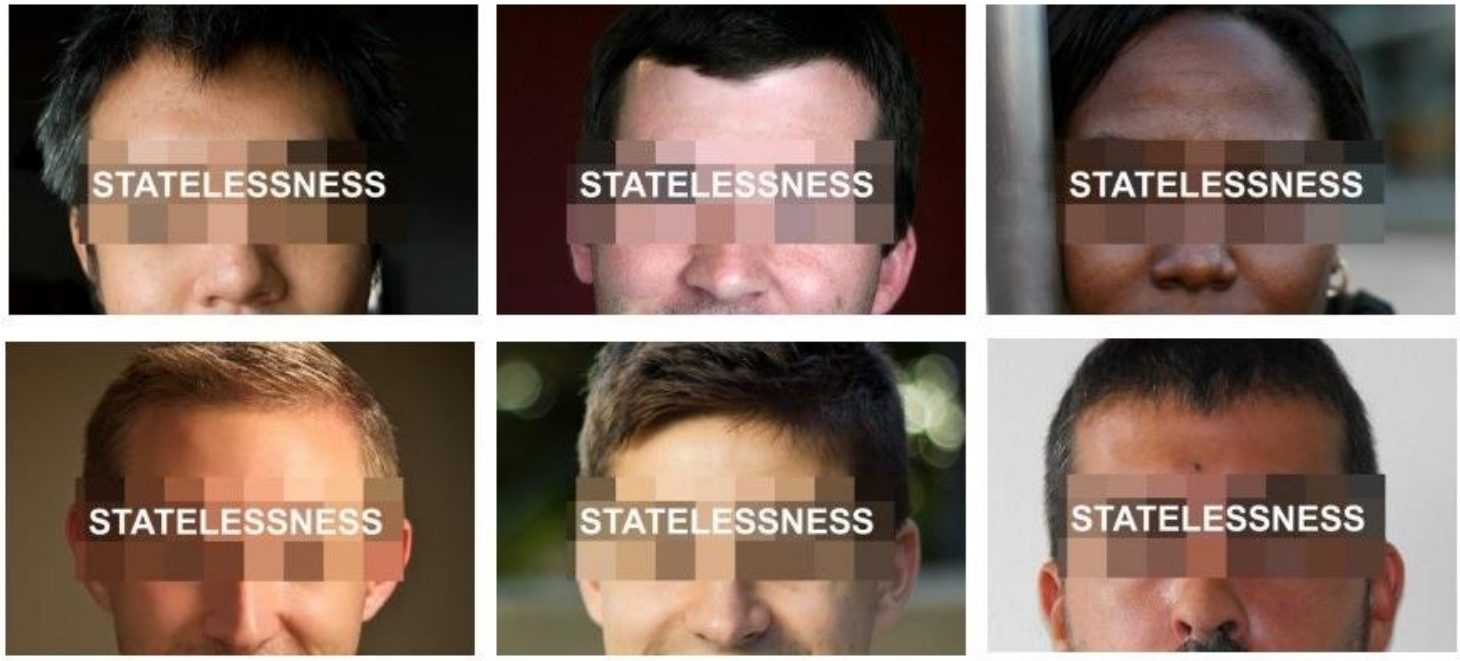

Figure 01. Faces of statelessness.
Source: Freely available on the web. Non copyrighted.

CHAPTER I – THEORETICAL FRAMEWORK OF STATELESSNESS.

Right to nationality is inherently linked to statelessness, an occurrence that is real and has been more and more addressed by the international community. This research addresses statelessness topic and, in order to provide basic understanding, it starts from a comprehensive literature review about theoretical issues.

What does mean ‘right to nationality’? Who determines whether a person is a citizen of a country? What actually is statelessness? Which causes emerges statelessness around the world? What are the consequences of being stateless? These initial questions were elaborated to build some basic concepts, what is extremely important for the general analysis of this study results. The answers found will be uncovered on the following pages.

1. THE RIGHT TO NATIONALITY.

Nationality is a relevant subject not only from a legal perspective, but also from social and political aspects. The latter two approaches will not be discarded during this academic analysis, however greater emphasis will be given on legal perspective, since it is a legal study primarily. Important to mention, however, this section focus will not be on legal instruments as such[1]; instead, it will be on conceptual and case law debate, based on two main issues: "What is nationality" and "Who determines whether or not a person is a national of a particular country?"

1.1 What is Nationality?

Firstly, to define what nationality is, it will be made a brief historical examination of this theme. After that, the concepts of *Nation* and *Citizenship* will be further analysed in order to demonstrate that Nationality, as a concept adopted throughout this research, was built based on social, political and legal aspects.

Historically, the concept of nationality currently adopted dates back to the fifteenth century and is associated with the emergence of Modern States. However,

[1] Legal instruments on nationality issues is covered in *Chapter II - Legal Framework to Address Statelessness*. See page 46.

nationality can be understood as the oldest link in international relations, being present since the Ancient civilizations.[2]

From the beginning, it is necessary to point out that, during this period, the idea was profoundly different from the current one; however, it was already possible deduce that some individuals, more than others, were attached either to their town or to their society, an embryonic idea which gave rise to the concept of nationality.[3]

In ancient Greece, for example, only men, children of Greek parents, could be considered as social members, as part of a "family". In Ancient Rome, in turn, other criteria for granting nationality were adopted beyond the criteria adopted by Greece, such as domicile or legislation.[4] In the middle Ages, a new criterion was considered: the individual's place of birth, regardless of the nationality of their ancestors. However, nationality began to be understood as it is currently only with the emergence of Modern States and its conception of Unitary State, since when:

> the presence of a nationality has served as affirmative element of State's existence itself; as well as the reason to justify State's behaviours in regard to its individuals, either legitimizing them with rights to participate in the national legal system or protecting them in international relations.[5]

So far, this thesis approached historical issues, focusing on how the concept of nationality evolved in different civilizations throughout the years. This is extremely relevant for this debate, because it shows that nationality is not a random topic, but a concept with different meaning according to each civilization. Accordingly, after understanding historical evolution, this research goes briefly over concepts of *nation* and *citizenship*, what is essential to debate the concept of nationality.

To begin with, it is important to mention that several authors, scholars and political scientists present the definition of Nation; however, for purposes of this study, it was selected the classic definition brought by the Austrian author Bauer, for whom:

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[2] According to the Brazilian scholar Soares, in the late fifteenth century, with the emergence of Modern States, the concept of nationality becomes more important as it comes to mean *the bond that determined submission of an individual to a State*.
G F S Soares, Curso de Direito Internacional Público (v.1 Atlas, 2002).

[3] W L M Bernardes, Da nacionalidade: brasileiros natos e naturalizados (Del Rey, 1995).

[4] R P Macedo and S T Amaral, 'Nationality' [2009] ETIC 3,4.

[5] G F S Soares, 'Os direitos humanos e a proteção dos estrangeiros' [2009] Revista da Faculdade de Direito da Universidade de São Paulo 408,415.

> The question of the nation can only be approached from the concept of national character. Let us provisionally define national character as the complex of physical and mental characteristics that distinguishes one nation from others; beyond this, all peoples have those common characteristics that we mutually acknowledge as human, while on the other hand the particular classes, professions and individuals of each nation have individual properties, special characters, that distinguish them from one another. But it is clear that the average German is different from the average Englishman, no matter how much they may have in common as individuals, as members of the same class or the same profession; just as each English person shares a set of characteristics with another, no matter how separated they may be by individual or social differences.[6]

From this, some issues deserve analysis, especially to clarify the link between the concepts of *Nation* and *State*, which arises from the Principle of Nationalities. The German jurist Zippelius very well clarified this principle:

> Each nation has a call and a right to form a State. As humanity is divided into a number of nations, also the world should be divided into the same number of States. Each nation is a State and each State is national body. [7]

The problem of linking concepts of Nation and State is that, historically, there are some outstanding examples that contradict this proposition. Jews, Palestinians, Tibetans and Chechen, for instance, have been considered as Nation, even without State. Therefore, it is largely understood that these concepts of Nation and State are closely related, but they never are mixed up.

With regard to citizenship, immediately it is necessary to mention the existing academic controversy. It is not pacific the understanding that both concepts of citizenship and nationality overlap. Actually, there are theories that claim for the national form of modern citizenship (liberal citizenship) and others defending the universal vocation of national citizenship (cosmopolitan citizenship or post-national) as an alternative, according subsequent analysis.

It is understood as modern citizenship or liberal citizenship that based on the concept of national citizenship, that is, nationality is sine qua non condition for establishing political relations and, more than that, for the construction of belonging. Ultimately, this reflects the idea that only nationals can enjoy some prerogatives,

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[6] O Bauer, 'The Nation' in G Balakrishnan (ed), Mapping the nation (Verso, 1996) 40.

[7] R Zipellius, Teoria Geral do Estado (K P A Coutinho tr, 12nd edn, F Calouste Gulbenkian, 1997) 100.

particularly recognition as political actors and the right to enter the State's territory.[8] Therefore, from this liberal perspective, it is clear that nationality should not be confused with citizenship.

It is verified that, from this perspective, citizenship denotes specific status linked to assurance of rights, that is, the status of those nationals who hold all political privileges. In this respect, citizenship presupposes nationality, and it can be considered narrower concept when compared to the national.

This view is adopted from the viewpoint of domestic laws, primarily. Whether in the Constitutional Law or in the study of State Theory, citizenship and nationality are distinct concepts. As an example, there is the case of Brazil, which adopts this liberal conception in its current Constitution.[9] Following this, a Brazilian professor points out that the Encyclopaedia Britannica makes the distinction between the terms *national* and *citizen*. He explains that nationality and citizenship are distinct concepts, since citizens are the nationals who hold all political privileges. To corroborate his thesis, he exemplifies quoting US case: in the past, before the US Congress grant them citizenship (total sense of the word), American Indians were sometimes referred to as *noncitizen* nationals.[10]

On the other hand, this idea has been increasingly confronted by the international law approach, especially after emergence of human rights internalisation, which is compatible with the universal call of citizenship. In these new approaches, the individual is considered as the reference point for the allocation of rights and the exercise of citizenship, which becomes much wider and, therefore, coincides with the concept of nationality. This view was supported by leading scholars of the twentieth century, for example, Hannah Arendt, for whom:

> We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinion) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation. The trouble is that this calamity arose not

[8] N Justo, 'O regime internacional de proteção às pessoas apátridas em dois momentos: contribuições para uma análise sobre a relação entre apatridia, cidadania e ordem internacional' (Master thesis, PUC-RJ, 2012) 26. <http://www.maxwell.vrac.puc-rio.br/Busca_etds.php?strSecao=resultado&nrSeq=20435@1> last accessed 19 January 2015.

[9] In the first article of the Brazilian Constitution, citizenship is understood as a manifestation of political rights, guaranteed only to nationals.

[10] J Dolinger, Direito Internacional Privado - Parte Geral (12 edn, Renovar, 2008) 158.

> from any lack of civilization, backwardness or mere tyranny, but on the contrary, that it could not be repaired, because there was no longer any "uncivilized" spot on earth, because whether we like it or not we have really started to live in One World. Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity altogether.[11]

The famous expression "right to have rights", brought by Arendt, makes reference a right not to be fundamentally confused with civil rights. Rather, it is so elementary that its loss generates an absolute lack of rights. It is, in fact, the right to have a motherland, that is, the right to belong to a political community. This advanced formula is part of a substantial debate on the importance of firstly recognizing an individual as prerogative to other rights' enjoyment.

In this perspective, citizenship, which merges with nationality concept, guarantees the right of belonging to a political community and have ensured all other rights.[12] Belton clarifies that this view claims for equal treatment to all individuals and states that citizenship shall be extended to as many individuals as possible: "Its emphasis is upon the equality of all individuals regardless of their relationship to the State."[13]

It is important to make clear that, after these historical considerations and the explanation of post-national citizenship concept, the dichotomous idea between citizenship and nationality has become irrelevant, mainly on international field, as Weiss clearly teaches:

> From the point of view of international law it is not incorrect to say nationality of an individual in his quality of being a subject of a certain State and therefore its citizen. It is likewise a logical consequence of the exclusive relevance of nationality for the purpose of international law that distinctions made by municipal law between various classes of national are immaterial from the point of view of international law.[14]

The discussion about liberal vs national citizenship and the debate about citizenship vs nationality are very significant for this study, for two main reasons.

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[11] H Arendt H, The origins of Totalitarianism (Harcourt, 1968) 296, 297.

[12] U Marti, 'Hannah Arendt et le monde d'aujourd'hui' in M Caloztschopp (ed) Hannah Arendt, les sans-État et le "droit d'avoir droits". (L'Harmattan, 1998) 19.

[13] K Belton , 'The great divide: citizenship and statelessness' (Master thesis University of Central Florida, 2005) 10. <https://digitalcollections.net.ucf.edu/cdm/ref/collection/ETD/id/3747> last accessed 19 February 2015.

[14] P Weis, Nationality and Statelessness in International Law (Brill, 1979) 6.

Firstly, they bring important conceptual understandings about the topic, what makes this debate more academically reflective. Secondly, because, from this, it is possible to define the main concepts and theories adopted in this research.

Given these arguments, the cosmopolitan citizenship concept is considered more persuasive and more appropriate for the purposes of this research, since the focus of this study is on the international law field. Besides, it reflects the majority doctrine understanding: both concepts (citizenship and nationality) are conceptually coincident. In support of this theoretical current, the British author Alison Kesby argues that:

> Dissociating nationality from citizenship sustains inequality between nationals because not all nationals are necessarily citizens. [...] There is a disjunction between the international and national significance of the status [national]. On Arendt's articulation of the right to have rights, the two were interrelated. Right-bearing and protection at the national and international levels are connected. Arendt highlighted the link between participatory political communities founded on plurality on the one hand, and protection against arbitrary deprivation of nationality and statelessness on the other. The right to have rights was not merely the right to an international legal status - to protection at the international level - but the right to belong to a political community with such belonging denoting active as opposed to formal membership.[15]

Consequently, it is clear that citizenship and nationality are overlapping concepts for the purpose of this research and it will be used interchangeably from now on.

Once understood and defined the concepts of nation and citizenship adopted in this study, it is time to finally devote attention to the definition of nationality from a legal perspective.

From this approach, nationality might be considered as the political and legal link that connects an individual to a specific State.[16] It is said that this link was firstly recognized when the International Court of Justice (hereafter, ICJ) dealt with the Nottebohm Case in 1955:

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[15] A Kesby, The right to have rights - Citzenship, Humanity and International Law (Oxford University Press, 2012) 45.

[16] According to some scholars, such as the Brazilian author Dolinger, this bond that links an individual to a specific State can be understood from two dimensions: vertical perspective(understood as the link between the individual and the state and, therefore, relevant for international law) and the horizontal perspective. This last one focuses on sociological aspect, aimed at individual connection with other community members and the state. For this study, the vertical dimension is adopted, according to which, nationality is a political and legal link that connects individual and State from international law perspective.
J Dolinger, Direito Internacional Privado - Parte Geral (n10).

> According to the practice of States, to arbitral and judicial decisions and to the opinion of writers, **nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties**.[17]

Doubtless, as stated by the Court, nationality is a complex occurrence and cannot simply be seen as an isolated phenomenon. It is recognized that the issue of nationality includes social, existential, political, cultural and other aspects, as it has been shown throughout this section. For the purpose of this study, however, a more simple approach will be taken, that is, the genuine link theory, according to which, States recognize nationality as the legal relationship between a person and a State[18]. It is relevant to mention that this approach is broadly accepted on the international law field, despite of some divergences[19].

Based on what was already debated, some fundamental assumptions can be consolidated following. They are conclusive to the development of this entire research.

It was understood that the Nation concept, which is distinct from concepts as State and Nationality, reflects a sense of belonging or an ideal of shared community among those who consider themselves members and, therefore, carries a much more sociological than legal bias.

Concerning citizenship, it was found that, despite existing conceptual controversy, a better understanding reflects the cosmopolitan citizenship theory, according to which the concepts of nationality and citizenship are coincident. For this reason, it is important to reaffirm that, throughout this thesis, both terms are interchangeably adopted, since this view is widely accepted in international law field studies, as it was clearly pointed out by Kesby.

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[17] *Case Nottebohm (Liechtenstein v. Guatemala)* (Second Phase) [1955] ICJ **emphasis added** <http://www.refworld.org/docid/3ae6b7248.html> last accessed 27 October 2014.

[18] O Vonk, Dual Nationality in the European Union: a Study on Changing Norms in Public and Private International Law in the Municipal Laws of Four EU Member States (Martinus Nijhoff Publishers, 2012) 17.

[19] Some authors believe that contemporary international law no longer adopts the genuine link theory and point out that nationality is as diverse as the different purposes aggregated on twenty-first century. To better understand this subject, please consult: Sloane R D, Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality [2009] Harvard International Law Journal 08.

Finally, it is important to reiterate that, for purposes of this research, nationality (or citizenship) is understood as the existing political and legal link between a person and a specific State.

1.2 Who determines whether a person is a citizen of a country?

It is generally accepted that the questions of nationality fall within the domestic jurisdiction of each state[20]. In other words, it is up to States decides in nationality and it is a sovereign act. It is for each State to set the standards that shall guide the acquisition of nationality and, in some cases, discretion to decide about their attainment by individuals, not fitting to any other State interfere in this regard.

The sovereign character of granting citizenship is based on the fact that nationals constitute the human element of a specific State. In this sense, the very existence of the State depends on the definition of who are its nationals. Thus, it is not appropriate that other States interfere in this matter; otherwise, emergence and maintenance States would be legally subject to external interferences.

This view is also supported on the international law field. Calling back the mentioned case in the previous section and analyzing it further, it is said by the Court that “Nationality is within the domestic jurisdiction of the State, which settles, by its own legislation, the rules relating to the acquisition of its nationality”.[21]

This statement allows the one’s incontestable conclusion that the States are those responsible to determine whether a person is considered a national in a given State. Nationality is a matter of domestic jurisdiction, indeed.

What is worth to note, however, is the fact that the powers of States are not omnipotent and this act of sovereignty remains limited to a certain extent by international law and by other States practices. In this sense is remarkable to mention that, even before of the establishment of United Nations (hereafter, UN), the Hague Convention in its article had already provided that:

> It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with

[20] UN High Commissioner for Refugees (UNHCR), 'Nationality and Statelessness: A Handbook for Parliamentarians'. (Geneva, 2005) 8.

[21] *The Nottebohm Case* (n17).

> international conventions, international custom, and the principles of law generally recognized with regard to nationality.[22]

This principle of nationality jurisdiction, provided for the first article of The Hague Convention, is completed with the rule in its subsequent article 2: "Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State".[23]

Therefore, one cannot fail to conclude that States are the responsible to define norms to grant or recognize its right to nationality; moreover, when doing this, all the international norms and commitments have to be taken into account by the States.

2. STATELESSNESS.

Statelessness, meaning the lack of a formal nationality link, is a subject that deserves careful study, from the perspective of international law, whereas it is an existing phenomenon with disastrous consequences.

This section addresses the issue from the historical and legal perspective, with the aim of presenting its historical roots; discussing the terminology used to express this phenomenon and exposing the classic academic classification. Finally, it will be defined the meaning of statelessness adopted for the purposes of this research.

2.1 Historical Approach.

Statelessness is a subject, under the national and international perspective, which has not been minimized over the years. This is a persistent problem and so far found no solution, although it has shown a significant evolution in the last sixty years, especially under international law, as will be shown below.

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[22] Convention on Certain Questions Relating to the Conflict of Nationality Law (adopted 12 April 1930, entered into force 1 July 1937) 4137 LNTS 77 (The Hague Convention) art. 1

[23] The Hague Convention (n22) art. 2

Several authors[24] show that the emergence of stateless person dates back to Ancient Rome, where there was the figure of *peregrini sine civilitate*[25], which opposed the *jus civile*.[26] Regarding the medieval period, however, there are no widespread reports of statelessness, especially since the Middle Ages experienced a phase in which the one's political identity was not defined by the membership of a particular field or kingdom; instead, it was defined by the submission to a political-religious community that overflowed any national borders, the *Res Publica Christiana*.[27]

It was in the nineteenth century, however, that statelessness turned into recognized phenomenon, due to political reasons and due to the appearance of numerous national legislations, adopted in the German Empire. On this issue, the Brazilian scholar Lafer teaches that:

> Admittedly, in the nineteenth century, the lack of nationality was a political issue in Europe, mainly because of the emigration that followed the revolutionary movements of 1848 and with groups such as Gypsies and Jews, who were not necessarily seen as natural in any country. That is why the term stateless - which means, for the individual, being a foreigner in all countries, and therefore lack of political rights and suffer restrictions on civil rights - comes in the nineteenth century, showing that the problem exists.[28]

In the following century, the phenomenon has worsened with the World Wars, causing the displacement of people as a result of global impacts.

With the end of World War I, there was the arising, in numerically unprecedented scale, people who were not welcome anywhere and could not be

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[24] Among the authors who study this topic, the Brazilian Celso Albuquerque de Mello was chosen to support the historic claims. See: Mello C A, Curso de Direito Internacional Público. (12 edn, Renovar, 2002).

[25] Mathisen says that, after 212, many immigrants arrived in Roman Empire. These people constitute a new class of noncitizens, the *peregrini sine civilitate*, who supposedly did not share the benefits, duties, status, and sense of identity, that accrue to the citizen body.
See: Mathisen R W, 'Peregrini, Barbari, and Cives Romani: Concepts of citizenship and the legal identity of Barbarians in the Later Roman Empire' [2006] The American Historical Review, 1011.

[26] According to Stein, Roman law, a set of unwritten customs, was applicable only to those who could claim to be Roman citizens (*ius civile*, law for *cives*, citzens).
See: Stein P, Roman law in European history. (Cambridge University Press, 1999).

[27] C Schmitt, The nomos of the earth in the international law of the Jus Publicum Europaeum. (Telos Press Publishing, 2003) 56.

[28] C Lafer, A reconstrução dos direitos humanos: um diálogo com o pensamento de Hannah Arendt. (Companhia das Letras, 1991) 138.

integrated anywhere.[29] In addition, the emergence of totalitarian regimes, such as the Communist Revolution in the extinct USSR, Nazism in Germany and Fascism in Italy expanded the extent and impact of statelessness, since, in that context, all those who have fled these political systems have lost their nationality:

> These displaced persons, said Hannah Arendt, have become the refuse of the earth because when they lost their homes, their citizenship and their rights, they found themselves expelled from scheme People-State-Territory.[30]

About this, the Brazilian author Konder Comparato points out:

> (...) the Nazi state systematically deprived minority groups of German nationality, particularly people of Jewish origin. Soon after the war, Hannah Arendt drew attention to the perverse face of this abuse, showing how the deprivation of nationality of the victims turned them on excluded people, with no legal protection anywhere in the world. [...] Who was stripped of his nationality without being political opponent, cannot find any State willing to receive him: he simply is no longer considered a human person.[31]

The mentioned historical facts of the twentieth century were devastating and, among its main consequences, there was recognition of statelessness around the world. From that period until the contemporary period, statelessness has become a universal problem, emerging the need for its coping.

After this brief background, this research will address theoretical, fundamental and legal aspects of statelessness definition and its related implications, such as academic classification adopted internationally.

2.2 Definition of Statelessness.

The designation "Statelessness", which literally means the absence of a State, most likely comes from the French term "*apatridie*" that was first used only after the World War I, replacing the German terms before diffused: "*Heimatlosigkeit*" and later, "*Staatslosigkeit*". "Statelessness" is also preferred than the Italian option "without polis" or "*apolidia*", since the notion of State had surpassed the limits of polis since a long time.[32] [33]

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[29] C Lafer, (n28) 139.

[30] C Lafer, (n28) 139.

[31] F K Comparato, A afirmação histórica dos direitos humanos (6 edn, Saraiva, 2008) 139.

[32] M Vichniac, The International Status of Stateless Persons (American Jewish Committee, 1945).

To expand this idea, the Brazilian author Mello researched the origin of the term statelessness and, on that basis, taught that:

> Charles Claro, an attorney from the Paris' Court of Appeal in 1918, created ‘statelessness’ as a designation for those people without nationality. In Germany, they were called "heimatlos" or "staatenlose" (stateless). In England, “statelessness". Other denominations have been proposed, as "apolidi" proposed by Ilmar Penna Marinho. However, “stateless" and "statelessness" were chosen and largely adopted in international conventions and by most of the international scholars.[34]

For the purpose of this research, it was important to make brief comments about the emergence of the term statelessness and its consensual adoption in the international scenario, because it avoids any misunderstanding of the concepts. Once understood this, it is necessary to clarify the conceptual meaning of statelessness.

In short, stateless person means to be without nationality or citizenship, means that a person is formally without a legal link[35] with any State either because such bond never existed or because it has ceased to exist.[36]

Besides of academic definitions, it is noteworthy to mention the current legal definition of stateless person, brought by the fist article of the Convention relating to the Status of Stateless Person (hereinafter 1954 Statelessness Convention), that reads: “*For the purpose of this Convention, the term ‘stateless person’ means a person who is not considered as a national by any state under the operation of its law*”.[37]

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[33] In Brazil, the adopted word is APATRIDIA. However, some Brazilian authors, such as Meireles Teixeira and Francisco Rezek, use APATRIA instead of APATRIDIA in the context of the Brazilian debate. It is important to remark, though, it is only handwriting differentiation, without any semantics change of the term. Thus, it is understood that such distinction is irrelevant academically and therefore this research adopts the majority form of use, namely APATRIDIA.

[34] Mello C A, Curso de Direito Internacional Público. (n24)

[35] As a rule, it is understood that a relevant link can derive mainly from the territory of birth, descent, marriage or habitual residence. The issue of what constitutes the relevant link is dealt further in *Chapter I, Section 3.1 – Nationality Acquisition*. See page 30.

[36] Check *Chapter I, Section 3 - Causes of Statelessness* to better understand about the causes that make cease the bond of nationality, generating the phenomenon of statelessness. See page 33.

[37] Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117 (Convention) art 1.
This legal document is one of the most important related to statelessness issues. Together with many other international legal instruments on the issue, it will be further analysed in *Chapter II - Legal Framework to Address Statelessness*. See page 46.

