Jornal of Legal Sciences

e-ISSN: 2317-2150

Pensar

Universidade de Fortaleza

10.5020/2317-2150.2025.16831

Statelessness Arising from Gender Discrimination: Attribute of the “Existence” of Personality Rights[1]

Apatridia Oriunda da Discriminação de Gênero: Atributo da “Existência” dos Direitos de Personalidade

Apatridia Originada por la Discriminación de Género: Atributo de la “Existencia” de los Derechos de la Personalidad

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Editorial

Histórico do Artigo
Recebido: 31/05/2024
Aceito: 22/07/2025

Eixo Temático 1: Direito, Democracia e Justiça Social

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Financiamento:
Pesquisa viabilizada por recursos do PROSUP/CAPES – Brasil.

Como citar:
SCIPIONI, Lorenzo Pazini; RIBEIRO, Daniela Menengoti Gonçalves. Apatridia oriunda da discriminação de gênero: atributo da “existência” dos direitos de personalidade. **Pensar – Revista de Ciências Jurídicas**, Fortaleza, v. 30, e16831, 2025. DOI: https://doi.org/10.5020/2317-2150.2025.16831

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Abstract

The object of study of this article is the analysis of the legal institute of statelessness resulting from the impossibility of transmitting nationality through the mother. A stateless person is one who is not considered a national by any State. Nationality is a legal and political bond that unites a person to the State, ensuring individuals the recognition of legal personality and the rights deriving therefrom. The problem this research seeks to address is whether statelessness affects certain groups of people more acutely due to gender-based discrimination. The hypothesis is that the predominance of patriarchal culture has led to the production of laws that treat women unequally with regard to the attribution of the legal bond between the individual and the State. Using deductive reasoning, through a literature review, and adopting a descriptive and exploratory approach, the study confirms the proposed hypothesis and demonstrates that gender discrimination in laws represents a significant part of statelessness situations in various countries around the world.

Keywords: Stateless persons; gender discrimination; personality rights; nationality; recognition of legal personality.

Resumo

O objeto de estudo deste artigo é a análise do instituto jurídico da apatridia em decorrência da impossibilidade de transmissão da nacionalidade pela mãe. Apátrida, designa a pessoa que não é considerada como nacional por nenhum Estado. A nacionalidade é laço jurídico e político que une uma pessoa ao Estado, garantindo aos indivíduos o reconhecimento da personalidade jurídica e dos direitos que dela decorrem. O problema ao qual a pesquisa procura responder é se a apatridia atinge algum grupo de pessoas de forma mais acentuada, em razão da discriminação por motivo de gênero. A hipótese é que o predomínio da cultura patriarcal conduziu a produção de leis que tratam as mulheres de forma desigual no que tange a atribuição do vínculo jurídico entre o indivíduo e o Estado. Ao se valer do raciocínio dedutivo, por meio da revisão de literatura, adotando uma revisão descritiva e exploratória, o estudo confirma a hipótese levantada e demonstra que a discriminação de gênero nas leis representa parte significativa das situações de apatridia em diversos países no mundo.

***Palavras-chave:** Apátridas; discriminação de gênero; direitos da personalidade; nacionalidade; reconhecimento da personalidade jurídica.*

Resumen

El objeto de estudio de este artículo es el análisis del instituto jurídico de la apatridia como consecuencia de la imposibilidad de transmitir la nacionalidad por parte de la madre. Apátrida designa a la persona que no es considerada como nacional por ningún Estado. La nacionalidad es un vínculo jurídico y político que une a una persona con el Estado, garantizando a los individuos el reconocimiento de la personalidad jurídica y de los derechos que de ella se derivan. El problema al que la investigación procura responder es si la apatridia afecta de forma más acentuada a determinados grupos de p*ersonas debido a la discriminación por razón de género. La hipótesis es que el predominio de la cultura patriarcal condujo a la producción de leyes que tratan a las mujeres de manera desigual en lo que respecta a la atribución del vínculo jurídico entre el individuo y el Estado. Recurriendo al razonamiento deductivo, mediante la revisión de la literatura y adoptando una revisión descriptiva y exploratoria, el estudio confirma la hipótesis planteada y demuestra que la discriminación de género en las leyes representa una parte significativa de las situaciones de apatridia en diversos países del mundo.*

