

Mapping **STATELESSNESS** in Portugal

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ABBREVIATIONS

ACM	High Commission for Migration Alto Comissariado para as Migrações
CEDAW	Convention on the Elimination of Discrimination Against Women
CEPAC	Centro Padre Alves Correia
CERD	Convention on the Elimination of Racial Discrimination
CIT	Temporary Installation Centre Centro de Instalação Temporária
CPR	Portuguese Refugee Council Conselho Português para os Refugiados
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
CTD	Convention Travel Document
ECHR	European Convention on Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ISS	Institute of Social Security Instituto da Segurança Social
JRS	Jesuit Refugee Service
NISS	Social Security Identification Number Número de Identificação da Segurança Social
SEF	Immigration and Borders Service Serviço de Estrangeiros e Fronteiras
SCML	Santa Casa da Misericórdia de Lisboa
SDP	Statelessness Determination Procedure
SNS	National Health Service Serviço Nacional de Saúde
RIFA	Relatório de Imigração, Fronteiras e Asilo
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

Portugal is party to the major international and regional treaties relevant to statelessness. In particular, Portugal ratified the 1954 Convention relating to the Status of Stateless Persons¹ (1954 Convention) and the 1961 Convention on the Reduction of Statelessness² (1961 Convention) in 2012.³ This brings with it an international commitment to prevent and reduce statelessness and to identify and protect stateless persons. While Portuguese legislation and the implementing administrative procedures comply, in many aspects, with these international standards, room for improvement remains, particularly regarding identification.

Portuguese law does not contain an explicit definition of a stateless person. Nonetheless, the Portuguese legal system is a monist one, which means that the definition contained in the 1954 Convention is incorporated into domestic legislation. There may be space, however, to further ensure that the concept of statelessness and its implications are well understood by entities with competence to interpret and apply the law.

Although the Migrant Integration Policy Index of 2015 scored the Portuguese nationality regime as “favourable,” it is possible to encounter cases that fall through the cracks of this regime. These cases sometimes occur for reasons less related to substantive law than to its operationalization through the procedural rules related to acquisition of Portuguese nationality, and their assessment by administrative authorities. During this mapping cases of persons who are or may be stateless were found among: irregular migrants without any identification documents from their country of origin; children born in Portugal to foreign parents with an irregular presence in the country; children born to Portuguese citizens abroad whose parents failed to register them; and stateless asylum-seekers.

Portugal does not have a dedicated statelessness determination procedure, which may explain the limited identification of cases. In Portugal, stateless persons may be encountered by citizenship authorities during processes of acquisition of Portuguese nationality, as well as by the Portuguese Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras*, SEF), which is responsible for asylum and other immigration procedures. In particular, the stateless status is acknowledged (but not scrutinized) as part of the identity assessment made during asylum procedures if a spontaneous asylum-seeker claims to be stateless or when the asylum-seeker was previously listed as stateless during registration in the relocation programme (in either Italy or Greece). Stateless persons may also be encountered by SEF in processes of granting of residence permits, in case such status has been pre-determined elsewhere. As SEF is not equipped to inquire into potential cases of statelessness, it registers unclear situations as “nationality unknown.”

¹ UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, UNTS, Vol. 360, p. 117, available at: <http://www.refworld.org/docid/3ae6b3840.html>.

² UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, UNTS, Vol. 989, p. 175, available at: <http://www.refworld.org/docid/3ae6b39620.html>.

³ By Presidential decrees N. 134/2012 and N. 133/2012, of 7 August, published in *Diário da República*, I Série, N. 152.

During the study, the Central Registry Office and SEF were seen to lack clear and consistent registration guidance and practice with regard to statelessness. These factors, combined with imprecise assessments of individual cases, mean that potential cases of statelessness are not adequately identified and addressed. This situation poses challenges for the identification and protection of stateless persons in Portugal.

As a result, available statistics on the stateless population in Portugal are quite limited. They solely refer to stateless persons who have been encountered by SEF in asylum or other immigration procedures (who claim to have, or were registered elsewhere as having, stateless status), as well as to those who have acquired Portuguese nationality via rarely used normative provisions specifically aimed at avoiding statelessness. For instance, there are no statistics on the number of irregular and unregistered stateless persons. In addition, individuals who have been erroneously registered with a certain nationality do not appear in statelessness-related statistics even though they may be stateless. In this context, it is difficult to estimate the number of stateless persons in Portugal.

There is a general lack of awareness about statelessness in Portugal, ranging from Government authorities to civil society organizations dealing with immigration matters. Consequently, the opportunity is lost to adequately address the particularities of the phenomenon, and ultimately provide the necessary protection to stateless persons in Portugal. While granting stateless persons access to a nationality is the sole solution to their plight, ensuring, in the interim, that their status is recognized – and that they are granted a residence permit on the basis of their stateless status – constitutes the most adequate means for them to effectively benefit from the human rights protection regime.

1. Introduction

In November 2014, the United Nations High Commissioner for Refugees (UNHCR) launched a Global Campaign to End Statelessness in 10 Years. The strategy for the campaign is set out in a Global Action Plan,⁴ which contains a guiding framework of ten actions to be undertaken by States, with a view to ending statelessness. States are encouraged to adopt National Action Plans including all actions deemed necessary to end statelessness in their own national contexts.

As part of this campaign, UNHCR has conducted numerous statelessness mappings, including over 10 mappings and studies in Europe since 2011.⁵ The mapping in Portugal was conducted by a UNHCR consultant, Dr. Ana Sofia Barros. The Portuguese Refugee Council (CPR), UNHCR's partner in Portugal, also contributed substantively to this project. UNHCR is very grateful for all the cooperation extended and for the valuable input, feedback, and comments received throughout its consultation processes from Portuguese authorities, organizations, frontline social workers, lawyers and academics, who are all listed in Annex I. UNHCR would also like to particularly thank the stakeholders who attended a consultation on 8 June 2018. This meeting aimed to discuss the mapping's findings and recommendations and was attended by the Office of the Secretary of State for Citizenship and Equality and the High Commission for Migration (who hosted the event), the Ministry of Internal Administration, the Ministry of Justice, the Central Registry Office, the Immigration and Borders Service (SEF), the Portuguese Ombudsperson, and CPR.

The information gathered and discussions raised throughout the mapping aim at developing a better understanding among stakeholders of the situation of stateless persons in Portugal. Particular attention is paid to the extent to which international standards are implemented in Portuguese law and practice. UNHCR thus hopes that the report will contribute to the ongoing dialogue between UNHCR, the Portuguese Government, civil society, stateless persons, and other relevant actors on steps that may need to be taken at national level to bring the country's national legal framework, institutional capacities, and administrative practices fully in line with international standards. Moreover, UNHCR hopes that the report can serve as a starting point for the development of a National Action Plan to end statelessness in Portugal.

⁴ See: UNHCR, *Global Action Plan to End Statelessness: 2014 – 2024*, available at: <https://bit.ly/2nr6xpl> (UNHCR Global Action Plan).

⁵ Including in Belgium, Estonia, Finland, Iceland, Lithuania, Malta, the Netherlands, Norway, Sweden, the United Kingdom, and others. For more detailed information, please see refworld.org.

1.1 Chapter Outline

The mapping study is divided into five chapters. In this introductory chapter, key definitions are presented and the methodology used for the investigation is described. Chapter 2 provides an overview of statelessness around the world, its causes and consequences, and elaborates on the responsibility of UNHCR towards stateless persons. Chapter 3 describes the Portuguese legal regime in relation to statelessness and analyses whether it complies with Portugal's obligations under the 1954 and 1961 Conventions. This is followed by a demographic inquiry into the dimension of statelessness in Portugal and the country's population registration practice, as contained in Chapter 4. The latter chapter highlights as well the challenges faced by stateless persons in accessing human rights and makes the case for the establishment of a statelessness determination procedure (SDP) in Portugal. The final chapter sets out the conclusions of the investigation and puts forward a set of recommendations to Portuguese authorities.

1.2 Definitions and Scope

Article 1(1) of the 1954 Convention defines a "stateless person" as someone "who is not considered as a national by any State under the operation of its law." The term "national" refers to a formal bond between the State and the individual, the contours of which are defined in domestic law, under certain limitations imposed by international law. "Domestic law" is to be understood broadly, so as to encompass not only "legislation, but also ministerial decrees, regulations, orders, judicial case law ... and, where appropriate, customary practice."⁶

Establishing whether an individual is considered a national of a State requires an analysis of both the State's legislation, as well as its application to an individual's case.⁷ This report will thus pay particular attention to authorities' judgments in applying nationality rules, and the terms in which they use their discretionary power (whenever it is legally granted), as these elements are important for understanding how nationality matters are treated in Portugal. A person's nationality must be assessed at the time of determination of eligibility under the 1954 Convention. In other words, the question to be answered is whether, at the point of making an Article 1(1) determination, the individual is a national of the country(ies) with which he or she holds relevant links. This means that an individual who could potentially acquire the nationality of a given State, or who is partway through a process of acquiring nationality that is yet to be completed, cannot be considered as a national for the purposes of Article 1(1).⁸

This mapping report does not cover only officially recognized stateless persons. In the absence of a SDP in Portugal, the report also addresses cases of persons who may be stateless and who are at risk of statelessness. The latter concept includes those who have difficulties proving that they have relevant links to a State. For instance, persons who lack a birth certificate, especially in the migration context, may fall into this category.⁹ Persons of "undetermined nationality" are also part of

⁶ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, para. 22, ("Handbook on Protection of Stateless Persons"), available at: <http://www.refworld.org/docid/53b676aa4.html>.

⁷ *Ibid.*, para. 23.

⁸ *Ibid.*, para. 50.

⁹ UNHCR-OSCE, *Handbook on Statelessness in the OSCE Area: International Standards and Good Practices*, 28 February 2017, pp. 14, 15.

the scope of the study. It should be noted that UNHCR finds the latter grouping to be distinct from that of stateless persons. Notably, this term refers to those for whom a preliminary review has been inconclusive as to whether they possess a nationality or are stateless. This could be owed to their difficulty in proving possession of any nationality while maintaining links to more than one State on the basis of birth, descent, marriage, or habitual residence; or to their treatment by authorities in the State of residence as possessing links to another State (based on historic ties, race, ethnicity, language, or religion) that give rise to a claim of nationality. Although the category “undetermined nationality” is not officially used in Portuguese registration practice at the municipal level, it is used by SEF and has surfaced throughout this study in various instances, such as, in court proceedings or with regard to institutionalized children. Finally, persons who can be categorized as “un-returnable” will also be taken into account in the report. This category may be related to statelessness inasmuch as it refers to persons who cannot be returned anywhere, as no country would accept them.

The terms “nationality” and “citizenship” are used interchangeably in this report.

1.3 Methodology

The methodology employed in this study combined desk review of legal documents and quantitative data with stakeholder meetings and interviews with persons of concern. The research was conducted between October 2017 and March 2018. Given the time constraints, combined with the lack of available information in various parts of the country, the mapping study cannot purport to cover comprehensively the contours of statelessness in Portugal. Rather, it seeks to shed light on several aspects of this phenomenon, such as its legal and practical ramifications, and to uncover some individual stories, in order to place on the agenda a topic that has hitherto remained largely overlooked.

Quantitative analysis

During this investigation, it was not possible to reach concise conclusions on the dimension of the stateless population in Portugal. Statistical information thus drew from a range of existing public sources, such as population censuses and administrative data provided primarily by SEF. More detailed information regarding the acquisition of Portuguese nationality was provided by the Central Registry Office.

The quantitative analysis informing the demographic section of this report is complemented by a description of the registration methods and practices that provide the basis for the statistics.

Legal research

Both Portuguese legislation relating to statelessness and the practices of implementing authorities were examined, in order to assess Portugal’s compliance with the 1954 and 1961 Conventions, as well as other relevant international and regional instruments. The main national sources of law analysed in the present study were: the Portuguese Constitution;¹⁰ the Portuguese Nationality Law;¹¹ the Portuguese Nationality Regulation;¹² the Legal Framework of Entry, Permanence, Exit,

¹⁰ Approved by Decree of 10 April 1976, with the version introduced by Law N. 1/2005, of 12 August.

¹¹ Law N. 37/81, of 3 October, with the version introduced by Organic Law N. 2/2018, of 5 July.

¹² Decree-Law N. 237-A/2006, of 14 December, with the version introduced by Decree-Law N. 71/2017, of 21 June.

and Removal of Foreigners Into and Out of National Territory (Immigration Law),¹³ and the Asylum Law.¹⁴ In analyzing current legal and administrative approaches to statelessness, particular attention was paid to whether and to what extent they provide for the prevention, identification, protection, and reduction of statelessness.

The analysis of legal documents was complemented by the study of Portuguese literature in relation to statelessness and nationality matters in general.

Meetings with stakeholders

The mapping study benefited greatly from meetings with representatives of Government ministries, public administration entities, civil society organizations, immigration lawyers, and academics (a list of all stakeholders consulted for this report is provided in Annex I). Given the scarcity of information on statelessness available in Portugal, the experiences and knowledge shared by these stakeholders were invaluable for the understanding of the phenomenon and the particular contours it assumes in the country.

Interviews with persons of concern

In order to document the human face of statelessness in Portugal, and to better understand individual experiences, several interviews were conducted with persons of concern. Some difficulties were faced in identifying the interviewees, particularly outside the asylum system. The majority of cases were referred by civil society organizations (CSOs) and frontline social workers. Apart from identification, access to persons of concern proved to be an additional difficulty, in part due to their fear of exposure or a mistrust in solutions ever being reached.

Seventeen persons of concern were interviewed between November 2017 and March 2018. Two of these interviews were conducted via phone, and one of the persons of concern shared his case in the framework of a participatory assessment organized by UNHCR on 17 February 2018 (see below). All others were interviewed in person. Interviews were held in venues chosen in accordance with the interviewees' preferences and usually lasted around two hours. All interviews were semi-structured in order to ensure some level of comparability between the various cases presented in the mapping study. The queries normally covered topics such as causes of statelessness, interaction with relevant public entities, and access to human rights. All those interviewed in person signed a form indicating their consent to be interviewed and to have their stories published by UNHCR. This form also provided information about the mapping study's objectives and the standards of confidentiality and anonymity applied.

Participatory assessment with persons of concern

On 17 February 2018, UNHCR organized a participatory assessment in Lisbon with five persons of concern to document their stories. The discussions focused on the administrative difficulties they faced in Portugal in terms of acquisition of Portuguese (or other) nationality, as well as the impact of their condition as stateless persons on access to human rights. The event provided an opportunity for the participants to share their experiences and their views on further steps that could be taken in Portugal to strengthen the protection of stateless persons.

¹³ Law N. 23/2007, of 4 July, with the version introduced by Law N. 59/2017, of 31 July.

¹⁴ Law N. 27/2008, of 30 June, with the version introduced by Law N. 26/2014, of 5 May.