From this paragraph, it is clear that this definition refers to a formal legal link between an individual and a specific State. At a first glance, the concept may seem satisfactory for operation of the protection system that is based on it. However, understand the definition of statelessness and apply it in the context of international law is not a simple task. This is the reason why the United Nations High Commissioner for Refugees (hereinafter UNHCR)[38] promoted a meeting, in May 2010, where the most renowned experts discussed the theme and debated on the concept of stateless person under international law.

On this meeting, the experts decided to review the principles of customary international law, general principles of international law and treaty standards, national legislation, administrative practice and judgments of national courts, as well as decisions of international tribunals and academic work in order. They debated about the topic and worked to assure the broadest possible application of international human rights law to individuals in statelessness condition. As result of this meeting was elaborated a document “Summary Conclusions” (hereinafter Prato Conclusions), reflecting the understanding emerged from the discussion. [39]

2.3 Statelessness “de facto” and Statelessness “de jure”.

During the Expert Meeting, more than only debate the definition of statelessness, the protection of these individuals and the prevention of this phenomenon, experts addressed a point that deserves scholarly relevance: the concept of "*de facto*" statelessness and its contrast to "*de jure*" statelessness that, although clearly distinct, are often confused.

"*De jure*" statelessness is the concept already mentioned previously as the legal definition of stateless person, brought by the fist article of 1954 Statelessness Convention. As expressed in this document, "*de jure*" stateless persons are not

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[38] This UN Agency is the international body that addresses the question of statelessness. It will be discussed in detail in *Chapter III, Section I - UNHCR’s mandate and role for Statelessness*. See page 76.

[39] UNHCR 'Expert Meeting - The Concept of Stateless Persons under International Law Summary Conclusions (Prato Conclusions)' (Italy 2010).
This was a first of a series of Expert Meetings convened by UNHCR in the context of the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness with the purpose of drafting guidelines under UNHCR’s statelessness mandate on (i) the definition of a “stateless person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons; (ii) the concept of de facto statelessness; (iii) determination of whether a person is stateless; (iv) the status in national law to be granted to stateless persons and; (v) the prevention of statelessness among persons born on the territory or to nationals abroad.

considered nationals under the laws of any country; it is, therefore, the lack of a formal legal relationship between a person and any State. It reflects the classical concept of statelessness presented by scholars, as said by the Brazilian author Guimarães: "*de jure*" stateless person is "an individual who has no nationality, who has never had or have lost it." And, therefore, has no link with a State which is supposed to assure protection and assistance to the individual.[40]

From the beginning, it is important to mention that, in presenting an interpretation of the mentioned first article, the UNHCR stated:

> persons who fall within the scope of Article 1(1) of the 1954 Convention are sometimes referred to as "*de jure"* stateless persons even though the term is not used in the Convention itself. (…) These guidelines address interpretive issues regarding the Article 1(1) definition of stateless persons, yet avoid qualifying them as *de jure* stateless persons as that term appears nowhere in the treaty itself.[41]

In order to clarify *"de jure"* concept adopted in the framework of international law, the "Prato Conclusions" brought a detailed analysis of the terms "not considered as a national...under the operation of its law" and "by any State".[42]

In analysing "not considered as a national...under the operation of its law", experts define a relevant criteria: whether or not, at the present time, States consider both non-automatic and automatic methods of acquiring and being deprived of nationality. Besides, it is taken into account if States assure, among others, those considered as minimal effect of nationality, that is,

> the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally , including in relation to return to the State of nationality.[43]

In turn, "by any State" refers to a negative definition, that is, each State in the world should discard a person as its own national. It is remarkable to note that

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[40] F X S Guimarães, Nacionalidade: aquisição, perda e reaquisição (2edn, Forense, 2002).

[41] 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 February 2012). UN Doc HCR/GS/12/01.

[42] UNHCR, 'Prato Conclusions' (n39).

[43] UNHCR, 'Prato Conclusions' (n39).

"States", in this context, are those recognized in the international order as such, according to the international law criteria.[44]

When addressing the concept of "*de jure*" stateless, experts recalled two important points: first, the definition was established as part of customary international law; and second, it is necessary directly link this interpretation to the concept of State, because in situations where the State does not exist, people will be *ipso facto* considered stateless, if they have no other nationality.

To further complement this understanding and provide interpretative legal guidance for governments, NGO's, legal practitioners, decision-makers and the judiciary, the UNHCR issued the Guidelines on Statelessness Nº 1 in February, 2012, in which is explicated the definition of "stateless persons" in Article 1(1) of the 1954 Convention relating to the status of stateless persons.[45]

This Guideline Nº 01 adopted the similar methodological approach of Prato Conclusions: "Article 1(1) can be analysed by breaking the definition down in two constituent elements: 'not considered as a national…under the operation of its law' and 'by any State'." Similarly, the conclusions demonstrated that "State" is the one considered under international law criteria, which does not require it to have received universal or large-scale recognition of its statehood by other States, neither to become a Member State of United Nations.[46]

Likewise, the document establishes whether an individual is not considered as a national analysing how a State applies its nationality law in each individual case. Besides, clarify that:

> the reference to "law" in Article 1(1) should be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice.[47]

Despite being the definition widely adopted within the framework of international law, the concept that defines stateless person as "an individual who is not recognized as citizen by any State under the operation of its law" has been

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[44] UNHCR, 'Prato Conclusions' (n39).

[45] 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' (n41).

[46] 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' (n41).

[47] 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' (n41).

criticized by some specialists. Among scholars who more criticize this definition, there is Clark Hanjian who challenges the assumption that citizenship should solely be State-based. According to him, the UN definition is conspicuously distorted in the interest of states:

> It presumes that citizenship and statelessness are regulated exclusively by states and have nothing to do with the will or consent of individuals. According to this definition, an individual can become stateless only if no state lays claim to her. Conversely, this definition implies that if any state does claim an individual as one of its citizens, then that individual must be regarded as a citizen. In sum, the UN definition presumes that an individual's citizenship status depends solely on whether or not some state considers that individual as one of its own. The will and consent of the individual are irrelevant. Only the will of the state is recognized. [48]

Next to the criticism that the definition presented by the UN is State-based and does not consider individual choice or preference in determining membership, another argument is extensively explored in the academic world to demonstrate the shortcomings of this definition: it does not take into account persons who are not "*de jure*" but are "*de facto*" stateless. To discuss this issue, "*de facto*" statelessness concept must be revisited.

In general words, "*de facto*" statelessness has been understood as the notion of effective nationality. This is the condition of individuals who, possessing "*de jure"* any nationality, for some reason are excluded from enjoying the benefits associated.

It was raised by some scholars that person's nationality can be ineffective either within or outside the country of his birth. The concept of *"de facto"* statelessness was based on people who do not enjoy the inherent rights to the nationality rights and on people in need of protection even if they are within "their" State. Based on that, it was conjectured that a person could be *"de facto"* stateless even within the country's borders of his nationality.

However, it has been established that *"de facto"* statelessness does not include people who are within their own country of nationality. Accordingly, persons who are *"de facto"* stateless cannot be inside of their nationality country, as said by Massey:

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[48] C Hanjian, The Sovrien: An exploration of the right to be stateless *(*Polyspire, 2003) 4.

> De facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country.
> Persons who have more than one nationality are de facto stateless only if they are outside all the countries of their nationality and are unable, or for valid reasons, are unwilling to avail themselves of the protection of any of those countries.[49]

Despite of the term "*de facto"* stateless person is not defined in any international instrument and there is no treaty regime specific to this category of person, the Prato Conclusions brings important clarifications about the topic as follow:

> 1. De facto statelessness has traditionally been linked to the notion of effective nationality and some participants were of the view that a person's nationality could be ineffective inside as well as outside of his or her country of nationality. Accordingly, a person could be de facto stateless even if inside his or her country of nationality. However, there was broad support from other participants for the approach set out in the discussion paper prepared for the meeting which defines a de facto stateless person on the basis of one the principal functions of nationality in international law, the provision of protection by a State to its nationals abroad.
>
> 2.The definition is as follows: de facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of
> its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality. [50]

In summary, *"de facto"* stateless is the category which include those people who in practice are denied to effective protection by their states because they cannot establish their nationality, either because they lack the ability to prove their link with any State or because they have the documents but are denied to access certain rights. It means they nominally hold a citizenship but are not able to exercise all the rights to which that citizenship should entitle them.

Batchelor explains the reasons why *de facto stateless person*s are not included in the legal definition of *de jure stateless person*:

> to avoid confusion in an individual's status, to avoid encouraging individual efforts to secure an alternative nationality, to avoid a situation in which some States decide to treat a person as stateless, while other States consider that person to still hold nationality, and to avoid confusing overlap between the 1954 Convention relating to the Status of Stateless Persons and the 1951 Convention relating to the Status of Refugees. The drafters presumed that de facto stateless persons were those who still had a nationality in name, but for whom that nationality was not effective.[51]

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[49] H Massey, UNHCR and de facto statelessness. (UNHCR, 2010) 61.
[50] UNHCR, 'Prato Conclusions' (n39).

[51] C Batchelor, Statelessness and the Problem of Resolving Nationality Status' [1998] International Journal of Refugee Law, 172.

It is worth mentioning that a considerable number of scholars argue for including *"de facto"* stateless in the concept of the UN definition[52]; however, there are legal consensus that *"de facto"* stateless persons are not included in the concept brought by 1954 Statelessness Convention.[53] It should be highlighted, however, that is recommended by the international order that countries party to the 1954 Statelessness Convention shall endeavour to assist *"de facto"* stateless persons.[54]

Despite the criticism, it is necessary to clarify that for the purposes of this thesis, the UN definition is taken. Once elucidated this, remains clear the reason why the debate about statelessness “de jure” and “de facto” was brought to this thesis: it was necessary to know about the existence of both concepts and understand the difference between them. Only from this, it is possible to make clear that this research is referring mostly the stateless persons covered by the concept brought by 1954 Statelessness Convention.

Finally, it is important to mention that two main reasons support the adoption of UN definition in this research: first, it is largely used through current UN documents and by scholars; and second "de jure" citizenship is currently the first step toward acquiring other rights. That is:

> for those who hold no citizenship, it is not a question of whether they are enjoying all the rights to which they are entitled, but whether they have any rights at all. Once one at least bears a citizenship, and is therefore legally recognized by a State, one is then in a better position to make a stand for other rights. In this regard, de jure citizenship is essential.[55]

According to UNHCR, "difference between *‘de jure’* and ‘*de facto’* statelessness can be difficult to establish. Millions of people around the world are trapped in this legal limbo".[56] Despite the conceptual difficulties involved, it is

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[52] Among scholars, Carol Batchelor (1998) and Francis Deng (2001) are strong advocates of this thesis.

[53] Several international legal documents corroborate this thesis, as Prato Conclusions and Guidelines on Statelessness.

[54] Through non-binding clauses, the 1954 Convention recommends that each contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons.

[55] K Belton , 'The great divide: citizenship and statelessness' (n13)

[56] UN High Commissioner for Refugees (UNHCR), 'O que é apatridia?' <http://www.acnur.org/t3/portugues/quem-ajudamos/apatridas/o-que-e-a-apatridia/> last accessed 9 January 2015.

necessary to reiterate that UN concept is adopted throughout this work, referring in general to *"de jure"* stateless, even when there is no express mention to this definition.

3. ADDRESSING CAUSES OF STATELESSNESS.

Statelessness can occur when a person, at birth, find himself stateless because does not meet the nationality acquisition criteria; or because, even when already acquired once, nationality is lost for some reason. This section addresses circumstances that give rise to some of the main causes of statelessness, either from the acquisition or from loss of nationality. Besides, because it is interesting subject to study, two other related topics will be briefly considered: childhood statelessness and renunciation of nationality.

3.1 Nationality Acquisition.

When interpreting the expression “by any State” in art. 1(1) of 1954 Statelessness Convention, the Guidelines on Stateless Nº 01 limits the research scope of the countries to those who have a relevant link with the individual. This relevant link is established “by birth on the territory, descent, marriage or habitual residence”, since these are the main factors that materialize the "effective" or the "genuine" link to establish the acquisition of nationality.[57]

The first two, birth and descent, are international standards for defining nationality acquisition criteria. In general, these two criteria support two core principles internationally applied when granting citizenship: *jus soli* and *jus sanguinis*, both of them applied at the birth moment.

Jus soli criterion, with roots in the Middle Ages[58], emerges the concept of citizenship linked to the individual's birthplace. It means that, according to this principle, which literally translating means *"the law of the soil"* the nationality is

[57] 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' (n41).

[58] According to Brazilian professor Mello, "jus soli" has its roots in economic and social organization of medieval feudalism. The land was considered the greatest wealth and power symbol and nationality only followed the general guidelines. This phenomenon reflects the way that, in the medieval period, were distinguished the famous character by the place of his birth, what it is seen for example in Erasmus of Rotterdam.
To know more, see: Mello C A, Curso de Direito Internacional Público. (n24).

granted for all those who born within the country's territory, regardless the nationality of their parents.

Historically, this criterion was more commonly adopted by immigration countries, given the interest in making immigrants as their nationals; because, if it were otherwise, would exist huge social groups that would be subject to diplomatic protection of their respective national States. These immigration countries are concentrated mainly in the Americas and, consequently, it appears that currently the *jus soli* is the predominant rule in the Americas, but is rare elsewhere.[59]

Jus sanguinis, on the other hand, goes back to Ancient civilizations[60] and is determined by family ties that serve to legitimate rights and duties of a free individual in relation to its own people and other individuals who do not have their "nationality", that is, the same blood.[61] So, literally translated as "the law of the blood", it is concerned to parent's citizenship at the time of the birth, independently of the place.

In opposition to *jus soli* criterion, the *jus sanguinis* is characteristic of emigration countries, because it allows States continue to have "some control over their nationals who have emigrated and their descendants".[62] Even today, in most European countries, the principle of *jus sanguinis* remains the main mode of transmission of nationality, which has suffered increasing criticism as it focuses on children of European born abroad rather than children of non-European immigrants born in Europe. Many European countries, however, are experiencing revaluation of its laws and gradually start to adopt the principles of *jus soli* and *jus sanguinis* on allied way:

> There is a clear process of convergence between countries with *ius soli* and *ius sanguinis* traditions. While *traditional ius sanguinis* countries (Belgium, Germany, Greece) have introduced or extended *ius soli* provisions for second -and third generation immigrants, classic *ius soli* countries (the UK, Ireland) have limited these provisions. Despite this converging trend*, ius soli*

[59] J Feere, Birthright Citizenship in the United States: A Global Comparison (Center for Immigration Studies, 2010).

[60] Mello also teaches that, despite of innumerous distinctions, peoples of ancient Egypt, Babylon, Greece, Ancient Rome and Hebrews had a similar criterion for granting nationality: there was the fact that an individual could only be considered as social integrant based on their descent from one of the members of those respective peoples. Mello C A, Curso de Direito Internacional Público. (n24).

[61] G F S Soares, Curso de Direito Internacional Público (n2).

[62] G F S Soares, Curso de Direito Internacional Público (n2) 149.

> remains hotly contested, particularly in the context of debates of multiple citizenship.[63]

Despite the tendency to adopt both principles jointly, usually countries adopt one of them overwhelmingly. It is important to mention yet that such resistance to the *jus soli* principle occurs because the idea of permissive citizenship rights *jus soli* is associated with. Most countries with unconditional *jus soli* laws tend to give birth right citizenship (and nationality) based on *jus sanguinis* rules as well, although these stipulations tend to be more restrictive than in countries that use *jus sanguinis* as the primary basis for nationality.

On the acquisition of nationality, it is important to mention that some countries have the possibility of grant a citizenship not only at the birth time, but also at later in life, as a volitional act of the person concerned.

The Brazilian author Silva uses following distinction to classify the nationality acquisition into categories: original nationality and secondary nationality.[64] As is clear to infer, according to the author, original nationality is received at birth by individual, it is a natural fact; and, as explained earlier, the original nationality may be granted by *jus soli, jus sanguinis*, or by the hybrid system, combining both principles.

On the other hand, secondary nationality is acquired by voluntary act at a later point in life, as taught by Silva:

> Secondary nationality is acquired by voluntary fact, after birth, either because, at birth, the person has another, or many other nationalities, or because there is a time lapse in which the individual had no nationality.[65]

It is appropriate to clarify that a person can acquire secondary nationality in several different ways, such as: benefit of the law; marriage; naturalization*; jus laboris*; cases of territorial change; *jus domicile.* Baoubock points out different possibilities of acquisition of nationality: besides birthright-based modes, the author

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[63] M Vink and de G R Groot, 'Birthright Citizenship: Trends and Regulations in Europe. Comparative Report.' (EUDO Citizenship Observatory, 2010).

[64] J A Silva, *Curso de Direito constitucional positivo*. (Malheiros, 2010).

[65] J A Silva, *Curso de Direito constitucional positivo*. (n64) 171.

mentions basic residence-based, family relation-based, affinity-based modes and some others.[66]

Regardless of classification, what is important to note is that, for acquiring secondary nationality, a person must demonstrate the existence of a relevant, effective and genuine link between him and the State (habitual residence, marriage, cultural affinities, etc).

Moreover, it should be mentioned that secondary nationality is acquired through administrative procedure in case of the applicant fulfil the legal requirements determined by the State. However, applicants are not considered citizens until the final decision of the State.

As previously explained, the current dominant academic position says that criteria for grant or withdrawal citizenship is a sole prerogative of each State, which reflects one of the main consequences of sovereignty principle. Hence, each State would be free not only to adopt the above mentioned criteria - *jus soli, jus sanguinis* - but also would be free to determine criteria for acquisition or supervening loss of nationality. It is worth remembering that such sovereignty, however, is not unrestricted, given the need for recognition before other actors in international law sphere.[67] In general, on domestic level, these legal rules are institutionalized through legal instruments, such as Constitutions, Presidential decrees, Citizenship Acts or any other national legislation.

3.2 Causes of Statelessness.

Once understood how one acquires nationality, it is necessary to understand how one loses it and what are the causes that lead to statelessness. To present causes, this research recall the manual 'Nationality and statelessness: a handbook for parliamentarians' which brings a very clear and didactic classification, presenting the main causes of statelessness into three groups, as follow: a) technical causes; b) causes linked to State succession; c) causes linked to discrimination or arbitrary deprivation of nationality.[68]

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[66] To better understand this subject, see R Baubock and others, Acquisition and loss of nationality: Comparative analyses-policies and trends in 15 European countries (Amsterdam University Press, 2006).

[67] *Case Nottebohm (Liechtenstein v. Guatemala)* (n17).

[68] UNHCR 'Nationality and Statelessness: A Handbook for Parliamentarians' (n20).

Technical Causes

Considered as the easier viewing, “they are ‘technical causes’ because statelessness is the unintentional result of the acts of individuals or the operation of particular municipal laws or policies”[69]. Technical causes of statelessness should not be underestimated, because they are many and varied and can consolidate this occurrence by birth time or later in life.

UNHCR manual brings as main technical causes those linked to the renunciation of nationality, linked to issues that directly affect children or woman and administrative causes or even automatic loss of nationality due the fact of living abroad.

At this point, it is worth a further observation to the most common and perhaps most known technical cause of statelessness: negative conflict between citizenship conceptions ruled on *jus soli* and *jus sanguinis*.[70]

As seen previously, the first of these two categories prescribes that nationality is granted to all those who are born in the territory of a State; so, for example, every individual who is born within Brazilian soil is automatically eligible for Brazilian citizenship[71] [72]. On the other hand, according to the *jus sanguinis*, belonging to the community is determined by ascendance; thus, to acquire Italian citizenship, for instance, one must present relationship close to an Italian national.[73] That said, the problem becomes eminently simple: if citizens of a State that privileges the *jus soli* principle have children in the territory of a country that opts for *jus sanguinis*, children are stateless at first.[74]

Narrowing down on the issue of *jus sanguinis* principle, it is important to observe how this criterion for acquisition of nationality arises statelessness issues, particularly with regard to gender legislation. Frequent cases in North Africa, Middle East and Asia demonstrate this situation when, for example, nationality can only be

[69] L v Waas, Nationality matters: statelessness under international law. (Intersentia, 2008) 49.
[70] L v Waas, Nationality matters: statelessness under international law (n70),

[71] Brazilian Constitution grants citizenship by both criteria: *jus soli* and *jus sanguinis*. Both children born in Brazil as sons of Brazilians abroad can acquire Brazilian nationality. See *Chapter II, Section 2.2 - Brazilian Legal Response, Page 58.*

[72] Constitution of the Federative Republic of Brazil 1988 (BRAZIL) art 12.

[73] Act n 91 Citizenship 1992 (Italy).

[74] L v Waas, Nationality matters: statelessness under international law (n70),

passed from father to son, or where the nationality of the woman who marries a foreigner is withdrawn in favour of the husband's one.[75]

The onus of statelessness can also fall on babies whose paternal ancestry cannot be determined or on abandoned children, whose situation is even more vulnerable. Moreover, the principle of *jus sanguinis* can make statelessness an inherited condition, through several generations, until a subsequent acquisition of citizenship can be possible.[76]

Finally, it stands out that, among the technical causes, authors also list issues of nationality renunciation and statelessness childhood; however, these topics were not discussed in details because they receive particular analysis on sections below.

Causes Linked to State Succession

Concerning to issues of State succession, statelessness often comes out. State transition situations - when a State ceases to exist, being replaced by another or giving rise to multiple other States, etc. - are potential cause of massive loss of nationality. A classic example of this occurrence is the case of the Soviet Union in 1991, when individuals originated from extinct countries (such as Armenia and Azerbaijan, among others) have become stateless.

Furthermore, certain elements are unique to such succession events, considering the troubled situation that generally is intrinsic to them. When the emergence of a new State, for example, citizenship has to be given from some form, usually chosen from three options: previous nationality, ethnicity and territorial jurisdiction.[77] It is clear that each one has its own problems; for example, in cases where there is more than one successor State, it is not immediately clear which of the two new States should be responsible for certain part of the predecessor State citizens.

[75] B K Blitz and M Lynch, Statelessness and the Benefits of Citizenship: A comparative study (Geneva Academy of International Humanitarian Law and Human Rights, 2009).

[76] L v Waas, Nationality matters: statelessness under international law (n70).

[77] L v Waas, Nationality matters: statelessness under international law (n70) 25.

Regardless of succession mode or its inherent problems[78], it is clear that all of them are considered factors with huge possibilities to emerge statelessness phenomenon and, therefore, cannot be disregarded in the context of international law.

Causes Linked to Discrimination or Arbitrary Deprivation of Nationality

Discrimination and arbitrary deprivation or denationalization also can be argued to explain the occurrence of this incident:

> Statelessness arises in a variety of contexts. (…) Most stateless persons, however, have never crossed borders and find themselves in their "own country". Their predicament exists in situ, that is in the country of their long-term residence, in many cases the country of their birth. For these individuals, statelessness is often a result of discrimination on the part of authorities in framing and implementing nationality laws.[79]

Arbitrary deprivation of nationality is a confrontational manifestation form of statelessness.[80] It is not uncommon that conflicts relating to nationality in such cases are placed in very unstable political frameworks. A classic example is what happened in Nazi Germany, which made use of discriminatory legislation in order to deprive Jewish population of German citizenship.[81]

Accordingly, improper criteria can be used on granting nationality, resulting in the denial of citizenship to some groups, notably race segments[82], in

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[78] Referencing the Vienna Convention on Succession of States in Respect of Treaties (1978) and the Draft Articles on Nationality of Natural Persons in Relation to the Succession of States (1999), Waas includes four main situations under the expression "State succession", namely: unification or dissolution of a State, the transfer of territory from one State to another and the separation of part of a State.
See L v Waas, Nationality matters: statelessness under international law (n70).

[79] UNHCR, 'Guidelines on Statelessness No 3: The Status of Stateless Persons at the National Level' (17 July 2012). UN Doc HCR/GS/12/03.

[80] For consideration of this concept from the perspective employed in this analysis, it is necessary to clarify that, any act perpetrated by a State, contrary to the ordinary operation of its law, to grant or deprive nationality is considered arbitrary, as so does any act justified in unlawfully discriminatory terms. It should be noted, however, that under certain conditions - for example, for national security reasons - an action that otherwise would be arbitrary, can be considered legitimate.
L v Waas, Nationality matters: statelessness under international law (n70).

[81] B K Blitz and M Lynch, Statelessness and the Benefits of Citizenship: A comparative study (n75).

[82] In this context, the term "race" is understood as the meaning established by the International Convention on the Elimination of All Forms of Racial Discrimination, according to which the term applies to race, colour, descent, or national or ethnic origin.
International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) (ICERD) 660 UNTS 195, art 1.

violation of international standards. As already seen, States have wide discretion regarding determination of who should or should not be considered as citizen; in fact, any community shall have clear boundaries between its members and non-members.

However, reasonable limits have to be taken in order to determine whether a practice of differentiation comes to set discrimination. At this point, different answers could be obtained, with no discernible consensus on what clearly sets discrimination.[83] On the other hand, some patterns are already established, such as the fact that the prohibition of racial discrimination is already regarded as *jus cogens*.[84]

Along with technical causes, State transition issues and arbitrary deprivation of nationality, “new forms” of statelessness are emerging recently. It is possible to identify increasing debate and emphasis on statelessness situations derived from precarious documentation of vulnerable groups, for example. In this sense, the poor registration of births and marriages has been identified as a potential vector of statelessness.[85]

Moreover, migration issues have also been in focus, particularly related to illegal immigration. Increasing difficulties of nationality acquisition for migrants, associated with growing legal and illegal migration are serious problems for national policies of recipient countries.[86] Issues such as human trafficking and situations involving large numbers of refugees - and their correlation with statelessness - are also being explored in literature and recent international and domestic legal provisions.[87]

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[83] L v Waas, Nationality matters: statelessness under international law (n70).

[84] In international law field, Jus Cogens are standards recognized by the international community as peremptory, from which no derogation is permitted.
Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) (VCLT) 1155 UNTS 331, art 53.

[85] B K Blitz and M Lynch, Statelessness and the Benefits of Citizenship: A comparative study (n75).

[86] International Migration Institute, 'Towards a New Agenda for International Migration Research' (2006) <http://www.imi.ox.ac.uk/pdfs/a4-imi-research-agenda.pdf> last accessed 10 November 2014.

[87] L v Waas, Nationality matters: statelessness under international law (n70).