***Palabras clave:** Apátridas; discriminación de género; derechos de la personalidad; nacionalidad; reconocimiento de la personalidad jurídica.*

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1 Introduction

The right of every person to have a nationality, along with the prohibition of arbitrary deprivation of nationality and the right to change nationality, are enshrined in the Universal Declaration of Human Rights. The International Covenant on Civil and Political Rights of 1966 also affirms that every individual has the right, everywhere, to recognition as a person before the law. Nationality is thus an attribute of «existence» and recognition of fundamental personal rights. Furthermore, it plays a role in the formation and development of human personality

Broadly defined, nationality is a legal and political bond that unites a person to a State, formalized through recognition of legal personality. More precisely, it is also a sociological and political link. Hence, the term nationality denotes the legal connection between a person and a State, while citizenship refers to the rights and duties arising from that connection.

People generally acquire nationality automatically at birth, either through their parents (jus sanguinis) or the country of birth (jus soli). However, this is not the reality for many stateless individuals, «persons without a country.»

The International legal definition of «stateless» designates a person who is not considered a national by any State. Conversely, terms such as dual nationality, polynationality, or multiple nationality refer to positive nationality concurrence. Statelessness arises when both jus sanguinis and jus soli criteria fail to confer nationality.

Currently, thousands of individuals without nationality struggle for basic human rights. Denial of legal identity at birth due to legal anomalies leads to lifelong impacts, limited access to education, healthcare, family life, employment opportunities, and more. The lack of legal identity violates the moral integrity of the individual and, consequently, their personality.

Statelessness entails deprivation of nationality and legal personality and leads to clear discrimination, excluding such individuals from enjoying civil, political, social, and economic rights. This condition can persist for life, affect future generations, and even deny individuals the dignity of an official burial or death certificate.

This plight becomes more severe when gender discrimination is embedded in national laws. Women may be prevented not only from acquiring nationality themselves but also from transmitting it to their children. These situations are inhumane and affect all aspects of a child’s life.

The central question of this study is whether statelessness disproportionately affects specific groups due to gender-based discrimination. The hypothesis is that patriarchal cultural dominance has resulted in laws treating women unequally in establishing legal bonds with the State.

Accordingly, the article examines the legal concepts of nationality, citizenship, and statelessness, then explores gender discrimination in nationality law and its implications for legal personality. It further analyzes the contributing factors to statelessness, emphasizing how national laws reflect and perpetuate gender discrimination. The gender and intersectionality perspective serves as a methodological tool to reveal gender bias and interpret laws that, though ostensibly neutral, perpetuate discrimination.

Finally, the article evaluates international commitments to eradicate statelessness and assesses Brazil’s engagement. Methodologically, it adopts deductive reasoning with descriptive and exploratory literature review.

2 Citizenship and Nationality: The Influence of the Nation-State

Etymologically, the term «citizenship» originates from Greco-Roman antiquity as an institution intended to define the boundaries of politics by determining who belonged[2] to and who was excluded from the civic body. This is what is now referred to as nationality, as both terms were once expressed by the same word: the Greek politeia derived from polites (citizen), itself from polis (city), and the Latin civitas, which had a collective meaning (city).

However, it was in the modern nation-state model that a new form of legal and political organization emerged, consolidating the definition of nationals. Following the intellectual and philosophical movement of the Enlightenment (1715–1789) and the French Revolution (1789–1799), efforts were made to realize the ideal of freeing the individual from absolutist political power.

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[2] In addition to the feeling of belonging, citizenship refers to participation. In Politics, Aristotle (2007) attempts to define “pure citizenship”. In addition to land rights and participation in common rights, citizens must participate in political life; they are the ones who have the capacity to participate in deliberative and judicial power.

In modern society, the nation-state became the reference point for legal recognition and the exercise of rights, serving as a politico-legal model for articulating and regulating individual power within the community, encapsulated in the idea of sovereignty and its attributes of nationality and citizenship (Klein Junior; Olsson, 2020, p. 124).

During the French Revolution – from the first meeting of the Constituent Assembly in 1789 to Napoleon Bonaparte’s rise to power in 1799 – the bourgeoisie advocated for the integral régénération of man, society, the State, and the prevailing judicial system (Facchini Neto, 2013, pp. 64–65).