2. Statelessness Across the Globe

Statelessness was acknowledged as a global phenomenon during the first half of the twentieth century. Nowadays, it still affects millions of persons, ranging from entire communities to newborn babies, children, couples, and older people. Countries with notably large stateless populations include Côte d'Ivoire, the Dominican Republic, Iraq, Kuwait, Myanmar, Thailand, and others. The scale of statelessness has fluctuated over time, with improvements in some parts of the world, such as, in Eastern Europe or South-East Asia being offset by new problems in others, like the new “stateless generation” of children in the context of the European refugee crisis.¹⁵

Statelessness is a man-made problem and occurs for a variety of causes, which will be briefly discussed in Section 2.1. Section 2.2 presents an overview of the consequences of statelessness. These explanations provide a basis for the understanding of UNHCR's role in relation to statelessness, described in Section 2.3.

2.1 Causes of Statelessness

Statelessness can be caused by a number of factors, which can be grouped into three main categories:

- i. gaps in, and conflict of, nationality laws or administrative practices;
- ii. dissolution and separation of States or transfer of territory between States;
- iii. discrimination on account of gender, age, ethnicity, and/or race.

(i) Factors of a legal technical nature relate to gaps in nationality laws or conflicts in nationality laws that may lead to an individual ‘falling through the cracks.’ As an example, statelessness could arise when a child is born in the territory of a *ius sanguinis* State to parents with the nationality of a *ius soli* State. In this case, if the nationality laws of both States do not contain provisions that would grant nationality to such a child, he/she would be born stateless.

¹⁵ The Syrian conflict, which has led to hundreds of thousands of Syrian refugees seeking protection in Europe (for statistics see: <https://bit.ly/1xHP3Yh>), exemplifies the links between forced displacement and the risk of statelessness. A UNHCR investigation from 2014 (see: UNHCR, *Woman Alone: The fight for survival by Syria's refugee women*, 2 July 2014, available at: <http://www.refworld.org/docid/53be84aa4.html>) found that the conflict has left many women without their husbands, which puts their children at risk of statelessness since, on grounds of gender-discriminatory nationality laws, children born outside Syria can only acquire nationality through their fathers. Refugee children from 24 other countries apart from Syria face similar problems (see UNHCR, *Background note on gender equality, nationality laws and statelessness*, 2018, available at: <http://www.refworld.org/docid/5aa10fd94.html>). In addition, a child can be rendered stateless if the father is himself stateless, if there is no proof that the father is a national of a given country, if the child is born out of wedlock, or if the marriage has not been registered.

Statelessness can also occur later in life. For instance, some States have nationality laws that allow individuals to renounce their nationality without having first acquired, or been guaranteed the acquisition of, another nationality. In addition, some States automatically revoke the nationality of an individual who has left his/her country or who resides abroad. Revocation of nationality is often linked to faulty administrative practices in which the individual concerned is not made aware that he/she risks losing his/her nationality if regular registration with the country's authorities is not undertaken.

Individuals may also remain stateless, even though they would in theory be eligible for citizenship, because of administrative or bureaucratic barriers. These include prohibitive fees or burdensome procedures, with high thresholds of documentary evidence being demanded to lodge an application. Obstacles of other types may also arise, such as the need to travel long distances to access the competent services.

Failure or inability to undertake administrative procedures, such as birth registration, places children at risk of statelessness. Indeed, birth certificates provide proof of where a person was born and parentage, which constitute crucial information to establish one's nationality.

(ii) The transfer of territory or of sovereignty has long been a cause of statelessness. The dissolution of the Soviet Union and the Federal Republic of Yugoslavia,¹⁶ as well as the more recent secession of South Sudan from Sudan,¹⁷ constitute cases in point. National legislation and practices unavoidably change once a State gains independence from a colonial power or after a State is dissolved, if a new State or States succeed(s) a dissolved State. The concomitant adoption of new nationality laws and/or new administrative procedures may lead to situations of statelessness if individuals fail to acquire nationality under the new legislation or under new administrative procedures, or if they are denied nationality because of a reinterpretation of previously applicable laws and practices.

(iii) The numerically most prominent cause of statelessness at the global level is related to the denial or withdrawal of nationality on discriminatory grounds. Based on, for example, religious beliefs or ethnicity, a certain group within a State or populations living across multiple States are sometimes denied or deprived of nationality. Examples of such populations include the Rohingya in Myanmar.¹⁸

Discrimination on the ground of gender can also be a cause of statelessness. Some countries, the majority of which are in the Middle East, North Africa, and Sub-Saharan Africa, retain provisions in their nationality laws whereby women are not granted the same rights as men to confer nationality to their children.¹⁹ Children whose mothers are unable to pass on their nationality, or who are born out of wedlock, may end up stateless if their father is stateless, if he cannot confer nationality under the nationality law of his State, or if is unable or unwilling to undertake the required administrative steps with the authorities of his country on behalf of his children. Furthermore, some States automatically alter a woman's nationality status when she marries a non-national. A woman may then become stateless if she does not automatically receive the nationality of her husband or if her husband has no nationality. A woman can also become stateless if, after she receives her husband's nationality,

¹⁶ For a description of the phenomenon, see, e.g.: UNHCR, *The State of The World's Refugees 1997: A Humanitarian Agenda*, 1 January 1997, Chapter 6, available at: <https://bit.ly/2MzTuxd>.

¹⁷ See, generally, UNHCR's *Global Focus* South Sudan page, available at: <https://bit.ly/2nq6DOn>.

¹⁸ For more information on the Rohingya and their statelessness situation, see: <http://www.unhcr.org/rohingya-emergency.html>.

¹⁹ See: UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness* 2018, 8 March 2018, available at: <http://www.refworld.org/docid/5aa10fd94.html>.

the marriage is dissolved and she loses the nationality acquired through marriage, but her original nationality is not automatically restored.

2.2 Consequences of Statelessness

Without any nationality, stateless persons often do not enjoy the basic rights that citizens enjoy. Their situation is an intricate one because human rights purportedly apply to all persons irrespective of nationality or immigration status, including to stateless persons. Moreover, the principle of equality and non-discrimination generally prohibits any discrimination based on the lack of nationality status. In practice, however, the system for human rights protection operates on the basis of a national-State relationship. Statelessness thus often results in denial of fundamental rights.

Most stateless persons encounter numerous difficulties in every aspect of daily life, which severely affect their integration in society. Stateless parents may experience difficulties obtaining a birth certificate for their children. Generally, stateless persons have problems obtaining personal identification documents. Without such documents, enjoyment of basic rights is strongly undermined, which may even create an incentive to avoid participation in society altogether. Stateless persons may face obstacles accessing health care services or education, entering the labour market, or traveling abroad. Stateless persons may not be able to open a bank account, to own, register or inherit property, or get legally married.²⁰

Moreover, stateless persons may be detained for prolonged or repeated periods, either because they cannot prove their identity and where they come from, or because they are considered to be illegal aliens, without there being any country to which they can be returned.

Many stateless populations belong to the most marginalized and vulnerable groups in the world. When thousands of people are stateless, this gives rise to communities that are alienated. In the worst cases, statelessness may represent a source of conflict and lead to displacement.

2.3 Role of UNHCR

The responsibilities of UNHCR in the framework of statelessness were first envisaged with regard to refugees who were also stateless, in accordance with paragraph 6(A)(II) of UNHCR's Statute and Article 1(A)(2) of the 1951 Convention relating to the Status of Refugees. Both documents refer to stateless persons who meet the criteria of the refugee definition. UNHCR's statelessness mandate was further expanded following the adoption of the 1954 and 1961 Conventions. Furthermore, UN General Assembly resolutions 3274 (XXIX) and 31/36²¹ designated UNHCR as the body mandated to examine the cases of persons claiming the benefit of the 1961 Convention and to assist such persons in presenting their claims to the competent national authorities. In 1995, the UN General Assembly conferred upon UNHCR a global mandate for the identification, prevention, and reduction

²⁰ For more information on how statelessness particularly affects children, see: UNHCR, *The Urgent Need to End Childhood Statelessness*, November 2015, available at: <https://bit.ly/1I5PdDk>.

²¹ See: UNGA resolutions A/RES/3274 (XXIX), 10 December 1974, and A/RES/31/36, 30 November 1976.

of statelessness, as well as the protection of stateless persons.²² This mandate has been developed and refined in subsequent Executive Committee conclusions and UN General Assembly resolutions, confirming the four distinct areas in which UNHCR is authorized to act.²³ It is important to note that the UN General Assembly resolutions that set out UNHCR's mandate on statelessness are universal in scope and do not restrict UNHCR's activities to States Parties to either the 1954 Convention or the 1961 Convention.

In order to address the problem of statelessness, UNHCR has taken up multiple tasks. To name a few examples, UNHCR:

- actively promotes accession to the two Statelessness Conventions;
- assists Governments in drafting and implementing nationality legislation in line with the Conventions' provisions and provides training for Government officials;
- works with national parliaments to ensure that nationality legislation does not lead to statelessness;
- supports citizenship campaigns aimed at encouraging States to grant nationality to stateless persons who are long-term habitual residents; and
- assists stateless individuals and groups directly by consulting with the relevant States in an effort to find solutions to their plight.

Particularly relevant as a basis for this study is UNHCR's role in promoting "increased understanding of the nature and scope of the problem of statelessness, [identifying] stateless populations and [understanding] reasons which led to statelessness, all of which would serve as a basis for crafting strategies to addressing the problem."²⁴

²² See: UNGA resolutions A/RES49/169, 23 December 1994, and A/RES/50/152, 21 December 1995. The latter endorses Executive Committee Conclusion No. 78 (XLVI) – 1995.

²³ See, notably: UNGA Resolution 61/137, 25 January 2007, para. 4, and subsequent resolutions, as well as Executive Committee Conclusion N. 106 (LVII) (2006) on "Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons."

²⁴ Executive Committee Conclusion N. 106 (LVII) (2006), para. (c).

3. Statelessness under the Portuguese Legal System

3.1 Overview of the International and Regional Legal Framework

Historically, it was believed that States were free to regulate the nationality of their subjects. This had evident consequences: it could easily lead to positive conflicts of nationality laws, in which case individuals would be entitled to two or more nationalities, or to negative conflicts, leaving individuals stateless. Such conflicts brought about changes in legal thought within the international community, which were given particular impetus with the internationalist ideals that followed the Second World War. It became increasingly accepted that States' margin of discretion was not unlimited,²⁵ and that the attribution of nationality relied upon the existence of an *effective link* between the State and the individual.²⁶ The Universal Declaration of Human Rights (UDHR), adopted in 1948, set a fundamental benchmark in this respect. It not only determined that "everyone has the right to a nationality" (in Article 15(1)), but also that "no one shall be arbitrarily deprived of his nationality" (in Article 15(2)). The loss of nationality was now clearly linked to the need to safeguard the rights of individuals, thereby limiting States' freedom in regulating nationality rules.²⁷

A number of international and regional instruments address these rights more in-depth. A brief overview of these instruments provides background on the standards within which domestic legislation should operate.

At the international level, two Conventions deal specifically with statelessness: the abovementioned 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The 1954 Convention provides the legal definition of a 'stateless person' and contains a comprehensive codification of the rights attached to this category. In turn, the 1961 Convention aims at avoiding the incidence of statelessness and, to that end, imposes obligations upon States related to the conferral and non-withdrawal of nationality. As has already been noted, Portugal acceded to both Conventions in 2012. There is no domestic legal document transposing these Conventions entirely. Still, several provisions thereof can be found in national legislation, as will be described in this chapter. Full transposition is not required, given the monist character of the Portuguese legal system. Indeed, according to Article 8(2) of the Portuguese Constitution,

²⁵ See Article 1 of the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89.

²⁶ R. M. Moura Ramos, 'Nacionalidade e Descolonização (Algumas Reflexões a Propósito do Decreto-Lei n.º 308-A/75, de 24 de Junho)', in *Revista de Direito e Economia*, Ano II, N.º 2 Julho/Dezembro 1976, pp. 331-362, at pp. 332-335.

²⁷ *Ibid.*, pp. 336-338.

“[t]he norms contained in duly ratified or approved international conventions come into force in Portuguese internal law once they have been officially published, and remain so for as long as they are internationally binding on the Portuguese state.” However, the absence of domestic legislation regulating the identification of statelessness persons (notably through the implementation of a SDP) significantly hampers the practical operationalization of the 1954 Convention (see below Chapter 4).

Portugal is party to other international human rights instruments relevant to statelessness. These include the International Covenant on Civil and Political Rights (ICCPR),²⁸ the Convention on the Rights of the Child (CRC),²⁹ the Convention on the Elimination of Discrimination Against Women (CEDAW),³⁰ the Convention on the Elimination of Racial Discrimination (CERD)³¹ and the Convention on the Rights of Persons with Disabilities (CRPD).³² All of these instruments contain provisions relating to the right to nationality and to the principle of non-discrimination, and contribute to both the protection of stateless persons and the prevention of statelessness. It is of note that, according to Article 16(1) of the Portuguese Constitution, the rights enshrined in this document do not exclude any others set out in applicable international legal rules. Article 16(2) moreover prescribes that constitutionally guaranteed rights are to be interpreted and implemented in harmony with the UDHR.

In addition to these instruments, the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol apply to stateless persons who meet the definition of a refugee. Portugal is party to both instruments.³³ This means that, in Portugal, stateless persons who are also refugees benefit from the protection afforded to refugees by the 1951 Convention and its 1967 Protocol.

At the European regional level, two instruments of particular relevance to the question of statelessness have been adopted by the Council of Europe. These consist of the European Convention on Nationality, ratified by Portugal,³⁴ and the European Convention on the Avoidance of Statelessness in Relation to the Succession of States, to which Portugal is not party. With regard to the European Convention on Nationality, it can be noted that, while broader than the 1961 Convention in terms of scope, covering a range of questions relating to the acquisition and loss of nationality, it contains safeguards similar to those found in the latter treaty. Next to these instruments, the European Convention on Human Rights and Fundamental Freedoms (ECHR)³⁵ should also be mentioned. Although the right to a nationality is not as such a convention right, this treaty has proved increasingly relevant to the prevention of statelessness and the protection of stateless persons. Indeed, the European Court of Human Rights has acknowledged the impact of the denial of citizenship upon a person’s social identity, bringing this situation within the scope of Article 8 of the ECHR, which enshrines the right to respect for private and family life.³⁶

²⁸ Signed on 7 October 1976 and approved for ratification by Law N. 29/78, of 12 June.

²⁹ Signed on 26 January 1990 and ratified by Presidential Decree N. 49/90, of 12 September.

³⁰ Signed on 24 April 1980 and approved for ratification by Law N. 23/80, of 26 July.

³¹ Approved for adhesion by Law N. 7/82, of 29 April.

³² Signed on 30 March 2007 and ratified by Presidential Decree N. 71/2009, of 30 July.

³³ The 1951 Convention was approved for adhesion by Decree-Law N. 43201, of 1 October 1960 and the 1967 Protocol was approved for adhesion by Decree N. 207/75, of 17 April.

³⁴ Signed on 6 November 1997 and ratified by Presidential Decree N. 7/2000, of 6 March.

³⁵ Signed on 22 September 1976 and approved for ratification by Law N. 65/78, of 13 October.

³⁶ See: *Genovese v. Malta*, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, available at: <http://www.refworld.org/docid/509ea0852.html>.

3.2 The Portuguese Nationality Regime

The Portuguese nationality regime has been characterized as one of the most “liberal” in the European Union (EU),³⁷ and has been scored as “favourable” by the Migrant Integration Policy Index of 2015.³⁸ The current section will analyze the regime’s contours and practical implementation, in light of the international legal standards designed to prevent and reduce statelessness.