3.3 Childhood Statelessness.

Statelessness childhood is a subject that has received more attention because of increasing awareness on the issue of statelessness. About this, Maureen Lynch and Melanie Teff discuss the issue and point out some specific circumstances that make a child become a stateless person:

> Apart from the ways in which any person can become stateless, a child in particular can become stateless when a family migrates away from a country where citizenship is conveyed by *jus sanguinis;* a child has the right to citizenship of the parents' country of origin but cannot always access it and may instead become *de facto* stateless in the country where they grow up. Lack of birth registration can cause statelessness. Children may not be registered because parents fear drawing attention to their own status.
> A child can also become stateless when a birth record is destroyed or lost and there is no other means to link them with a particular country.
> Inequitable laws also create childhood statelessness. (…)
> Where citizenship is determined exclusively by the father's nationality, stateless fathers, single women, or women living apart from their husbands face numerous barriers to registering their children.[88]

If a woman is unable to extend citizenship to her spouse, statelessness may be imposed on her and her children. Whether parents are married or not may also determine a child's nationality. For example, a legacy of UN peacekeeping is fatherless children – and the citizenship rights of children born to UN troops and female nationals are not always clear.

As it is possible to see, there are several reasons that put children as a very vulnerable group. Concerned with this issue, UNHCR issued Guidelines on Statelessness focused on the situation of the child to address the problem.[89] This issue, however, will not be further discussed, since it is not the focus of this essay.

3.4 Renunciation of Nationality.

Finally, it is important to mention renunciation issues. Some States have nationality laws that allow individuals to renounce their nationality without having first acquired, or - at least - having guaranteed the acquisition of another nationality. This situation often leads to statelessness.

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[88] M Teff and M Lynche, 'Childhood Statelessness' in Forced Migration Review (2009) 31.

[89] UNHCR, 'Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness' (21 December 2012). UN Doc HCR/GS/12/04.

The conflict of laws, in this case, can arise when one State cannot grant nationality until the individual renounce his original nationality. Hence, sometimes an individual is forced to renounce citizenship elsewhere before is able to apply for citizenship in the place where he resides, for instance; this makes him a stateless person until the new nationality is granted.

It is very important to mention that some scholars claim that State permission is never necessary to relinquish one's citizenship status[90]. Nevertheless, this is not the prevailing understanding either among authors or among States. Actually,

> many States do not make citizenship renunciation an easy procedure. In Bhutan, the Democratic Republic of Congo, Egypt, Jordan and the Maldives, to name just a few, special permission must be sought from the respective Head of State or multiple government entities in order to renounce one's citizenship. In States such as Austria, Iran and Latvia, the State can potentially refuse a renunciation request if it decides that military obligations have not been fulfilled. In all cases, however, an individual cannot simply choose to renounce her citizenship and be done with it, for the State (whether via a court decision or the approval of an ambassador at an Embassy) generally must authorize this decision.[91]

These procedures generally imposed by States - to give or not permission of nationality renunciation - serve as important elements that minimize statelessness locally.

4. CONSEQUENCES OF BEING A STATELESS PERSON.

The start point to reflect upon the implications and consequences of being a stateless person would be the interesting conclusion drown by Arendt who claimed stateless is a person who "*lack the right to have rights*".[92]

Indeed, the most grievous consequence of being stateless is the status of "invisibility" that one acquires into the international and domestic field. Because of his/her condition, the person is not able to exercise a plenty of rights, including those considered basic or fundamental (such the right to access basic services: work,

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[90] Hanjian discusses the right to be voluntarily stateless. C Hanjian, The Sovrien: An exploration of the right to be stateless *(*n48).

[91] K Belton , 'The great divide: citizenship and statelessness' (n13) 42.

[92] H Arendt, 'The Origins of Totalitarianism' (Harcourt, 1968) (as cited in J G Matthew, 'Statelessness and the right to citizenship' in Forced Migration Review (Oxford 2009) 50.

schooling, justice system, health care system, international travels, etc.) which should be granted by the simple fact that they are human rights internationally recognized as such.

In addition to this legal perspective (what prevent people of accessing basic services, marrying, travelling, having documents, and so on), there is also a human dimension involved in this problem, what make stateless people feel unwanted and excluded, turned into the category of “nowhere people” or “ legal ghosts” because of its vulnerability and marginalization.[93] A real case of a formerly stateless resident of Vietnam illustrates human impact of this phenomenon:

> One young man, now 29 years of age, spent the first 27 years of his life without a nationality. Born in Vietnam to a stateless father and Vietnamese mother, he described what life was like when he was stateless: “when I wanted a girlfriend and met her parents, they asked me who I was, why my name was strange and where my ID card was. Finally I met a girl I loved and her parents didn’t care about the ID card, but we couldn’t legally marry because I didn’t have the ID card”.[94]

Unquestionably, statelessness damages a person’s sense of identity and worth, and regularly guides to one’s political, social and economic marginalization. However, beyond the individual impacts, statelessness can also have broader consequences on society as a whole, particularly because excluding a complete segment of the population possibly will produce social tension and significantly impair efforts to promote economic and social development.

Considering what was exposed, this research will present three major areas of analysis: legal, psychological and social consequences of being stateless person.

Legal Consequences

According to Feller, a stateless person experiences his existence, yet never legally recognized.[95] From the international law perspective, these people live

[93] UNHCR, 'The World’s Stateless People: Questions & Answers' (2007) 6.

[94] UNHCR, 'Good Practices, Addressing Statelessness in South East Asia' (Bangkok, 2010) 3.

[95] UNHCR, 'Statelessness: An Analytical Framework for Prevention, Reduction and Protection' (Geneva, 2008) iii.

in conditions of legal limbo[96], and the main consequence of being a stateless is the absence of citizenship, which brings, accordingly, a range of other deprivations.

There are countless legal problems faced by stateless persons: denial of right to vote, inability to make international travel due to lack of passport or other travel document. Moreover, they do not have access to basic rights, such as education, health, labour, social security and retirement, among others.

Stateless persons cannot enrol in school, what deprives them to access knowledge and, consequently, to access the necessary clarification to reverse statelessness situation.

When needing medical care, they cannot benefit from the public health system for failing to show any identification document. What remains for them is the choice of private health services and medication. However, as these people do not have access to work and income, they will not be able to afford such services.

Adults are not the only ones facing these situations. A child, when stateless, is prevented from being registered and, therefore, has no legal document that gives him citizenship. This condition will result in a series of restrictions that this child will suffer throughout his life, if do not acquire a nationality.

Either adults or children, often stateless persons are deprived of access rights assured to any person. With no documents that give the individual his legal personality, a stateless person faces worrying situations:

> The privation of a homeland is a degrading and debilitating condition that affects almost every aspect of a person's life. Those who are not recognized as citizens of a country cannot often enrol in school, work legally, have own property, marry or travel. They may have difficulty being hospitalized and unable to open a bank account or receive a pension. Whether they are victims of theft or rape, can be seen unable to sue because, under the law, they do not exist. Often they do not even have a recognized name.[97]

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[96] The entry "limbo" is commonly find on statelessness literature. On consulting the Oxford Dictionaries, the word means “a state of neglect or oblivion” and refers to condition of marginality, or legal vulnerability that stateless persons are usually exposed to.

[97] UNBR, 'Os Excluídos: O Mundo Desconhecido dos Apátridas' (2007) <http://nacoesunidas.org/os-excluidos-o-mundo-desconhecido-dos-apatridas/> last accessed 13 August 2014.

bank account or receive a pension. Whether they are victims of theft or rape, can be seen unable to sue because, under the law, they do not exist. Often they do not even have a recognized name.

Referencing the legal status to which stateless persons are subjected, Lafer characterizes these individuals as 'unprotected in relation to their rights and subject to the arbitrariness caused by State authorities in order to get rid of these troublesome "visitors"'.[98]

Psychological Consequences

Among many traumatic implications that fall upon the stateless persons, psychological consequences affect exactly what human beings have as more peculiar: the personal identity.

Because they live in a legal limbo, stateless persons are often victims of prejudice and discrimination, which affects not only their own self-confidence as an individual, but also their sense of belonging to a particular group, above all.

On this issue, Ferreira argues that ‘prejudice fulfils its role and arouses feelings of failure and impotence in their victims, preventing them from developing self-confidence and self-esteem’.[99]

Prejudice interferes on the mental health of the individuals and consequently on the construction of their identity. The situation of legal limbo, peculiar of stateless persons, prevents them to access basic services and rights. In turn, the social discrimination pushes these individuals away from social groups, creating the feeling of not belonging.

Overall, self-identity depends on the experiences that an individual has throughout his life. When taking into account the consequences of statelessness, it appears that the extent of the psychological effects are devastating:

> Being said ‘no’ to by the country where I live; being said ‘no’ to by the country where I was born; being said ‘no’ to by the country where my parents are from; I feel I am nobody and don’t even know why I am living. Being stateless, you are always surrounded by a sense of worthlessness.[100]

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[98] C Lafer, A reconstrução dos direitos humanos: um diálogo com o pensamento de Hannah Arendt. (n28).

[99] R F Ferreira, *Afro-descendente, identidade em construção* (Pallas, 2000) 59.

[100] UNHCR ‘Nationality and Statelessness: A Handbook for Parliamentarians' (n20) 6.

This happens because these individuals have no other reference than the reflection of oppression caused by all the difficulties they are constantly subject to.

Social Consequences

Whilst legal and psychological consequences of statelessness are felt and absorbed by the individual, there are consequences to be examined in social sphere. When interacting with other individuals, stateless person has to face one of the most serious consequences: discrimination and the consequent non-inclusion in social groups. Exemplifying how severe are the social problems faced by stateless persons, Arendt testifies:

> The calamity of the rightless is not that they are deprived of life, liberty and the pursuit of happiness, or of equality before the law and freedom of opinion—formulas which were designed to solve problems within given communities—but that they no longer belong to any community whatsoever.[101]

Doubtless, the feeling of non-belonging, the social, legal and psychological consequences affect people who are considered stateless mainly. However, it is necessary to mention that these people are not the only ones involved; rather, society as a whole is affected by the phenomenon of statelessness:

> Stateless persons are outside of the writ of law and do not receive the State's protection. Stateless children cannot go to University or take national exams that entitle them to compete for civil servant jobs; stateless people cannot vote, own land, get legally married, open a bank account, get access to healthcare, or travel. The list goes on. They are basically invisible in the eyes of the State and are forced to lead their lives in the shadows. However, statelessness not only affects individuals, it is also detrimental to the well-being of society at large because it excludes large swathes of the population and prevents them from contributing to the productive capacity of their country.[102]

Non-participation and lack of contribution to society complicates social integration and raises the prejudice and discrimination. Consequently, stateless persons, more and more discriminated, do not establish belonging feelings and

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[101] H Arendt H, The origins of Totalitarianism (n11) 295.

[102] B Hendricks, 'Stateless people are like ghosts, forced to lead their lives in the shadows' (2015) <http://kora.unhcr.org/barbara-hendricks-stateless-people-like-ghosts-forced-lead-lives-shadows/> last accessed 02 March 2015.

become "invisible" in the world: 'A stateless person is someone who is like a ghost – they are invisible to all the things we take for granted'.[103]

To understand causes and consequences of being a stateless person is very relevant to this research, because following chapters will address some international and national responses to face statelessness problems. Doubtless, causes and consequences have to be taken into consideration when designing policies and legal instruments to end statelessness and, due to this, these topics were largely approached.

[103] UN High Commissioner for Refugees (UNHCR), 'Hendricks commends efforts to end statelessness in Côte d'Ivoire' (22 July 2014) <http://www.unhcr.org/53ce16666.html/> last accessed 12 March 2015.

PART 2

RESEARCH OUTCOMES

Figure 02. Brasileirinhos Apátridas (Little Stateless Brazilians).
Source: Freely available on the web. Non copyrighted.

The second part of this research is focused on answer the main research question: *To what extent Brazilian laws and policies are in compliance with its international commitments on identification, prevention and reduction of statelessness and protection of stateless persons?*

To do that, the theoretical approach elaborated on the first part of this essay is taken to serve as theoretical base for the research outcomes. Give this, two points had to be considered in this study: Brazilian domestic legislation and Brazilian national actions and policies regarding statelessness. Having the UNHCR four-pillar approach as paradigm, the analysis was built to present results in these both mentioned area, adopting both descriptive and analytic methods.

Hence, this thesis brings the Chapter II, what is a result of a critical analysis of domestic legislation to verify if it complies with international standards and to discuss to what extent the Brazilian legislation is in accordance with its international obligations on identifying, preventing, reducing statelessness and on protecting stateless persons.

In addition to this result, this research comes up with a specific outcome concerning Brazilian actions and policies on statelessness. The Chapter III brings descriptive information about Brazilian action and policies whereas discloses critical reviews about the steps Brazil is taking to deal with following issues: identification, prevention and reduction of statelessness, as well protection of stateless persons in the country.

CHAPTER II – LEGAL FRAMEWORK TO ADDRESS STATELESSNESS.

1. INTERNATIONAL PERSPECTIVE

International human rights system is founded on that all human beings are entitled to a set of rights, which are primarily granted (or recognized) by States[104].

[104] According to UN, "International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights."

Based on that, one can easily conclude that States parties of international human rights treaties have the duty to respect and ensure the human rights of all individuals within their territory and jurisdiction.

Apparently, it would be a solution for stateless persons, since they could have their rights assured in any jurisdiction, even without any formal link with any State. The reality, however, is quite discrepant in this sense, as it is clearly stated by the UNHCR:

> While human rights are generally to be enjoyed by everyone, selected rights such as the right to vote may be limited to nationals. Of even greater concern is that many more rights of stateless people are violated in practice - they are often unable to obtain identity documents; they may be detained because they are stateless; and they could be denied access to education and health services or blocked from obtaining employment.[105]

In order to face this problem, the international community has been making some effort in legal terms to guarantee the right to nationality for all people and avoid the phenomenon of statelessness. This chapter, accordingly, gives an overview of the different sources related to this issue in international perspective. Going further, the section makes a more detailed study of the core documents approaching specifically the statelessness theme, that is, the 1954 Statelessness Convention and the Convention on the Reduction of Stateless (hereinafter 1961 Statelessness Convention).[106]

1.1. General Overview: Universal and Regional Instruments

To begin with, it is hugely important to understand that the right to nationality is considered fundamental right firstly provided in the Universal Declaration of Human Rights (hereinafter UDHR) in its article 15, as below: ‘Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality’.[107]

UNHR, 'International Human Rights Law' <http://www.ohchr.org/EN/Pages/InternationalLaw.aspx> last accessed 30 November 2014.

[105] UNHCR, 'Searching for citzenship' <http://unhcr.org.ua/en/who-we-help/stateless-people/241-searching-for-citizenship.> last accessed 30 November 2014.

[106] Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175 (Convention).

[107] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR) art 15.

Besides that, there is a plenty of binding international instruments generally related to the international human rights law - under the auspices of the UN - aimed at the protection of this right.

The International Covenant on Civil and Political Rights (hereinafter ICCPR) states in its article 24(3): 'Every child has the right to acquire a nationality'.[108]

Moreover, the right to nationality can also be implied from the article 26 of ICCPR that reads:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, **national or social origin**, property, birth or other status.[109]

The International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR) does not clear grant the right to nationality; however it is also very important in the sense that it is a legal basis to allow all non-national (inclusive those who are considered stateless) to enjoy the rights provided in this mentioned document.[110]

Going even further than its protection by the International Bill of Rights, most major international documents recognizes nationality right:

- Convention on the Rights of the Child (hereinafter CRC)[111]
- Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter CEDAW)[112]
- Convention on the Elimination of All Forms of Racial Discrimination (hereinafter ICERD)[113]

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[108] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 24(3).

[109] ICCPR (n107) art 26, **emphasis added**.

[110] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 2.
Art 2: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin property, birth or other status.

[111] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) arts 2, 7, 8.

[112]Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 9.

[113] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD) art 5.

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter ICRMW)[114]
- Convention on the Rights of Persons with Disabilities (hereinafter CRPD)[115].

In addition, a considerable large list of universal[116] and regional[117] documents assure the right to nationality; and the immense majority of UN States have ratified at least one or several treaties, what assures some protection to stateless persons[118].

As it is possible to imply from the explanation above, the legislation about statelessness is overlapping the main documents of the International Human Rights Law, and it happens because the right to nationality is a basic and fundamental right that has to be granted to any person simply by the fact that he/she is human being. This subject is clearly approached by Batchelor:

> From this brief review of international law pertaining to nationality, it is clear that the developments of this century have fundamentally altered the reference points for nationality legislation and practice. The reasons for these developments are also clear. Everyone has the right to a nationality. Everyone needs a nationality because nationality serves as the basis for legal recognition and for exercise of other rights. Nationality should, therefore, be effective in ensuring the exercise of these rights. Statelessness should be avoided as it defeats these goals and may, further, lead to displacement. One of the best means of avoiding statelessness is to ensure recognition of an individual's genuine and effective link with a State, based on a combination of factors including place of birth, descent, and residency[119].

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[114] International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 1 July 2003) A/RES/45/158 (ICRMW) art 29.

[115] Convention on the Rights of Persons with Disabilities (adopted 24 January 2008, entered into force 03 May 2008) A/RES/61/106 (CRPD) art 18.

[116] Some of universal documents: Hague Convention on Nationality (1930), Convention on the Nationality of Married Women (1957), Declaration of the Rights of the Child (1959), Declaration on the Human Rights of Individuals who are not nationals of the country in which they live (1985)

[117] Some of regional documents: OAS Convention on the Nationality of Women (1933), Europe Convention on the Reduction of cases of Multiple Nationality and military obligations in cases of multiple nationality (1963), American Convention in Human Rights (1969), European Convention on Nationality (1997), Inter-American Program for a Universal Civil Registry and The Right of Identity (2008).

[118] According to UN, all States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality.
UNHR, 'What are Human Rights' <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.apx> last accessed 30 November 2014.

[119] C Batchelor, 'Statelessness and the Problem of Resolving Nationality Status' (n 52) 168.

In addition to this point, what is also relevant to note is that human rights laws apply to all people[120], regardless of nationality or immigration status, what includes stateless persons.

In the same perspective, the basic principle of equality and non-discrimination is also very protective, since it prohibits any discrimination based on any criteria, including the lack of nationality status. This mentioned principle is also the base to legitimate different treatment for groups who are in a different position under the concept of material equality.

Based on that, States are able to recall this argument when adopting affirmative action measures[121] in order to assist particularly vulnerable groups of stateless persons in their territory. According to Blitz and Lynch (2009), "the uniquely vulnerable position of the stateless - as for non-nationals everywhere - may call for such positive measures"[122].

To resume the discussion about interrelation of nationality legislation and International Human Rights Law, it is necessary to comprehend that human rights law supplements the protection regime set out in the domestic order, under the auspices of States sovereignties:

> where states are failing either individually or collectively to ensure that everyone enjoys the bond of citizenship somewhere, the human rights regime's assertion of universality begins to crumble unless special provision is made for those persons who find themselves excluded by the system: the stateless.[123]

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[120] Although there is a significant part of scholars who claim for the Cultural Relativism of Human Rights, this essay follows the major doctrine according to which Human Rights are universal. They are universal because everyone is born with and possesses the same rights. All people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of UDHR: 'All human beings are born free and equal in dignity and rights'.

[121] The principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions that cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.
UNITED NATIONS. Human Rights Committee. 1989. Paragraph 10.

[122] Blitz and Lynch, Statelessness and the Benefits of Citizenship: A comparative study (n75) *35.*

[123] Blitz and Lynch, Statelessness and the Benefits of Citizenship: A comparative study (n75) *41.*

Lastly, it is imperative to note that, together with universal and regional legal instruments of international human rights law, there are two particular International Conventions approaching specially the statelessness subject.

These two International Conventions regarding to statelessness are extremely significant, since they address specific issues not covered by other legal instruments and approach vital matters, as rights and duties of stateless persons and States parties, as it will be seen next[124].

1.2. Statelessness: The Core Conventions.

There are two very important international treaties related to the issue of statelessness: the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961) which together seek to guarantee basic rights to stateless individuals. More than that, they regulate the issue of statelessness, providing legal tools to prevent and reduce this phenomenon around the world, and, at the same time, assure minimal standards to protect people who already hold this status.

Despite of its massive significance, only few State members have ratified these mentioned documents. According to UNHCR, at the ending time of this research, in April 2015, 86 States are parties of the Convention relating to the Status of Stateless Persons (1954)[125] and 63 States have ratified or acceded the Convention on the reduction of Statelessness (1961)[126]. It is true, however, that lately this subject has received more attention from the international community and piecemeal more States are getting committed with this issue. It is clear by the fact that a considerable number of States have acceded the two conventions and others,

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[124] Both agreements – 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness – are important legal instruments to prevent and decrease this condition, and offer protection to those who find themselves in this stateless limbo. While some regional treaties and human rights laws complement these agreements, the statelessness conventions are the only two of their kind.
UNHCR, 'A plan for protecting those without citizenship or rights available' <http://www.unhcr-centraleurope.org/en/resources/conventions/statelessness-conventions.html> last accessed 20 January 2015.

[125] UN Treaty Collection, Convention relating to the Status of Stateless Persons <https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en> last accessed 30 April 2015.

[126] UN Treaty Collection, Convention on the Reduction of Statelessness <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en> last accessed 30 April 2015.

going even further, have been working for establish its own national procedure to identify stateless or taking other steps to address statelessness[127].

To better organize this section, first it will be presented a detailed study of each of the two international conventions and at the end, a historical analysis will be performed considering both of them together.

Convention Relating to the Status of Stateless Persons (1954 Statelessness Convention).

The Convention relating to the Status of Stateless Persons was adopted in September of 1954 and entered into force in June of 1960[128] with the aim of setting up a framework for the international protection of stateless persons. According to UNHCR, this 'is the most comprehensive codification of the rights of stateless persons yet attempted at the international level'.[129]

Created to address the protection problems faced by stateless persons, this 1954 Convention aims to regulate the status of stateless persons and to ensure the widest possible enjoyment of their human rights: it 'addresses many practical concerns relating to the protection of stateless persons – such as access to travel documents – that are not dealt with elsewhere in international law'[130].

The document deals with legal status of the stateless persons, assuring them several rights, such as acquisition of movably and immovably property, right of association, right to have a job or work in his own account (arts. 13, 15, 17 and 18, respectively).

Moreover, according to articles 21, 22, 23, 24 and 27 of the Convention, States parties shall ensure to the stateless person who is in its territory, a series of

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[127] In December 2011, UNHCR organized a ministerial meeting in Geneva, in which several Governments committed to take action to address statelessness. Pledges were made by different countries in order to assure promotion of law reform to prevent or reduce statelessness (including removing gender discrimination from their nationality laws); implementation of better civil registration and documentation systems to prevent and reduce statelessness; establishment of statelessness determination procedures; and studies or mapping initiatives to better understand the extent of statelessness in their countries.
UNHCR, 'Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011' (Geneva, October 2012).

[128] Convention Relating to the Status of Stateless Persons (n37).

[129] UNHCR, 'Text of the 1954 Convention relating to the Status of Stateless Persons with an Introductory Note' (Geneva, May 2014).

[130] UNHCR, 'Protecting the Rights of Stateless Persons: The 1954 Convention relating to the Status of Stateless Persons' (Geneva, March 2014).

basic rights, such as housing, education, public assistance, work and social security, among others.

Other very relevant provisions of this document is about the right to freedom of movement. According to its article 27, the 1954 Convention requires that States provide papers and travel documents to try to help resolve practical problems that stateless persons face in their daily lives.

Doubtless, the major significance of this international document is its definition of a “stateless person”, provided by the article 1, as previously seen. Once given this status, the person is entitled to the minimum standard of rights brought by this treaty. For instance, regarding to rights as freedom of religion and education of the children, under the art. 4 of this Convention, the stateless person has the same rights as citizens do; while they are entitled to receive the same treatment as other non-nationals, with respect to some other rights, such housing and employment.

The document also guarantees, in its article 31, that contracting States cannot expel a stateless person lawfully in their territory, except for reasons of public order or national security.

Under the Convention, stateless persons also have duties, such as the obligation to respect the country's laws, the regulations where they are and the measures adopted for the maintenance of public order. In its article 12, the Convention says that stateless persons shall be subjected to rules of his State of domicile, or, failing that, to his country of residence.

From this, it is possible to imply that State parties and stateless persons shall build a relationship of mutual respect, in order to avoid any prejudice or different treatment in relation to the born citizen.

In summary,

> 1954 Convention relating to the Status of Stateless Persons is important because it sets the framework for the standard of treatment of stateless persons. It provides the individual with stability and ensures certain basic rights and needs are met, such as access to courts and education. These stabilizing factors, in addition to improving the quality of life for those who remain stateless, also decrease the potential for future displacement[131].

[131] UNHCR, ‘Information and Accession Package: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness’ (January 1999).

Based on that, remains clear that 1954 Convention provides practical solutions for States to address particular needs of stateless persons, assuring them security and dignity until their situation can be definitely resolved.[132]

Finally, it is important to mention that the enjoyment of the rights assured under the 1954 Convention is not the same as having a citizenship:

> No matter how extensive the rights granted to a stateless person may be, they are not the equivalent of possessing a nationality. All human beings have the right to a nationality and whenever the "anomaly" of statelessness arises.[133]

Even though there is a legal regulation (1954 Convention) to protect people who hold this status, it is not the same as having a nationality and enjoying all the inherent rights. This is the reason why stateless person has the right to have its naturalization facilitated. Not approached by any other treaty, the article 32 of the 1954 Convention calls upon States to facilitate the assimilation and naturalization procedures of stateless persons, because 'once they acquire an effective nationality, stateless persons are no longer stateless: their plight has come to an end'.[134]

Convention on the Reduction of Statelessness (1961 Statelessness Convention).

Considered as 'the only universal instrument that elaborates clear, detailed and concrete safeguards to ensure a fair and appropriate response to the threat of statelessness',[135] Convention on the Reduction of Statelessness (1961 Convention) was adopted in August of 1961 and entered into force in December of 1975. In trying to find a solution to avoid the occurrence of statelessness, after years of negotiation, the States agreed on this international treaty that complements the 1954 Statelessness Convention and is considered as 'the leading international

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[132] UNHCR, 'Text of the 1954 Convention relating to the Status of Stateless Persons with an Introductory Note' (n 129).