Amid efforts to finalize the Civil Code project, Napoleon Bonaparte seized power. He recognized the importance of the debate and the interest of jurists across Europe in codifying private law. He aimed to guarantee civil liberties to citizens as compensation for the political restrictions of his regime. Thus, he relied on previous initiatives and dedicated himself to the project that culminated in the approval, in March 1804, of the Code Civil des Français, later renamed the Code Napoléon.

The French Code was not the work of an enlightened despot, but rather of the revolutionary bourgeoisie, who aimed to build a society based on the principles of equality and liberty for citizens (Facchini Neto, 2013, p. 68). Article 7 proclaimed that «[t]he exercise of civil rights is independent of the status of citizen, which is acquired and retained only in accordance with constitutional law»[3] (Assemblée Nationale, 1804). Thus, the enjoyment of civil rights was granted to all men as such, in respect of the equality principle set out in the 1789 Declaration of the Rights of Man and Citizen[4].

Within the widespread European interest in codifying private law, the principle of nationality stood out, notably through the work of the Italian politician and jurist Pasquale Stanislao Mancini (1817–1888), a pioneer in the emerging science of international law in the 19th century.

Mancini argued that the «Nation» should be the primary actor in international law, as it was the true subject of the international order – real and permanent – created by history rather than by politics, as the State would be. This idea upholds nationality as the individual’s link to the Nation and their subjection to national law in most relevant legal situations, particularly regarding personal status (Moura, 2018, pp. 198 ff.). The term «personal status» refers to capacity, personality rights, family relations, and succession matters.

Based on Nations, Mancini developed the idea that nationality – encompassing elements such as region, race, language, customs, history, laws, and religions – should be activated by a vital spirit, a psychological element that constitutes national consciousness, allowing individuals living in the same territory, with common customs and language, to recognize each other as fellow citizens.

According to Mancini, the defining features of nationality are civil rights, granted to all men as such, in accordance with the principle of equality. Voting rights and political participation, he argued, are not essential to citizenship, as they are insufficient to define and distinguish one people from another (Moura, 2018, p. 201).

Thus, influenced by the Code Napoléon and Mancini’s theory, citizenship was conceived as a principle of nationality and governed all legal relations concerning the individual’s personal status. This reflects the semantic shifts in the meanings of citizenship and nationality over time, revealing how their definitions often overlap. This is likely why many countries have adopted the terms nationality and citizenship inconsistently, diverging from the contemporary legal doctrine that seeks to harmonize these concepts.

Some countries adopt the term nationality in closer alignment with the sociological notion of Nation, such as Spain (nacionalidad) (Spain, 2022) and France (nationalité) (France, 1958). In contrast, in Italy, the term used in both legal and doctrinal contexts is citizenship (cittadinanza) (Italy, 1992), meaning that an Italian citizen recognizes the legal system and complies with political and civil duties.

In Brazil, there is a clear distinction between the legal institutes of citizenship and nationality. Nationality refers to being a member of the Brazilian State. Citizenship, on the other hand, pertains to nationals who exercise political rights, enabling them to engage in public affairs either directly (through voting) or indirectly (by running for public office)[5].

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[3] In the original: “*L’exercice des droits civils est indépendant de la qualité de Citoyen, laquelle ne s’acquiert et ne conserve que conformément à la loi constitutionnelle*”. The new version of the article came into force in 1994, changing to the following text: “*L’exercice des droits civils est indépendant de l’exercice des droits politiques, lesquels s’acquièrent et se conservent conformément aux lois constitutionnelles et électorales*” (Legifrance, 1994).

[4] The *Déclaration des Droits de l›Homme et du Citoyen* is a document that resulted from the French Revolution and that defines the individual and collective rights of men as universal. The expression “men” is understood, theoretically, in the sense of “human beings”.

[5] In Brazil, political rights, an expression of citizenship, are regulated by the Federal Constitution in article 14, which establishes participation in national politics.

Contemporary legal doctrine conceives nationality as the legal bond between individuals and a society, arising from legal frameworks established by the State for its acquisition. Hence, nationality is a legal-political matter of domestic public law, guided by the State's and individuals' legitimate interests, within the bounds established by international law, which complements domestic law to avoid statelessness or dual nationality.

Nationality is closely tied to the sociological concept of Nation, which gained prominence during the French Revolution and came to symbolize the people as a homogeneous unit.