Section 3.2.1 will begin with a description of the evolution of the Portuguese nationality regime, especially since the decolonization of Portugal’s former African colonies in 1974 and 1975. The choice was made to set an analytical focus on this period, as decolonization was found throughout this study to have a bearing on the current phenomenon of statelessness in Portugal. As will be seen, the Portuguese nationality regime has been influenced by general legislative choices in other domains of the legal system, and the country’s social context in terms of migratory trends. Factors linked to history, culture, language, and ethnicity have, of course, also played a role. Important standards related to the prevention and reduction of statelessness have generally been embraced in successive legislative changes. Yet, the history of the Portuguese nationality regime is also marked by legislative choices and procedures that at some points constituted regressions (for a synthesis of the causes leading to potential cases of statelessness in Portugal identified in this study, see Annex II).

3.2.1 Historical Evolution of the Nationality Regime

The Portuguese *Ordenações Filipinas* of 1603³⁹ constitute the first Portuguese legal document regulating nationality matters by delimiting those who were to be considered “native of the kingdom.”⁴⁰ This code endorsed both the *ius soli* and the *ius sanguinis* principles, a combination which would endure in subsequent legal texts, albeit in different terms. Forms of derived acquisition of nationality were later systematized by the Portuguese Constitution of 1822, the Constitutional Chart of 1826, and the Portuguese Constitution of 1838. These documents also included statelessness prevention provisions about foundlings. The acquisition of a new nationality was deemed to imply the loss of Portuguese nationality, an understanding that was retained in the first Portuguese Civil Code of 1867 and later reiterated in Law N. 2098, of 1959 (with some nuances).⁴¹

In 1975, with decolonization of Portugal’s African colonies (Angola, Cape Verde, Guinea-Bissau, Mozambique, and São Tomé and Príncipe), significant changes occurred. Indeed, Portuguese colonies were considered to be part of the State’s territory, meaning that all citizens residing in the colonies were Portuguese. In 1975, Portugal had to redefine the nationality of a significant number of its citizens, including by withdrawing citizenship status.⁴² To avoid an inflow of persons who would invoke their previous condition as Portuguese nationals to apply for a Portuguese identity card, Portugal opted for a restrictive regime, set out in Decree-Law N. 308-A/75, of 24 June.⁴³ The new law created legal categories of persons eligible to retain Portuguese citizenship, mostly linked to “European

³⁷ M. M. Howard, *The Politics of Citizenship in Europe*, Cambridge University Press, 2009, pp. 19-36, 89.

³⁸ See: <http://www.mipex.eu/access-nationality>.

³⁹ I.e., Ordinances of Philip, a compilation of laws published under Spanish rule in 1603, and subsequently confirmed by the Portuguese King D. João IV. This document is available at: <http://www1.ci.uc.pt/ihiti/proj/filipinas/ordenacoes.htm>.

⁴⁰ R. Moura Ramos, ‘A Evolução do Direito da Nacionalidade em Portugal (Das Ordenações Filipinas à Lei N.º 2098)’, in *Boletim da Faculdade de Direito de Coimbra*, 1983, pp. 8, 9.

⁴¹ *Ibid.*, pp. 21-26, 52, 53.

⁴² R. M. Moura Ramos, *supra* note 26, p. 331.

⁴³ This document is available at: <https://bit.ly/2AYPSDp>.

lineage.” All others would lose their Portuguese nationality. Most residents in the Portuguese ex-colonies were thus stripped of their Portuguese nationality, as well as thousands of individuals born in the ex-colonies who were residing in third countries at the time of independence. Moreover, those who had resided in Portugal for less than five years prior to 25 April 1974 also lost their Portuguese nationality. This contributed to a new “racialized” concept of Portuguese citizenship.⁴⁴

Decree-Law N. 308-A/75 was criticized for unfairness and the uncertainties it created, leading to numerous legal explanatory texts, as well as abundant case law and opinions of the Prosecutor General’s Office. According to one legal commentator, the regime revealed “a total indifference to the grave social and human problems stemming from statelessness, as well as the recommendations of the international community to reduce it as much as possible.”⁴⁵ Ultimately, individuals with undeniable, effective links to Portugal lost their Portuguese nationality, without having acquired the nationality of any of the newborn States,⁴⁶ some of which adopted restrictive laws and/or administrative procedures⁴⁷ (see below Sections 3.2.3.2.3 and 4.1.1). Actually, it was out of the acknowledgement that there were “significant numbers” of refugees and stateless persons in Portugal following decolonization that an inter-ministerial institution was created (the “*Comissão Interministerial de Apoio aos Refugiados e Apátridas*”) to articulate policies to support these individuals.⁴⁸

The following case, described in Opinion 97/75 of the Prosecutor General’s Office,⁴⁹ highlights the kind of issues that occurred at the time.

Telmo Gilberto Antunes was born in Mozambique in the 1940s, to an African mother, also born in Mozambique, and an unknown father. He was domiciled in the country by the time it became independent, in 1975. Mozambique’s independence brought about Telmo’s loss of his Portuguese nationality, as he did not fulfill any of the conditions set out in Decree-Law N. 308-A/75 to preserve Portuguese nationality. To complicate matters further, Telmo had renounced his Mozambican nationality. Exceptional and duly justified circumstances, however, could be invoked before the Council of Ministers, in order for the latter to determine the preservation of Portuguese nationality (i.e., beyond the criteria foreseen in the abovementioned Decree-Law). Telmo, indeed, resorted to this mechanism, grounding his claim on the fact that his mother had been born to a Portuguese father and that his father was himself Portuguese. Telmo moreover advanced significant arguments demonstrating effective links to Portugal, by noting how his wife and three children had Portuguese nationality, how they would all settle definitively in Portugal, and how he had performed military service for the country. Yet, for lack of evidentiary support, Telmo’s claim was ultimately deemed unfounded by the Council of Ministers, and he was thereby left stateless.

In the end, these difficulties could have been avoided if Decree-Law N. 308-A/75 had included safeguards against statelessness along the lines of Article 8(1) of the 1961 Convention, providing that the loss of Portuguese nationality would not take place if the person would otherwise become stateless.

⁴⁴ P. Aires Oliveira, ‘Decolonization in Portuguese Africa’, in *Oxford Research Encyclopedias*, May 2017.

⁴⁵ R. M. Moura Ramos, *supra* note 26, p. 340.

⁴⁶ A. Marques dos Santos, ‘Nacionalidade e Efectividade’, in *Estudos de Direito da Nacionalidade*, Almedina, 1998, pp. 279-310, at p. 297, 289-301.

⁴⁷ A. P. Horta and P. White, ‘Post-colonial Migration and Citizenship Regimes: A Comparison of Portugal and the United Kingdom’, in *Revista Migrações*, Abril 2009, N. 4, Lisboa: ACIDI, pp. 33-57, at pp. 43, 44.

⁴⁸ See Resolution 144/81, of 11 June 1981, available at: <https://dre.pt/application/file/a/578181>.

⁴⁹ Prosecutor General’s Office, Opinion 97/75, of 13 November 1975, published in BMJ N. 256, May 1976, pp. 28-31.

3.2.2 The Foundations of the Current Nationality Regime

3.2.2.1 THE PORTUGUESE CONSTITUTION

According to Article 4 of the Portuguese Constitution: “All persons whom the law or an international convention considers to be Portuguese citizens are such citizens.” Article 26, in turn, accords to “everyone” the right to citizenship (n. 1),⁵⁰ the deprivation of which “may only occur in the cases and under the terms that are provided for by law, and may not be based on political motives” (n. 4). The Portuguese Constitution thus confines itself to endorsing the fundamental right to Portuguese nationality, without determining who is entitled to it. This determination is left to the legislator. As is generally understood in Portuguese academic circles, this right is not only an entitlement of Portuguese citizens (i.e., a right not to be arbitrarily deprived of Portuguese nationality) but also of foreigners and stateless persons (i.e. a “positive” right to acquire Portuguese nationality, provided certain conditions are met).⁵¹ The following sections will discuss how the right to Portuguese nationality materializes and what concrete procedures render access to it possible.

3.2.2.2 LAW N. 37/81, OF 3 OCTOBER

The Portuguese nationality regime has its foundations in Law N. 37/81, of 3 October, which substituted the abovementioned Law N. 2098. The reforms contained in Law N. 37/81 followed a period of structural change that affected the Portuguese society throughout the 1960s (when an increase in emigration was clearly visible) and the 1970s (with decolonization).⁵² The main characteristics of the current regime relevant to statelessness will now be introduced.

Regarding the attribution of Portuguese nationality by birth, Law N. 37/81 relied heavily on the *ius sanguinis* principle, in contrast to Law N. 2098. Furthermore, the new regime introduced a safeguard against statelessness, granting Portuguese nationality to those born in the country who would otherwise be stateless. Contrary to the previous regime (whereby everyone born in Portugal was automatically Portuguese), the new law determined that those born in the Portuguese territory to foreign parents would only acquire Portuguese nationality provided that the parents had been “habitually residing” in the country for six years and that an affirmative manifestation of will to that end had occurred (Article 1(c)).⁵³

With regard to the loss of Portuguese nationality, this could occur for various reasons under the previous Law N. 2098. For instance, the State had the power to deprive an individual of his nationality under certain circumstances (e.g. the acquisition of a second nationality). However, the new Law N. 37/81 only maintained one possibility for loss of citizenship – namely renunciation, which entailed the submission of a declaration to that end, proffered by the individual, as long as he or she was a national of another State.

⁵⁰ According to Article 19(6), this right cannot be suspended in a state of siege or a state of emergency.

⁵¹ J. Pereira da Silva, “O Direito Fundamental à Cidadania Portuguesa”, in *Estudos em Homenagem ao Prof. Doutor Armando M. Marques Guedes*, FDUL, 2004, pp. 265-313, at pp. 277-279; A. R. Gil, ‘Princípios de Direito da Nacionalidade – Sua Consagração no Ordenamento Jurídico Português’, in *O Direito*, Ano 142.^o (2010), IV, pp. 723-760, at p. 755.

⁵² R. Moura Ramos, *Do Direito Português da Nacionalidade*, Coimbra Editora, 1984, pp. 99-111.

⁵³ According to I. Jalles, ‘Nationalité et Statut Personnel dans le Droit de la Nationalité Portugaise’, in M. Verwilghen (ed.), *Nationalité et Statut Personnel. Leur Interaction dans les Traités Internationaux et dans les Législations Nationales*, 1984, pp. 169-193, the six-year criterion was included in order to avoid a massive influx of natives from the former Portuguese colonies.

Coming back to the attribution of Portuguese nationality by birth, the strictness of the criteria set out in Law N. 37/81 with regard to persons born to foreign parents in Portugal should be highlighted. These criteria brought uncertainty regarding the nationality of a number of Afro-descendants born and residing in Portugal – which has had an impact up to current times (see below Section 3.2.3.2.3). The story of Amanda (below) demonstrates this issue. These criteria became even more restrictive with the first legislative amendment to Law N. 37/81 (contained in Law N. 25/94),⁵⁴ which reduced the significance of the *ius soli* principle, and thereby, hindered access to Portuguese nationality.⁵⁵ According to one commentator, this regime led to situations of *de facto* statelessness,⁵⁶ where, on the one hand, the foreign nationality applicable to individuals residing in Portugal was not felt, let alone exercised, and where, on the other hand, their effective links to Portugal played no role whatsoever in the acquisition of Portuguese nationality.⁵⁷ With this regime came instability, insecurity, and social exclusion, notably among youngsters already born in Portugal.⁵⁸



Case of Amanda

Name: Amanda (name changed for confidentiality reasons)

Country and year of birth: Portugal, 1986

Current status: without legal status in Portugal, may be stateless

Amanda's mother, Soraia, was born in Sao Tomé and came to Portugal after 1974, with a temporary Cape Verdean passport. With it she managed to obtain a residence permit. At some point, however, her passport was not renewed as she had to register her nationality and she did not have a birth certificate from São Tomé to do so. As a consequence, she remained irregular in Portugal and only managed to solve her situation many years later. In the meantime, Soraia and her partner, also Cape Verdean, had children, both prior to and after the coming into force of Law N. 37/81. The first ones acquired Portuguese nationality by birthright, as the *ius soli* principle applied, but not Amanda, the only child born after the new nationality regime. In a context of poverty and family disintegration, Soraia never registered Amanda as a Portuguese national. Moreover, unaware of the legislative changes, Soraia always thought her child was Portuguese. Amanda only took the first steps to clarify her nationality status when she was of age. She was not able to obtain the nationality of Cape Verde because she was no longer a minor, combined with the fact that she did not possess any official document with a picture of her. Undocumented, she was once detained and only managed to be released with the help of a CSO working on migrant issues. With the support of this institution, Amanda has, since January 2016, tried to acquire Portuguese nationality through naturalization, but has encountered several difficulties in terms of documentary evidence requirements.

⁵⁴ Under the new provision, those born in the Portuguese territory to foreign parents would now only acquire Portuguese nationality provided that the parents had been *legally* residing in the country for six years, in the case of nationals of Portuguese-speaking countries, or for ten years, in all other cases. An increase in the number of years of residence in the country was thus included, and so too the requirement of legal stay, rather than just habitual residence.

⁵⁵ This legislative change occurred in the context of a substantial increase in immigration to Portugal throughout the 1980s, including irregular migration. See: R. Moura Ramos, 'Continuidade e Mudança da Nacionalidade em Portugal', in *Studia Juridica 40 – Colloquia-2*, Coimbra Editora, 2000, pp. 399-410, at p. 409.

⁵⁶ See: UNHCR, *Handbook on Protection of Stateless Persons*, *supra* note 6, p. 5.

⁵⁷ V. Canas, 'Nacionalidade Portuguesa depois de 2006', in *Separata de Estudos em Homenagem ao Professor Doutor Marcelo Caetano no Centenário do seu Nascimento*, Coimbra Editora, 2006, pp. 851-874, at p. 853.

⁵⁸ This was acknowledged in the Preamble of the subsequent Law N. 2/2006 (see below). See also: V. Canas, *ibid*.

The abovementioned criteria of the Portuguese nationality regime came to be seen as excessively stringent, thereby leading to a further amendment to Law N. 37/81, introduced by Law N. 2/2006. As Portugal increasingly affirmed itself as a country of immigration, accommodating this changed reality became a central concern. In the new law, the hurdles faced by third-generation immigrants in terms of access to Portuguese nationality were dealt with through changes in the provisions granting Portuguese nationality by birth.⁵⁹ Moreover, the situation of second-generation immigrants was addressed with the adoption of more lenient naturalization rules.⁶⁰ In both instances, the *ius soli* criterion was reinforced. Apart from widening access to Portuguese nationality, Law N. 2/2006 was also attentive to international legal standards on prevention of statelessness. Possibly to address the negative impacts of Decree-Law N. 308-A/75,⁶¹ Law N. 2/2006 embraced a new provision granting the right to acquire Portuguese nationality through naturalization to those who were at some point in time Portuguese and, having lost said nationality, never managed to acquire another one (Article 6(3)).