[133] UNHCR, 'Protecting the Rights of Stateless Persons: The 1954 Convention relating to the Status of Stateless Persons' (n 130).

[134] UNHCR, 'Protecting the Rights of Stateless Persons: The 1954 Convention relating to the Status of Stateless Persons' (n 130).

[135] UNHCR, 'Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness' (Geneva, March 2014).

instrument that set rules for the conferral and non-withdrawal of citizenship to prevent cases of statelessness from arising'.[136]

This document demanded over a decade of negotiation because, as already mentioned, States are the responsible ones to establish rules and norms about granting nationality in their territory and they are sovereign when elaborating their national laws about nationality.

Besides, Belton points out that:

> This convention was controversial because some committee members thought the text of the convention should center on the elimination of statelessness, while others sought only to reduce it. In the end, it was decided that the convention would focus on the prevention and reduction of statelessness.[137]

Despite of existing controversies, the international community was concerned about the necessity of States contribute to prevent and reduce statelessness globally. As a result, the 1961 Statelessness Convention is an attempt to balance the individual rights of stateless persons with the sovereignty of States in setting out norms of nationality and prevention of statelessness. In short, it means that, while States maintain the right to elaborate the content of their nationality laws, they must do so in compliance with international norms relating to nationality, including the principle that statelessness should be avoided[138].

Regarding to the material content of this document, it covers a wide range of situations in order to set up protection to prevent statelessness. There are three major areas that are topics of concern of this document: statelessness at birth, statelessness in context of transfer territories and statelessness that can have its roots in life.

The first situation, the Convention seeks to avoid statelessness determining that States shall grant nationality automatically or upon application to children born on their territory or born to their nationals abroad[139]. The second context, based on article 10 of the 1961 Statelessness Convention, is covered by granting nationality for those who would become stateless in case of transferring

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[136] UNHCR, 'Text of the 1961 Convention on the Reduction of Statelessness with an Introductory Note'. (Geneva, May 2014).

[137] K Belton, 'The great divide: citizenship and statelessness' (n 13) 86.

[138] UNHCR, '1961 Convention on the Reduction of Statelessness with an Introductory Note' (n 136).

[139] Convention on the Reduction of Statelessness (n 106) arts 1 and 4.

territories. Finally, under the articles 5, 6, 7 and 8, the mentioned convention approaches the cases of statelessness that can occurs during the lifetime, either through loss, renunciation or deprivation of nationality; in this cases, the international documents disallows Contracting State parties to withdraw the nationality of its nationals if it would result in statelessness.

The 1961 Statelessness Convention provides some possibilities in which the State can deprive a person of his nationality, namely: cases in which nationality is obtained by misrepresentation or fraud, and occasions when the naturalized citizen moved back to his home country, remaining there for longer than allowed by the State Party and not declaring the intention to retain his nationality. Worth remembering that, in accordance to art. 8, these hypotheses must be expressed in the domestic law.

On the other hand, the document prohibits countries to deprive nationality if it results in statelessness or occur on racial, ethical, religious or political basis (art. 9). In cases of acquisition or transfer of territories, States must ensure that none of people becomes stateless persons (art. 10).

Besides, it is important to clarify article 13 of the Convention with regard to how the provisions of this legal document should be interpreted. The mentioned article reinforces the idea of a broad interpretation of rights, in the sense that the legal interpretation should always be exercised in favour of the reduction of statelessness, favouring the individual, protected by the Convention.

It is clear that the 1961 Statelessness Convention tries to address an extensive roll of statelessness causes in order to prevent its future occurrences; however this phenomenon still remains and needs to be combated; accordingly, UNHCR recalled the attention of States for this document which is definitely very relevant:

> It is essential that the provisions of this Convention be widely known and that all stakeholders engage in effort to achieve an increase in the number of accessions to the Convention, in order to address the plight of stateless persons around the world.[140]

To conclude this analysis, it is interesting to give a brief historical glance to the issue. At first, the international community had planned to include preventive

[140] UNHCR, '1961 Convention on the Reduction of Statelessness with an Introductory Note' (n 136).

norms about statelessness in a specific Protocol to the Convention relating to the Status of Refugees (1951); however the large amount of post-war refugees prevent the inclusion of stateless persons in this international document[141].

It was only in 1954, with the Convention relating to the Status of Stateless persons, that this vulnerable group had firstly recognized its fundamental rights specifically. This document is relevant in the sense that assures stateless person must be protected. The Convention on the Reduction of Statelessness, adopted in 1961, on the other hand, is designed to address and prevent this phenomenon. As clearly explain Goris:

> The 1954 Convention affirmed that the fundamental rights of stateless persons must be protected while the 1961 Convention created a framework for avoiding future statelessness, placing an obligation on states to eliminate and prevent statelessness in nationality laws and practices. Specifically, States may not deprive persons of citizenship arbitrarily or in such a way as to cause statelessness. While states retain broad control over access to citizenship, the legal power to withdraw citizenship once granted is more limited.[142]

As it is possible to imply, the first document from 1954 was built in order to normalize and develop the condition of the people who are considered stateless under this document. Conversely, the Convention on the Reduction of Statelessness is the innovative and important document to avoid statelessness and, therefore, does so applying two systems of nationality: *jus solis* and *jus sanguinis* depending on the case. Its core aim is to prevent this happening as much as it is possible. The focus should be on preventing and reducing statelessness:

> Protection of stateless persons under the 1954 Convention relating to the Status of Stateless Persons should thus be seen as temporary response while avenues for the acquisition of a nationality are explored. The reduction of statelessness through acquisition of nationality remains the ultimate goal. The 1961 Convention on the Reduction of Statelessness provides States with tools for avoiding and resolving cases of statelessness.[143]

Based on that, it is possible to summarize this section with two main understandings: firstly, it is indispensable to bear in mind that together, the 1954 and 1961 Conventions, structure the basis of the international legal framework to address

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[141] N Robinson, 'Convention relating to the Status of Stateless Persons. Its History and Interpretation' (UNHCR,1997).

[142] I Goris, 'Statelessness: what it is and why it matters' in Forced Migration Review (2009) 4.

[143] UNHCR, 'Protecting the Rights of Stateless Persons: The 1954 Convention relating to the Status of Stateless Persons' (n 130).

statelessness issues. Finally, it is important to observe that so far ‘international law on nationality evolved along two tracks: to protect and assist those individuals who were already stateless, and to try to eliminate, or at least reduce, the incidence of statelessness.[144]

Lastly, it is necessary to mention the fact that, UNHCR reinforces the idea that both mentioned Conventions provide an important legal framework to prevent statelessness and protect people who are already in such condition. In this sense, the UN agency constantly appeals to all worldwide States adhere both conventional texts.

2. BRAZILIAN LEGAL RESPONSE.

As previously mentioned, this section intends to verify to what extent the Brazilian legislation is in accordance with its international obligations on identifying, preventing, reducing statelessness and on protecting stateless persons. Hence, it is necessary to go over the Brazilian domestic law to support the results here presented.

It is under the auspices of national legislation that Brazil deals with statelessness either directly (such as regulating the condition of stateless people to assure that they have minimally their human rights respected) or indirectly (legislating on birth registrations, for instance), therefore, it is massively debated.

For didactic purposes, this section starts with descriptive analysis of statelessness current situation in Brazil, since it is necessary to understand the impact of this problem within the country before doing the legal review.

2.1 A Picture of Statelessness in Brazil.

Brazil is the focus of this study. This analysis, however, starts from a global and regional perspective to reach the Brazilian context. This broader examination is necessary because, from this, it is possible to have a better picture of the country, when comparing the reality of the mentioned country with other States and regions.

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[144] UNHCR ‘Nationality and Statelessness: A Handbook for Parliamentarians' (n 20).

Chapter III of this study will make clear that UNHCR is the international body with the mandate to deal with the issues of stateless persons.[145] To start this analysis in this chapter, it is enough to understand that UNHCR, amongst its activities, has the designation to make the identification of this vulnerable group.

In trying to identify them, annually UNHCR launches a Global Trend Reports to present global statistics.[146] For the purpose of this study, the official table *'Refugees, asylum-seekers, internally displaced persons (IDPs), returnees (refugees and IDPs), stateless persons, and others of concern to UNHCR',* was analyzed from 2003 to 2013[147], in order to collect the necessary data to develop the graphic below about the number of stateless people worldwide:

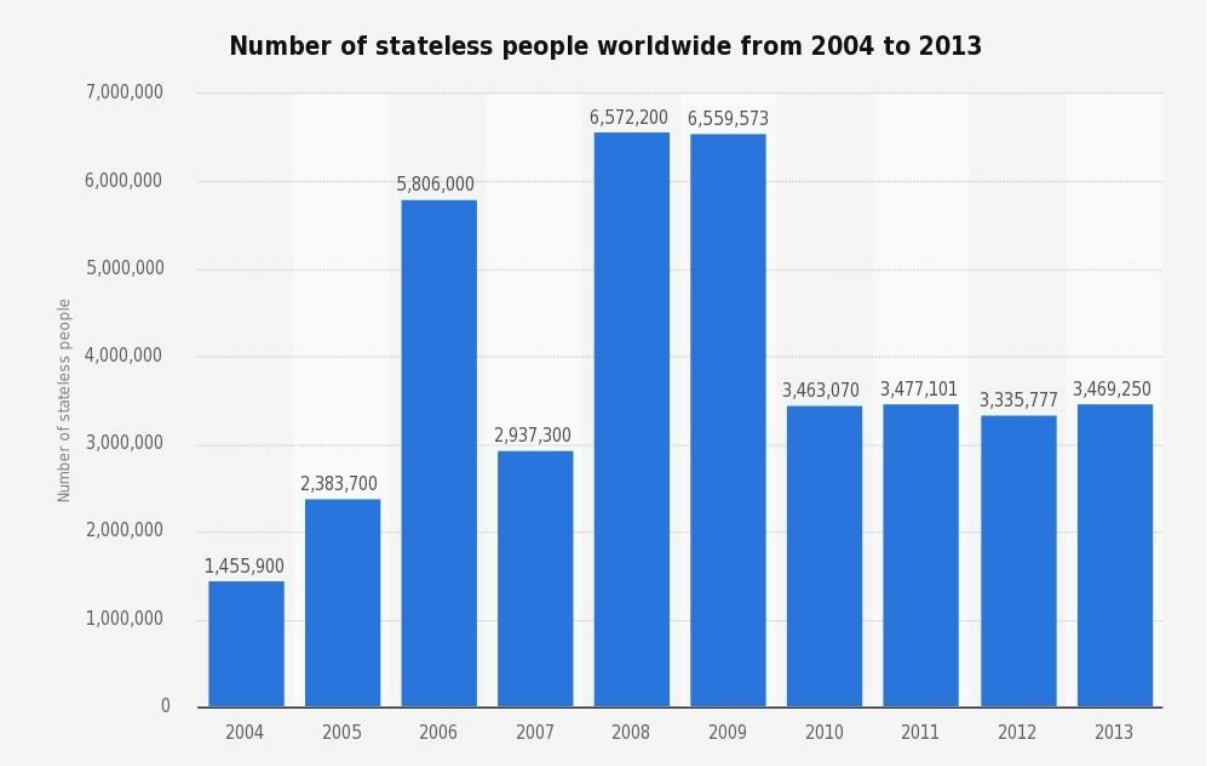

Figure 03. Number of Stateless People Worldwide from 2004 to 2013.
Source: UNHCR Global Trends. Annexes. Table 01: Refugees, asylum-seekers, internally displaced persons (IDPs), returnees, stateless persons, and others of concerns to UNHCR by end-, 2004-13.

[145] To learn about UNHCR's mandate, see Chapter III – Section 1 – UNHCR's Mandate and Role for Statelessness, page 76.

[146] UNHCR, 'UNHCR Global Trends 2013: War's Human Cost' (Geneva, 20 June 2014).

[147] At the time of this study, UNHCR had launched Mid-Year Trends 2014; however, to keep the annual pattern, this study opted for using the Global Trends 2013, launched in June 2014 for gathering the statistics.

According to this UNHCR official data, by the end of 2013, figures show around 3.469.000 people as statelessness in the world; however, these numbers are uncertain and different institutions show different data about this issue. For example, the Humanitarian Information Unity (HIU) of U.S Department State already estimated that, since 2009, there were over 6,5 million of people considered as stateless worldwide:[148]

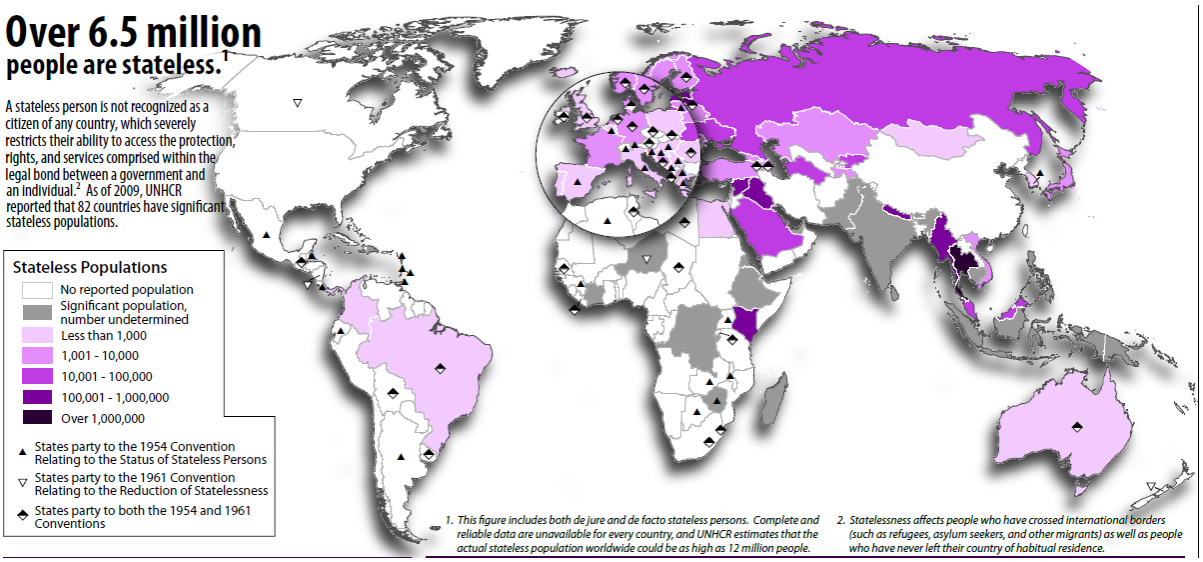

Figure 04. Number of Stateless People Worldwide in 2012.
Source: HIU: Statelessness: A Global Challenge. 26 August 2010.

In addition to this information, the number of 12 million was referred as an approximate estimative in the UNHCR Report of Refugee in 2011, after considering that only about 64 States had, at that time, regular and reliable database of stateless people identified[149].

Moreover, the official UNHCR website mentions that “at least 10 million people worldwide have no nationality”[150], and the UNHCR Press Release, dated of 2014, says:

> Statelessness remains hard to quantify with precision, both because of the inherent difficulties governments and UNHCR have in recording people who lack citizenship and related documentation, and because some countries do not gather data on populations they do not consider as their citizens. For

[148] US Department of State, 'Statelessness: A Global Challenge' (30 August 2010) <http://www.state.gov/documents/organization/181264.pdf> last accessed 31 October 2014.

[149] BBC News, 'UN warning over 12 million stateless people' (25 August 2011) <http://www.bbc.com/news/world-14654066> last accessed 21 October 2014.

[150] UNHCR, 'An Introduction to Stateless' <http://www.unhcr.org/pages/49c3646c155.html> last accessed 31 October 2014.

> 2013, UNHCR's offices worldwide reported a figure of almost 3.5 million stateless people, however this is about a third of the number of people estimated to be stateless globally[151].

From all these different statistic data, it is possible to conclude that figures are far from being precise, mainly because there are a huge amount of stateless persons who are not identified as such around the globe.

Besides the universal numbers, there are statistic data reflecting reality in each region of the planet. Following, it is partially reproduced UNHCR data from the table entitled '*Refugees, asylum-seekers, internally displaced persons (IDPs), returnees (refugees and IDPs), stateless persons, and others of concern to UNHCR by region, 2012-2013'*, designed by the UNHCR[152]:

Region (UN major area)	Persons under UNHCR's statelessness mandate end 2012	Persons under UNHCR's statelessness mandate end 2013
Africa	721.400	721.326
Asia	1.938.700	1.872.385
Europe	675.700	665.507
Latin America and the Caribbean	**-**	**210.032**
Northern America	-	-
Oceania	-	-
Grand Total	3.335.800	3.469.250

Table 01. Stateless persons by region 2012-2013.
Source: UNHCR Global Trends. Annexes. Table 22: Refugees, asylum-seekers, internally displaced persons (IDPs), returnees, stateless persons, and others of concerns to UNHCR by end-, 2013.

As it is possible to imply from Figure 04 and from Table 01 above replicated, American continent, in general, does not provide a reliable information about the figures on statelessness[153].

What is possible to say, furthermore, is that this region is not considered as one of the most affected in the world when comparing to others. There are two

[151] UNHCR, 'Global forced displacement tops 50 million for first time in post-World II era' (Press Release, 20 June 2014) <http://unhcr.org/trends2013/> last accessed 02 November 2014.
[152] UNHCR, 'UNHCR Global Trends 2013: War's Human Cost' (n 203) 44, **emphasis added**.

[153] Until 2012, neither North or South America provided reliable data on Statelessness figures. From 2013, Latin America started to gather some information, under UNHCR's database. However, Northern America still remains under 'not available information'.

central motives that can be a reasonable explanation why America and, mostly Latin America in particular, is not hugely impacted by this situation. Firstly, because most of the countries grant nationality adopting not only *jus sanguinae* criteria, but also *jus soli,* preventing cases of statelessness in a very effective way: 'Once most Latin American countries grant citizenship to all born in its territory, the region has the lowest incidence of people without nationality'. [154]

The second reason to explain this low incidence is the fact that, since 2012, most of the countries have assumed international commitments and have ratified either both or at least one of the International Statelessness Conventions. Even, in cases of those Latin American countries who have not ratified none, they have made pledges to do so[155], as it can be seen from the figure 05, developed by the UNHCR:[156]

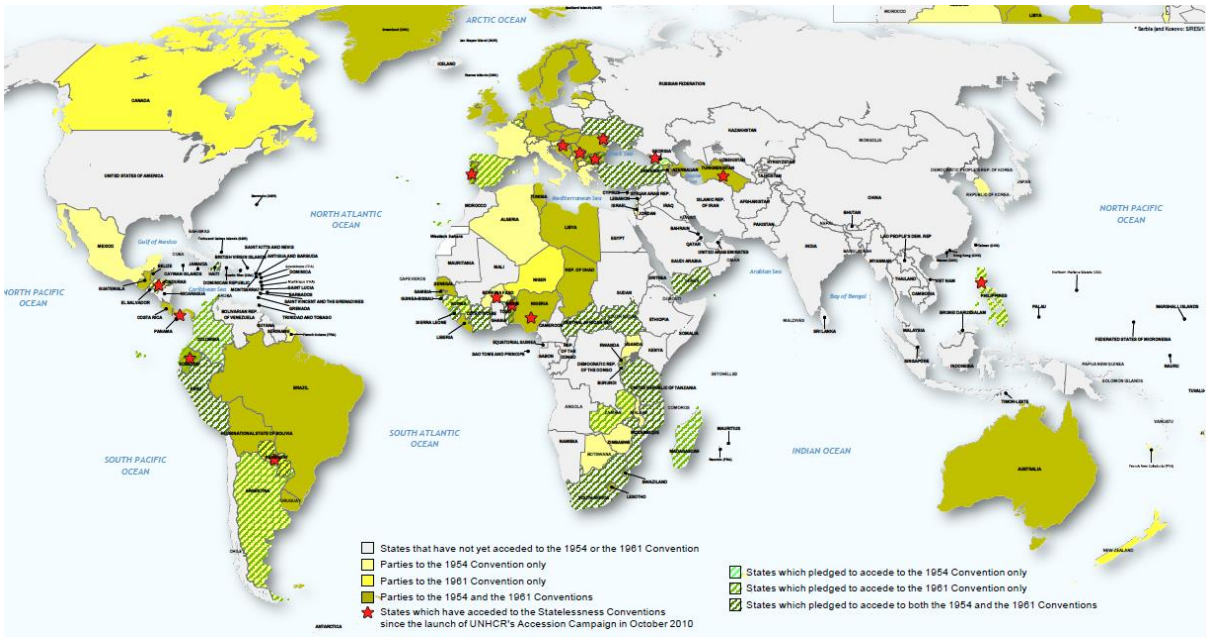

Figure 05. State party to the Statelessness Conventions and pledges to accede.
Source: UNHCR, 'States Party to the Statelessness Conventions and Pledges to Accede' (1 October 2012).

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[154] UNHCR. 'Doze milhões de apátridas vivem em limbo legal' (25 August 2011) <http://www.acnur.org/t3/fileadmin/Documentos/portugues/eventos/Apatridia_no_mundo.pdf?view=1> last accessed 02 November 2014.

[155] Since 2012, when UNHCR elaborated this Figure 05, a considerable number of Latin American countries have already fulfilled their pledges and acceded to one or both Statelessness Conventions. At the end of 2012, Honduras acceded to the 1954 Convention and became one of few countries that have acceded both Conventions. Peru also acceded both Conventions in 2014. In addition, during 2014, Paraguay acceded 1954 Convention while Colombia and Argentina acceded 1961 Convention.

[156] UNHCR, 'States Party to the Statelessness Conventions and Pledges to Accede' (1 October 2012) <http://www.unhcr.org/4d651eeb6.html> last accessed 02 November 2014.

After considering global and regional analysis, it is important to verify specifically Brazilian reality on statelessness. To begin with, it is important to mention that, following the global tendencies, there is a huge controversy on the national gathered data and it is possible to say that there are at least three different statistic data about statelessness figures, as it is showed next.

Firstly, Brazilian Government, through Department of Federal Police (hereinafter DPF) and Ministry of Justice, in 2013, informed that there were approximately three thousand stateless persons living in Brazil, from which, eight were registered as temporary foreigners and five were considered refugees[157].

In 2014, however, UNHCR presented numbers very different from those reported by the Federal Police. Considering the stateless persons under its mandate in Brazil, the UN Agency came up with official data of two stateless persons in the entire country, as it is showed in Table 2 below: [158]

	Pop. start-2013		**Pop. end-2013**	
Country of residence	Total number of persons under UNHCR's statelessness mandate	*of whom: UNHCR-assisted*	Total number of persons under UNHCR's statelessness mandate	*of whom: UNHCR-assisted*
BRAZIL	***1***	***1***	**2**	***1***

Table 02. Persons under UNHCR's statelessness mandate, 2013.
Source: UNHCR Global Trends. Annexes. Table 07: Persons under UNHCR's statelessness mandate, 2013 by end- 2013.

It is important to mention that there are two main reasons why the reported figures are drastically distinct. First, it is because Brazil presents general numbers whereas UNHCR's Report considers only the stateless persons under its mandate, that is, the context in which, UNHCR is engaged and directly involved in finding ways - together with the government - to ensure that stateless persons are correctly identified and protected.

[157] This data was informed during a Police Federal Department meeting in November of 2013, placed in Brasilia/Brazil. Because the information is not precise, it was not registered as official information. According to the Regional Superintendent, 'there is no official procedure to identify stateless persons in the country and this mentioned figures on statelessness comes out from daily records kept by the regional immigration police'. Interview with Ildo Gaspareto, Regional Superintendent, Federal Police Department (Brazil, 28 August 2014).

[158] UNHCR, 'UNHCR Global Trends 2013: War's Human Cost' (n 203) 38, **emphasis added.**

The second reason lays down on the uncertainty around the categorization of the status for stateless person. To try to overcome this challenge, it was said by the UNHCR Brazilian Regional Office that they are 'working together with Brazilian Government in order to clarify the status of individuals identified as stateless in their database, since there are no official procedures for determination of such status'. [159]

Besides that, some Institutions focused on statelessness issues presents some statistic numbers. For instance, The International Observatory on Statelessness[160] published a distinct information:

> It has been reported that Brazil is home to some 1,000-3,000 stateless persons. Fortunately, Brazil has recognized this problem and recently revised its Constitution and signed on to the statelessness conventions to rectify the situation. Sources indicate that civil society organizations have been urging the government to conduct a migratory regulation review.[161]

Independently of imprecision of the figures, it is a fact that statelessness does exist in Brazil, even though not in a large scale as it is in many other countries.[162] Because of this fact, the government in charge of the country has made legal commitments and developed some internal policies to deal with this issue.

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[159] Through virtual interview conducted in May 2014 with André Ramirez, UNHCR Officer in Brazil, it was said that: 'Statelessness data in Brazil is not up-to-date, but, according to UNHCR data we have only one or two cases'. It was also said that 'We have been working alongside with the Government in order to elaborate the official identification procedure to allow us having more precise figures and elaborate new actions to face statelessness in the country'.
Email from André Ramirez, UNHCR Officer in Brazil, UNHCR Brazilian Office (Brazil, 08 May 2014).

[160] The International Observatory on Statelessness is a collaborative project between Oxford Brookes University and the Refugee Studies Centre, University of Oxford to investigate and promote research on issues of statelessness. It is managed by a team based in London, Nairobi, Bangkok and Washington, D.C. and is guided by an advisory board of international experts.

[161] International Observatory on Statelessness, 'Brazil' <http://www.nationalityforall.org/brazil> last accessed 21 April 2015.

[162] The largest stateless population is in Myanmar, where over 1 million people of ethnic Rohingya were denied nationality. Other countries with high numbers of stateless persons include Ivory Coast, Thailand, Nepal, Latvia and Dominican Republic. UN warned that the conflict in Syria can increase the number of new stateless.
E Batha, 'Campanha da ONU para encerrar situação de apátridas' (4 November 2014) <http://www.administradores.com.br/noticias/cotidiano/tutu-e-jolie-apoiam-campanha-da-onu-para-encerrar-situacao-de-apatridas/94625/> last accessed 21 April 2015.

2.2 Brazilian Legal Responses.

Despite of the fact that, so far, Brazil still does not have a national specific law regarding to statelessness, there are some very remarkable legal developments in this issue at the national level, as it will be showed in this section.