According to Alain Pellet, Nguyen Quoc Dinh, and Patrick Daillier (2003, p. 505), the affirmation of nationality is justified by two reasons. First, as one of the classical political foundations of the principle of self-determination - the nationality principle allows a group to make the initial choice within the framework of an emerging State; and second, to support the recognition of the right to nationality as a fundamental human right.

Citizenship presupposes nationality, meaning that to possess political rights, one must be a national. Citizenship can be seen both as a status and as a legal relationship between the citizen and the State. It comprises a set of rights that allow a person to participate in the life and governance of their community. According to Dalmo Dallari (1998, p. 14), "[t]hose without citizenship are marginalized or excluded from social life and decision-making, relegated to an inferior position within society."

For Hannah Arendt, human rights presuppose citizenship as a foundational principle, since deprivation of political status undermines the human condition. She highlights the ineffectiveness of classical human rights in addressing statelessness: "a man may lose all so-called Rights of Man without losing his essential quality as a man, his human dignity. Only the loss of a community expels him from humanity" (Arendt, 2004, p. 331).

3 The Power of States to Determine Their Nationals

According to the principle of exclusive competence, it is the sovereign prerogative of States to regulate, at their discretion, the attribution, suspension, and loss of nationality. This principle is firmly rooted in both international practice and legal instruments, including jurisprudence and conventions.

In 1930, a convention and three protocols on nationality were signed in The Hague. These included: the Convention on Certain Questions Relating to the Conflict of Nationality Laws; the Protocol on Military Obligations in Certain Cases of Dual Nationality; the Protocol Relating to a Case of Statelessness; and the Special Protocol Concerning Statelessness (Brazil, 1932). [6]

According to Articles 1 to 3 of the 1930 Hague Convention, each State shall determine under its own law who are its nationals; 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; and, unless otherwise provided in the Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses (Brazil, 1932).

In the realm of international jurisprudence on nationality, the notable Nottebohm case, decided by the International Court of Justice (ICJ) on April 6, 1955, affirmed that it is within the sovereign power of States to regulate, through their domestic law, the acquisition of nationality: «It is for Liechtenstein, as for any other sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality […]. International law leaves it to each State to lay down the rules governing the grant of its nationality»[7] (ICJ, 1955, p. 20, free translation).

At the same time, the ICJ emphasized that nationality serves primarily to determine that the individual granted such status enjoys the rights and is bound by the obligations imposed by the State's laws on its nationals. This is implicitly contained in the broader notion that nationality is an integral part of a State's competence[8] (ICJ, 1955, p. 20, free translation).

The Court also noted that nationality is a legal bond based on a factual connection, an effective solidarity of existence, interests, and sentiments, coupled with a reciprocity of rights and duties. It is the legal expression of the

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[6] In Brazil, Decree No. 21,798, of September 6, 1932, promulgated the convention and three protocols on nationality, signed in The Hague, on April 12, 1930, with reservations regarding articles 5, 6, 7, 16 and 17, which Brazil will not adopt, as they conflict with basic principles of its internal legislation.

[7] In the original: "*Il appartient au Liechtenstein comme à tout État souverain de régler par sa propre législation l'acquisition de sa nationalité* […]. *Il n'y a pas lieu de déterminer si le droit international apporte quelques limits à la liberté de ses décisions dans ce domaine*."

[8] No original: "*D'autre part, la nationalité a ses effets les plus immédiats, les plus étendus et, pour la, plupart des personnes, ses seuls effets dans l'ordre juridique de 1'Etat qui l'a conférée. La nationalité sert avant tout à déterminer que celui à qui elle est conférée jouit des droits et est tenu des obligations que la législation de cet État accorde ou impose à ses nationaux. Cela est implicitement contenu dans la notion plus large selon laquelle la nationalité rentre dans la compétence nationale de l'État*."

fact that the individual concerned, whether by law or administrative act, is more closely linked to the population of the granting State than to that of any other[9] (ICJ, 1955, p. 23, free translation).

4 Statelessness: The (Dis)regard of the Individual by the State

The nation-state has proven decisive in defining the criteria and attributions of nationality. Countries generally adopt similar standards to determine their nationals, seeking substantial evidence of the individual's connection to the State. Although rules vary due to the discretionary power States enjoy in these matters, certain fundamental features are recognized by legal scholars as admissibility criteria for nationality (Daltro, 2022, p. 210).