Law N. 2/2006 had retroactive effects with regard to cases of acquisition of Portuguese nationality by birth, but not through naturalization (see Article 6 of Organic Law N. 2/2006). This means that those born in Portugal between 1981 and 2006, with their parents not fulfilling (legal) residence requirements, remained entangled in bureaucratic difficulties to obtain Portuguese citizenship.

Subsequent versions of the Portuguese Nationality Law did not bring about appreciable changes when it comes to provisions pertinent to statelessness. However, at the time of writing this study, a new amendment was approved, which significantly extends access to Portuguese nationality and includes new provisions on the prevention of statelessness, as will shortly be discussed.

3.2.3. An Analysis of Nationality Rules in Relation to Statelessness

As already mentioned, the current nationality regime is founded in Law N. 37/81. The version under discussion was introduced by Organic Law N. 2/2018, which will now be termed as the “Portuguese Nationality Law.” The subsequent sections will describe the modes of acquisition and loss of Portuguese nationality under the new regime, with a focus on provisions more directly connected to the issue of statelessness.

3.2.3.1 ACQUISITION OF PORTUGUESE NATIONALITY

3.2.3.1.1 BIRTHRIGHT ACQUISITION

a) Acquisition by descent (*ius sanguinis*)

Article (1)(1)(a) of the Portuguese Nationality Law states that persons born to a national of Portugal within the country are automatically conferred Portuguese nationality. With regard to those born

⁵⁹ The residence requirement was now lowered to five years, without a distinction being made between Portuguese and non-Portuguese speaking countries. In addition, and in order to combat social exclusion, a person born to foreign parents in Portugal would also (automatically) acquire Portuguese nationality in case one of the parents had also been born in Portugal and resided therein (regardless of legal title) at the time of birth.

⁶⁰ One of the main modifications in this context was to limit the discretionary powers previously retained by the Public Administration in deciding upon the granting of Portuguese nationality through naturalization. Indeed, the observance, as such, of certain legal requirements would now automatically entitle the individual to a subjective right to acquire Portuguese nationality.

⁶¹ Cf. V. Canas, *supra* note 57, p. 870.

abroad to a Portuguese national, the granting of Portuguese nationality does not operate *ex lege*. According to Article 1(1)(c), for instance,⁶² two alternative manifestations of will must occur, so as to ensure a meaningful connection between the Portuguese State and its second-generation emigrants: such a birth must be registered with the Portuguese registration office; or the person (or his/her legal representative, if under-aged) must declare his/her wish to become a Portuguese national.⁶³ This provision complies with Article 4 of the 1961 Convention. Yet, simple as it may seem, it may give rise to certain challenges. Notably, in 2016, a Portuguese newspaper reported an instance in a developing country where the consular services reportedly experienced communication difficulties with the registration services back in Portugal.⁶⁴ During this study, it was not possible to gather additional information regarding this type of situation. Apart from such instances, the absence of registration (for whatever reason) of the child soon after birth may give rise to cases of potential statelessness, as Karina's story demonstrates.



Case of Karina

Name: Karina

Country and year of birth: Germany, 2001

Arrival in Portugal: 2013

Current status: Karina eventually became Portuguese in February 2018

Karina was born in Germany in 2001 to Portuguese parents. Her birth was registered in the hospital but her parents never took care of her registration either as a German or as a Portuguese national. When Karina was 12, her mother brought her to Portugal. Around two years later, on grounds of domestic violence, she was moved to a private institution of social solidarity. The process of determination of Karina's nationality was initiated during child protection court proceedings, which lasted for three years. The Public Prosecutor's initiatives were not successful, however. In 2017, Karina moved in with her older sister, now her guardian, who had been relentlessly trying to solve Karina's situation of (apparent) statelessness. Attempts to obtain an *apostille* and an international birth certificate were not sufficient for the Portuguese registration services, which persisted in requesting an original birth certificate. This certificate was recently obtained, and Karina was granted Portuguese citizenship in February 2018.

⁶² Portuguese nationality is also granted under the *ius sanguinis* principle to those born abroad while one of the parents performs public service functions of the Portuguese State (Article 1(1)(b)), as well as to those who have, at least, a second-degree Portuguese ascendant and fulfill other requirements (Article 1(1)(d)).

⁶³ The law does not specify whether this declaration should be made orally or in writing.

⁶⁴ A news article from *Diário de Notícias*, dated 15 April 2016, reports the case of a stateless baby, born in Timor-Leste to Portuguese parents. The baby's statelessness reportedly arose due to shortfalls in the communication between the consulate and the Central Registry Office in Portugal, as well as the request by the Central Registry Office for documents that were not possible to obtain in Timor-Leste. See: <https://bit.ly/2OZbK4n>.

b) Acquisition through birth in the country (*ius soli*)

Being born in Portuguese territory does not, as such, carry any direct entitlement to Portuguese nationality. The granting of Portuguese nationality purely on the basis of the *ius soli* principle only operates in specific instances, including with a view to avoiding statelessness. Firstly, and in compliance with Article 1(1) of the 1961 Convention, Article 7 of the CRC, and Article 24 of the ICCPR, Portuguese nationality is automatically granted to persons who would otherwise be stateless (Article 1(1)(g)).

Moreover, Article 1(2) states: “newborn foundlings are presumed to have been born in Portuguese territory unless proof to the contrary is provided.” In order to bring this provision into full compliance with Article 2 of the 1961 Convention, Article 1(2) should also presume that foundlings are born to parents of Portuguese nationality. In practice, however, the Central Registry Office has confirmed in an interview that it interprets Articles 1(2) and 1(1)(g) together to stipulate that foundlings be granted Portuguese nationality: firstly, the law presumes that the child was born in Portugal, and secondly, since it is not possible to establish the filiation of a foundling, the child is considered “otherwise stateless.” This provision therefore accomplishes the result envisaged by Article 2 of the 1961 Convention, although the wording of Article 1(2) on foundlings could be further clarified. Furthermore, it is of note that while Article 1(2) only refers to newborn infants, Article 105 of the Civil Registration Code is interpreted in terms that further extend such an entitlement to persons with an apparent age of less than fourteen years old, as well as to those with a mental illness.⁶⁵ This interpretation is in line with UNHCR’s view that such a safeguard: “is to apply [at a minimum] to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth.”⁶⁶ It should, in any event, be noted that the regime for foundlings, as set out in Portuguese legislation, is quite unclear and could therefore be clarified in the Portuguese Nationality Law for the sake of legal certainty.

Article 1 of the Nationality Law foresees two other instances of attribution of Portuguese nationality under the *ius soli* principle with pertinence for this study. Notably, nationality is automatically granted to individuals born in Portuguese territory to foreign parents, if at least one parent was also born in Portugal and resides in the country, regardless of legal residence status, at the time of birth (Article 1(1)(e)). Moreover, individuals born in Portuguese territory to foreign parents, who are not performing public service functions, may also acquire Portuguese nationality if they do not declare their unwillingness to become Portuguese and provided that, at birth, one of the parents has been legally residing in the country for at least two years (Article 1(1)(f)). Although the criterion of legal residence mitigates the *ius soli* principle, the automatic grant of nationality – provided that nothing is declared to the contrary – facilitates considerably the operationalization of the provision, when compared to the previous version, which demanded the manifestation of willingness to become Portuguese.⁶⁷

⁶⁵ The procedures to register the foundling are described in Articles 106-108 of the Civil Registration Code.

⁶⁶ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Arts 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, para. 58, available at: <http://www.refworld.org/docid/50d460c72.html>.

⁶⁷ The manifestation of willingness requirement was criticized by a Portuguese scholar, according to whom: “many descendants of lusophone citizens, residing for long in Portugal and, in principle, intending to stay in the country indefinitely, do not acquire Portuguese citizenship at birth solely owing to a lack of diligence by their parents.” See: J. Pereira da Silva, “Direitos de Cidadania e Direito à Cidadania”, Observatório da Imigração, ACIME, 2004, pp. 111, 112 (unofficial translation).

c) Family and marriage

The Portuguese Nationality Law does not specifically facilitate access to nationality for stateless persons married (or in a non-marital partnership) to a national of the State. The general rule contained in Article 3 also applies in such cases: the stateless person may only acquire Portuguese nationality after three years of marriage (or judicially recognized non-marital partnership) and provided that a declaration to that end is made in the course of marriage.

Given the link the person will have with Portugal by virtue of marriage (or non-marital partnership), as well as the fact that this person is otherwise stateless, Portugal is encouraged to amend its nationality law in order to facilitate quicker access to Portuguese nationality. Principles of family unity support this recommendation, as it is quite difficult for stateless persons who are not beneficiaries of international protection to establish lawful residence in Portugal (see below Section 3.2.4). Although, in accordance with Article 15 of Law N. 37/2006,⁶⁹ a family member of a Portuguese citizen may request a residence permit where the period of residence is planned for more than three months, the procedure to follow demands the presentation of a passport, which the stateless person will not possess.

d) Naturalization

Access to a given nationality on the basis of residence is made possible through the mechanism of naturalization. While Article 32 of the 1954 Convention and Article 6(4)(g) of the European Convention on Nationality encourage States to facilitate naturalization for lawfully and habitually resident stateless persons, such facilitation is not provided for in the Portuguese nationality regime. This has been criticized by Portuguese legal scholars for its dissonance with international law and the Portuguese Constitution.⁷⁰ Stateless persons must thus comply with the requirements generally prescribed by law for other foreigners, as explained below.

Access to Portuguese nationality under Article 6(1) on naturalization is granted to individuals who:

- a) are of age⁷¹ or emancipated before Portuguese law;
- b) have legally resided in the Portuguese territory for at least five years;
- c) hold sufficient knowledge of the Portuguese language;
- d) have not been condemned, by a final ruling, with a prison sentence greater than three years; and
- e) do not constitute a threat to national security and defence, for their engagement with practices linked to terrorism.

⁶⁸ The expression “derived citizenship” is used in Portuguese legal circles to refer to all forms of acquisition of Portuguese nationality other than through birthright (also termed “citizenship of origin”). Both forms of acquisition of Portuguese nationality entail the same rights, entitlements and prerogatives, except for one’s eligibility for Presidential elections – a possibility that is solely granted to “Citizens of Portuguese origin” under Article 122 of the Portuguese Constitution.

⁶⁹ This Law transposes Directive 2004/38/EC of the European Parliament and of the Council, of 29 April 2004.

⁷⁰ See, e.g.: J. Pereira da Silva, *supra* note 51, pp. 311, 312.

⁷¹ i.e., 18 years old.

More favourable conditions for naturalization are granted in Article 6(2) to under-aged children, born in Portugal to foreign parents, as long as the criteria set out in c), d), and e) above are satisfied, and provided that, at the time of the request, one of the following conditions is met:

- a) one of the parents has been residing in the country, regardless of title, during, at least, the five years immediately preceding the request; or
- b) the child has concluded either primary or secondary school in Portugal.

Finally, Article 6(5) provides for the grant of Portuguese nationality to persons who satisfy the criteria contained in a), c), d), and e) of Article 6(1), as well as all of the following:

- a) they were born in Portugal;
- b) to a foreign parent who resided in the country, regardless of title, at the time of birth; and
- c) who have resided in the country for at least five years.

In enabling registration later in life, Articles 6(2) and 6(5) introduce a “post-birth application” of the *ius soli* principle, as they allow the acquisition of Portuguese nationality by those born in Portugal to foreign parents who, at the time of birth, did not fulfill the conditions (such as legal residence) prescribed in the abovementioned Article 1 (attribution by birthright), but that later came to satisfy certain requirements of integration into the Portuguese society.⁷² Contrary to the previous version of the nationality regime, where the grant provided for in Article 6(5) was discretionary, a real right of access to Portuguese nationality is now embraced in the new provision.

At the time of writing, Article 6(5) is being used by two CSOs following cases of potential statelessness in Portugal, contacted for this study.⁷³ In most cases identified, statelessness was found among those with an irregular status in Portugal. Hence, this sort of provision can be quite useful to solve their cases.

Another useful provision for stateless persons is Article 6(8), which foresees the discretionary grant of Portuguese nationality to individuals who are ascendants of Portuguese citizens by birthright, and who have resided in Portugal, regardless of title, during, at least, the five years immediately preceding the request and as long as the ascendancy line has been established at the moment of birth of the Portuguese citizen.

3.2.3.2 LOSS OF PORTUGUESE NATIONALITY

The fundamental right to a nationality implies that no one can be arbitrarily deprived of his or her nationality. Article 15(2) of the UDHR, Articles 7 and 8 of the 1961 Convention, and Article 7 of the European Nationality Convention set out this right. Along these lines, Article 26(4) of the Portuguese Constitution provides that: “Deprivation of citizenship and restrictions on civil capacity may only occur in the cases and under the terms that are provided for by law, and may not be based on political motives.” Renunciation and falsehood are two forms of loss specifically laid out by the Portuguese Nationality Law. Still, other grounds for the loss of Portuguese nationality will be mentioned in the following sections.

⁷² A. R. Gil, *supra* note 51, at p. 732.

⁷³ The naturalization processes at issue were started by these institutions under the previous version of Article 6(5), which demanded proof of ten years of residence. As was noted by one of the interviewees, this requirement was hard to fulfill, given that often requesters did not possess sufficient documents (e.g. from schools or hospitals) to prove ten years of residence in a row. Another difficulty indicated relates to the discretion with which such documents are sometimes assessed.



Case of Nelson

Name: Nelson

Country and year of birth: Angola, 1970

Arrival in Portugal: 1976

Current status: without legal status in Portugal and may be stateless

Nelson was born in Angola in 1970 to parents of Angolan origin. In the aftermath of the Angolan war of independence, Nelson was taken to Portugal by two women, only to find out at a later stage that one of these women was his mother. He came undocumented and without any information about his family's story. He grew up in a context of family violence and social vulnerability, and he developed an alcohol addiction. When Nelson was 14 years old, he sought the support of a rehabilitation institution, which accommodated him until he was 18. This institution managed to obtain Nelson's first document: a Portuguese ID card. With it, he registered with the Portuguese military service, as it was compulsory, and pursued a normal life in Portugal. Starting to inquire into his identity and life story, however, Nelson came to learn more about his Angolan roots and to engage more actively with groups concerned with the civil war in Angola and with the country falling into the hands of the People's Movement for the Liberation of Angola (MPLA). He wanted to participate in the Angolan war and fight for his country. In 1989, following a conversation with an *attaché* of the Angolan Consulate (who had reportedly promised him Angolan nationality), and with a document in his hand prepared by the said *attaché* attesting that Nelson was Angolan, Nelson approached the Portuguese registration services to renounce his Portuguese nationality. With the presence of two witnesses, his renunciation was accepted and registered. The statelessness drama in Nelson's life started at that moment: he never managed to obtain Angolan nationality, as there were no registry records of him in the country. Since then, Nelson has lived a life of vulnerability and dependence on the support of others. He has reached out to every possible institution, and even brought his story to the attention of the media, without success.

3.2.3.2.1 RENUNCIATION

According to Article 8 of the Portuguese Nationality Law, loss cannot automatically ensue from any fact and is rather solely dependent upon a declaration of will from the interested party. Moreover, and in conformity with Article 7(1) of the 1961 Convention and Article 8 of the European Nationality Convention, renunciation is subject to the possession of another State's nationality.