To begin with, the first important fact to mention is that Brazil is one of the few countries around the world that have ratified the two conventions regarding to statelessness. The Brazilian State signed 1954 Statelessness Convention in September 1954 and ratified it in August 1996.[163] Concerning to 1961 Statelessness Convention, Brazil acceded it in October of 2007.[164]

At this point, it is important highlight that Brazil adopts the dualist theory in regarding the relationship between internal and international law. Accordingly, in order to ensure the Conventions could be applied in Brazil, it was necessary convert them into national provisions to be applied as internal regulations. It was done through the Executive Decree nº 4.246/2002 and the Legislative Decree nº 274/2007 that converted the 1954 and 1961 Statelessness Conventions into ordinary national law, respectively.

Once considered that most important international provisions are components of the national legal system enforceable in the country, it is necessary to analyse how the Brazilian Constitution, the main fundamental law in the country, approaches the right to nationality and the issue of statelessness.

In its Chapter III, Brazilian Constitution regulates the issue of granting nationality:

> Article 12. The following are Brazilians:
> I – by birth:
> a) those born in the Federative Republic of Brazil, even if of foreign parents, provided that they are not at the service of their country;
> b) those born abroad, of a Brazilian father or a Brazilian mother, provided that either of them is at the service of the Federative Republic of Brazil;
> c) those born abroad, to a Brazilian father or a Brazilian mother, provided that they are registered with a competent Brazilian authority, or come to reside in the Federative Republic of Brazil, and opt for the Brazilian nationality at any time after reaching majority;
> II – naturalized:
> a) those who, as set forth by law, acquire Brazilian nationality, it being the only requirement for persons originating from Portuguese-speaking countries the residence for one uninterrupted year and good moral repute;

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[163] UN Treaty Collection, Convention relating to the Status of Stateless Persons (n 125).

[164] UN Treaty Collection, Convention on the Reduction of Statelessness (n 126).

> b) foreigners of any nationality, resident in the Federative Republic of Brazil for over fifteen uninterrupted years and without criminal conviction, provided that they apply for the Brazilian nationality.[165]

Primarily, the criteria adopted by this legal document is *jus solae* criteria and, therefore, any person born within the Brazilian borders is considered as a national, even if from foreign parents. Additionally, the criteria *jus sanguinae* is also contemplated. Brazilian Constitution grants citizenship to all children born abroad, with either father or mother Brazilian, under the condition of a consular registration or domicile in the country.

In summary, after 2007,[166] Brazil adopts both criteria (*jus solae* and *jus sanguine*) when granting nationality at birth. Besides that, Brazil also grants nationality to foreigners upon request when the requisites mentioned in the article 12, II are filled up.

It is true that the Constitution does not regulate specific issues of statelessness, nevertheless it is possible to affirm that this document, based on the principles of the human dignity and prohibition of any form of discrimination, assures the fundamental rights for the stateless people living in Brazil.[167]

After examine the most important law of the country, it is time to consider remaining legislation, that is, the set of Brazilian national laws. It is very important to make clear that, at current time, there is no any specific national law approaching exclusively statelessness issues. It does not mean, however, that Brazil does not deal with this matter. As just mentioned, Brazil ratified both International Conventions and converted them into national ordinary law; therefore, both instruments regarding statelessness issues are enforceable within the country, through all the available mechanisms, including the Judiciary system.

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[165] Constitution of the Federative Republic of Brazil 1988 (n 72) art 12.

[166] It is important to note that, until 2007, Brazilian nationality was granted to children born abroad, with either father or mother Brazilian, only in the following circumstances: if the family moved back to Brazil and, living in the country, requested the child's citizenship. This situation, however, was modified in September of 2007, through the Constitutional Amendment nº 54/2007, that altered the Constitution and granted the Brazilian nationality to all children born abroad, with either father or mother Brazilian, under the condition of a consular registration.
This issue will be approached in details on the Chapter IV, See page 112.

[167] Combining the articles 1 and 5 and based on the human rights principles, the Constitution says that everyone is equal under the law, with no distinction of any form and assures for every person resident in the country (nationals and non-nationals, including stateless persons) the inviolability of fundamental rights.
Constitution of the Federative Republic of Brazil 1988 (n 72).

Naturally, it does not replace the need of having a specific national law to regulate the subject in details, approaching mainly the protection of people in this condition. Because of this, Brazil has started to take a step to have a national legislation on statelessness, since 2011.

In that year, considering the 50th anniversary of the 1961 Convention, the international community reiterated the need of make the International Conventions on Statelessness and its importance widely known. Likewise, UNHCR claimed States to accede the conventions and promote changes at national legislations in order to deal with statelessness around the globe:

> Today is the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. But with so few states party to this treaty – just 38 of the UN's 193 member states – there is little cause for celebration. Millions of people around the world continue to suffer the consequences of not having a nationality. And in an age of increasing labour mobility, for many people, children in particular, the risks of losing one's nationality are growing.
> Five days ago UNHCR launched a global campaign to combat statelessness. We expect that a number of States will either accede to the two Statelessness conventions this year or pledge to do so at a ministerial-level meeting of UN member states being held in Geneva in December [the two conventions are the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness]. Nonetheless we are today repeating our call to governments, advocates, media, and individuals for a redoubling of efforts so that more states sign on to the statelessness conventions, reform nationality laws, and resolve the problem. Everyone should have a nationality: It is a fundamental right.[168]

By this time, Brazil had already signed on both Statelessness International Conventions, however, there was no national law to approach the statelessness matters, as requested by the 1954 Convention. Mainly because of a lack of a specific national procedure system for determination and protection of stateless persons, Brazilian Ministry of Justice identified the need of elaborate a draft law to overcome this acknowledged problem.[169]

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[168] This is a summary of what was said by UNHCR spokesperson Adrian Edwards at the press briefing, on 30 August 2011, at the *Palais des Nations in Geneva*.
UNHCR, '50th anniversary of Reduction of Statelessness Convention, Briefing Notes' (30 August 2011) <http://www.unhcr.org/4e5cbd409.html> last accessed 21 April 2015.

[169] About this draft bill, it is important to mention the impossibility of access for study purposes. It is acknowledged that this document would be a huge differential to this analysis. Because of this, throughout the year 2014, I tried to get a copy of it from the Ministry of Justice, from UNHCR, from parliament and from non-governmental organizations involved with the question. However, those involved have not provided the project, claiming that the final version is not yet available for publication. Thus, all the information in this research comes from media releases and, until the conclusion of this study, in April 2015, the bill was not officially presented to society.

This mentioned draft bill is a very innovative document and brings relevant points on how to deal with this issue within the country. Following some remarkable points that deserve comments upon:

a) it is a national legal law overwriting the most relevant international regulations to assist stateless persons within the country, in a very protective way. From this, it is inferring that this law will fully comply with international human rights standards;

b) the Brazilian definition of stateless person is broader than that brought by the international convention. It is set that this legislation will recognize as stateless person anyone who 'is not considered as a national by any State under the operation of its law', as well as those 'who cannot prove their nationality by circumstances beyond their will'. Also, it has been debated the inclusion of *de facto* stateless person;

c) National Committee for Refugees (hereinafter CONARE)[170] is designated as the responsible institutional body to appreciate and make decisions about statelessness issues. Hence, it will be renamed as National Committee for Refugees and Stateless Persons;

d) there is designed a national system procedure to determine those who can hold the status of stateless persons and, accordingly, enjoy the inherent rights. As it was noted by the Human Right Unit of the UNHCR on the report of the Universal Periodic Review, in 2011: 'The bill would enable the establishment of a statelessness status determination procedure and would guarantee the issuance of a Brazilian ID for recognized stateless persons, allowing a permanent visa after four years of residence in the country'. [171]

e) it provides that, once determined statelessness status, stateless persons legally recognized by Brazil may acquire Brazilian nationality, what can be extended to their families.

Finally, it is important to reiterate that this draft bill started to be elaborated under the responsibility of Brazilian Ministry of Justice. It was firstly brought to scene in 2011, when António Guterres, the High Commissioner for Refugees, made his

[170] CONARE is an institutional body of Brazilian Ministry of Justice Department. This subject will be further analyzed some paragraphs forward in this section.

[171] UNHCR, 'Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedure Reports - Universal Periodic Review: Brazil' (November 2011) 2.

second official visit to Brazil to further strengthen relations with the country.[172] During this occasion, the Minister of Justice then in charge, Luiz Paulo Barreto, announced the Brazilian intention and handed in a hard copy of this draft bill to Mrs. Guterres.

After that, only on August, 2014 this subject was taken up. During the seminar *'The Eradication of Statelessness in the Americas: Brazil's Leadership Role',*[173] held in Brasilia on August 2014, the Ministry of Justice presented the bill openly. The legal document was announced by the Brazilian National Secretary of Justice, Paulo Abrão, and was presented as result of a joint effort of the Ministry of Justice and the UNHCR.

According to both institutions, the bill, which creates the national identification procedure in Brazil, still goes through small adjustments and will be sent to Brazilian Parliament only in the second half of 2015.

Mr. Paulo Abrão, during the event, noted that the bill is the result of a commitment made by Brazil to the UN and the UNHCR and said: 'This is a very important step and we [Brazil] will fill a legal and history gap about definition, competence, procedures, rights and duties in relation to stateless persons in Brazil and worldwide. We must protect those who have no country'.[174]

It is not only through the domestic legislation as such, but also through the case law that Brazil has been dealing with statelessness matters. The country has presented some progress in the matter as it will be displayed following.

While lacking a structured and complete legislative system to deal with this, the Brazilian Judiciary system has been playing an important role on protecting stateless persons and reducing statelessness.

There is a noteworthy case law ruled by the Federal Court of Rio Grande do Norte, in Brazilian northeast, which is singular to examine statelessness matters within the country. [175]

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[172] See more information about the visit of the United Nations High Commissioner for Refugees, António Guterres, to Brazil in <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/visita-ao-brasil-do-alto-comissario-das-nacoes-unidas-para-refugiados-antonio-guterres-2013-1o-a-3-de-agosto-de-2011> last accessed 21 April 2015.

[173] This seminar took place in Brasilia on August 2014 as one of the ten conferences organized by Ministry of Justice during the national event 'II Ciclo de Altos Estudos – Justiça sem Fronteiras'.

[174] UNHCR, 'Governo do Brasil anuncia projeto de lei para proteger pessoas sem pátria' (August 2014) <http://www.acnur.org/t3/portugues/noticias/noticia/governo-do-brasil-anuncia-projeto-de-lei-para-proteger-pessoas-sem-patria/> last accessed 21 April 2015.

[175] *Andrimana Buyoya Habizimana v Brazil*, Case 2009.84.00.006570-0 (2010, 4ªVF, Judge Edilson Nobre, Rio Grande do Norte) (Federal Court of Brazil).

In summary, the case is about a young man, Andrimana Buyoya Habizimana, who escaped from Burundi, country that faced financial crisis and ethnical disputes in Africa. He entered in Brazil in a freighter in 2006 and, since then, he tries to enjoy his rights.

Firstly, with no proof of his nationality and not being recognized as a national of any country, Habizimana requested a refugee status, what was denied by the Brazilian Ministry of Justice. Following, this institutional body also denied his requests of permanent visa for foreign people and finally denied his request of status as stateless person. At the same time, both Burundi and South African embassies declared that they did not recognize him as a national and, therefore, would not accept his deportation.

Deprived of all his fundamental rights, the applicant only found a solution when appealed to the Brazilian Federal Court, claiming to be legally identified as stateless person to enjoy the inherent rights of this status. As final decision, the Court recognized and protected him as stateless person, granted him possibility of obtain documents and live legally in Brazil. The Judge ruled that: 'Brazil shall guarantee him all the rights and documents granted to any Brazilian, in addition to the possibility of engaging in paid activities to maintain his life with dignity in Brazil, his home now'. [176]

What is more interesting in this case, however, is the reasoning of the ruling. Once there is no national legislation to determine the status of a stateless person, the magistrate argued on the human rights values, specifically on the principle of the human dignity:

> There is no State that considers the Applicant as its national and nor any State which demonstrates interest in doing so. (…) I consider that denying this demand will result, in the practical life, the reduction of the Applicant to the condition of 'thing', eliminating the possibility of his own development and development of his personality, what collides – a lot – with the principle of the human dignity. (…) The concern of preserving the dignity of the human being looms much more relevant in the current stage of the Brazilian legal system, when even to the animals, treatment as 'thing' is refused.[177]

After the analysis of this emblematic case law and the observance of the performance of the Brazilian State, it is pertinent to say that Brazil has been committed to protect human rights before the international society. Accordingly,

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[176] *Andrimana Buyoya Habizimana* (n 175).

[177] *Andrimana Buyoya Habizimana* (n 175).

Brazil is fully committed to protect stateless internationally and internally; and, despite of the legal gaps, this commitment is visible through the decisions of the judiciary.

Once Brazilian domestic legislation and case law's tendencies were understood, this section comes up with the answer for the question: to what extent Brazilian domestic legal system comply with international standards on statelessness?

To begin with, it is necessary to recall what has already been showed in this study, mainly in this chapter: there is a plenty of universal and regional documents that serve to protect the right to nationality and, therefore, avoid the occurrence of statelessness directly or indirectly.

What is necessary to mention, primarily in this analysis, is the fact that Brazil has ratified the main universal documents which relates statelessness: The UDHR, the ICCPR, the ICESCR and the two specific International Statelessness Conventions: Convention relating to the Status of Stateless persons (1954) and Convention on the Reduction of Statelessness (1961).

At this point, it is important to mention that, whereas the country has made no reservations to the 1954 Convention so far, in December of 2009 by the time of the accession, the Brazilian Government communicated UN about a reservation on the 1961 Convention:

> The National Congress of Brazil approved the text of the Convention on the Reduction of Statelessness by means of Legislative Decree n. 274, of 4 October 2007. In accordance with Legislative Decree n. 274/2007, the text of the Convention is approved expressly with the restriction allowed for in article 8 (3) (a) (ii) of the Convention, so that the Federative Republic of Brazil retains the right to deprive a person of his nationality when he conducts himself in a manner seriously prejudicial to the vital interests of the Brazilian State. In this regard, it is noted that the instrument of accession to the Convention deposited by Brazil with the Secretary-General on 25 October 2007 did not specify the above restriction, in accordance with article 8 (3) of the Convention. [178]

The article 8 (3) (a) (ii) of the referred Convention expressly allows that States may detain the right to deprive a person of his nationality if he has conducted himself in a manner seriously prejudicial to the vital interest of the State:

[178] UN Treaty Collection, Convention on the Reduction of Statelessness (n 126).

> Article 8
> 1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.
> 3.Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:
> (a) that, inconsistently with his duty of loyalty to the Contracting State, the person
> (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State[179]

In the same sense, the article 12, §4ª, I of Brazilian Federal Constitution literally reads: 'Article 12. (…) Paragraph 4. Loss of nationality shall be declared for a Brazilian who: I – has his naturalization cancelled by court decision on account of an activity harmful to the national interests'. [180] Therefore, considering the compatibility between the two mentioned norms, the country justified the mentioned reservation to the 1961 Convention, what, under no circumstance, decline the Brazilian commitment of preventing and reducing statelessness.

In addition to the previous point, it is also possible to verify that Brazil have ratified the major regional instruments that not only protect stateless persons, but also reduce and prevent statelessness, highlighting the Inter-American Convention that specify in the article 20:

> Article 20. Right to Nationality
> 1. Every person has the right to a nationality.
> 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
> 3. No one shall be arbitrarily deprived of his nationality or of the right to change it.[181]

Yet considering the regional legal instruments, in November of 2010, eighteen Latin American countries entered in a formal agreement to protect refugees and stateless persons in the region.[182] This commitment, recognized as 'Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas',

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[179] Convention on the Reduction of Statelessness (n 106) art 8.

[180] Constitution of the Federative Republic of Brazil 1988 (n 72) art 12.

[181] American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OAS (Pact of San Jose) art 20.

[182] The 'Brasilia Declaration' was adopted by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. The United States and Canada participated in the meeting as observers.

recommends States to consider acceding to UN 1954 and 1961Conventions and review their enforceable legal system and protection apparatus, not only to fortify them, but also to address existing gaps through new laws and methods.

Brazil was amongst the countries that signed the Declaration. More than this, Brazil was the most important articulator to make the meeting happen and to call other States to take on regional commitment. Even though it is a non-binding document, it is quite significant because was considered as a 'landmark declaration', as said by the UN High Commissioner for Refugees:

> This is a landmark declaration that I hope will result not only in better protection for refugees and other displaced people across the Americas, but also accelerate global efforts to improve the situation of displaced people and end the scourge of statelessness. I encourage governments in other regions to take note of the pioneering leadership that has been shown today by Latin America in making this Declaration. This is a valuable international precedent.[183]

In the same direction, in December 2014, Latin American and Caribbean countries agreed to work together to uphold the highest international and regional protection standards, find innovative solutions to protect refugees, displaced people and end the plight of the region's stateless[184]. A ministerial meeting in Brazil, known as Cartagena +30[185], mapped out statelessness challenges and charted a 10-year plan of action aimed at strengthening protection across the Latin America and Caribbean regions. The outcomes are embodied in two important documents: the 'Brazil Declaration' and 'Global Action Plan to End Statelessness', in which, among other pledges, States commit to eradicate statelessness:

> Reaffirm our commitment to the eradication of statelessness within the next ten years and support the campaign and the Global Plan of Action to End Statelessness, launched by UNHCR within the framework of the sixtieth anniversary of the 1954 Convention relating to the Status of Stateless Persons, by resolving existing

[183] UNHCR, 'Latin American Nations pledge more for protection of the displaced and stateless' (12 November 2010) < http://www.unhcr.org/4cdd4dc09.html> last accessed 21 April 2015.

[184] UNHCR, 'Latin America and the Caribbean: Region aim to end statelessness within the next decade' (5 December 2014) < http://www.unrefugees.org.au/news-and-media/news-headlines/latin-america-and-the-caribbean-region-aim-to-end-statelessness-within-the-next-decade> last accessed 21 April 2015.

[185] Event hosted by Brazil's justice and foreign affairs ministries and UNHCR to commemorate the 30th anniversary of the Cartagena Declaration, a key document on the protection and rights of refugees, and reaffirm its principles. Those taking part in Caragena+30 include top officials from all countries in the region, representatives of international organizations, civil society members and academics.

> situations, preventing new cases of statelessness and protecting stateless persons, through the revision of national legislation, the strengthening of national mechanisms for universal birth registration and the establishment of statelessness status determination procedures.[186]

Due to the fact that Brazil adopts a dualist theory system, as previously referred, all the protective international and regional commitments assumed by the country (with exception of those rooted in soft law, as Brasilia Declaration and Brazil Declaration, for instance) have been incorporated into the national legal system, as enforceable ordinary law. Together with the very protective Brazilian Constitution and the rights assured to stateless persons in Brazil, this body of law covers significantly, albeit not enough, the commitments on statelessness issues.

On the other hand, the lack of a specific national legislation approaching the topic and the absence of a national determination procedure for the determination of status of stateless person is not a simple issue. Actually, this represents not only an internal issue, but also is considered as a violation of international commitments, since is a direct breach of the 1954 Convention in its article 12. This article announces that national law of the State party has to regulate the personal status of a stateless person, fundamental for the enjoyment of the rights inherent to this condition[187].

In trying to overcome this problematic point, all the powers (Executive, Legislative and Judiciary) of Brazil are working together. While there is no formal determination procedure, the Judicial power uses its prerogatives and the human rights principles to protect stateless person in concrete cases, whereas the Executive and Legislative work together to approve a national legislation defining the national procedure and regulating the issues of statelessness in general, as previously explained.

Once approved, this national law will be extremely important. In 1997, Brazil approved a law on refugees' identification procedure that served as a successful model for the entire continent. The ordinary law 9.474/1997 incorporated the most relevant international documents and, going even further, provided a broader definition of refugee. Fifteen years after, around 14 countries have been

[186] Brazil Declaration and Plan of Action (adopted 3 December 2014).

[187] Convention Relating to the Status of Stateless Persons (n37) art 12.

influenced by this legislation and adopted a broader definition of refugee, similarly to the Brazilian legislation.

Following the same reasoning, it is possible to imply that, with its imminent national statelessness law, Brazil might take a concrete step toward the recognition of stateless persons' rights and, accordingly, contribute to push America beyond when coping with statelessness issues.

To summarize this analysis, it is clear that Brazil, with regard to its legal system, has been putting huge efforts to overcome the challenges and make the national law suitable and congruent with the international legal framework on statelessness issues. This statement can be verified by the following facts:

a) Brazil is one of the few countries who have ratified the two International Conventions to face the statelessness issue;

b) Brazil has ratified most of major important documents, either in international or regional level, which recognizes the right of nationality;

c) Brazil identifies the right to nationality in its Constitution as a fundamental right and recognizes both criteria of acquiring nationality *(jus soli* and *jus sanguine*), what leads to the conclusion that the national legal system has a broad range of protection to avoid statelessness;

d) Brazil currently lacks a specific national law to determine the status of stateless persons in the country; however has been trying to address this gap, through the judicial mechanism and the legislative proposition to reverse this scenario;

e) Brazil, despite not having a high incidence of statelessness figures, is concerned not only to accede and ratify all related international documents dealing with the issue, but also to promote its importance throughout the American region to build a nation more solidary and supportive for those who face this dreadful situation.

In this sense, the Brazilian State deserves to be recognized as a State committed with this issue. More than that, it is possible to affirm, based on the arguments above, that Brazilian domestic legal system comply with the international standards on statelessness, despite it requires some improvement.

CHAPTER III – IDENTIFICATION, PREVENTION, REDUCTION OF STATELESSNESS AND PROTECTION OF STATELESSNESS PERSONS.

Statelessness is an existing problem that emerges because of diverse causes. It has drastic individual, social and legal consequences. The question, therefore, is how to address this issue? How to build a response for the current hassle of statelessness?

States are the foremost responsible to deal with prevention and reduction of statelessness and, mostly, those who are State parties of the 1954 Convention have the duty to protect persons who hold the status of stateless persons. Nevertheless, other actors have stepped up efforts to deal with this matter, among them, the most engaged one is the Office of the United Nations High Commissioner for Refugees (UNHCR) which will be studied in this chapter.

To study this issue and the involvement of this UN Agency in the subject under analysis, this chapter initially focuses in two important questions for this research: what is UNHCR's mandate and role for statelessness? and how UNHCR address the statelessness issue?

This is extremely important to serve as base to present the results of Brazilian actions and policies, what will be showed subsequently.

1. UNHCR's MANDATE AND ROLE FOR STATELESSNESS.

The United Nations General Assembly established United Nations High Commissioner for Refugees (UNHCR) in 1950. Primarily, the UN Refugee Agency is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide:

> Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country.[188]

Although chiefly dealing with refugee issues, this UN Agency also was mandated to deal with statelessness issues in the international arena, helping

[188] UNHCR, 'Office of United Nations Commissioner for Refugees' (March 2014) <http://www.unhcr.org/pages/49c3646c2.html> last accessed 20 December 2014.

stateless people. The historical development that clarifies how this international body got involved with this issue is explained following.

From the beginning, it is necessary to understand the reason why statelessness issues have fallen under the responsibility of this mentioned agency, created specifically for other purposes. Actually, it is because the issue of Statelessness went through a period of marginalization within the UN. [189]

This understanding is based on the fact that article 11 of the 1961 Statelessness Convention provided for the establishment of a specific body to stateless persons under the UN. However, when the sixth ratification of this document was received in 1974, meaning that the Convention would come into force within two years, this body had not been created. To try to tackle the issue, the General Assembly, through Resolution 3274, decided provisionally that UNHCR would play, provisionally, the functions relating to the allocation of Article 11 of the Convention; this decision was confirmed on the Resolution 31/36 of 1976, when the Convention entered into force.[190]

Hence, the only connection made between UNHCR and the regime of stateless persons would be the mentioned article 11 of the 1961 Statelessness Convention, establishing this body to be responsible for ensuring that stateless persons receive the guarantees contained in that Convention, and only in it.

Corroborating the thesis of marginalization of this issue, there is the argument that the 1954 Statelessness Convention did not contain any provision requesting a specific organ[191], such as the 1951 Refugee Convention, which brought the UNHCR as the guardian of the Convention and as the body responsible for refugee protection:

> Whereas refugees are directly appointed the assistance of the UNHCR in Article 35 of the Convention Relating to the Status of Refugees, the stateless are not afforded any such body in either of the conventions concerning statelessness. This difference has resulted in the stateless being treated differently to refugees by the agency[192].

UNHCR Statute and its budget allocation had been specifically designed to address the issue of refugees. Thus, it was clear that this international body was

[189] N Justo, 'O regime internacional de proteção às pessoas apátridas em dois momentos' (n 8) 135.

[190] N Justo, 'O regime internacional de proteção às pessoas apátridas em dois momentos' (n 8) 136.

[191] N Justo, 'O regime internacional de proteção às pessoas apátridas em dois momentos' (n 8) 141.

[192] K Belton, 'The great divide: citizenship and statelessness' (n 13) 89.

not designed to deal with the issue of stateless persons. This, coupled with the fact that the mandate received by this body in relation to statelessness was very "weak" - restricted to the 1961 Statelessness Convention - contributed to the marginalization of statelessness within the scope of UNHCR and, accordingly, within UN sphere.

> It recognizes that for the first fifteen years after receiving responsibility to assist stateless persons, 'the organization [UNHCR] devoted relatively little time, effort or resources to this element of its mandate' and that it has been unable to provide the same services to the stateless as it does to refugees.[193]

Although UNHCR, by that time, did not play a satisfactory role in the issue of stateless persons, none of any other UN body offered more substantial answers. According to Belton, statelessness received a very low priority at the UN, during that period, as evidenced by the limited funding provided to the question. The organization have not included statelessness as a global problem nor have considered it as its priority agenda; rather, the issue of Internally Displaced Persons was emphasized. [194]

The first time that issue of statelessness reappears as concern under UNHCR is in 1988, through the Conclusion n. 50/1990 of the Executive Committee of the Board.[195] In view of the connection between refugee problems and stateless persons, this conclusion urged States to become parties to both Statelessness Conventions in order to eliminate statelessness and adopt legal measures to promote basic rights of persons in this condition.

UNHCR should promote accession to Statelessness Conventions, not because it was its responsibility, but because of the absence of a specific international body for stateless persons.[196]

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[193] K Belton, 'The great divide: citizenship and statelessness' (n 13) 99.