Original nationality, that is, nationality acquired by birth, a non-voluntary act imposed upon each citizen without requiring individual initiative, can also be distinguished from acquired nationality, which results from the individual's deliberate choice within the legal framework established by national law, such as naturalization.

For the acquisition of original nationality, three systems may be adopted by domestic legislation: jus sanguinis («right of blood»), where nationality is conferred through descent; jus soli («right of soil»), where nationality is based on the territory of birth; and the mixed system, which accepts both criteria.

The jus sanguinis criterion is typically adopted by countries with significant emigration histories, aiming to preserve their national identity. Conversely, jus soli is usually employed by developing countries seeking to build new communities through settlement, granting nationality to all born within their territories, even to children of foreign parents.

Derived or secondary nationality is acquired through naturalization, defined as the act by which someone becomes a national of another country. This frequently results from marriage to a national or long-term residence in a State other than the State of origin.

Although the Nottebohm case affirmed that nationality matters should be resolved within States' domestic jurisdictions, these rights are nevertheless limited by international law, which primarily serves State interests. Nationality conflicts were not avoided, as international law recognized both jus sanguinis and jus soli as valid bases for nationality acquisition by birth, making dual nationality common. However, statelessness was not prevented, leaving many individuals unable to claim any nationality and thereby lacking protection from any State (Klein Junior; Olsson, 2020, p. 124).

The international legal definition of a «stateless person»[10] is provided by the 1954 Convention Relating to the Status of Stateless Persons, designating someone who is not considered a national by any State under its laws (Brazil, 2002a). In other words, such individuals have no active nationality. Some are born stateless, others become stateless, but not all stateless persons are refugees.

The main difference between statelessness and refugee status lies in the absence of a nationality bond for the former. Refugees[11], on the other hand, do possess nationality and are recognized as rights-bearing citizens of their country of origin, but due to a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, cannot remain in their country and thus migrate elsewhere.

Legal literature distinguishes two categories of stateless persons: de jure and de facto. De jure stateless individuals are not considered nationals by any State. De facto stateless persons, however, may formally hold a nationality but do not enjoy protection from that State, either because they refuse to request such protection or because the State fails to provide it (IOM, 2009, pp. 8–9).

4.1 Factors Giving Rise to Statelessness

German-Jewish political philosopher Hannah Arendt, who devoted part of her work to analyzing the phenomenon of statelessness, personally experienced the deprivation of rights and persecution in Nazi Germany and lived as

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9 In the original: "[...] *the nationality is a lien juridique ayant à sa base un fait social de rattachement, une solidarité effective d'existence, d'intérêts, de sentiments jointe à une réciprocité de droits et de devoirs. Elle est, peut-on dire, l'expression juridique du fait que l'individual auquel elle est conférée, soit directement par la loi, soit par un acte de l'autorité, est, en fait, plus étroitement rattaché à la population de l'Etat qui la lui confère qu'à celle de tout autre État."*

10 The Convention was enacted in Brazil by Decree No. 4.246 of May 22, 2002.

11 The Statute of Refugees (also called the 1951 UN Refugee Convention) was adopted on July 28, 1951, by the United Nations (UN). It defines who a refugee is and clarifies the rights and duties between refugees and the countries that host them, with the States being responsible for defining by law the procedure for requesting asylum. According to the 1951 Convention, refugees are people who are outside their country due to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a social group, and who are unable (or unwilling) to return home (BRAZIL, 1961). Currently, however, broader definitions are adopted, considering refugees as people forced to leave their country due to armed conflicts, widespread violence and massive violation of human rights.

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a stateless person during her early years of exile in the United States. According to her, the unique situation of stateless persons does not result from inequality before the law, but from the absence of laws applicable to them (Arendt, 2004, p. 335).

Arendt (2004) emphasized that internal upheavals in the newly established nation-states of 20th-century Europe triggered widespread violations of the rights of stateless persons, leading minority groups to conclude that there were no human rights for those without nationality.

Unfortunately, the current situation remains troubling. According to the United Nations High Commissioner for Refugees (UNHCR)[12], one or more of the following factors may give rise to statelessness (UNHCR, 2021).

The first factor is discrimination based on race, ethnicity, religion, language, or gender. States may also prevent citizens from acquiring nationality through discriminatory legal reforms. Gender discrimination, for example, prevents women from transmitting nationality on an equal basis with men. As a result, children may be left stateless when their parents are stateless, unknown, missing, or deceased.