While this rule is quite straightforward, questions can arise regarding proof of possession of another State's nationality prior to renunciation. As the story of Nelson (and others)⁷⁴ shows, the seriousness of the act of renunciation demands maximum rigor by the competent authorities.

The new version of the Portuguese nationality law introduces an important provision that could be used in cases such as that of Nelson. According to Article 12-A(1) of the new version: "The act whereby Portuguese nationality is granted, acquired or lost on the basis of false documents or documents certifying untrue or inexistent facts, as well as false declarations, shall be null."⁷⁵ Proof of

⁷⁴ With regard to individuals of Angolan origin, it was confirmed in an interview conducted for this study that at least two more cases of this sort were dealt with by the Angolan Consulate in past years.

⁷⁵ Unofficial translation.

Case of Zelinda



Name: Zelinda

Country and year of birth: Cape Verde, 1959

Arrival in Portugal: 1984

Current status: without legal status in Portugal, may be stateless

Zelinda was born in Cape Verde in 1959, to Cape Verdean parents. Sixteen years later, Zelinda moved to Germany with her uncle, where she met her future husband. He was a Portuguese and Cape Verdean national, and they got married in 1981. Through marriage, Zelinda acquired Portuguese nationality and was registered as such in 1984, the year when the couple settled in Portugal. The acquisition of Portuguese nationality entailed the automatic loss of the nationality of Cape Verde, which was imposed by the latter's Decree-Law N. 71/76, of 24 July. This fact was noted down in Zelinda's birth certificate. Zelinda had a normal working life in Portugal and in the meantime had children, who were registered as Portuguese citizens. In the 1990s, Zelinda and her husband got divorced. During this period, the Portuguese registration services found out that Zelinda's ex-husband had obtained Portuguese nationality through false documents and warned her that, as a result, she was not Portuguese either. Although her ID card was still renewed in 1999 out of "sympathy", she was left seemingly stateless and without any documents in 2010. Her children, including Nelson who had served the Portuguese military for three years, were also stripped of their Portuguese nationality. In the meantime, Zelinda's children have managed to acquire Cape Verdean nationality, but Zelinda has not, in that her original birth certificate has not yet been found.

As remarked by Zelinda:

"Since 2010, life has stopped"

falsehood in cases of loss may not be easy, however, especially when it requires collaboration from a given embassy/consulate. In cases like Nelson's, it entails that an official document be produced by the consulate so as to retract an older official document (which served as proof of possession of another nationality). This sort of factor should be taken into account when assessing proof of falsehood by the requester.

3.2.3.2.2 LOSS ON THE BASIS OF FALSE DOCUMENTATION

The deprivation of Portuguese nationality has occurred in cases where the person was found to have obtained this nationality via the presentation of false documents. In light of Article 8(2)(b) of the 1961 Convention and Article 7(1)(b) of the European Convention on Nationality, a person may be deprived of his/her nationality in cases where it was obtained through fraudulent conduct. Still, in such instances, the State owes certain duties of protection to the individual thereby left stateless (namely the right to a fair hearing by a court or other independent body (Article 8(4) of the 1961 Convention)). Next to this, it is fundamental to take into account the consequences of loss or deprivation of nationality upon family members. In light of Article 6 of the 1961 Convention (complemented by Article 9 of the CEDAW), this loss cannot be automatically extended to spouses or

children, and is rather dependent upon the latter's possession or acquisition of another nationality.⁷⁶ Unfortunately, this statelessness-prevention provision was not respected in the case of Zelinda.

Contrary to its previous versions, which were silent in this respect, the new nationality regime once again provides an important solution to prevent statelessness: under Article 12-A(2), loss of Portuguese nationality on the basis of false documentation will not operate in cases where the person is thereby left stateless.

3.2.3.2.3 OTHER FORMS OF LOSS OF PORTUGUESE NATIONALITY

Throughout this mapping exercise, cases of potential statelessness were identified among persons who were Portuguese and, for different reasons, lost their nationality. Two types of situations will be described below.

a) Law-induced loss: Decree-Law N. 308-A/75

As was already discussed in Section 3.2.1, decolonization brought with it the need to redefine who, from the Portuguese ex-colonies, would preserve Portuguese nationality and who would no longer be entitled to it. Decree-Law N. 308-A/75 was adopted to that end, without ensuring that



Case of Aguinaldo

Name: Aguinaldo

Country and year of birth: São Tomé e Príncipe, 1954

Arrival in Portugal: 1972

Current status: without legal status in Portugal, may be stateless

Aguinaldo was born in São Tomé e Príncipe, in 1954, to a Mozambican father and a Cape Verdean mother. In 1972, he came to Portugal for work-related reasons, possessing an older Portuguese ID (or similar document), as São Tomé e Príncipe was still a Portuguese colony at the time. In 1976, he also obtained an ID for foreigners, stating his origin from São Tomé e Príncipe. Without having realized it, he lost his Portuguese nationality in 1975, as he did not fulfill the criteria set out in Decree-Law N. 308-A/75. Until 2012, he was engaged in construction work and had a normal life in Portugal, using his foreigners' ID. However, in 2012, he lost all his documents. Since then, his life has been marked by precariousness. Undocumented, his access to the job market has been significantly hampered and he now lives in a homeless centre. In the meantime, he tried to acquire the nationality of Cape Verde, without success. Recently, he managed to obtain his birth certificate through the Embassy of São Tomé e Príncipe, and has now initiated the process of registration as a national of that country.

Aguinaldo is striving to clarify his nationality status, and with it, to obtain documents again. As he remarked:

"An individual with documents is a free individual."

⁷⁶ Expert meeting convened by the Office of the United Nations High Commissioner for Refugees, "Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality", Summary Conclusions, Tunis, Tunisia, 31 October-1 November 2013, paras. 40, 41 (UNHCR Expert Meeting on Loss and Deprivation of Nationality").

Portuguese nationality would be granted to those who would otherwise become stateless as a result of the creation of newly independent territories. As noted by one commentator: “the Portuguese legislator blatantly created the conditions to turn some of its citizens into stateless persons ... for it would suffice that the newly formed States would not follow, in the grant of their nationality, the criteria that the Portuguese legislator assumed they would adopt.”⁷⁷ In this context of shifts in laws and procedural miscommunication, many fell through the cracks and were ultimately left stateless. During this investigation, six cases were identified of potential statelessness deriving from the application of Decree-Law N. 308-A/75.

b) Loss on the basis of flawed attribution

During this mapping exercise, a worrying occurrence was raised several times by different interviewees: that of individuals who lost Portuguese nationality on the basis of the detection of flaws in its attribution by public authorities. Such cases mostly relate to the attribution of Portuguese nationality under Law N. 37/81, in its 1981 version (recall above Section 3.2.2.2). It is of note that given the improvements in document issuance in Portugal, cases of flawed attribution are not likely to occur in the future. Law N. 37/81, in its initial version, significantly restricted access to Portuguese nationality for persons born to foreign parents in Portugal, as it introduced a six-year residence criterion that was not required in previous legislation. Possibly due to lack of awareness of this new requirement, as well as to problems related to insufficiencies in the information provided in birth certificates (notably regarding the parents’ foreign nationality), various nationality registrations made in the 1980s were flawed. Such errors were often only detected decades later, most prominently since 2006, with the introduction of new technology and the Portuguese “citizenship card.”

Nowadays, cases of loss on the basis of flawed attribution in the 1980s still occur. For instance, one of the persons interviewed for this study lost his Portuguese nationality on such grounds in February 2016 and, at the time of writing, remains seemingly stateless. As explained by a migration lawyer interviewed, such flaws were typically detected when the individual approached the central registration services to renew his or her ID card. The outcome was to simply withdraw the individual’s decades-long (apparent) Portuguese nationality, without safeguards being put in place to ensure that statelessness would not ensue.

Many of those affected were left without any guidance by the registration services as to possible solutions. Essentially, they had two options: the re-acquisition of Portuguese nationality through naturalization or the acquisition of the nationality of another country with which the individual held some ties. It is, in any case, not certain whether these options could actually be operationalized. In the next section, the regime of re-acquisition of Portuguese nationality will be discussed.

Even where Portuguese identification documents were issued through a flawed application of the law or a misinterpretation of the facts, deprivation of one’s nationality in such terms seems incompatible with the fundamental notion that loss cannot leave a person stateless, as prescribed by Article 8(1) of the 1961 Convention. To be sure, UNHCR holds the view that deprivation of nationality must serve a legitimate purpose and must be proportionate to the interests that the State seeks to protect. This begs for a balancing exercise of the impact of deprivation on the rights of the individual. In so doing, account must be taken of the strength of the person’s link with the State, including birth in the territory, length of residence, family ties, economic activity as well as linguistic

⁷⁷ R. M. Moura Ramos, *supra* note 26, p. 341 (unofficial translation).



Case of Jair Barreto

Name: Jair Barreto

Country and year of birth: Portugal, 1982

Current status: became Cape Verdean in 2012

Jair was born in Portugal in 1982 to Cape Verdean parents. With his birth certificate, he was able to register in a public school, where he studied until 1996. That year, he was moved to an educational centre for social rehabilitation and, with the support of this institution, he was registered as a Portuguese citizen. He lived a normal life in Portugal until 2005, when he was not able to renew his Portuguese ID card. He was left unaware of how to proceed and only learned three years later, through a letter from the Central Registry Office, that his ID had not been renewed on grounds of “undue attribution, since his birth certificate mentioned the Cape Verdean nationality of his parents.” From that moment on, Jair was no longer a Portuguese citizen, but rather, an irregular migrant, without an identification document. He reached out to Portuguese authorities several times in order to recover his Portuguese nationality, but was not able to naturalize as he had previously committed a crime punishable with a prison sentence of a maximum penalty equal or superior to three years. His seemingly stateless situation was finally solved around 2012/2013, through the Embassy of Cape Verde – although the latter denied at first Jair’s entitlement to Cape Verdean nationality. Following some back and forth, he first obtained a Consular Inscription Certificate and, one year later, a Cape Verdean passport. At the time of writing, Jair, who was born in Portugal and was formerly considered Portuguese, remains irregular in the country, as he has not been able to obtain the necessary documentary evidence required by SEF to grant a residence permit.

As stated by Jair:

“It was inhuman to leave me with my hands tied. Only I know what I went – and still go – through. I studied here, became a professional here, and I have lived here since I was born. It is extremely tiring, which explains why I have ultimately quit ... from being Portuguese I became illegal.”

and cultural integration.⁷⁸ Regarding the cases mentioned above, it can be argued that the impact of deprivation on people’s lives seems to greatly outweigh the interests that Portugal sought to protect – considering that these were individuals who were born in the country and who had been living therein for decades.⁷⁹

Possibly owing to this sort of consideration, and to the detection of numerous cases of loss of Portuguese nationality based on flawed attribution, Portugal included a crucial safeguard in Article 12-B(1) of the new nationality regime whereby: “[t]he possession, in good faith, of Portuguese nationality by birthright or acquisition for, at least, 10 years constitutes grounds for the consolidation of nationality, even when the act or fact from which its attribution or acquisition derives is contested.”⁸⁰ This provision prevents the loss of Portuguese nationality and subsequent risk of statelessness, and is therefore commendable. Although it does not have retroactive effects, it still applies to pending cases at the moment of entry into force of the new nationality regime (Article 6(1) of Organic Law N. 2/2018).

⁷⁸ See: UNHCR Expert Meeting on Loss and Deprivation of Nationality, *supra* note 76, paras. 20-22.

⁷⁹ This represents the view of the author and does not reflect an official position of UNHCR.

⁸⁰ Already in 2017, a pertinent safeguard was added to the Nationality Regulation preventing potential loss along these lines, but solely in specified instances. See: Article 70(4)(5).

3.2.3.2.4 RE-ACQUISITION OF PORTUGUESE NATIONALITY THROUGH A MORE FAVOURABLE NATURALIZATION REGIME

Those who had Portuguese nationality and at some point lost it without having acquired a new one may re-acquire Portuguese nationality through a more favourable naturalization regime, prescribed in Article 6(3) of the Portuguese Nationality Law. In these circumstances, neither the requirement of five years of legal residence, nor the need to demonstrate sufficient knowledge of Portuguese, apply. This provision resolves loss cases and subsequent statelessness brought about by Decree-Law N. 308-A/75, for example. It can thus be seen as an anti-statelessness clause, even if corrective in character, and not preventive.⁸¹ Yet, despite its potential, it has rarely been used or even suggested by the Portuguese registration services to interested parties (see below Section 4.1.2.2). Several interviews conducted with social workers following cases of potential statelessness showed that there is little awareness of this provision. Aginaldo (case described in Section 3.2.3.2.3), for example, was never advised to attempt re-acquisition of Portuguese nationality, although he is certainly entitled to it, and has instead spent his last years in between embassies that have not yet solved his seemingly statelessness situation.

In case the individual who lost Portuguese nationality has in the meantime acquired the nationality of another State, it is also possible to regain access to Portuguese nationality under Article 6(6) – the same favourable grounds of Article 6(3) applying. The crucial difference is that in the case of Article 6(3), the Portuguese Government does not have any margin of discretion in the grant of nationality, as the latter is seen as a genuine right of the individual, whereas that is not the case with regard to Article 6(6). Here, the Government's discretion is still not absolute, as it is limited by constitutional requirements, such as the principle of non-discrimination.

It is important to highlight that the abovementioned cases of deprivation of Portuguese nationality based on flawed attribution under Law N. 37/81, in its initial version, were typically solved by the Portuguese registration services through Article 6(6), and not Article 6(3). This means that Portuguese authorities acted, by default, under the assumption that the individuals concerned had a foreign nationality, while, in reality, in a big number of instances this was not the case. Arguably, this shows lack of awareness as to what statelessness means and entails.⁸²

The fact that an option is available to solve cases of loss of Portuguese nationality through a more favourable naturalization regime is positive. Still, one should not overlook the fact that going through such processes might be quite burdensome and time-consuming, since the documentary evidence required may be difficult, or even impossible, to obtain. For instance, in both regimes of re-acquisition, the presentation of the individual's criminal record from the country of origin is required,⁸³ even if the individual may have never actually been in that country.

Not all of those wishing to re-acquire Portuguese nationality are able to do so through the abovementioned Article 6 provisions. Indeed, and in line with general naturalization requirements,

⁸¹ R. Moura Ramos, 'A Renovação do Direito Português da Nacionalidade pela Lei Orgânica n.º 2/2006 de 17 de Abril', in *Estudos em Homenagem ao Prof. Doutor Manuel Henrique Mesquita*, Vol. II, 2009, Coimbra Editora, pp. 617-678, at p. 639.

⁸² As a result, inaccuracies in the quantitative data presented by the Central Registry Office on statelessness seem unavoidable (see below Section 4.1.2.2).

⁸³ Articles 21(2)(c) and 24(2)(b) of the Portuguese Nationality Regulation regulate, respectively, the regimes of Articles 6(3) and 6(6) of the Portuguese Nationality Law. The requirement of presentation of the criminal record from the country of origin may be bypassed, however, if the individual proves that he/she has lived outside this country since the age of sixteen (Article 37(8) Portuguese Nationality Regulation). As has been noted by some interviewees for this study, proof of the latter can also be quite difficult to provide.

these provisions are only applicable in cases where the individual has not been condemned, by a final ruling, with a prison sentence greater than three years. Jair, for instance (case described above in Section 3.2.3.2.3), was not able to resort to Article 6 for this reason. This raises the question of how to strike a balance between the principle of “effective link”, the concept of “legal rehabilitation,” and the interests (of maintenance of social peace) protected by Portugal in requiring absence of a criminal record.