[194] K Belton, 'The great divide: citizenship and statelessness' (n 13) 104.

[195] UNHCR EXCOM Conclusion No 50 (XXXIX) 'General' (1990).

[196] The Conclusion n. 68, 1992 of the Executive Committee shows that UNHCR does not consider itself as official body to deal with statelessness issues, rather, it is only a body that acts in the absence of a proper organ. 'Reiterates its call to States and relevant international agencies actively to explore and promote measures favourable to stateless persons and, **recognizing the absense of an international body with a general mandate for these persons**, calls upon the High Commissioner to continue her efforts generally on behalf of stateless individuals and to work actively to promote adherence to and implementation of the international instruments relating to statelessness.' (**emphasis added**).
UNHCR EXCOM Conclusion No 68 (XLIII) 'General' (1992)

This lack of an agency with mandate on statelessness, however, changed. The Conclusion n. 74/1994 strengthened the UNHCR's mandate in relation to stateless persons.[197] This strengthening was justified by the persistence of statelessness in various parts of the world. The choice of UNHCR would promote continuity with the responsibilities previously entrusted to this body.

With this mentioned Conclusion, it was established that the UNHCR responsibilities, then, included statelessness issues. Thenceforward, UNHCR was officially in charge to promote accession to Statelessness Conventions, instruct staff and governments, and gather information to clarify the extent of the problem of statelessness. The UN General Assembly, in its resolution 49/169, endorsed this reinforcement.[198]

Once statelessness issue became the target of a second UNHCR mandate, the agency realized the need to justify its new role. This function was performed by the document ‘Note on UNHCR and stateless persons’, in June 1995.[199] In December of that year, the Executive Committee adopted the Conclusion n. 78/1995[200] that, together with the Conclusion n 106/2006,[201] provide guidelines for the UNHCR address statelessness.

The Conclusion no. 78/1995 clearly established the functions to be performed by the UNHCR on the issue of statelessness, and this was fundamental to initiate the organization of an internal structure in this body to deal with statelessness. [202]

UNHCR's activities on statelessness took place, initially and predominantly, in relation to Europe, specifically in the cases of States succession,

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[197] UNHCR EXCOM Conclusion No 74 (XLV) ‘General' (1994)

[198] UNGA Res 49/169 (24 February 1995) UN Doc A/RES/49/169

[199] UNHCR EXCOM 'Note on UNHCR and stateless persons: corrigendum' (1995).

[200] UNHCR EXCOM Conclusion No 78 (XLVI) 'Prevention and Reduction of Statelessness and the Protection of Stateless Persons' (1995).

[201] UNHCR EXCOM Conclusion No. 106 (LVII) 'Conclusion on Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons' (2006).

[202] Given these directives and the relative obscurity of the issue in the years since the drafting of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, the Office was faced with a significant task in structuring a plan of action; implementing it globally; developing relationships with other interested organizations; promoting accessions to little-known instruments; training staff and government officials; providing advisory services on nationality legislation and practice; and ensuring the capacity to provide technical expertise in each of these areas.
UNHCR 'Note on UNHCR and stateless persons: corrigendum' (n 199).

such as cases of USSR. This performance was gradually expanded to other regions of the world, especially Asia, Africa and the Middle East. This development was recognized in the text of the 2003 Progress Report:

> The main development has been the global expansion of UNHCR's activities in respect of stateless persons […]. The geographical focus has now broadened from central and eastern Europe to other parts of the world where statelessness is a problem, including Africa, Asia and the Middle East. [203]

The 2000s were marked not only by the geographic expansion of the system, but an important bureaucratic change that made statelessness a priority within UNHCR. As result, there was a change in the budgetary allocation for the question, showing the new prioritization focus.

As it was showed, by the early 2000s, statelessness was not a priority in organizational and budgetary terms to UNHCR.[204] This, however, has undergone a major change and the cause was clarified in the Conclusion n. 106/2006, adopted by the UNHCR Executive Committee.

In contrast to the Conclusion n. 50/1990, which only placed the issue of stateless persons because of its relation to refugees, this new Conclusion 106/2006 was taking the issue of stateless autonomously. This conclusion brought provisions for the identification, prevention, reduction of statelessness and for protection of stateless persons. Furthermore, it reaffirmed the UNHCR role as an expert body and producer of knowledge in relation to statelessness. This was essential and was instrumental in motivating the decision to make statelessness a priority in UNHCR, allocating to it a new budget.[205]. From then on, the issue of statelessness conquered its place on the international agenda and the UNHCR role and mandate was established. Therewith, UNHCR started to address this issue globally, and has become the leading international body to address it.

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[203] UNHCR EXCOM 'UNHCR's activities in the field of Statelessness: Progress Report' (3 June 2003) [1].

[204] UNHCR also faced a number of internal challenges. Although it has developed a growing body of expertise on statelessness, the budget structure and the planning and reporting instruments in place until recently have not provided an easy overview of activities being undertaken at the field level or their costs. Priorities relating to refugee protection and durable solutions, including large-scale forced displacement and major return operations, sometimes prevented managers at the field level from dedicating additional resources to statelessness. In some situations budgetary constraints prevented statelessness from being prioritized.
UNHCR EXCOM 'Progress Report on Statelessness' (29 May 2009). [7].

[205] UNHCR Conclusion No. 106 (LVII) (n 201).

As can be inferred from the historical view, UNHCR assumed its role in addressing the phenomenon of statelessness and the content of this responsibility is further set out by the Executive Committee through its Conclusions. However, it is important to note that this agency cannot address this issue with no help of other important actors.

Firstly and foremost, UNHCR urges States, among other, to work in this causes.[206] Besides, the Executive Committee requires the agency to work not only with governments, but also with other UN agencies and civil society to address the problem.[207]

To complement this subject, the UNHCR publication titled 'Nationality and Statelessness: A handbook for Parliamentarians'[208] lists other important actors who should work in collaboration with the UNHCR on this issue: some other United Nations agencies[209], some regional bodies[210], non-governamental organizations and the Inter-Parliamentary Union (IPU).

UNHCR, working alongside with all of these organizations in addressing the problem related to statelessness, implement its mandate[211] through activities that are grouped into four categories:

- Identification: Gather information on statelessness, its scope, causes and consequences.

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[206] In Conclusion n. 106/2006, UNHCR recommends States to consider examining their nationality laws with a view to adopting and implementing legislation to prevent the occurrence of statelessness and to seek appropriate solutions for persons who have no genuine travel or other identity documents, as well as to actively disseminate information regarding access to citizenship, including naturalization procedures.

[207] UNHCR Conclusion No. 106 (LVII) (n 201).

[208] UNHCR 'Nationality and Statelessness: A Handbook for Parliamentarians' (n 20) 8.

[209] The main United Nations agencies are the Office of the High Commissioner for Human Rights, the United Nations Children's Fund (UNICEF) and the United Nations Development Fund for Women (UNIFEM). Eventually, UNHCR works with the International Labour Organisation (ILO), the United Nations Development Fund (UNDP) and the World Food Programme (WFP). In addition to these UN organizations mentioned, UNHCR works in close collaboration with relevant UN treaty-body mechanisms that ensure the right to a nationality, such as the Human Rights Committee, the Child's Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee on the Elimination of Discrimination Against Women.

[210] Council of Europe, the Organization for Security and Cooperation in Europe, the Organization of American States, the African Union, the League of Arab States, and the Organization of the Islamic Conference.

[211] UNHCR's Executive Committee provided guidance on how to implement this mandate through this Four-Pillar Approach.
UNHCR Conclusion No. 106 (LVII) (n 201).

- Prevention: Address the causes of statelessness to address gaps in nationality laws and promote accession to the 1961 Convention on the Reduction of Statelessness

- Reduction: Facilitate legislation and procedures to allow stateless people to acquire, confirm or restore a nationality

- Protection: Intervene to help stateless people to exercise their rights and promote accession to the 1954 Convention relating to the Status of Stateless Persons[212].

2. UNHCR FOUR-PILLAR APPROACH.

The previous section demonstrated the role of UNHCR in the context of international regime to address statelessness. After a period marked by marginalization of statelessness within the UN and UNHCR, there is a change in the landscape from the second mandate received by UNHCR to address the issue of statelessness, beyond what already had in relation to refugees.

In this context, UNHCR is reaffirmed as the main player body on the issue of stateless persons and producer of knowledge on this issue. Working alongside States and other international organizations, UNHCR proposes a specific approach to address the statelessness issue, based on the four-pillars: identification, prevention and reduction of statelessness and protection of stateless persons.

As of, this section provides a detailed analysis of each of these pillars to understand how this problem has to be faced.

2.1 Identification of Stateless Persons.

Identifying the dimension of the statelessness problem, as well as its causes and consequences, is the first essential step towards solving the issue. It is not an easy task, however. As it was said by Manly: 'Stateless people are in many ways the ultimate "forgotten people" and identification of stateless persons remains a major challenge'."[213]

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[212] UNHCR, 'How the UNCHR helps the Stateless' <http://www.unhcr.org/pages/49c3646c16a.html> last accessed 15 April 2015.

[213] M Manly and S Persuad, 'UNHCR and responses to statelessness' in Forced Migration Review (2009).

As seen in previous sections of this research, stateless persons are 'forgotten' in several aspects, whether in public policy or in everyday life. They live on the margins of society and, therefore, identify how many and who are stateless persons around the globe is a major challenge.[214]

Considering this, UNHCR established identification as one of its priority action. This pillar is about mapping, gathering and analyzing all important information on statelessness. Identify stateless persons, however, means much more than draw up a mere statistical calculation. For a detailed identification of such individuals, UNHCR has been developing academic research and practical studies about stateless groups in certain regions, aiming not only to know how many there are and where they are, but how they live and which difficulties these people face:

> Going beyond mere numbers, UNHCR analyses legislation to identify gaps which have led to statelessness and researches the situation of people who lack a nationality. While this research is important for a basic understanding of the problem, it is meaningless without first-hand information. Whenever possible, UNHCR interviews stateless people about their situation and seeks their views on solutions. We also try to identify and work with other stakeholders, including institutions and experts who have an influence on the situation.[215]

To effectively face statelessness, UNCHR and other stakeholders must understand this occurrence, that is, scrutinize causes, consequences, review existing legislation and conduct researches, interviews or any other source of reliable information available to have the understanding of the real scenario, rather than the statistical one.

In order to guide the UNHCR global actions to identify statelessness, the UNHCR Executive Committee, through Conclusion n. 106/2006, stated:

> In the identification of statelessness, some important initiatives could include:
> a) renewed efforts by States to identify stateless populations residing in their territory with the assistance of UNHCR and other United Nations agencies (such as UNFPA) and to provide yearly statistics on stateless persons or individuals with undetermined nationality to UNHCR;
> b) an increase in UNHCR's capacity to undertake research in partnership, where appropriate, with relevant academic institutions, so as to assist States to better identify and profile stateless populations, as a basis for crafting

[214] In many countries, the fact that stateless people live on the margins of society and are undocumented makes it difficult to understand their situation. In order to gather basic statistical information, UNHCR not only works with governments and sister UN agencies, but also provides support to activities like population censuses.

[215] UNHCR, 'Stateless Actions - Identification' < http://www.unhcr.org/pages/49c3646c16d.html> last accessed 12 April 2015.

> strategies to assist them to acquire an effective citizenship or, at a minimum, to have access to basic rights as stateless persons;
> c) UNHCR to promote a common understanding of the problem of statelessness and a platform for dialogue between States;
> d) cooperation with the Inter-Parliamentary Union (IPU) in the field of nationality and statelessness, including to further disseminate the 2005 *Nationality and Statelessness: A Handbook for Parliamentarians* in national and regional parliaments to raise awareness and build capacity among State administrations and civil society.[216]

Among these mentioned items, the first - States' duty on identify the stateless population living in its territory, with the help of UNHCR - deserves few words upon. This is very important because the status of stateless person confers distinctive rights and duties for a person who is in a vulnerable condition and, therefore, starts to assure to these 'nowhere citizens' some protection and rights. [217]

To begin with, this study aims to present what are the necessary procedures for a person to be legally identified as stateless before the international community and the domestic jurisdictions.

The article 12 of the 1954 Statelessness Convention states: 'The personal status of a stateless person shall be governed *by the law of the country of his domicile or, if he has no domicile, by the law the country of his residence'*.[218]

From this provision, it is possible to imply that the issue of considering whether a person is stateless is strictly made at national level, according to domestic laws and procedures.

First, it is significant to point out that if, on one hand, it is implicit in the 1954 Statelessness Convention that States must identify stateless persons within their jurisdictions in order to offer them proper treatment; on the other hand, this international document does not regulate *how* the parties have to design or operate the stateless determination procedures.

However, it is according to its own interests that States adopt legislation to indicate how a stateless person can be identified. This legislation should also designate the authority responsible for decision-making and establish what are the

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[216] UNHCR Conclusion No. 106 (LVII) (n 201) [4].

[217] Stateless persons are generally denied enjoyment of a range of human rights and prevented from participating fully in society; however, the recognition of a stateless person status assures rights and obligations under national law. This core set of rights assured must reflect the international standards of international human rights law.
UNHCR, 'Guidelines on Statelessness n. 3' (n 80).

[218] Convention Relating to the Status of Stateless Persons (n 37) art 12, emphasis added.

legal consequences for those identified as a stateless person. As it turns out, the establishment of this stateless identification procedure assures to States a wide-ranging discretion on this matters. According to the UNHCR:

> Local factors, such as the estimated size and diversity of the stateless population, as well as the complexity of the legal and evidentiary issues to be examined, will influence the approach taken. For such procedures to be effective, though, the determination of statelessness must be a specific objective of the mechanism in question, though not necessarily the only one.[219]

Despite of this broad State discretion on this issue, international guidelines should be considered on designing the procedures for statelessness identification. Given this, UNHCR edited the Guidelines on Statelessness N. 3 that "advise on the modalities of creating statelessness determination procedures, including questions of evidence that arise in such mechanisms". [220]

Generally speaking, this document provide guidance to States and other institutions on how to create the necessary national procedures for determining whether or not an individual is stateless. The guidelines discuss the design and location of such procedures, assessment of evidence, and other procedural considerations.

Yet, the current study does not aim to make a detailed analysis of the procedures as such; it rather remarks the fact that UNHCR asserts that statelessness determination procedures are indispensable mechanisms which each State party must develop to accomplish its protection commitments under the 1954 Statelessness Convention.

Doubtless, the identification of the stateless persons is central, since it is the first step to address this issue; however, currently "only a relatively small number of countries have established statelessness determination procedures, not all of which are highly regulated."[221]

So far, only 12 states worldwide have developed and established stateless determination mechanisms that not only are considered practical efficient but also ensure effective implementation of legal standards established by the 1954

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[219] UNHCR, 'Text of the 1954 Convention relating to the Status of Stateless Persons with an Introductory Note' (n 129).

[220] UNHCR, 'Guidelines on Statelessness n. 3' (n 79).

[221] UNHCR, 'Handbook on Protection of Stateless Persons' (Geneva, 2014) 6.

Statelessness Convention, by UNHCR guidelines and by international human rights law.[222]

According to ENS, these stateless determination procedures can be classified according to statelessness-specific regime[223]:

	First generation (20th century)	*Second generation (2000-2011)*	*Third generation (after 2011)*[11]
Specific rules in law, clear or relatively clear procedural framework		Spain (2001)[12] Latvia (2004)[13] Hungary (2007)[14]	Moldova (2012)[15] Georgia (2012)[16] Philippines (2012)[17] United Kingdom (2013)[18]
Clear protection ground, but no detailed rules in law, yet functioning procedural framework	France (1952)[19] Italy (70s?)[20]	Mexico (2007)[21]	
Clear protection ground, (yet incomplete) procedural framework			Slovakia (2012)[22] Turkey (2013)[23]

Figure 06. Classification of countries statelessness procedures according to specific regime.
Source: ENS. 'Determination and the protection status of stateless persons – A summary guide of good practices and factors to consider when designing national determination and protection mechanisms'. (2013)

Although none of these procedures can be considered as the best model, each of them is an example of development and they have been taking as a frame for other countries that have lately revealed concern on develop and implement its own national identification procedures[224].

Certainly, it is considered as a progress, since the identification of stateless persons is a core issue on enhancing respect for the human rights, because it is the way to assure a legal status, which confers enjoyment of the rights under the 1954 Statelessness Convention.

From this, it is understood that the determination procedure for the status of a stateless person is, primarily, a domestic State issue. However, it is necessary to remark that this is not a discretionary act; instead, it is a responsibility, especially for those States parties of 1954 Statelessness Convention, which committed internationally. In not having its own stateless national identification procedures,

[222] ENS, 'Determination and the protection status of stateless persons – A summary guide of good practices and factors to consider when designing national determination and protection mechanisms' (2013) 6.

[223] ENS, 'Determination and the protection status of stateless persons' (n 179) 7.

[224] In December 2011, a considerable number of countries have shown interest in establish national statelessness determination procedures during a ministerial meeting. Among these countries, there were Belgium, Brazil, Costa Rica, Peru, Uruguay, Australia and United States of America.
UNHCR, 'Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011' (Geneva, October 2012).

States are violating international commitments through direct breach of article 12 of the 1954 Convention.

Finally, it is essential understand what are the implications of having the status of stateless person. Summarizing, it means that a stateless person, recognized as such, has the minimum rights and the obligations under international and national level. This has to be observed in order to assure that a stateless person be able to enjoy minimally the fundamental human rights while participate and integrate a society.

Admittedly, however, the granting of such status in each State, and the treatment of persons determined to be stateless is not a certain rule and it is defined according to the real case which can fall within five different situations: first, when they were already granted the status of stateless under the 1954 Statelessness Convention; second, when they are still waiting for the decision; third, when they are stateless within a jurisdiction that does not have statelessness determination procedure; fourth, when they are stateless within a jurisdiction that; and fifth when they are "*de facto*" stateless rather than *"de jure"* stateless.[225]

Finally yet importantly, it should be emphasized that identification relates directly to protection of stateless persons when talking to them about their daily lives and the human rights problems they face. Besides, formally, identification is considered the first step to ensure rights and protect stateless people at domestic and international level. Beyond this direct link between identification and protection, this first UNHCR pillar is also related to prevention (when identifying gaps in legislation); and reduction of statelessness, when gauging opportunities for solutions to this phenomena.[226]

[225] UNHCR, through *Guidelines on Stateless No 3,* addressed one by one each of these mentioned situations in order to assist States ensures that stateless persons receive such status in their jurisdictions and enjoys all the rights and obligations associated therewith.

[226] UNHCR, 'Stateless Actions - Identification' (n 215).

2.2 Prevention of Statelessness.

As other important pillar, UNHCR addresses prevention of statelessness. The easiest and most effective way to deal with statelessness is to prevent it from occurring, in the first place.[227]

Prevent statelessness, therefore, is to focus on the cause of the problem to prevent the phenomenon is set. Based on this perspective and necessity of preventing statelessness, the UNHCR Executive Committee, through Conclusion 106/2006, made the following appeal:

> (h) *Calls on* States to facilitate birth registration and issuance of birth or other appropriate certificates as a means to providing an identity to children and where necessary and when relevant, to do so with the assistance of UNHCR, UNICEF, and UNFPA;
> (i) *Encourages* States to consider examining their nationality laws and other relevant legislation with a view to adopting and implementing safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality; and *requests* UNHCR to continue to provide technical advice in this regard;
> (j) *Notes* that statelessness may arise as a result of restrictions applied to parents in passing on nationality to their children; denial of a woman's ability to pass on nationality; renunciation without having secured another nationality; automatic loss of citizenship from prolonged residence abroad; deprivation of nationality owing to failure to perform military or alternative civil service; loss of nationality due to a person's marriage to an alien or due to a change in nationality of a spouse during marriage; and deprivation of nationality resulting from discriminatory practices; and *requests* UNHCR to continue to provide technical advice in this regard;
> (k) *Stresses* that in the event of State succession, the concerned States put in place appropriate measures to prevent statelessness situations from arising as a result and take action to address such situations;
> (l) *Encourages* States to seek appropriate solutions for persons who have no genuine travel or other identity documents, including migrants and those who have been smuggled or trafficked, and where necessary and as appropriate, for the relevant States to cooperate with each other in verifying their nationality status, while fully respecting the international human rights of these individuals as well as relevant national laws;
> (m) *Calls upon* States Parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime, to respect their obligation to assist in verifying the nationality of the persons referred to them who have been smuggled or trafficked with a view to issuing travel and identity documents and facilitating the return of such persons; and, *encourages* other States to provide similar assistance[228]

As it turns out, there is international concern to prevent new occurrences of statelessness addressing all the causes: technical ones, those linked to the state

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[227] UNHCR, 'Stateless Actions - Prevention' <http://www.unhcr.org/pages/49c3646c173.html> last accessed 12 April 2015.
[228] UNHCR Conclusion No. 106 (LVII) (n 201).

succession or birth issues and causes linked to discrimination or arbitrary deprivation of nationality.

In the prevention of technical causes, UNHCR focuses on cooperate with States to address gaps in domestic nationality legislations which could lead to statelessness. With regard to causes linked to the state succession or birth issues, it is said that some preventive initiatives could include:

> a) States to ensure systematic birth registration and issuance of birth certificates as a means to provide a legal identity and an effective nationality to children; UNHCR and UNICEF to cooperate to assist interested States in such registration and documentation at birth;
> (…)
> e) further efforts by States, in cooperation with UNHCR and other concerned organizations, to promote the adoption of national systems with consistent and clearly identifiable mechanisms aimed at the avoidance of statelessness in the event of State succession.[229]

Concerning to arbitrary causes, States might ensure the adoption and systematic use of safeguards in national legislation protecting against statelessness in these contexts; and UNHCR shall provide technical and advisory support to this end.[230] Relevant to note that, according to this UN agency 'preventing statelessness that is linked to discriminatory practices is more difficult'. Hence, to try to overcome this challenge, they 'train government officials on legal standards and good administrative practices and raises awareness on the consequences of statelessness'.[231]

Besides addressing specifically the causes, UNHCR has an important role on preventing statelessness through international promotion to encourage States accede the Convention on the Reduction of Statelessness.

2.3 Reduction of Statelessness.

Alongside to identification and prevention, UNHCR actions are focused on reduction of statelessness, because

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[229] UNHCR, 'Statelessness: Prevention and Reduction of Statelessness and Protection of Stateless Persons' (14 February 2006).

[230]UNHCR, 'Statelessness: Prevention and Reduction of Statelessness and Protection of Stateless Persons' (n 229).

[231] UNHCR, 'Stateless Actions - Prevention' (n 227).

> one of the main challenges faced by the international community remains how to bring to an end protracted statelessness situations which prevent millions of people from of enjoying an effective citizenship, and how to prioritize situations where stateless persons are absolutely destitute.[232]

To reduce statelessness, UNHCR works alongside to other stakeholders to implement actions in order to assist stateless persons to change their status, what is done through obtainment, confirmation or restoration of citizenship. In these cases, the role of both civil society and States is fundamentally important for achieving the goals.

In observance of the state sovereignty principle, amendments to domestic citizenship laws cannot be imposed to reduce statelessness. It is required, though, States have a strong political commitment and the underpinning actions in order to:

> ensure the grant of citizenship at birth or provide access to citizenship through legislation to children born on their territory who would otherwise be stateless,
>
> cooperate in the establishment of id entity and nationality status of victims of trafficking, many of whom, especially women and children, are rendered effectively stateless due to an inability to establish such status, so as to facilitate appropriate solutions to their situations, respecting the internationally recognized human rights of the victims.[233]

In the same direction, the UNHCR role cannot be underestimated, since this international organization shall act primarily to:

> cooperate with UNICEF to promote full implementation of article 7 of the CRC provision;
>
> promote a consistent United Nations inter-agency response to protracted statelessness situations, particularly in cooperation with the United Nations Office of the High Commissioner for Human Rights, UNICEF and UNIFEM, as well as to assist, where necessary, concerned States to integrate or reintegrate marginalized communities by developing programmes in the field of education, housing, and income-generation, in partnership with UNDP and ILO;
>
> assist States to organize citizenship campaigns and other measures enabling stateless persons to acquire citizenship.[234]

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[232] UNHCR, 'Statelessness: Prevention and Reduction of Statelessness and Protection of Stateless Persons' (n 229).

[233] UNHCR, 'Statelessness: Prevention and Reduction of Statelessness and Protection of Stateless Persons' (n 229).

[234] UNHCR, 'Statelessness: Prevention and Reduction of Statelessness and Protection of Stateless Persons' (n 229).

At this point, the UNHCR role to reduce statelessness through campaigns deserves some important considerations. It is worth remembering that this action should be implemented not only at the domestic level through assistance to States, but also at international level in order to raise public awareness globally. Considering this, in 2014, the UNHCR launched a global campaign to eradicate statelessness within ten years.

In the year that marked the 60th anniversary of the 1954 Statelessness Convention, UNHCR launched the "I BELONG" campaign on November, 4th.[235] With global outreach, this campaign aims to draw world's attention to the devastating consequences of statelessness; besides, this action aims to fully eradicate this phenomenon by 2024 and clarified it by UNHCR's Open Letter to End statelessness:

> Across the world today more than ten million people are told they don't belong ANYWHERE.
> They are called 'stateless'. They are denied a nationality. And with it, they are denied their basic rights.
> Statelessness can mean a life without education, without medical care, or legal employment.
> It can mean a life without the ability to move freely, without prospects, or hope. Statelessness is inhumane.
> The main reason people are stateless is because of discrimination. Because of their ethnicity. Because of their religion. Because in some countries women cannot pass their nationality on to their children.
> We believe it's time to end this injustice. With enough courage we know it is possible. Governments can change their laws and procedures, and give stateless people their rights and a place to belong.
> Within ten years, we can ensure everyone has a nationality. Because if we don't this injustice will only get worse. A child is born stateless every ten minutes.
> By the time you finish reading this letter another person may have started life without a nationality.
> We are ready to make our voices heard. We believe that if we take a stand, others will join us. And if enough of us stand up we will end this inhumanity.
> That is why UNHCR has launched the Campaign to End Statelessness in 10 years.
> Sixty years ago, the world agreed to protect stateless people.
> Now it's time to end statelessness itself.[236]

Together with the launch of the campaign, UNHCR also published a special Report on Statelessness and the Global Action Plan with ten points to end the problem.