The second factor is gaps in nationality laws. Each country has its own laws that establish the circumstances under which nationality is acquired. If these laws are poorly designed or inadequately implemented, they may leave individuals stateless[13].

A third factor occurs when people move away from the country of their birth. Conflicts between nationality laws may then generate a risk of statelessness. For example, a child born in a foreign country may become stateless if that country does not grant nationality based solely on birth on its soil and the country of origin does not permit a parent to transmit nationality to children born abroad.

Another major cause is the emergence of new states and changes in nationality laws following border shifts. In many cases, specific groups may be left stateless, and even when new countries permit general access to nationality, ethnic, racial, or religious minorities may struggle to prove their connection to the state.

The fifth factor relates to loss or deprivation of nationality. In some countries, citizens may lose their nationality for living abroad for extended periods. More severe cases involve mass denationalization. For instance, a 2013 court decision in the Dominican Republic stripped thousands of Dominicans of Haitian descent of their nationality, on the pretext that their ancestors were irregular migrants (Ribeiro; Silva, 2017).

Finally, individuals may become stateless if they cannot prove their legal ties to a State. Being undocumented is not the same as being stateless; however, lack of birth registration can place individuals at risk of statelessness, as a birth certificate provides evidence of place of birth and parentage, critical information for determining nationality.

Despite international guarantees of the right to a nationality, including the prohibition of arbitrary deprivation and the right to change nationality, as established in Article 15 of the Universal Declaration of Human Rights (UN Human Rights, 1948), and the right to legal recognition as a person everywhere under Article 16 of the 1966 International Covenant on Civil and Political Rights (Brazil, 1992), statelessness remains a grave but often overlooked issue.

Today, thousands of stateless individuals continue to struggle for basic human rights. As George Orwell (2009) once suggested, a stateless person takes on the role of a «nonperson,» which is something different from death.

Most known stateless populations belong to minority groups. According to UNHCR, at least 4.2 million people globally live without any nationality (ISI, 2020, p. 1). The ten countries[14] with the largest stateless populations accounted for over 87% of the global stateless population in 2019. Côte d'Ivoire currently has the world's largest stateless population, where women and children are disproportionately affected. Children, for instance, represent 54% of stateless individuals identified, though they make up only 48% of Côte d'Ivoire's total population (ISI, 2020, p. 3).

In response, the UNHCR launched the #IBelong Campaign on November 4, 2014, along with the Global Action Plan to End Statelessness: 2014–2024. Developed in consultation with States, civil society, and international organizations, the Action Plan provides a strategic framework of ten actions for States to implement over ten years

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[12] UNHCR, the United Nations High Commissioner for Refugees or UN Refugee Agency (UNHCR) is a UN agency that works to ensure and protect the rights of people in refugee situations around the world.

[13] The *ius solis* criteria is, as a rule, the one adopted in art. 12, I, "a" of the Federal Constitution (CF). Thus, any person born in Brazilian territory, even if the child is a child of foreign parents, will be considered Brazilian. Foreign parents, however, cannot be in the service of their country. Until mid-2007, there was a gap in the legislation that led to children of Brazilians born abroad in a country that adopted the ius sanguinis criterion – without the parents being in the service of the Federative Republic – being deprived of their original Brazilian nationality. With Constitutional Amendment No. 54/2007, original nationality was granted to those born abroad to a Brazilian father or mother, if they are registered with the competent Brazilian office, in accordance with art. 12, I, "c", first part of the CF (Brazil, 1988).

[14] They are: Ivory Coast, Bangladesh, Myanmar, Thailand, Latvia, Syria, Malaysia, Uzbekistan, Kuwait and Estonia (ISI, 2020, p. 3).

to eradicate statelessness. These include resolving existing statelessness situations, preventing new cases from arising, and improving identification and protection of stateless individuals (UNHCR, 2020).

5 Statelessness Exacerbated by Gender Discrimination: A Maternal Legacy

Gender studies can make important contributions to understanding contemporary migratory movements. Although women often migrate with family groups, many also migrate alone in pursuit of autonomy or to escape limited opportunities and discrimination in their places of origin (Assis, 2007, p. 24).

International migration during the second half of the 19th century and throughout the 20th century was marked by ethnic, class, and gender diversity, as individuals from different backgrounds moved around the globe in search of new opportunities (Assis; Kosminsky, 2007). In this context, the category «gender» has been incorporated into migration analysis, offering a more accurate picture of women’s increasing participation in migratory processes, and highlighting a significant cause of childhood statelessness.