3.2.3.3 LEGAL IMPEDIMENTS TO THE ACQUISITION OF PORTUGUESE NATIONALITY

Conviction, by a final ruling, with a prison sentence greater than three years constitutes, among others, a legal impediment to the acquisition of Portuguese nationality. In particular: it hampers both the birthright acquisition of nationality by those born abroad with, at least, a second-degree Portuguese ascendant (Articles 1(1)(d) and (3) of the Portuguese Nationality Law) and naturalization processes (Article 6); and constitutes grounds for the public prosecutor to oppose the acquisition of Portuguese nationality (Articles 9 and 10). Such a *negative condition* for the acquisition of Portuguese nationality is meant to prevent offenders under criminal law from eventually integrating into the Portuguese community.

This raises the question of how to apply such a legal impediment to stateless persons, for whom a facilitated naturalization regime is desirable, and to those who possessed Portuguese nationality for less than 10 years and lost it, without possessing a foreign nationality (recall discussion above in Section 3.2.3.2.3).

Cases of naturalization requests being barred due to conviction for the commission of crimes in the terms described above, even where such incidents have already been erased from the individual’s criminal record,⁸⁴ have given rise to notable controversy in Portugal. Administrative Courts have made contradictory decisions in this respect. To some, the sole element to consider is whether the crime committed is punishable in the abstract, and thus, factors such as the concrete sentence that was applied, its extinction, or the materialization of legal rehabilitation, are all deemed irrelevant.⁸⁵ To others, condemnation does not automatically lead to the rejection of a naturalization request, and should instead be seen as an indication of the undesirability of the applicant, to be considered in each concrete case.⁸⁶ As has been noted, in matters as fundamental as nationality, such controversies give rise to an unsustainable legal insecurity.⁸⁷

The Portuguese Constitutional Court was recently called upon to examine this matter, in a case involving an individual of unknown nationality, residing in Portugal since 1976, whose request to acquire Portuguese nationality on the basis of marriage, presented in 2005, had been automatically opposed by the Public Prosecutor on grounds that he had been convicted of theft in 1992. In Ruling N. 106/2016,⁸⁸ the question put before the Constitutional Court was whether the choice of the Portuguese legislator to impede access to Portuguese nationality on the basis of a conviction along the lines described above was in conformity with the Portuguese Constitution. Notably, Article 26 of

⁸⁴ In accordance with Article 11 of Law N. 37/2015, of 5 May.

⁸⁵ See, e.g.: Decision of the Administrative Supreme Court, First Section, 10 July 2014, Procedure 0595/14.

⁸⁶ See, e.g.: Decision of the South Administrative Central Court, 10 January 2013, Procedure 08678/12.

⁸⁷ C. Urbano de Sousa, “A Naturalização do Estrangeiro Residente: Concretização do Direito Fundamental à Cidadania Portuguesa: Acórdão do STA (1.ª Secção) de 5.2.2013, P. 76/12”, in *Cadernos de Justiça Administrativa*, N. 107 – Setembro/Outubro 2014, CEJUR, pp. 23-36.

⁸⁸ Constitutional Court Ruling N. 106/2016, 30 March 2016.

the Constitution characterizes the right to acquire Portuguese nationality as a fundamental right and Article 30 proscribes sentences of a perpetual nature or of unlimited/undefined duration, as well as sentences automatically involving the loss of any civil right.

In order to answer this question, the Constitutional Court would essentially have to inquire into whether conviction, as such, automatically precludes any margin for the consideration of the concrete circumstances of the case, either by the public administration, or by courts. In Ruling N. 106/2016, striking a balance between the various values and legal interests at stake, the Court took particular note of “legal rehabilitation” and the regime set out in Portuguese penal legislation whereby the passage of time triggers the deletion of convictions from an individual’s criminal record, out of consideration for his or her full re-integration in society. The importance of these values, combined with the qualification of the right to Portuguese nationality as a fundamental right, led to the Court’s conclusion that, in the context of acquisition of Portuguese nationality, the relevance attributed to criminal conduct cannot be unlimited. Rather, an interpretation of Article 9(b) of the Portuguese Nationality Law in conformity with the Constitution demands that, in each concrete case, this legal impediment be considered in light of the aforementioned principle of “legal rehabilitation.”

Even if only applicable in this concrete case, the decision proffered by the Portuguese Constitutional Court is helpful, although more importance could have been given to the fact that the individual’s nationality was unknown. As confirmed by the Central Registry Office, this decision has already influenced its practice, which constitutes a significant improvement. Furthermore, it is worth noting that the new nationality regime explicitly states that it is the penalty concretely applied that should be considered (and not the penalty in the abstract).

To sum up, with regard to individuals clearly integrated in Portuguese society (i.e. who have resided for a long period in the country, know the Portuguese language, and presumably solely hold effective links with the Portuguese State, or at least relevant links) the principle of “legal rehabilitation” should take precedence over the value of respect for legal interests that is inherent in the criminalization of conduct. This understanding applies to an even greater degree in statelessness situations.⁸⁹ Holding otherwise would mean that the right to acquire Portuguese nationality would be denied indefinitely – an outcome that seems to violate the principle of proportionality that guides any restriction of constitutionally guaranteed rights, such as the right to acquire Portuguese citizenship.⁹⁰

With particular regard to the acquisition of nationality by stateless persons, the Committee of Ministers of the Council of Europe has noted that States should: “ensure that offences, when they are relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a State.”⁹¹

⁸⁹ This represents the view of the author and does not reflect an official position of UNHCR.

⁹⁰ C. Urbano de Sousa, *supra* note 87.

⁹¹ Council of Europe: Committee of Ministers, *Recommendation R (1999) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness*, 15 September 1999, (1999) 18, available at: <http://www.refworld.org/docid/3ae6b3964.html>.

3.2.3.4 PROCEDURAL RULES

3.2.3.4.1 DOCUMENTARY EVIDENCE

The procedural rules attached to the right to a nationality are a fundamental component, which can essentially determine its operability. On the one hand, procedures circumscribe the terms in which public authorities are to treat an individual's nationality claim, and thus, significantly shape the fairness of such an exercise. On the other hand, widening access to Portuguese nationality in substantive law may be somewhat frustrated when accompanied by burdensome procedures, through the imposition of heavy formal requirements or high costs, for example.⁹²

Proof of statelessness

The Portuguese Nationality Law envisages two instances where Portuguese nationality can be conferred upon proof of statelessness:

- in Article 1(1)(g), granting birthright nationality to those born in Portugal without another nationality at the time of birth; and
- in Article 6(3), allowing for the naturalization of those who had Portuguese nationality and, having lost it, never managed to acquire another one.⁹³

Proof of statelessness may give rise to difficulties, however. According to Article 36 of the Portuguese Nationality Regulation,⁹⁴ the burden of proof rests entirely in the hands of the interested party, who is required to submit “documents produced by the authorities of those States with which he or she has relevant links.”⁹⁵ The Central Registry Office noted in an interview that it suffices to present a brief declaration produced by the pertinent embassy(ies), asserting that the interested party is not a national of that country. In practice, however, it can be difficult to obtain the required documents from the embassies. During this study, several cases were identified where the embassy in question would neither acknowledge the person's nationality, nor emit a declaration to the contrary, thus leaving the person in limbo. Even if such a stalemate situation lasts beyond a reasonable period of time, the lack of response from the pertinent embassy is not considered by the Central Registry Office as a strong indication that the individual is not a national.

In any case, the interpretation of Article 36 may vary in the practice of different civil registration officers, which creates legal insecurity. A migration lawyer interviewed for this investigation noted, with regard to a case involving a woman and her child of undetermined nationality (the possibilities being Russian or Estonian) that, although they possessed the required declarations from the pertinent embassies, the Central Registry officer still found them insufficient and requested further information regarding the parents. The aim was to exhaust all possibilities by clarifying the parents' nationality and whether, according to the legislation of their countries, the claimants could be entitled to their nationality. It should be recalled that a person's nationality is to be assessed at the time of determination of eligibility under the 1954 Convention, which was not fully taken into account in this case.

⁹² A. R. Gil, *supra* note 51, p. 757.

⁹³ With regard to persons born in Portugal, proof of statelessness must be specifically added to his or her birth certificate as an identity element (Articles 3(c) and 6 of the Portuguese Nationality Regulation). Those who were not registered at birth may always do so later in time (Article 99 of the Civil Registration Code).

⁹⁴ Regarding Article 6(3), proof of statelessness is similarly regulated by Article 21(2)(b).

⁹⁵ Unofficial translation.

While these obstacles refer to those who can potentially seek the support of pertinent embassies, different hurdles arise among beneficiaries of international protection, who cannot contact the authorities of their countries of origin. Notably, it is uncertain how the situation of children born in Portugal to beneficiaries of international protection would be dealt with under Article 36, in cases where the acquisition of the parents' nationality is legally conditioned upon registration with the diplomatic services of their country. On the one hand, it would not be possible to register these children with their parents' nationality; on the other hand, it would also not be possible to obtain the documents required by Article 36 to trigger processes of acquisition of Portuguese nationality. In these cases, other elements should be accepted for proof of statelessness.

An additional factor hindering proof of statelessness relates to the possession of a certificate of consular inscription and the probative value this document is attributed in processes of acquisition of Portuguese nationality. Among the cases identified in this study, some individuals from former Portuguese colonies possessed an older consular inscription and, despite the fact that, at a later stage, they were unable to obtain a passport from the embassy (due to the impossibility of tracing their birth certificates), the Central Registry Office still presumed their foreign nationality. The rejection of a request to obtain/renew a passport constitutes reason enough to doubt the probative value of an individual's certificate of consular inscription, and thereby, his or her possession of a foreign nationality. These elements should be given more attention in the evaluations made by the Central Registry Office.

Case of Cristina



Name: Cristina

Country and year of birth: Portugal, 1990

Current status: without legal status in Portugal, may be stateless

Cristina was born in Portugal, in 1990, to an Angolan mother and a Cape Verdean father. Fearful of being caught undocumented, Cristina's mother never registered her birth. Throughout the years, Cristina attended school, sports, and theatre without any document other than a vaccination bulletin. When she turned 18, she gave birth to a child whom she could not register under her name given the lack of identity documents. This was ultimately possible with the support of two witnesses, who had to confirm her identity. Cristina took the first steps towards obtaining Portuguese nationality when she was 17, without success. With the help of a social worker, she finally understood what was needed: the late registration of her birth. After three years of obstacles being raised by the Central Registry Office (grounded on her mother's lack of documentation), Cristina eventually obtained a birth certificate when she was 24 years old. Since then, however, she has lived in a stalemate situation. On the one hand, the Angolan and Cape Verdean nationalities do not seem to be an option for her, in that these countries require the presentation of an identity document with a picture, which she does not have. On the other hand, she has not managed to prove that she is stateless before Portuguese authorities. Irregular in the country where she was born, Cristina has had informal jobs here and there, and does not take public transportation alone as she is afraid of being caught by the police.

The difficulties inherent in providing – negative – proof of statelessness should not be overlooked, and thus, flexibility in the assessment of cases is warranted. UNHCR recommends that the burden of proof be shared between the applicant and the examiner, which means that both parties must cooperate to obtain evidence and establish the facts.⁹⁶

The lack of a birth certificate

With regard to stateless persons not born in Portugal wishing to naturalize as Portuguese, the lack of a birth certificate (required by Article 19(2)(a) of the Portuguese Nationality Regulation) constitutes an almost insurmountable obstacle to trigger such a process. Among the cases identified, these problems were usually faced by those who came at a young age to Portugal, fleeing conflicts in African countries. In such cases, either registration offices and churches (where, at the time, it was common to register births) were burned, or the certificates in the meantime obtained were not properly authenticated. As confirmed by several interviewees, the Central Registry Office often requires the presentation of a birth certificate and does not offer much guidance as to possible alternatives. Individuals find themselves in a stalemate situation between the Central Registry Office and the relevant embassy, which may last for years. According to one of the persons interviewed for this study, the naturalization process he initiated in 2008 was only finalized in 2013. He went “dozens of times” to the Central Registry Office, presented “three different birth certificates which were never deemed duly authenticated,” and only managed to obtain the required document with the help of the Portuguese Ministry of Foreign Affairs.

Late birth registrations at the pertinent embassies were not an option for some interviewees. As they were of age, they would instead have to travel to their country of origin for such a registration. This was not feasible given the associated costs, as well as their condition as irregular migrants, which brought with it the fear of leaving the country without the possibility of coming back.⁹⁷ Given the close ties between Portugal and Portuguese speaking countries through the CPLP⁹⁸ forum, which facilitates entry and residence rights to its members, Portugal could consider developing a cooperative arrangement with the relevant countries in order to render late birth registrations possible for stateless persons. This could be done, for instance, through the emission of a return travel document.

It is important to note that, in naturalization processes, Article 26 of the Portuguese Nationality Regulation exceptionally dispenses with the presentation of any required document (such as the birth certificate), through a reasoned statement addressed at the Ministry of Justice. Although this mechanism is only to be used in “special cases,” it could be an interesting option for stateless persons. However, the potentially stateless persons and social workers interviewed for this study had not heard about this possibility, including in their interactions with the Central Registry Office.

As was already noted, substantive law does not facilitate naturalization for stateless persons. The current section further demonstrated how the procedural elements required by the Portuguese Nationality Regulation seem to hinder the process even more, when compared to other foreigners who are documented. Therefore, increased awareness of the obstacles facing stateless persons is needed. For instance, when enquiries with competent authorities from the individual’s country of origin are met with silence or a lack of cooperation, this factor should be given due consideration

⁹⁶ UNHCR, *Handbook on Protection of Stateless Persons*, *supra* note 6, pp. 34, 35.

⁹⁷ An option that is exceptionally made available by the Angolan consulate, for instance, is that of special late birth registrations.

⁹⁸ Community of Portuguese Language Countries.

by the Central Registry Office. Following a reasonable period of time without response, conclusions may be drawn as to the individual's non-possession of nationality from that country.⁹⁹ UNHCR finds it important, in a context of statelessness, that Portuguese authorities simplify procedures, offer strengthened guidance to individuals, and adjust their responses to the particularities of each case.

3.2.3.4.2 APPEAL

Articles 25 and 26 of the Portuguese Nationality Law grant to interested parties, as well as the Public Prosecutor, the possibility to request an independent appeal of decisions concerning both the acquisition and loss of Portuguese nationality. The procedure is essentially one of administrative law, and thus, Article 26 refers nationality litigation to the Statute of the Administrative and Tax Courts, the Administrative Courts' Procedure Code, as well as pertinent complementary legislation.

3.2.4 Areas for Strengthening the Portuguese Legal Regime

The case of stateless persons in Portugal who were not born in the country and reside there undocumented is difficult to solve, and calls for the incorporation of innovative solutions in the Portuguese legal regime. In fact, there is only one means of access to Portuguese nationality for these persons, which lies almost entirely in the hands of SEF. These persons must regularize their stay for five years, then apply for Portuguese nationality through naturalization (Article 6(1) of the Portuguese Nationality Law).