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[235] To see more details about this campaign, please access the official web page <http://ibelong.unhcr.org/en/home.do>.

[236] UNHCR, 'UNHCR's Open Letter to End Statelessness' (04 November 2014) <http://ibelong.unhcr.org/en/join/index> last accessed 21 April 2015.

This Global Action Plan to End Statelessness was developed by UNHCR in consultation with States, civil society and international organisations in order to set out a guiding framework made up of 10 Actions that need to be taken to end statelessness within 10 years[237]. The Global Plan's ten Actions to end statelessness are:

> 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.[238]

As it is possible to infer, these actions were built based on the UNHCR four-pillar approach and includes: better *identification* and *protection* stateless persons, *prevention* of new cases of statelessness and resolution of existing situations of statelessness (reduction or eradication).[239]

So far, this ongoing campaign has been showing encouraging results[240] with significant media impact and mobilization of Governments and civil society. Since the campaign launch, a plenty of States have been taking steps to implement the Global Plan and, in a regional perspective, both American and African regions have reaffirmed their commitment to end statelessness[241].

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[237] UNHCR, 'Global Action Plan to End Statelessness' (Geneva, 4 November 2014).

[238] UNHCR, 'Global Action Plan to End Statelessness' (n 237) 4.

[239] UNHCR, 'Global Action Plan to End Statelessness' (n 237).

[240] UN High Commissioner for Refugees (UNHCR), 'Campaign Update, January 2015', January 2015 <http://www.refworld.org/docid/54cb79b04.html> last accessed 21 April 2015.

[241] In December of 2014, Latin America and Caribbean countries agreed to work together to end the plight of the region's stateless. These commitments, embodied in the Brazil Declaration and Plan of Action, are the outcome of a ministerial meeting in Brasilia, which rounds off the commemoration of the 30th anniversary of the Cartagena Declaration on Refugees. Committed to eradicate statelessness by 2024, Latin America and Caribbean became the first region to respond to UNHCR's global call.
Through a report launched in January 2015, African Union and UNHCR push for the right to nationality in Africa: "it urges African Union member States to support the African Commission on Human and Peoples' Rights to draft a protocol on the Right to a Nationality in Africa, which will provide the framework for countries' nationality laws to ensure that each and every person can enjoy the right to a nationality".
UNHCR, 'African Union and UNHCR push for the right to nationality in Africa' (29 January 2015) <http://www.unhcr.org/54ca3567f95.html> last accessed 21 April 2015.

Lastly, it is important to mention that, once achieved the aim of ending statelessness and, hence, acquiring nationality, the UNHCR role is redirected to ensure an effective participation and enjoyment the rights of these former stateless in the society, mainly through anti-discriminatory programmes of inclusion. In few words, "reduction of statelessness means finding a durable solution for people caught in statelessness situations".[242]

2.4 Protection of Stateless Persons.

Regardless of huge efforts done by UNHCR, States and other stakeholders to eliminate statelessness, it is a fact that this problem still remains and there are thousands of people who are framed as stateless worldwide. Accordingly, something needs to be done in order to assist these people to exercise their minimal fundamental rights.

Given this, the UNHCR Executive Committee urges:

> States gives consideration to acceding to the 1954 Convention relating to the Status of Stateless Persons and, in regard to States Parties, to consider lifting reservations;
>
> States which are not yet Parties to the 1954 Convention relating to the Status of Stateless Persons treaties stateless persons lawfully residing on their territory in accordance with international human rights law; and to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation;
>
> States treat them in accordance with international human rights law and also calls on States Parties to the 1954 Convention relating to the Status of Stateless Persons to fully implement its provisions. [243]

Besides calling States to get involved, at the same time:

> Requests UNHCR to further improve the training of its own staff and those of other United Nations agencies on issues relating to statelessness to enable UNHCR to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions.
>
> Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons;
>
> Encourages UNHCR to implement programmes, at the request of concerned States, which contribute to protecting and assisting stateless persons, in particular by assisting stateless persons to access legal remedies to redress

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[242] UN High Commissioner for Refugees (UNHCR) 'Stateless Actions - Reduction' <http://www.unhcr.org/pages/49c3646c176.html> last accessed 12 April 2015.

[243] UNHCR Conclusion No. 106 (LVII) (n 201).

> their stateless situation and in this context, to work with NGOs in providing legal counselling and other assistance as appropriate.[244]

As it was previously pointed out, stateless persons face several difficulties in their daily lives and, mostly, they do not have minimal standards of rights assured. In this point, UNHCR and other stakeholders (non-governmental organizations and civil society) have to assist them to find solutions to overcome these difficulties and assure better treatment.

To conclude, it is remarkable to note that, from the perspective of stateless persons, even when dealing with States who have not acceded this international document, a lot still can be done, since stateless people are also protected under general provisions of international human rights treaties.

2.5 Integrated UNHCR Four-Pillar Approach.

Once separately presented each of the four UNHCR pillars, it is necessary to mention there are many linkages between these different categories and, actually, they have to be considered as complimentary and interrelated in order to effectively address the issue of statelessness.

Only to exemplify few relations, it is said that identification relates directly to prevention when it helps to identify gaps in the national legislations, for example. Moreover, it relates to reduction when the analysis of the causes of statelessness results in solutions for existing situations; and it relates to protection when some procedures (as interviews, for example) set aside talking and awareness about human rights to find solutions to end statelessness.

To sum up the idea of this section, following it is reproduced a didactic diagram designed by the Regional Expert Roundtable in South East Asia in a successful attempt to summarize the idea of UNHCR four-pillar approach[245]:

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[244] UNHCR Conclusion No. 106 (LVII) (n 201).

[245] UNHCR, 'Good Practices, Addressing Statelessness in South East Asia' (n 94).

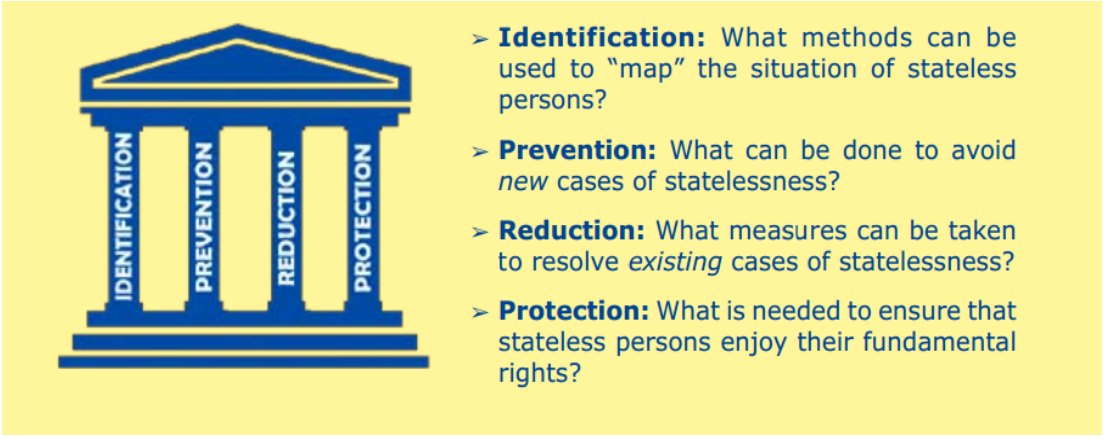

Figure 07. UNHCR Four-pillar approach to address statelessness.
Source: UN High Commissioner for Refugees (UNHCR), 'Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia' 2 March 2011.

These four areas of responsibility, when taken together, are the UNHCR four-pillar approach to address the issue of statelessness worldwide. It is important to remark that, for achieving successful results when applying this approach, UNHCR has to work together with other stakeholders who play a very important role, such as governments, civil society and other UN agencies.

3. BRAZILIAN RESPONSES AND COMMITMENTS TO ADDRESS STATELESSNESS

The analysis of Brazilian actions and policies to address statelessness will be grouped according to the Four-pillar framework developed by UNHCR. Hence, this session will be split into subsections with the titles of each of the four UNHCR pillars. This organization is a methodological strategy to firstly describe recent and current Brazilian policies in each of these areas; and, based on that, conduct a critical analysis to verify whether the country is fulfilling its international obligations on statelessness issues.

3.1 Identification of Statelessness in Brazil

From the theoretical study, there is no doubt that identification of a stateless person and, accordingly, the recognition of a legal status as such in a particular State, is fundamental to guarantee the enjoyment of rights and duties, as any other foreigner in the country.

Considering this, it is important to clarify how a person is identified as a stateless person in Brazil.

Even though Brazil has ratified both Stateless Conventions and has recently taken positive steps to create a specific statelessness determination procedure, officially, Brazil has no any regular legal procedure for determination of the stateless person.

Therefore, the persons in this situation might communicate his condition directly to the Brazilian Federal Police Department (hereinafter DPF),[246] institutional body which will initiate the procedure before the Department of the Foreign Relations in the Ministry of Justice. Once received the communication, the Department of the Foreign Relations will send the information to its National Committee for Refugees (CONARE) which will analyze and give a decision about the requirement[247].

Clarified the current administrative procedure to identify a person as stateless in Brazil, this research bring a critical review on the topic of identification, considering two main points of this pillar: current determination procedure to grant a stateless status within the country and mapping of stateless population in Brazil.

To begin with, results on statelessness determination procedures. From this research, it was not found any particular government policy specific developed to identify stateless population during the present time. As above reported, the official identification procedure is started by the DPF and concluded by CONARE; however, it occurs only when the interested present himself to do so.

This model - that requests initiative of concerned people, rather than the Government's proposal on identifying stateless person - is not sufficient, because tends to exclude those who are afraid of report to government bodies. Besides this, it is also necessary to bring up the reflection on the competence of CONARE, as the body responsible for carrying out this stateless identification procedure.

At this point, it is indispensable to make some few notes about the most important national institutional body to deal with statelessness issues within the

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[246] The Federal Police Department, or simply the Federal Police, is a Brazilian police institution under the Ministry of Justice, with the function, according to the 1988 Constitution, of exercise public security for the preservation of public order and the safety of persons, property and interests of the Union.

[247] In these situations, if the stateless person needs judicial assistance to initiate the procedure and have no funds to afford it, he/she can be represented by the Federal Public Defender’s office, free of charge.

country: National Committee for Refugees (CONARE)[248] directly linked to the Ministry of Justice. This is a collective body, which reunites representatives of different segments, such as Government, Civil Society and United Nations.

This body was primarily created to work out in matters of refugees. However, due to the inexistence of a specific body to perform statelessness issues, this committee is the responsible one to figure out all the correlated concerns, starting from the determination of the status of statelessness persons, passing through the protection and integration of those persons, until developing, implementing, coordinating and monitoring all the policies to prevent and reduce statelessness in the country.

Given this, the question on legal competence of this institutional body arises. Even with some divergences, most scholars defends that CONARE is intended to address issues of stateless persons in the country, despite the lack of legal provision on the subject:

> Despite the legal gaps, which has not explicitly informed on the competence of CONARE to rule on the stateless status of orders, it is understood that this is the competent administrative body to deal with the issue and implement the international commitments, on behalf of the Brazilian state.[249]

Still on the subject, it is believed that the issue of CONARE's competence will be solved when the draft law on statelessness is approved. This claim is based on the fact that this mentioned law will expressly define the power of this body to deal with statelessness issues in Brazil, as previously mentioned.

After debating the issue of Brazilian procedures to identify a stateless person as such, it is necessary to consider the evolution of Brazilian efforts for mapping its stateless population.

All the official statistic information existing in the country about stateless person (considered as reliable) is coming from the CONARE, which receives data from the Federal Police Department.[250]

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[248] The literal translation of this institutional body is *Comitê Nacional de Refugiados*, reason why the acronym adopted is CONARE, which will be used in this research when referring to this Committee.

[249] J Bichara, 'O Comitê Nacional para os Refugiados e sua (in) competência para atender aos pedidos de status de apátrida' in Interface (v 10 CCSA, 2013) 30.

[250] As showed above, some statistic data to elaborate statistic numbers on statelessness in Brazil are provided by other organisms, as UNHCR or international organizations from civil society; however, they are very divergent from those of the Federal Police, and, for the purpose, of this study, they will not be taken as official national data.

Concerning to the official governmental census or surveys, there is no room for statistical data concerning to stateless person as such. It is true that the Brazilian Institute of Geography and Statistic (hereinafter IBGE), when conducting official population census, take into consideration the number of stateless persons living in Brazil since their concept of 'population' is 'totality of inhabitants living within a territory, including nationals, foreigners and stateless persons'.[251] Nevertheless, stateless persons are not considered as a target to be identified; rather, they are merely included in the concept of general "population", in order to provide a more realistic number of living population in the country.

Concerning to demographic profile of this group, there is no official report in Brazil until the current time. Nevertheless, it was recently published that a national research is being conducted to map the profile of stateless persons living in Brazil. This research, started since mid of 2013, is a result of an agreement signed between the Institute of Applied Economic Research (hereinafter IPEA), Ministry of Justice and UNHCR Brazilian Regional Office. The socio-demographic study intends to identify the profile of refugees, asylum seekers and stateless people living in the country. Moreover, surveys will verify distinct aspects, such as where they live, what are their professional activities, economic impact of their activities on Brazilian society and their contribution to the Brazilian cultural and social development.[252] According to the CONARE's president, "results will be used by the Government to elaborate new public policies to better protect and include refugees and stateless persons in the Brazilian society"[253]

So far, these results were not published yet. It is true that, in November of 2014, CONARE and UNHCR published statistics about refugees in Brazil. It mapped refugees profile living in Brazil from 2010 to October 2014, based on CONARE official statistics.[254] However, none information about statelessness issues in Brazil has been published.

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[251] D Pereira, 'Nacionalidade' (February 2014) <https://www.passeidireto.com/arquivo/1930272/aula-nacionalidade> last accessed 16 March 2015.

[252] EBC News, 'Estudo vai mapear perfil de refugiados que vivem no Brasil' (24 April 2013) <http://www.ebc.com.br/noticias/agencia-brasil/2013/04/estudo-vai-mapear-perfil-de-refugiados-que-vivem-no-brasil> last accessed 21 October 2014.

[253] EBC News, 'Estudo vai mapear perfil de refugiados que vivem no Brasil' (n 252).

[254] UNHCR, 'Refúgio no Brasil: Uma análise estatística Janeiro de 2010 a Outubro de 2014' (Brasil, November 2014).

Regarding to academic researches, it is possible to say that, in Brazil, there is a plenty of discussion on the issue of Refugees; however, the statelessness topic still is not explored and is barely mentioned in discussions about refugees. There are only few publications, articles and thesis that occasionally approach the topic. Mostly, the current information is produced and published by non-governmental entities, as the UNHCR and the Brazilian Institute Migration and Human Rights (hereinafter IMHR).

After all this debate, it is possible to see, through its actions and policies, that Brazilian government is interested in mapping stateless population in its territory, and is working on this, despite of the lack of an official determination procedure to do so. Due to this absence, the targeted population is not properly identified and, therefore, the information is not accurately gathered, what is realizable on the divergence and inconsistence of the data throughout the country.

Given this, the conclusion reached is that, albeit some progress, the identification of stateless person appears as one of the biggest obstacles for the country. It remains a challenge for the Brazilian Government, as does so to the international community in general, considering that only a few countries in the world have official procedures to determine the status of stateless persons.

3. 2 Protection of Stateless persons in Brazil.

If, on the one hand, the international community is working hard to eradicate statelessness; on the other hand, the world cannot ignore that already exists thousands of people in this situation and, hence, in need of protection in order to minimize the negative consequences inherent to this condition. Given this, protection of stateless persons is unquestionably important and Brazil is fully committed to this cause.

As previously pointed out, Brazil – together with other Latin American and Caribbean nations – has committed itself to eradicate statelessness:

> by resolving existing situations, preventing new cases of statelessness and **protecting stateless persons**, through the revision of national legislation, the strengthening of national mechanisms for universal birth registration and the establishment of statelessness status determination procedures. [255]

[255] Brazil Declaration and Plan of Action (n 186).

Particularly on protecting stateless persons, Brazil, with the support of UNHCR and civil society, is engaged to implement the following actions:

> (d) Establish effective statelessness status determination procedures. The subregional consultations recommended including this competence within the functions of the CONAREs or equivalent institutions.
>
> (e) Adopt legal protection frameworks that guarantee the rights of stateless persons, in order to regulate issues such as their migratory status, identity and travel documents and, more generally, ensure full enjoyment of the rights protected by the 1954 Convention and other human rights treaties. [256]

In short, regarding to protection of stateless person within the country, Brazil is committed to: i. Establish stateless determination procedure; ii. Accede 1954 Convention; and iii. Enact legal protection framework to assure rights to stateless person.

Given this, it is necessary to analyze what are, so far, the taken steps by the Brazilian government to protect stateless persons in the country.

Establish stateless determination procedure

Doubtless, identify *who* is considered stateless under any jurisdiction is the first step to assure protection. Therefore, this topic should debate what Brazil has been doing to establish stateless determination procedure in the country; however, this subject was already exhausted in this study, on the Chapter III – Section 3.1 “Identification of Statelessness in Brazil’.

Accordingly, for now, to study the protection of stateless persons in Brazil, is enough to remind that Brazil still did not establish a legal stateless determination procedure; however, the country has already committed to do so. As a concrete measure, a draft law was elaborated and there is a pledge that this document will be sent to Brazilian Congress yet in 2015.

Accede 1954 Convention and enact legal protection framework to assure rights to stateless person

Brazil has acceded to 1954 Convention in 1996; in 2002, approved the text of this international Convention as national law, enforceable within the country by

[256] Brazil Declaration and Plan of Action (n 186).

the Executive Decree nº 4.246/2002. From this, a set of rights is established to protect stateless persons.

As mentioned, one of the biggest problems is the fact that there is no official procedure to identify and register stateless persons within the country. Once identified, however, there is a set of policies and possibilities for stateless persons.

Identified with stateless status, a person can enjoy a plenty of rights, because Brazil grants them all the required documents (including identification card, travel and work permit documents) and guarantees that they have all the same rights and duties of any foreigner living in a regular situation in the country.

In this case, all the national law are applicable and the person is protected by the Executive Decree nº 4.246/2002[257] and the Law 6.815/1980[258], what, in outline, regulates all duties and rights as summarized below.

Once legally identified as Stateless in Brazil, a person shall:

a) act in accordance to the national security and public order rules, under penalty of losing the national protection;

b) respect the Brazilian Constitution and laws in general, being aware that any infraction will be treated as committed by any Brazilian citizen;

c) inform the Federal Police Department any change in address;

d) maintain its own documentation updated.

On the other hand, stateless persons identified as such in Brazil, have the right to be protected and Brazilian Government has the duty to do so.

According to UNHCR:

> Stateless people, like everyone else, are entitled to enjoy a broad range of human rights under international law. Their situation however, as non-nationals everywhere, can present a challenge to guaranteeing the enjoyment of those rights in practice". [259]

To overcome this challenge, the States have not only to be committed to improve their national legislation, but also develop inclusive policies to assure the real enjoyment of the rights, rather than a mere legal protection.

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[257] This is a national legal instrument that incorporate and enforce the International 1954 Statelessness Convention into the Brazilian legal system.

[258]This is a national ordinary law widely known as Foreigners Statute, which define the juridical situation of the foreigners living in the country and regulate their duties and rights. Once stateless persons are treated as any other foreigner, these provisions are fully applicable.

[259] UNHCR, 'Good Practices, Addressing Statelessness in South East Asia' (n 94).

From the legal premise, the Brazilian government have already made a considerable progress and assures a range of rights to stateless persons, according to Executive Decree nº 4.246/2002 and the Law 6.815/1980, as mentioned. What is necessary to verify, however, is the (in) existence of effective governmental policies to apply these granted rights.

Below, this study comes up with a descriptive list of rights already legally assured in Brazil, followed by analysis of state actions and policies to implement them.

Once legally identified as stateless in Brazil, a person has the right to:

a) *have his stateless requirement analyzed individually and in a previously defined deadline*: to assure this right, the Brazilian government determined that all the requirements have to be submitted to CONARE. This body will appreciate and decide about the asking. In addition, stateless persons can have legal advice and orientation on regarding to national framework on statelessness, free of charge, provided by the Public Defenders' Office, a governmental body.

b) receive the most favorable treatment and not receive inferior treatment that those guaranteed to any other foreigner living in the country: during this research was not found any policy that matches the exercising of this right by the stateless persons.

c) *have the same rights and basic assistance given to any other foreigner living in the country legally, (such right to work, education, housing and fundamental rights in general as non-discrimination, for instance)*: once holding the status of stateless person, the individual can benefit from the public healthy and public education, as well integrate social programs for housing, if the requirements (same applicable for foreign) are fulfilled.

d) *have the same rights and assistance as any national regarding to freedom of religion, rights of intellectual property, social security and access to the justice:* the enjoyment of the civil rights and some other social, economic and cultural rights are granted to every person living in the country indistinctly, including the stateless persons.

e) *right to receive all the documentation assured by the legislation, that is, Foreigner Register, Individual Taxpayer Number and Labour's Card, and Foreigner Passport in case of international traveling*: once holding the stateless status, the

person can request its documents following the same procedure at any other foreigner living in the country.

f) *right to freely choose the living place within the national territory*: under the condition that the Police Federal Department must be informed, the stateless person can move around the country looking for the best suitable place to assure his life with dignity.

All these rights might be assured by the government in Brazil and, in case of any refuse, stateless persons can claim them judicially.

Lastly, it is important to note that, even though the national government is the primary responsible on dealing with statelessness issues, some local governments are already getting involved in this matter in order to guarantee better protection for those people.

As a good example, there is the local government of Rio Grande do Sul, a Brazilian province. The local Secretary of Justice and Human Rights created the Committee of Attention to Migrants, Refugees, Stateless Persons and Victims of Human Traffic in the province. Among its aims, the Committee intends to elaborate a plan of action to create specific public policies to attend the stateless' demands. This initiative was considered as a pioneering practice by the UNHCR Brazilian representative: 'Focusing on statelessness issues and reinforcing the protection to this vulnerable group are huge headway. This is a good policy of the local government of Rio Grande do Sul and should be considered by the other Brazilian provinces.'[260]

Conclusively, it is possible to say that national and local governments are engaged and committed to adopt practices and policies in compliance with international standards. The protection of stateless persons can be verified not only in a theoretical or regulatory plan, but also in situations of the daily life. This practical integration of this vulnerable group is fundamentally important, since they have already enough suffering on dealing with their 'invisibility'.

[260] ADUS, 'Rio Grande do Sul cria comitê para migrantes, refugiados, apátridas e vítimas do tráfico de pessoas' (28 October 2013) <http://www.adus.org.br/2012/10/rio-grande-do-sul-cria-comite-para-migrantes-refugiados-apatridas-e-vitimas-do-trafico-de-pessoas/> last accessed 12 April 2015.

3. 3 Prevention of Statelessness in Brazil.

Address the causes is a better option than address the consequences; this statement is true because addressing causes is mostly possible to solve the issue permanently. Hence, this is a very important approach when dealing with any issue since the prevention of a problem always addresses causes, roots of problems, rather than palliative or temporary solutions.

In the context of statelessness, prevention also is directly related to identification of causes that, when not addressed, leave people without any nationality and with no protection. Therefore, according to UNHCR, prevention is one of the four necessary topics to be addressed and, in short, 'includes the identification of domestic laws and practices that may lead to the creation of statelessness and the introduction of concrete measures to prevent statelessness from occurring or from perpetuating across generations.'[261]

It is said that prevention is considered the best way to face the statelessness, not only because it is considered as the most simple way to undertake the issue, but also because 'effective prevention means no one has to face, even temporarily, the detrimental consequences of statelessness.'[262]

Likewise on dealing with protection of stateless persons, Brazil is entirely committed to prevent new cases of statelessness through implementation of some actions clearly stated internationally:

> (a) Accede, as appropriate, to the 1954 Convention relating to the Status of Stateless Persons ("1954 Convention") and the 1961 Convention on the Reduction of Statelessness ("1961 Convention").
> (b) Promote the harmonization of internal legislation and practice on nationality with international standards.
> (c) Facilitate universal birth registration and the issuance of documentation, implementing the activities proposed in Conclusion No. 111 of UNHCR's Executive Committee, promoted by Latin America and the Caribbean. These activities may include, among others:
> i) the adoption of simplified administrative procedures;
> ii) the periodic organization of awareness campaigns and community outreach activities;
> iii) the application of appropriate measures to ensure that rural or remote areas are reached, for example through mobile registration units. [263]

[261] UNHCR, 'Statelessness: An Analytical Framework for Prevention, Reduction and Protection' (n 95).

[262] UNHCR, 'Good Practices, Addressing Statelessness in South East Asia' (n 94).

[263] Brazil Declaration and Plan of Action (n 186).

In attempt of summarize the Brazilian's commitment concerning to prevention of statelessness, it is possible to point them out: i. Accede 1961 Convention; ii. Improve civil registration/documentation; and iii. Address gaps in nationality laws. Considering them, the outcomes are presented.

Accede 1961 Convention

Considering the first pledge, accession to 1961 Convention, Brazil fully accomplished it, since 2007. More than that, Brazil has a leading role to promote the accession to this Convention into a regional context. The Brazilian Government is engaged with several actors, as UNHCR and other countries in the region for example, to promote the necessity of coping with statelessness issue internationally and regionally.

More specifically into a national perspective, however, Brazil has introduced concrete measures to prevent the occurrence of new cases of statelessness either improving civil registration/documentation or addressing gaps in nationality domestic laws.

Improve civil registration

Brazilian birth registration and issuance of civil documentation are very complex issues. Brazil is a country with extensive dimension, areas barely accessible and giant population. Because of these factors, among others, the lack of birth registration is a fact, even though it is legally compulsory and assured, free of charge for every born child, through a very simplified administrative procedure.[264]

According to information of Brazilian official census conducted by IBGE, [265] around six hundred thousand children between zero and ten years old are not registered: 'About 600,000 Brazilian boys and girls remain invisible to the state because they were not registered. Of these, more than half are indigenous or reside in the North and Northeast'.[266]

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[264] To register a birth, it is only required that one of the child's parents attend the registry office from the place where the person was born or lives and make the report. The procedure is free for everyone.