Gender discrimination in nationality laws is a major contributor to childhood statelessness, as legislation in certain countries denies women the right to confer nationality to their children on equal terms with men.

Gender discrimination refers to distinctions, exclusions, or restrictions based on sex that impair or nullify women’s rights in various areas, including politics, fundamental freedoms, and culture (UN, 1997).

When women are prevented by discriminatory laws from passing on their nationality, and when the child cannot acquire the father’s nationality, statelessness may result. This may happen when the father is stateless, unknown, missing, or unwilling or unable to fulfill administrative requirements to pass on his nationality or obtain the necessary documents.

Stateless children excluded from nationality face restricted access to basic rights such as education and healthcare, are exposed to lifelong discrimination, and may be at greater risk of violence, abuse, and trafficking.

Additionally, gender-based discrimination as a cause of statelessness often arises in the context of marriage. In some States, women lose their nationality upon marriage (Daltro, 2022, p. 216).

According to UNHCR, some States automatically alter a woman’s nationality upon her marriage to a foreigner. A woman may become stateless if she does not automatically acquire her husband’s nationality or if her husband has no nationality (UNHCR, 2014, p. 39).

When children are born out of wedlock, the risk of statelessness increases further in some countries, which impose legal restrictions on single mothers and/or fathers in terms of nationality transmission.

It is incorrect to assume that statelessness does not occur in developed countries. In the Netherlands, for example, new legal regulations introduced in 2003 concerning the legal paternity of children born out of wedlock had dramatic consequences for children of mixed relationships, a Dutch father and a foreign mother. In such cases, the father was required to officially declare the fetus as his child.

Statelessness may also occur when a woman loses her original nationality upon marrying a foreigner but does not acquire her husband’s nationality, or if he has none. Conversely, she may lose a nationality acquired through marriage upon divorce or even her husband’s death. Even when civil status does not automatically alter a woman’s nationality, she may request her husband’s nationality under laws that may themselves cause problems (UNHCR, 2012, p. 24).

Through the Global Action Plan, UNHCR established a starting point and goals to measure progress toward ending statelessness. In 2013, 27 States had nationality laws that prevented women from granting nationality to their children on equal terms with men. More than 60 States had laws that denied equal rights to women and men to acquire, change, or retain their nationality (UNHCR, 2020, p. 14).

By 2017, 10 States had reformed their nationality laws to allow women to confer nationality to their children equally. Another 20 States had amended their laws to enable women to acquire, change, and retain their nationality on equal terms with men (UNHCR, 2020, p. 14).

By 2020, an additional 10 States (20 in total since 2014) had reformed their laws to enable women to pass nationality to their children on equal terms with men. Additionally, another 20 States (40 in total since 2014) reformed their laws to allow women to acquire, change, and retain nationality equally (UNHCR, 2020, p. 14).

UNHCR and the United Nations International Children's Emergency Fund (UNICEF)[15] jointly published the report «Gender Discrimination and Childhood Statelessness» in 2019, noting that 25 countries still maintained laws denying women the right to pass on nationality to their children on equal terms with men, while three countries also had laws denying fathers the right to confer nationality to children born outside legal marriage (UNHCR; UNICEF, 2019).

According to that report (UNHCR; UNICEF, 2019, p. 7):

a) Countries whose laws completely or with limited exceptions deny mothers the right to confer nationality to their children include: Brunei Darussalam, Eswatini, Iran, Kuwait, Lebanon, Qatar, and Somalia.

b) Countries whose laws deny equal nationality rights to mothers but have limited safeguards against statelessness include: Bahrain, Burundi, Iraq, Jordan, Kiribati, Liberia, Libya, Nepal, Oman, Saudi Arabia, Sudan, Syria, Togo, and the United Arab Emirates.

c) Countries whose laws deny equal rights to both mothers and fathers to confer nationality to children born out of legal marriage include: The Bahamas, Barbados, and Malaysia.

d) Mauritania is also noted, where laws deny mothers equal rights to confer nationality, but the risk of statelessness is limited to specific circumstances.

These laws violate Article 9(2) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the principal UN instrument addressing gender-based discrimination and affirming gender equality as a structural principle.