Obtaining a residence permit in such circumstances is not easy, however. The Portuguese Immigration Law N. 23/2007 does allow for the granting of temporary residence permits, without the need of a residence visa, in a substantial number of "special circumstances."¹⁰⁰ Still, the procedure can only be triggered through the presentation of a passport (or another valid travel document)¹⁰¹ – which, as mentioned, is inexistent in certain cases. The only solution for undocumented individuals lies in resorting to Article 123, which contemplates an "exceptional regime," whereby residence permits may be granted for, *inter alia*, "humanitarian reasons." Here, any document the person may have (e.g. a social security number) is of use and witness testimony may also be exceptionally accepted. Some institutions interviewed for this study have already made use, successfully, of Article 123 in various cases of persons living in substantial vulnerability. However, it seems that, as of 2017, requests are being denied more often. A temporary residence permit is then granted for one year, and is potentially renewable for two years, and yet again for two additional years. From then on, it can be converted into a permanent residence permit.

Table 1. Residence permit requests and grants under Article 123 for "humanitarian reasons"

	2013	2014	2015	2016
Requests	391	248	229	388
Grants	113	91	161	267

Source: SEF, 2018

⁹⁹ UNHCR, Handbook on *Protection of Stateless Persons*, *supra* note 6, p. 17.

¹⁰⁰ These include the cases of those who have lost Portuguese nationality and who have remained in Portuguese territory for the last 15 years (Article 122(1)(i)) and of those who are no longer entitled to the right to asylum in Portugal based on the cessation of the reasons sustaining the referred protection (Article 122(1)(f)).

¹⁰¹ Article 61(1) of Regulatory Decree N. 15-A/2015, of 2 September.

At best, Article 123 opens the door for regular stay in the country for five years. But this option places persons of concern in a position where the outcome is dependent on a decision that is, in reality, discretionary. In addition, it should be recalled that the steps subsequently required towards naturalization are difficult to achieve because other documents, such as a criminal record from the country of origin (where some only lived in their infancy), are demanded. Finally, it is of note that, in any case, most persons of concern interviewed for the mapping study had not (yet) benefited from the regime prescribed in Article 123.

Like the case of Rosangela described below, other cases were identified in this study where Portuguese domestic legislation does not seem to offer any tangible solution in terms of access to Portuguese nationality. One individual fled from war in Liberia, and the other one from war in Mali. Both have lost contact with their relatives, remain undocumented in Portugal, and could not obtain any consular support in retrieving their birth certificates or establishing their identity.

While ultimately only the acquisition of Portuguese nationality would resolve such stalemate situations, where this is not yet possible, it is still necessary to protect stateless persons. The institutionalization of a SDP in Portugal would enable the identification of these persons and render



Case of Rosangela

Name: Rosangela (name changed for confidentiality reasons)

Country and year of birth: DRC/Angola, 1988

Arrival in Portugal: 1988/1989

Current status: without legal status in Portugal, may be stateless

Rosangela was born in between Angola and the former Zaire, current DRC, in 1988, to a Zairian father and an Angolan mother. Her birth was not registered. At 6 months of age, her parents brought her to Portugal without any documents. During her difficult childhood, Rosangela had access to a kindergarten and attended school until she was around 12 years old. Since she left school, Rosangela has lived an invisible life, vulnerable and undocumented, except for one year, 2012, when she was exceptionally granted a one-year residence permit through SEF's project "SEF em Movimento," which aims to simplify regularization procedures for the most vulnerable. During that period, she was able to work and to register with Social Security. She was not able to renew her residence permit, however, as she did not have any ID or passport to present at SEF. Once again irregular in the country and experiencing hardship, Rosangela committed several thefts, for which she has been sentenced a few times. Rosangela has four children, but only two, the older ones, have an acknowledged nationality through their fathers. The younger ones, born in 2015 and 2016 to a Cape Verdean father, are still awaiting a final decision from the Embassy of Cape Verde. As Rosangela and her current partner are irregular migrants in Portugal, they do not benefit from any kind of State support, including child benefit allowances. The pathway to nationality feels like a never-ending story to Rosangela, in that, being irregular and totally undocumented, she will never be able to naturalize as Portuguese. As expressed by Rosangela in a letter addressed to Portuguese authorities in 2017:

"... I need a document that says that I exist, so that I can work in a dignifying way and provide quality of life to my children – the kind of life every child deserves, and is entitled to by right, a nationality, education, health care, the bread of everyday, as a result of honest work. I need a residence permit just as I need the air that I breathe."

their protection effective through the regime contained in the 1954 Convention (see below Section 4.4). Furthermore, it would constitute a crucial first step towards the acquisition of Portuguese nationality, provided that, as suggested above, it is followed by the adoption of a new naturalization provision facilitating access to Portuguese nationality for stateless persons.

3.3 Stateless Persons' Rights under Portuguese Legislation

3.3.1 The Portuguese Constitution and the Principle of Equivalent Treatment

Article 15 of the Portuguese Constitution sets out the regime for the enjoyment of rights and the fulfillment of duties that is applicable to stateless persons. In line with the 1954 Convention, it contains a general and explicit grant of equivalent treatment between Portuguese nationals, on the one hand, and foreigners and stateless persons who find themselves in or who reside in Portugal, on the other hand. Equivalent treatment is therefore granted with regard to all constitutional rights, with a few specifically determined exceptions.¹⁰²

Portuguese legal scholars have questioned whether this principle is readily applicable, as such, to irregular migrants or undocumented persons (who, it should be added, may be stateless, without this status having been formally recognized). To some, it is rather the narrower concept of human dignity that dictates these persons' access to the rights enshrined in the Constitution, meaning that they would be entitled to fewer rights when compared to regular migrants.¹⁰³ A less restrictive view interprets the principle of equivalent treatment as endorsing a universalist conception of constitutionally-protected rights. Since the principle is directed at *all* individuals, *de facto* presence in the country should trigger as well its application, with restrictions thereof solely being allowed in specified cases.¹⁰⁴

The following sections will provide an overview of constitutional provisions, and rules contained in legal documents, where such generic assimilation and application of the principle of equality is further specified in particular human rights fields pertinent to stateless individuals.

3.3.2 Right to Health

As stated in Article 64(1) of the Portuguese Constitution, "[e]veryone has the right to the protection of health," which, among others, shall be fulfilled "[b]y means of a universal and general national health service." (Article 64(2)). In conformity with Article 23 of the 1954 Convention, the Portuguese

¹⁰² Exceptions to the principle of equivalent treatment can be found in Article 15(2) and consist of: "[p]olitical rights, the exercise of public functions that are not predominantly technical in nature, and the rights and duties that the Constitution and the law reserve exclusively to Portuguese citizens." In general, these exceptions relate to matters of political and community organization.

¹⁰³ See: J. Pereira da Silva, *supra* note 67 p. 28; J. Miranda and R. Medeiros, *Constituição Portuguesa Anotada*, Tomo I, Wolters Kluwer/Coimbra Editora, 2010, pp. 266, 267. The latter authors specify that, although irregular migrants and stateless persons do not benefit from equivalent treatment in the enjoyment of constitutionally guaranteed rights, they are still entitled to the rights contained in international human rights instruments ratified by Portugal, as well as the UDHR.

¹⁰⁴ A. R. Gil, *Imigração e Direitos Humanos*, Petrony, 2017, pp. 255-264.

Framework Law on Health further specifies that stateless persons residing in Portugal are beneficiaries of the National Health System (*Serviço Nacional de Saúde, SNS*).¹⁰⁵ This system is generally accessible to those legally residing in Portugal. Furthermore, the Health Ministry has clarified¹⁰⁶ that irregular immigrants (among whom, it should be added, it is possible to find persons who may be stateless) can also access it through the presentation of a document, issued by the municipality, certifying that they have been residing in Portugal for more than 90 days.¹⁰⁷ Those who do not possess such a document may also benefit from health services in specified cases, including: urgent situations; communicable diseases that constitute a public health threat; maternal and child health; or if they are minors.

3.3.3 Right to Social Security

Article 63(1) of the Portuguese Constitution determines that “[e]veryone has the right to social security.” The Portuguese Framework Law on Social Security embraces the principles of universality and equality, protecting beneficiaries from any discrimination on the basis of nationality.¹⁰⁸ In principle, then, equivalent treatment between nationals and stateless persons lawfully staying in the country, as specified in Article 24 of the 1954 Convention, would be ensured. This, however, depends on how the matter is further specified in legal texts dealing with social security matters. The Framework Law also regulates the conditions of access to the “solidarity sub-system,” which is a complementary mechanism aimed at fighting poverty and social exclusion. Stateless persons residing in Portugal (under conditions to be determined by law) may benefit from such a system.¹⁰⁹ In addition, access to a range of components of the social security system is further regulated in diverse legal instruments, which apply to stateless persons with regular residence in Portugal. To name two examples, stateless persons are entitled to: cash benefits aimed at family protection, such as, child benefits, study grants or funeral subsidies;¹¹⁰ and social benefits aimed at reinforcing protection in maternity, paternity, and adoption, in contexts of economic deprivation.¹¹¹

3.3.4 Right to Work

Workers’ rights are envisaged in Article 59(1) of the Portuguese Constitution, which secures their enjoyment by all individuals regardless of citizenship and place of origin. The rights referred to in this provision include the right: to a remuneration; to work under conditions of social dignity and that are hygienic, safe and healthy; to rest and leisure time; and to material assistance in case of unemployment. The Portuguese Labour Code contains provisions especially directed at foreigners and stateless persons. In line with Article 17 of the 1954 Convention, Article 4 asserts that stateless persons who are authorized to practice a professional activity under an employment contract in Portugal enjoy the same rights and are subject to the same duties as a worker of Portuguese nationality. Article 5 provides further specifications on the form and content of such an employment contract.

¹⁰⁵ Basis XXV(3) of Law N. 48/90, of 24 August, with the version introduced by Law N. 27/2002, of 8 November.

¹⁰⁶ Directorate-General for Health, Information Circular N. 12/DQS/DMD, of 7 May 2009.

¹⁰⁷ This is specifically regulated in Article 34 of Decree-Law N. 135/99, of 22 April, with the version introduced by Decree-Law 74/2017, of 21 June.

¹⁰⁸ Articles 6 and 7, respectively, of Law N. 4/2007, of 16 January, with the version introduced by Law N. 83-A/2013, of 30 December.

¹⁰⁹ Articles 36-40, *ibid.*

¹¹⁰ Articles 2, 3 and 7 of Decree-Law N. 176/2003, of 2 August, republished by Decree-Law N. 133/2012, of 27 June.

¹¹¹ Articles 2-5 of Decree-Law N. 105/2008, of 25 June.

3.3.5 Right to Education

Article 74(1) of the Portuguese Constitution provides that “[e]veryone has the right to education, with the guarantee of the right to equal opportunities in access to and success in schooling.” While Article 2 of the Portuguese Framework Law on Education¹¹² solely grants the right to education to “all Portuguese citizens,” this norm cannot but be interpreted in line with the wider constitutional intent of ensuring *everyone’s* (including stateless individuals’) access to such a right.¹¹³ Such an interpretation also brings this provision in conformity with Article 22 of the 1954 Convention.

3.3.6 Access to Justice

Access to justice and effective judicial protection is secured for “everyone” under Article 20 of the Portuguese Constitution.¹¹⁴ With particular regard to legal aid, Article 7 of Law N. 34/2004,¹¹⁵ grants this right to stateless persons who hold a valid residence permit in an EU member State and demonstrate financial hardship. Although access to legal aid has been broadened, when compared to previous norms that required regular presence in Portugal,¹¹⁶ it remains to be seen how the situation of stateless persons without a valid residence permit in an EU member State would be treated by Portuguese authorities. It is of note that Article 16 of the 1954 Convention more generically prescribes that “a stateless person shall have free access to the Courts of Law,” without mentioning residence criteria.

3.3.7 Access to Identity and Travel Documents

Although Article 28 of the 1954 Convention safeguards the right of stateless persons to a Convention Travel Document (CTD) issued by their country of lawful stay, currently, in Portugal, stateless persons are rather granted a “passport for foreigners” (Article 35(1) of Decree-Law N. 83/2000).¹¹⁷ This passport is solely granted to those legally residing in the country and has a maximum validity of two years (Article 38(a)). Within the asylum context, the issuance of travel documents is governed by Article 69 of the Portuguese Asylum Law.¹¹⁸ SEF confirmed in an interview conducted for this study that it has already approved a CTD in machine-readable format for stateless persons. However, this model still has to be backed up by legislative endorsement.

¹¹² Law N. 46/86, of 14 October, with the version introduced by Law N. 85/2009, of 27 August.

¹¹³ J. Pereira da Silva, *supra* note 67, p. 53.

¹¹⁴ In case of detention (under Article 27(3) of the Portuguese Constitution), this right assumes the contours described in Article 28.

¹¹⁵ Law N. 34/2004, of 29 July, with the version introduced by Law N. 47/2007, of 28 August.

¹¹⁶ Considerable controversy was raised in the past with regard to the entitlement to legal aid of individuals with irregular presence in the country. The Portuguese Constitutional Court has for instance pronounced several decisions (e.g.: Decision 340/95, of 2 November 1995 and Decision 962/96, of 15 October 1996) declaring the unconstitutionality of previous norms which entailed the denial of the right to legal aid to asylum seekers who, because of their irregularity, were unable to appeal a denied request for asylum.

¹¹⁷ See: Decree-Law N. 83/2000, of 11 May, with the version introduced by Decree-Law N. 138/2006, of 26 July.

¹¹⁸ Article 69 sets out a diversified regime for refugees and beneficiaries of subsidiary protection (see, respectively, Article 69(1) and Article 69(2)). As to the travel document issued to refugees, it is valid for one year, and renewable for identical periods (see: Article 19(2) of the Portuguese Immigration Law).

Stateless persons who do not possess a valid travel document are entitled to identity papers, in light of Article 27 of the 1954 Convention. In Portugal, this could be achieved through the grant of a residence permit, which, according to Article 84 of the Portuguese Immigration Law, “substitutes, for all legal purposes, the identification document.”¹¹⁹ However, under this regime, statelessness does not constitute a separate ground for the issuance of residence permits.

3.4 Conclusions and Recommendations

The legal implications of statelessness have received increased attention in Portugal. Still, there is room for improvement in all four dimensions of this phenomenon, notably, the reduction, prevention, identification and protection of stateless persons. Although Portugal is party to the 1954 and 1961 Conventions, which are thereby incorporated in its legal regime, the latter does not expressly contain a definition of a stateless person and is still to codify some of the Conventions’ provisions. The 1961 Convention, in particular, has not been sufficiently accounted for in regulatory legislation and administrative practice.