[265] UNICEF, 'Uma em cada três crianças com menos de 5 anos no mundo não existe oficialmente' (11 December 2013) <http://www.unicef.org/brazil/pt/media_26439.htm> last accessed 23 April 2015.

[266] BRASIL, 'Governo federal lança campanha pelo registro de nascimento' (Abril 2014) < http://www.sdh.gov.br/noticias/2014/abril/a-secretaria-de-direitos-humanos-da-presidencia-da-republica-sdh-pr-lanca-nesta-segunda-feira-28-em-brasilia-df-a-cartilha-sobre-registro-civil-de-

To face this problem since 2003, Brazilian government launched a campaign and started a program to combat and extinguish this problem. The ongoing campaign, leaded by National Secretary of Human Rights and by the National Council of Justice, was turned into a permanent program, which includes a plenty of policies to try to reach these Brazilian people who are excluded by social, political, geographic and economic barriers.

As one of the most remarkable policies of this program is aimed to address the indigenous situation, that is more problematic to access due to both remote localization and cultural barriers.

In 2014, a series of planned actions prioritized indigenous birth registration: awareness campaign, joint efforts for the issuance of documentation, and seven training workshops to improve access to documentation services. These actions took place in 49 cities, within five Brazilian provinces, reaching 68 ethnic groups, especially in the North and Northeast regions.[267] As the main result, it was launched a manual to eradicate the lack of registration among indigenous children in Brazil.[268]

Besides that, Brazilian government works together with United Nations Children's Fund (hereinafter UNICEF), since 1997, in order to overcome this problem in all the regions of the country. [269] Reached results are worthy, since the number of no registered children decreased 50% in five years, according to Brazilian government: 'the index was 20.9% in 2002, decreased to 12.2% in 2007 and fell to 6.6% in 2010. Between 2009 and 2010 the reduction was 19.5%, that is, one of the largest rates throughout the times.'[270]

From these actions and policies to promote birth registrations all over the country, it is possible to affirm that Brazilian government is committed not only to

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nascimento-de-povos-indigenas.-a-publicacao-e-uma-parceria-com-a-funai-e-tem-como-objetivo-avancar> last accessed 23 April 2015.

[267] BRASIL, 'Governo federal lança campanha pelo registro de nascimento' (n 266).

[268] This manual is only available in Portuguese version and aims help out indigenous people to register their children and, accordingly, eradicate lack of registration among indigenous people. SDH, 'Registro Civil de Nascimento para os Povos Indígenas no Brasil', (Brasil, April 2014).

[269] UNICEF, 'Registro Civil' < http://www.unicef.org/brazil/pt/activities_10160.htm> last accessed 23 April 2015.

[270] SDH, 'Direito para todos'. <http://www.sdh.gov.br/assuntos/direito-para-todos/programtobeas/promocao-do-registro-civil-de-nascimento> last accessed 23 April 2015.

preserve and guarantee the person's basic rights, but also is committed to avoid future cases of statelessness.

Address gaps in nationality laws

To begin with, it is possible to say that Brazil is concerned about harmonization of internal legislation with international standards regarding to nationality. Considering citizenship as fundamental right of everyone, the country adopts both criteria on granting nationality: *jus soli* and *jus sanguinis.*

This political decision, *per se*, already is a fundamental measure aimed to prevent statelessness, in the sense that Brazilian nationality is granted not only for all children who born in the country, but also is granted for those who born abroad, of a Brazilian father or a Brazilian mother. In adopting both criteria, Brazil minimizes the occurrence of statelessness, not only within the country borders, but globally.

Besides the attention to meet international standards and commitments about its citizenship law, Brazil also has been committed to address any existent gap in order to prevent statelessness.

Currently, Brazilian legislation follows international human rights standards and has a very protective and democratic legal system. Grounded on fundamental principles (as the dignity of human person, non-discrimination, among others)[271], Brazilian legal system leaves no room to arbitrary deprivation of nationality, based on discrimination, for instance. It is believed that, in general, Brazilian nationality laws have no gaps to be addressed.

At this point, it is worth mentioning that, in 2007, the Brazilian Constitution passed through an amendment to address nationality issues. The Amendment nº 54 of the Brazilian Constitution was a result of a country policy to prevent and reduce cases of statelessness in Brazil. For didactic purposes, however, this topic will be addressed in details on Chapter IV of this research, since it reflects integrated policies not only to prevent, but also to reduce cases of statelessness.

After all, from this data analysis about prevention of statelessness in Brazil, it is seen that national campaigns have been launched, policies have been reformed and even laws have been amended to focus on the root of statelessness in

[271] Constitution of the Federative Republic of Brazil 1988 (n 72) arts 1-4.

Brazil. Consequently, it is possible to affirm that both Brazilian legislation and governmental policies are in accordance with country's international obligation of preventing statelessness.

3.4 Reduction of Statelessness in Brazil.

Preventing the occurrence of new cases of statelessness is a crucial measure to avoid the spread of this phenomenon around the globe; however, as important as preventing, addressing the existent occurrences and finding a solution for them is also a case of priority.

According to UNHR,

> Reduction requires finding durable solutions for stateless persons by facilitating the acquisition, reacquisition or confirmation of nationality. It also involves issuing identity documents and promoting full social and economic participation so that citizenship becomes fully effective. [272]

As it is clear, Brazil is not a country with a record of a massive number of stateless persons; rather, it has presented data showing a number not higher than 6.000 (six thousand) persons in the country, where there are almost two hundred millions of people living. Therefore, definitely, proportionally it would not be considered as a significant number; however, this low rate is not an excuse used for the country for not assuming its responsibility; instead, Brazil has reaffirmed its commitment to eradicate statelessness

> by **resolving existing situations**, preventing new cases of statelessness and protecting stateless persons, through the revision of national legislation, the strengthening of national mechanisms for universal birth registration and the establishment of statelessness status determination procedures. [273]

In order to actively respond to the existing situations and find a solution to them, Brazil has reasserted its engagement to

> (f) Facilitate naturalization in accordance with article 32 of the 1954 Convention.
> (g) Confirm nationality, for example, by facilitating late birth registration, providing exemptions from fees and fines and issuing appropriate documentation for this purpose. Given that cases of people who may require having their nationality confirmed frequently arise in situations of irregular migration or when people live in border areas, achieving this goal may require the strengthening of bilateral or multilateral dialogue and

[272] UNHCR, 'Statelessness: An Analytical Framework for Prevention, Reduction and Protection' (n 95).
[273] Brazil Declaration and Plan of Action (n 186).

> cooperation, as appropriate, between civil registration authorities, as well as binational civil registration and documentation projects.
> (h) Facilitate the restoration or recovery of nationality through legislation or inclusive policies, especially the automatic restoration of nationality as a solution for cases in which the person h ad been arbitrarily deprived of nationality.[274]

As it is possible to conclude, Brazil endorsed three pledges to effectively reduce statelessness: i. Facilitate Naturalization; ii. Confirm nationality; and iii. Restore nationality. From this, Brazilian steps to reduce statelessness in the country will be further considered.

Facilitate Naturalization

Brazil admits naturalization procedure under conditions provided on the Brazilian Constitution:

> Article 12. The following are Brazilians:
> …
> II – naturalized:
> a) those who, as set forth by law, acquire Brazilian nationality, it being the only requirement for persons originating from Portuguese-speaking countries the residence for one uninterrupted year and good moral repute;
> b) **foreigners of any nationality, resident in the Federative Republic of Brazil for over fifteen uninterrupted years and without criminal conviction, provided that they apply for the Brazilian nationality**.[275]

Despite of the expression “foreigners of any nationality”, stateless persons are covered by this article, since they have similar rights as any other foreigner living in regular situation in the country, as already studied. It means Brazil has a policy that allow naturalization for foreigners and stateless persons once fulfilled the requirements: residence in the country for over fifteen uninterrupted years and no criminal conviction.

In other words, Brazil has no specific policy or legislation to facilitate naturalization of stateless persons. However, it is important to remind about the statelessness draft bill, which is waiting for approval. This new law will bring distinct conditions and requisites to facilitate naturalization situation of a person holding stateless status, in accordance with article 32 of the 1954 Convention.[276]

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[274] Brazil Declaration and Plan of Action (n 186).
[275] Constitution of the Federative Republic of Brazil 1988 (n 72) art 12. **Emphasis added**.
[276] Convention Relating to the Status of Stateless Persons (n37) art 32.

Confirm nationality

Brazil is also committed to reduce statelessness by confirming nationality, that is, mainly solving documental issues in the country.

By 2003, it was believed that birth registration would be minor subject, to be solved only between family and register office, with absence of the State in this regard. The picture changed when official data reported by census, at that time, estimated one million live births per year without civil registration.

Thus, in 2003 the Brazilian Government started to work in order to eradicate late birth registration. Since then, the Federal Government, in partnership with provinces, municipalities and civil society, has developed several actions to achieve this goal.

Among the government's actions, some were essential to ensure the success of nationality confirmation policy, for example gratuity of fees to issue the documents, national campaigns, installation of notaries offices in maternity hospitals and commitment of various involved stakeholders.

From the taken measures, it is possible to imply that this problem emerged in Brazil not because of arbitrary causes. Actually, confirmation of nationality is much more related to problems as lack of education and remote locations, which have been addressed properly by the Government in order to reduce this phenomenon within the country.

As a result, Brazil advances in the eradication of statelessness and is a step towards the eradication of late birth registration: “In 10 years, the number of children not registered at birth fell from 18.8% in 2003 to 5.1% in 2013. A level equal to or less than 5% is considered as eradicated by international organizations”.[277]

Restore nationality

Doubtless Brazil is engaged to reduce stateless. However, there are not too many actions to address cases of restore nationality, because Brazilian legal system leaves no room to arbitrary deprivation of nationality, as previously mentioned.

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[277] SDH ‘Brasil avança na erradicação do sub-registro’, (9 December 2014) <http://www.sdh.gov.br/noticias/2014/dezembro/brasil-avanca-na-erradicacao-do-sub-registro-civil-de-nascimento-segundo-ibge> last accessed 23 April 2015.

Apart from the successful case of the Brazilian Constitution Amendment nº 54/2007, there was no other situation approaching this pledge, due to the fact that Brazil follows international human rights standards and has a very protective and democratic legal system regarding to nationality and enjoyment of rights.

To conclude this topic is relevant highlight that Brazil takes steps to reduce statelessness within the country. However, from the research, was not found any specific policy or legislation to ensure the integration of a former stateless person. Even though, once granted the nationality, they are considered full citizens able to enjoy all the rights assured by the national legal order.

It is known that lack of effective integration leaves stateless people particularly vulnerable to exploitation by groups and criminal organizations, increasing the risk of human trafficking and illegal activities[278]. Therefore, this topic demands high priority on the governmental agenda.

[278] UNHC, 'Nacionalidade e Apatridia na África Ocidental' (Fevereiro 2015) <http://unhcr.org/ecowas2015/Apatridia-na-Africa-Ocidental-BACKGROUNDER-POR.pdf> last accessed 21 April 2015.

CHAPTER IV – "BRASILEIRINHOS APÁTRIDAS": A SUCCESSFUL CASE OF REDUCTION AND PREVENTION OF STATELESSNESS IN BRAZIL

This Brazilian case is internationally recognized as a successful case of reduction and prevention of statelessness. This is the main reason why it was brought as an example in this study, since it allows a broad debate about Brazilian commitments to address statelessness.

In order to understand it, this chapter presents the facts and outcomes of the case firstly; and, then, it is followed by a critical review.

4.1 CASE REVIEW – FROM STATELESS TO BRAZILIAN CITIZENS: FACTS AND OUTCOMES.

This chosen case is about the legislative amendments that caused a situation in which a considerable part of the Brazilian emigrants' children had denied her/his Brazilian citizenship during the years of 1994 and 2007. This situation had as consequence a huge amount of stateless children around the world.

The current Constitution in force in Brazil originally provided three forms of acquiring nationality at birth, according to its rules in article 12:

> The following are Brazilians:
> I – by birth:
> a) those born in the Federative Republic of Brazil, even if of foreign parents, provided that they are not at the service of their country; (*jus soli)*
> b) those born abroad, of a Brazilian father or a Brazilian mother, provided that either of them is at the service of the Federative Republic of Brazil; ***(jus sanguini + function)***
> c) those born abroad, to a Brazilian father or a Brazilian mother, provided that they are registered with a competent Brazilian authority, or come to reside in the Federative Republic of Brazil, and opt for the Brazilian nationality at any time after reaching majority; ***(jus sanguine + registration OR residence)***[279]

In 1994, however, the Ammendment n. 3 altered the rule on the article 12,I, c:

> c) those born abroad, of a Brazilian father or a Brazilian mother, provided that may reside in the Federative Republic of Brazil **and** opt at any time, the Brazilian nationality.

This amendment brought very serious consequences for the children born abroad from Brazilian parents, because it required a compulsory residence within the

[279] Constitution of the Federative Republic of Brazil 1988 (n 72) art 12. **Emphasis added**.

national territory in order to grant the Brazilian nationality. This could no longer be replaced by the register with a competent Brazilian authority abroad, as it was in the previous writing.

This measure (alteration in law) clearly turned into a cause of statelessness affecting directly the children, since it brought as a consequence the fact that all the children from Brazilian parents living abroad, after 1994, had the obligation to return to Brazil in order to choose for their citizenship personally. In this case, this mentioned imposition was a real barrier, since many of the Brazilians did not have possibility to return to Brazil due to the distinct reasons, such as financial one, for instance.

The real legal problem became apparent when the alteration raised the fact that this norm would conflict with some rules of other countries resulting in the statelessness phenomenon. In other words, some countries (for example France, Switzerland and Japan) do not admit the *jus soli* criteria. Therefore, the conclusion was quite easily reached: these children born in these countries, from Brazilian parents, were not considered national from the country where they born and had no conditions to support their trip back to Brazil to choose for the Brazilian nationality; hence, they had become stateless. Moreover, there is another important issue: considering that at one point some of them would be able to return and make the choice, what is these children' nationalities until they opt for it? Are they temporarily and conditionally considered Brazilians?

Amidst all these questions, a fact: from 1994 to 1997, worldwide, two hundred thousand children had become Brazilians "conditionally" and were considered strong candidates to become future stateless from Brazilian ancestry. Even though they were granted birth certificate and Brazilian passport, those documents were only valid until the children completed 18 years and, therefore, had the following caveat: "the condition of Brazilian is subject to confirmation of two events: residence in Brazil and option for Brazilian nationality before a federal judge."[280]

In order to face this problem, a strong social movement emerged. Entitled "Brasileirinhos Apátridas" (Stateless Little Brazilians - literal translation), it fought for the regularization of the situation and the change of the requirements of article 12.I.c

[280] FOLHA DE SÃO PAULO, '*Lei deixa 200 mil filhos de brasileiros no exterior sem pátria*' (May 2007) <http://www1.folha.uol.com.br/fsp/cotidian/ff2005200701.htm> last accessed 21 April 2015.

of Brazilian Constitution in order to grant nationality for the Brazilian's descendants living abroad.

Brazilian foreign living abroad manifested through global media and internet in order to denounce the situation and make people aware about the problem. As a result, at the end of 90's, a Brazilian journalist who lives in Switzerland called Rui Martins launched a movement "Brasileirinhos Apátridas". This is considered as one of the most influent groups that lead to modify the law and find a solution for the problem[281].

Intending spread the information and catch new adherents to join the cause, other groups were articulated in different countries, as US, Australia, Japan and Israel. To achieve their goal globally, a plenty of different measures and tools were adopted to communicate and expand: internet, magazines, publications, and even personal manifestations in front of the Brazilian consular departments in different parts of the world.

One of the most important faces of the movement was the ongoing political pressure that started with sending letter for different politics (President and Parliamentarians) to ask for a solution for the problem through a new changing of the Constitution. After a tireless political pressure, in 2000 a new amendment was finally proposed to change the Constitution in the sense to make it turn on again to its original sense.

Despite of it, this was not considered the end of the journey since the Brazilian parliament is known by its sluggishness. Then, it was necessary more articulation, involvement, manifestations and pressure of the movement "Brasileirinhos Apátridas" what culminated with a parliamentarian session on September, 20th 2007. In this session was voted and approved the new modification of the Brazilian Constitution (Amendment 57/2007) that assured two big achievements:

a) the right to nationality under the criteria *jus sanguinis* without "any condition" (only requiring the registration before a recognized authority) from so on;

b) and restauration of Brazilian nationality for those who born between 1994 and 2007 and were supposed to become statelessness.

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[281] 'Brasileirinhos Apátridas' (Civil Society Movement, 2007) <http://www.brasileirinhosapatridas.org/> last accessed 21 April 2015.

It is clear the conclusion, therefore, that the provision was turned back into its original form and the notion of citizenship is recognized in two hypothesis: either through the register or through the potestative form. [282] Thus, the factor "option" (intrinsic of the expression "potestative") should only be required from those who have not been registered, and come to reside in Brazil, after reaching adulthood. If the Brazilian child was born abroad and has already been registered before the competent authority, will be "forever" as a national of Brazil, without requiring further requirements as the latter option or residency.

4.2 DEBATING STATELESSNESS THROUGH THE BRAZILIAN CASE: A CRITICAL ANALYSIS.

After clarify the nuances of the Brazilian case, observing its principal facts and outcomes, it is necessary to make a critical legal review about the topic on prevention and reduction of statelessness, having a Brazilian case as scenario.

General assessment

The first part of this critical analysis will consider the theoretical concepts studied under the first part of this research in order to frame the selected case. To begin with, it is important to address the issue about the States sovereignty when recognizing a person as a national. As it was seen, it is primarily an issue of domestic law, even though it has to take into account the international rules and the practice of other states in order to assure larger protection for everyone. This Brazilian case studied fits as a perfect example to illustrate this necessity: the Amendment 57/2007 (that recognize the nationality of the children in 2007) was proposed considering mainly the fact that other States did not grant the nationality for these children leaving them stateless. Therefore, Brazil changed its domestic law to protect people and avoid statelessness, considering the practice and the law of other states (for example France and Japan, as already mentioned).

What's more, it is relevant to have in mind that the Brazilian case dealt with what is considered *de jure statelessness*, since the children (born abroad with Brazilians parents) had denied her/his citizenship under the law of both countries

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[282] M Rosso and L Sant'Anna, 'Brasileirinhos Apátridas: o caso dos filhos de brasileiros nascidos no exterior' in RDBras (2011).

(Brazil and the state where they were living). Moreover, it is necessary to make clear that the case was relating to the category of *jus sanguinis* criteria, once the children in spot were direct descendent of Brazilian parents and born abroad, reason why would be impossible to apply the *jus soli* criteria.

Finally, it is necessary to note that the cause that started this wave of stateless child is a technical one, that is, an amendment of the law (in 1994) which made it conflictive with other States law and, therefore, affected the Brazilian immigrants' children directly. It is true that when a cause of the statelessness is given by administrative or legal issues (rather than ideological, ethnical or discriminatory one), it makes the solution easier. Despite of this, it would not be possible without the eagerness and the commitment of the State and the other actors (such the international organizations and civil society) to truly face this problem.

Brazil and its compliance with prevention and reduction of statelessness

Considering the UNHCR four-pillar approach and the Brazilian commitment to prevent and reduce statelessness, it is possible to say that the case “Brasileirinhos Apátridas” is an example that Brazil has been putting lot of efforts to comply with its obligations. This claim can be verified by the following facts:

a) To fulfill its obligation of prevention statelessness in Brazil, the country made a pledge to address gaps in national law, when necessary.

As already explained, there is no need on doing so, currently. However, by the time of the mentioned case, the country was requested to take steps to review its nationality law in order to avoid the perpetuation of the problem. With the huge support of civil society, Brazil changed its law and, accordingly, prevented the occurrence of statelessness not only in Brazil, but worldwide.

b) In order to properly accomplish its commitment of reduce existing cases of statelessness, Brazil made a pledge to restore nationality, when needed.

As seen on the “Brasileirinhos Apátridas” case, Brazil faced the problem of statelessness from 1994 to 2007, due to a law modification. This fact resulted in a large amount of Brazilian’s descendants left with no nationality. Recalling, however, its international obligation of “try to eliminate or at least reduce the incidence of statelessness”,[283] Brazilian Congress passed a new modification in the law to grant

[283] UNHCR ‘Nationality and Statelessness: A Handbook for Parliamentarians' (n20).

Brazilian nationality to all people born between 1994 and 2007 from a Brazilian father or Brazilian mother, regardless the place of birth or residence. And, as a result, thousands of children had its Brazilian nationality restored.

In this sense, this case deserves to be recognized as one of the most remarkable Brazilian's measures to address statelessness issues, since the Brazilian government took a large step not only to reduce cases of statelessness, but also to prevent the occurrence of statelessness around the globe.

CONCLUSION

Statelessness topic is much more than only a theoretical issue to be discussed. It is a veiled reality that makes over than twelve million people invisible and deprived of any right, even so the “right to have a right”. Phenomenon spread around the world, statelessness also is a fact in the Brazilian context, even though not in a colossal scale as it is in some parts of the globe. Regardless of the dimension of this problem within the country, Brazil is internationally committed to deal with this issue and has worked out in its law and policies not only to identify, prevent and reduce statelessness, but also to protect people who are already in this abysmal condition.

Given this context, the main objective of this research was comprehend to what extent Brazil, through its legislation and policies, complies with its international commitments regarding to identification, prevention and reduction of statelessness and protection of stateless person. Far from intending to be regarded as exhaustive on the statelessness matter, this piece reached important results summarized following:

The first part of this research – Chapter I – was intended to be the theoretical framework and was elaborated to base the introductory part of the research, building some general concepts, important to make the general analysis. As a result, it was found summarily:

Nationality, interchangeably citizenship, is a political and legal link between a person and a specific State. And States are the responsible ones to define norms to grant or recognize it, taking into account international rules and commitments on doing so.

The right to nationality is based on the stricter concept of nationality that focuses on the legal bound between individual and states. Statelessness is the absence of this legal bound and can be classified as *de jure* and *de facto*. The adopted concept of stateless person is given by the first article of 1954 Convention, and means a “person who is not considered as a national by any state under the operation of its law”.

Taking into consideration the principles of "*jus solis*" and "*jus sangunis*", the causes of statelessness can be originated from technical issues or linked to state succession or still arbitrary reasons, such as discrimination.

The main consequences of stateless condition can be considered from legal, psychological or social perspective. Altogether, it results on the deprivation of basic and simple rights in the daily life of stateless persons and their vulnerability, marginalization and invisibility from a humanist perspective.

In turn, the second part this study – Chapters II, III and IV - brings the research outcomes focusing in Brazilian case.

Firstly, it was intended to cover the legal framework.

Concerning to international perspective, the right to nationality is protected by the main universal documents (such as the UDHR, ICCPR and ICESCR, amongst others) and regional ones, for instance the Inter-American Declaration on Human Rights, in the case of American system. Besides that, there are two main International Conventions addressing the specific topic of statelessness: 1954 and 1961 UN Conventions.

Furthermore, it was considered that the national order is very protective and the Brazilian Constitution assures the nationality based on both criteria of "jus soli" and "jus sanguine", what is an important legal measure to prevent statelessness. The biggest setback still is the lack of a specific national law to regulate the identification of stateless persons. However, it was also found that there is a draft law waiting for approval that will present a definition of stateless persons and will regulate, at a national level, specifically the issue of stateless people, their rights, duties and procedure for determination. Therefore, in general, it is possible to affirm that Brazilian national legislation is in accordance with the international framework on statelessness.

After the debate about legal framework, this research approached the international responses to address the statelessness issue.

Regarding this, it concluded that, to proper respond this challenge, the UNHCR developed a four-pillar approach that focus on identification, reduction and prevention of statelessness and protection of stateless persons. This approach, to be successful, request the commitment of all stakeholders, especially States.

Based on that, discussion about statelessness was made through the Brazilian policies to verify how the country is addressing the issue. At this point, the

UNHCR four-pillar approach was taken as paradigm to understand what Brazil is doing to identify and protect stateless persons and prevent and reduce statelessness.

As main results, it was noted that Brazil has developed several actions to deal with the statelessness, even though is not identified as a country with high incidence of statelessness. On one hand, the identification of stateless persons still remains a challenge due to the lack of official procedures and, accordingly, the statistical data of stateless community in Brazil is very rare and imprecise. On the other hand, the country has putting a lots of effort not only to protect (assuring the rights for the daily life and facilitating acquisition of nationality) and integrate stateless persons, but also to address the causes of the problem (mainly those related to documentation) and prevent statelessness.

Lastly, it is showed that Brazil gave a clear demonstration of its commitment with eradicate statelessness when successfully solved the emblematic case “Brasileirinhos Apátridas” and turned 200.000 stateless children in Brazilian citizens.

So, in general, it is possible to conclude that Brazil has played an important role on dealing with statelessness and is working more and more to develop policies in accordance with international standards to overcome this problem not only within its borders, but in a global context.

These mentioned findings provided enough fundaments to answer critically the main research question: “*To what extent Brazilian laws and policies are in compliance with its international commitments on identification, prevention and reduction of statelessness and protection of stateless persons?”* It was concluded that Brazil has been making huge efforts in order to make progress on the issue of statelessness and, overall, its national legal system and policies are in accordance with the general and international approach to cope with this problematic matter.

It is true, however that a plenty of challenges still remains in the country and Brazil still has a long way to fully accomplish its international obligations. Because of this, it is suggested that future researches address the current topic from other perspectives, in order to assess the legal and factual gaps that prevent the country to fully protect and assist individual who already hold this status while also take effective measures to reduce and prevent this problem. Another very interesting point that lack information and need more research is regarding the profile of the

stateless persons living in Brazil and their integration in the society, what is very important to base future country policies specially developed for meet the needs of this vulnerable group.

Regardless the existing challenges and despite of the fact of this long journey ahead, what is worthwhile to emphasize is the fact that Brazil, after all, is committed to overcome the problem of statelessness. What is expected with this initiative? Two main results: firstly, the country be able to develop policies and laws to effectively address the problem within its borders. And secondly that Brazil be able to exercise its influence and spread its sense of solidarity to inspire other States and make them committed with the elimination of statelessness worldwide, because at the end, what is important and necessary to effectively address the statelessness issue is that the international community as a whole recognize and internalize the general understanding that "*Citizenship is man's basic right for it is nothing less than the right to have rights",* as wisely said by Earl Warren.

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