A gender and intersectional perspective not only helps to identify gender biases but also highlights seemingly neutral rules that, when applied, perpetuate discrimination against women. Given that these groups are historically marginalized, special attention must be paid to the adequate protection of their rights (Silva, 2022, p. 82).

According to Glorimar León Silva (2022, p. 70), the provisions of CEDAW, its Committee's recommendations, and those from other specialized bodies form a relevant legal framework with three key proposals: ensuring full legal equality for women, improving their actual status, and challenging gender stereotypes. CEDAW also calls upon State Parties to take all appropriate measures to ensure women's right to participate fully in all aspects of cultural life.

States that deny women the same rights as men to acquire, change, or retain nationality also violate Article 9(1) of the Convention[16] and the International Covenant on Civil and Political Rights[17]. These instruments constitute binding sources of law with legal status equivalent to civil and political rights.

Hence, examining women's migratory flows not only acknowledges their proportional importance or economic and social contributions but also reveals how gendered identities and discourses shape migratory processes and perpetuate inequalities.

6 Final Considerations

The research aimed to answer whether statelessness disproportionately affects specific groups due to gender-based discrimination. The literature review confirmed the initial hypothesis, showing that gender discrimination in nationality laws is a major cause of statelessness in various territories.

Statelessness remains a recurring issue worldwide, though it gained renewed attention with the #IBelong campaign. The right to nationality, however, has been internationally recognized since the 1948 Universal Declaration of Human Rights, with each State responsible for determining the rules of citizenship.

The analysis demonstrated that gender discrimination in nationality laws significantly contributes to childhood statelessness, particularly where legal systems deny women the ability to transmit nationality on equal terms with men. This reflects the influence of patriarchal culture in producing legal norms that treat women unequally in determining the legal bond between the individual and the State.

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15 The United Nations International Children's Emergency Fund (UNICEF) is a United Nations agency that aims to promote the defense of children's rights.

16 "Article 9 (1) States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure, in particular, that neither marriage to a foreigner nor the change of nationality of the husband during marriage shall automatically change the nationality of the wife, render her stateless or oblige her to adopt the nationality of her spouse. (2) States Parties shall grant women the same rights as men with respect to the nationality of their children" (Brazil, 2002b).

17 "Article 24 1. Every child shall have the right, without any discrimination as to colour, sex, language, religion, national or social origin, economic status or birth, to the measures of protection which his or her status as a minor requires from his or her family, society and the State. 2. Every child shall be registered immediately after birth and shall be given a name. 3. Every child shall have the right to acquire a nationality [...] Article 26 All persons are equal before the law and are entitled, without any discrimination, to equal protection of the law. In this regard, the law shall prohibit any form of discrimination and shall guarantee to all persons equal and effective protection against any discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other status" (Brazil, 1992).

Discrimination should not be viewed as an essential element in acquiring stateless status but rather as a recurring factor in most cases. Gender-based discrimination increases the vulnerability of women and their descendants to statelessness.

Such discrimination is especially visible in marital and divorce contexts where women may lose their nationality due to changes in civil status. Additionally, when legal systems prevent women from transmitting nationality to their children, this can create intergenerational cycles of statelessness and rights deprivation.

By denying individuals, especially women and their children, the right to legal identity due to «legal anomalies,» States subject them to the deprivation of fundamental human rights, such as education, healthcare, and the right to form a family. This lack of recognition ultimately violates the individual's psychological integrity and their personality.

The right to nationality is a human right and an intrinsic part of personality rights. Its recognition is not merely abstract; it is a prerequisite for the effective realization of all other rights guaranteed by the State.

While UNHCR, other agencies, regional organizations, civil society, and stateless persons themselves play crucial roles, legal reforms are urgently needed to eliminate gender-based restrictions that prevent women from passing nationality to their children on equal terms with men. These reforms can be applied retroactively to ensure that individuals rendered stateless under discriminatory laws can acquire nationality.

Eliminating gender discrimination in the ability to acquire, change, or retain nationality is essential to protect future generations from statelessness and from the existential void of being born without legal recognition anywhere.

Thus, it is incumbent upon States to implement legal and policy reforms to address statelessness effectively. Expanding the application of the jus sanguinis criterion can mitigate the occurrence of such situations. At the same time, the sovereign discretion of States in matters of nationality must be constrained by international treaty obligations, customary international law, and general principles of law.

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