The Portuguese Nationality Law is quite broad when it comes to granting access to Portuguese nationality and offers some important safeguards to prevent and resolve cases of statelessness. It is, however, of note that these safeguards have so far been under-used (as will be seen in the following Chapter), which may be partially explained by the fact that cases presenting strong indications of statelessness are not framed in such terms by those who apply the law, due to lack of awareness of the phenomenon. Further obstacles may be found in the procedural requirements contained in the Portuguese Nationality Regulation. The right to Portuguese nationality is also a procedurally dependent right, which means that the development of a fair regulatory regime for attribution is required.¹²⁰ As it stands now, the regime imposes significant hurdles for stateless individuals wishing to acquire Portuguese nationality. UNHCR would thus like to put forward the following recommendations to the Portuguese State:

Access to Portuguese nationality

- The Portuguese Nationality Law laudably grants Portuguese nationality to those born in the country who would otherwise be stateless (Article 1(1)(g)), and facilitates the naturalization of those who lost Portuguese nationality (for instance, owing to Decree-Law N. 308-A/75) and never acquired another one (Article 6(3)). However, the attendant regulatory regime, and its practical application by the Central Registry Office, render proof of statelessness difficult. The challenges inherent in proving statelessness (such as lack of consular support from the country(ies) of origin) should be taken into account. UNHCR recommends that the law be amended so as to establish a burden-sharing scheme between the applicant and the examiner, which means that both parties must cooperate to obtain evidence and establish the facts.
- Naturalization could be further facilitated for stateless persons through the removal of procedural obstacles. A new provision could be added to the Portuguese Nationality Law providing for facilitated access to Portuguese nationality, for instance, by reducing the residence period required, discarding legal residence requirements, and by loosening procedural evidentiary conditions.

¹¹⁹ Unofficial translation.

¹²⁰ J. Pereira da Silva, *supra* note 67, p. 95.

- Stateless persons could in principle resort to the naturalization provisions contained in Article 6 of the Portuguese Nationality law. Yet, all of them entail procedural requirements that are difficult to fulfill:

1) In order to operationalize all Article 6 provisions, the Portuguese Nationality Regulation requires, among others, the presentation of a birth certificate. Although an exception to this requirement can be made under Article 26, interviews for this study showed that this provision was unfamiliar to requesters, and that guidance regarding its use is not normally provided by the competent services. In the cases identified, the inability or unwillingness to cooperate by relevant embassies were not taken into account by the Central Registry Office. UNHCR holds the view that beyond a reasonable period of time without a response from said embassies, conclusions may be drawn as to the individual's non-possession of nationality from that country. UNHCR finds it important that Portuguese authorities simplify procedures in the framework of statelessness, offer strengthened guidance to interested individuals, and adjust their responses to the specific characteristics of each case.

Loss of Portuguese Nationality

Cases of loss of Portuguese nationality identified in this study revealed worrying occurrences, as in various instances the possibility of ensuing statelessness was not taken into account. The new provisions introduced by Organic Law N. 2/2018 are certainly useful, not to solve pre-existing situations (as these provisions are not retroactive), but to prevent new cases from arising.

- With regard to new detected cases of flawed attribution of Portuguese nationality, individuals may maintain their nationality if possessed for at least 10 years, in good faith. As this concept is an abstract one, UNHCR recommends that the Central Registry Office develop guidelines on how to interpret and apply it in practice. In this way, clarity and legal security may be ensured. For other cases not fulfilling the 10-year requirement, the process of re-acquisition of Portuguese nationality through naturalization should be as expedited and simplified as possible.
- When it comes to the acquisition of Portuguese nationality through false documentation, the law does not allow such a grant to be nullified if statelessness would ensue. This statelessness prevention provision is of utmost importance. Yet, here as before, it may be rendered less meaningful than it seems depending on how proof of statelessness is assessed by the competent authorities.

The need for a Statelessness Determination Procedure

While the contours of a SDP will be explored in Section 4.4, it can already be noted here, by way of conclusion, that this mechanism is crucial for statelessness cases with no tangible solution under the current Portuguese legal regime (Section 3.2.4), as well as for those where substantive venues are offered in the law, but not procedural ones (Section 3.2.3.4.1). For instance, a SDP in Portugal could be linked to processes of acquisition of Portuguese nationality involving proof of statelessness.

The recognition of stateless status is a fundamental, if temporary, form of protection offered to individuals who otherwise remain invisible. While Section 3.3 was important to show that the Portuguese legal regime contains several human rights provisions in line with the 1954 Convention, it is also true that the absence of status determination implies that various persons in Portugal do not actually benefit from them.

4. The Face of Statelessness in Portugal

4.1 A Brief ‘History’ of Statelessness in Portugal

Information about the stateless population in Portugal is modest, which is mainly due to the inexistence of a mechanism allowing for the official recognition of such a status. This means that not all profiles and groups of individuals in the country are covered by administrative data. This problem is far from being unique to Portugal. Rather, only a few countries in the world or in Europe, have accurately identified the dimension of statelessness on their territories. As has been noted by UNHCR: “[m]easuring statelessness is complicated given that stateless people often live in precarious situations on the margins of society. Frequently, stateless persons are not only undocumented but also ignored by the authorities and uncaptured in national administrative registries and databases.”¹²¹

Chapter 4 begins by presenting all available statistical material on stateless persons in Portugal, based on data collected by Statistics Portugal (*Instituto Nacional de Estatística*, INE), the Central Registry Office, and SEF. An overview of the country’s population registration practice follows suit, taking into account diverse contexts where stateless persons, persons at risk of statelessness, or of unknown/undetermined nationality may be identified (Section 4.2). To deepen the understanding of the impact of statelessness in the daily lives of individuals, Section 4.3 looks into the challenges faced by these persons in accessing human rights. In order to enhance the identification and protection of stateless persons in Portugal, the chapter ends with a recommendation to establish a SDP, and describes several elements that should inform this mechanism’s design and operation.

4.1.1 Census Information

In the most recent Portuguese census, in 2011, the self-declared stateless population was 553 individuals. A look into the distribution of this population by age group reveals that the highest number of stateless persons was found among those born between 1972-1976 (100 persons), and between 1977-1981 (76 persons).

The number of self-declared stateless persons residing in Portugal was higher in previous censuses, as the table below demonstrates. While the data might not be fully accurate, as it is based on self-reporting by individuals of their nationality status, the table provides an interesting indication of the possible dimension of statelessness in Portugal in the past thirty years.

¹²¹ UNHCR Global Action Plan, *supra* note 4, p. 24.

Table 2. Census results

Year	Stateless population (self-declared)
2011	553
2001	1,075
1991	19,698
1981	1,175

Source: *Instituto Nacional de Estatística, 2018*¹²²

The 1991 census indicates a surprisingly high number of self-declared stateless persons. Among these, the most prevalent age group is that of children between 0 and 4 years old, with 6,704 persons. A possible explanation for this might be found in the abovementioned Law N. 37/81, which, throughout the 1980s, restricted the access of children born in Portugal to foreign parents to Portuguese nationality (recall Section 3.2.2.2).

The 1981 census may not capture with sufficient detail the impacts of the intense migratory flows to Portugal that followed decolonization and any links thereof with the numbers behind the category of stateless individuals. The disorder and social instability that permeated the whole process certainly made it difficult to record such elements.¹²³ In any event, it is quite likely that higher numbers of stateless persons (or at least, persons at risk of statelessness) could be observed in Portugal throughout the 1970s, for three main reasons:¹²⁴

- 1) Many, born in the ex-colonies, travelled to Portugal during the independence wars with Portuguese documents. They then lived in the country for decades with an apparent Portuguese nationality, although they had actually lost it in 1975, under the abovementioned Decree-Law N. 308-A/75. In a context of State succession, it is true that the newly formed independent territories offered the possibility of acquisition of their respective nationalities. However, in some of these processes, only a few months were granted for people to actually register their new nationality.¹²⁵ Lack of information and awareness significantly hampered the efficacy of the procedures for a number of individuals. Unsurprisingly, then, many never managed to undertake the required administrative steps to either preserve their Portuguese nationality under Decree-Law N. 308-A/75 (if its stringent criteria so allowed) or to acquire the nationality of the newly formed States. Cases of lack of registration of their children's nationality added further complications.

Various situations have been solved in the past decades, including by two migration lawyers interviewed for this study. Still, in the course of the interviews conducted – limited as they were in terms of time and geographical scope – it was possible to identify six potential cases of statelessness that remain unsolved. This is typically owing to the lack of documents (normally birth registration) required to trigger nationality processes either with the Portuguese authorities or the embassies of their countries of origin.

¹²² Census results may be found at: <https://bit.ly/1TauXyP>.

¹²³ See, *inter alia*: N. Dias, *Remigração e Etnicidade: Trânsito Colonial entre a África de Leste e a Europa*, Mundos Sociais, Lisboa, 2016, especially at pp. 112, 113, 132, 133.

¹²⁴ The following arguments are based on interviews with stateless persons, with two migration lawyers, a social sciences professor, and three CSO representatives.

¹²⁵ This was the case in Angola, for example.

- 2) Others, notably children and youth, made their way to Portugal without any document whatsoever. Particularly worrying was the case of children not truly integrated in a family of Portuguese origin, who, despite being registered upon arrival at the Portuguese airport among the returnees from the ex-colonies (for example, under the guardianship of an “affectionate Godfather” of Portuguese origin), were later left on their own, undocumented, and living with the support of charity organizations. As noted by a migration lawyer interviewed for this report, although these cases were not very numerous, they had extremely painful personal impacts, in contexts of immense vulnerability.
- 3) Finally, a considerable number of people managed to preserve Portuguese nationality under Decree-Law N. 308-A/75 through the presentation of false documentation, which was only detected later. Indeed, one of the provisions contained in said Decree-Law secured the preservation of Portuguese nationality to those who, having been born in an ex-colony, had been residing in mainland Portugal or in the archipelagos of Azores and Madeira for more than five years before 25 April 1974. In this vein, the solution found by many was to present an employment contract with a start date of more than five years to the Portuguese civil registration services as means of proof. As noted by an interviewee, various cases were subsequently detected, for instance, among individuals of Indian origin, who had been residing in Mozambique while it was still a Portuguese colony.

Generally, around half a million persons arrived in Portugal in 1975, mostly from Angola and Mozambique. This is indicated in the census of 1981, which included the question of where the respondents resided in December 1973, in an attempt to determine the number of “returnees” from the ex-colonies. Compared to other countries in Europe, this was (proportionally) the biggest contingent of “returnees” from ex-colonies.¹²⁶ Among these, the majority was able to preserve Portuguese nationality in light of Decree-Law N. 308/75. The problem, however, lies with the indefinite number of individuals who could not retain Portuguese nationality and did not obtain the nationality of a new State.

It is nearly impossible to capture in numbers the impacts of decolonization when it comes to the acquisition of a subsequent nationality – be it Portuguese nationality, or one from the newly formed States. As was already mentioned, a number of cases identified in the course of the mapping study remain unsolved still today. Yet, in all likelihood, most situations in Portugal were solved through naturalization. Some figures in this respect are included in the subsequent section.

4.1.2 Recent Official Data on the Stateless Population in Portugal

4.1.2.2 PERSONS WHO HAVE OBTAINED PORTUGUESE NATIONALITY

The official website of INE indicates that, between 2008 and 2016, only one acquisition of Portuguese nationality by a stateless person occurred.¹²⁷ For the purposes of this mapping, the same type of data was requested from the Central Registry Office. As the table below demonstrates, the scenario is slightly different from that presented by Statistics Portugal, since the latter solely gathers data based on acquisitions of Portuguese nationality through naturalization and declarations of will, thus leaving out all cases of attribution of nationality by birth.

¹²⁶ R. P. Pires, *Migrações e Integração: Teoria e Aplicações à Sociedade Portuguesa*, Oeiras: Celta, 2003, pp. 189, 192.

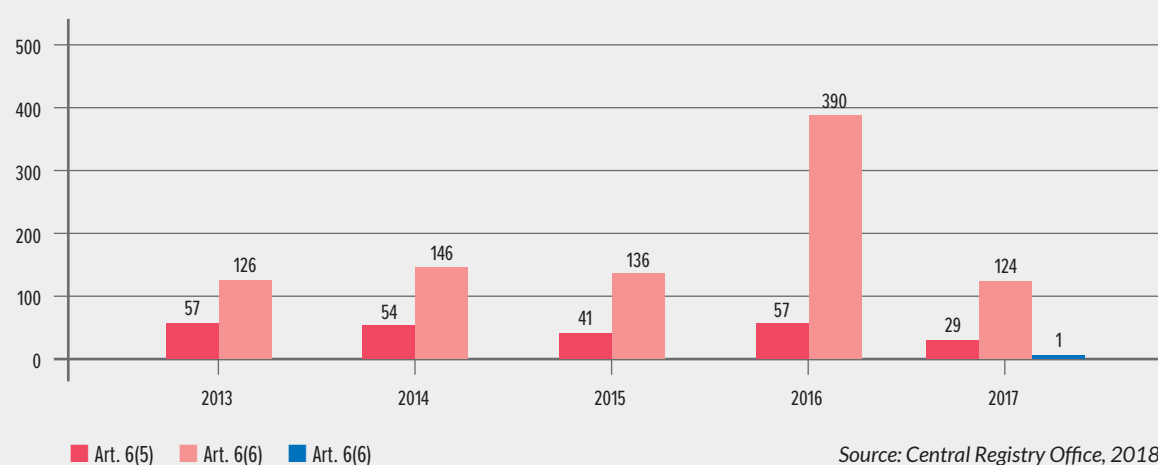
¹²⁷ See: <https://bit.ly/2AXi9dy>.

Table 3. Birthright acquisition of Portuguese nationality by persons who would otherwise be stateless

	2013	2014	2015	2016	2017
Article 1(1)(g)	1	3	4	4	4

Source: Central Registry Office, 2018

Portuguese official statistics fail to capture comprehensively naturalization processes involving stateless persons. Indeed, Article 6(3) (which, as mentioned above, allows for the naturalization of those who were at some point Portuguese and, having lost said nationality, never acquired another one) is the sole provision that is taken into account in said statistics. At the same time, potentially stateless persons (or at risk of statelessness) may have naturalized through any other provision of Article 6 (Article 6(5) and Article 6(6) being the most likely ones). For instance, and as already mentioned in Section 3.2.3.2.3, the majority of cases of loss of Portuguese nationality on grounds of flawed attribution were solved through Article 6(6), which is foreseen for individuals with a foreign nationality, while in various instances individuals had actually been left stateless (or at risk thereof). Moreover, the Central Registry Office was seen, in some instances of acquisition of Portuguese nationality, to presume the foreign nationality of individuals born in former Portuguese colonies who possessed a consular inscription from their country of origin, despite a demonstrable impossibility to obtain a passport from their embassy or recognition as a citizen by that country (recall Section 3.2.3.4.1). Here, as before, opportunities for a more adequate application of Article 6(3) were lost. Hence, among the individuals who naturalized as Portuguese between 2013 and 2017, represented in the chart below, it is likely that some of them were stateless or at risk of statelessness.

Figure 1: Acquisition of Portuguese nationality through naturalization

A final pertinent element relates to processes of acquisition of Portuguese nationality by persons from former Portuguese colonies. As already described, decolonization (and the adoption of Decree-Law N. 308-A/75) brought with it the loss of Portuguese nationality for thousands of individuals, among whom many were left stateless. It is likely that most of these persons have in the meantime acquired a nationality, although there are cases in Portugal that remain unresolved until today. Hence, the numbers of individuals from former Portuguese colonies who acquired Portuguese nationality between 2013 and 2017, displayed in the chart below, may also include stateless persons.

Figure 2: Acquisition of Portuguese nationality by persons from former Portuguese colonies

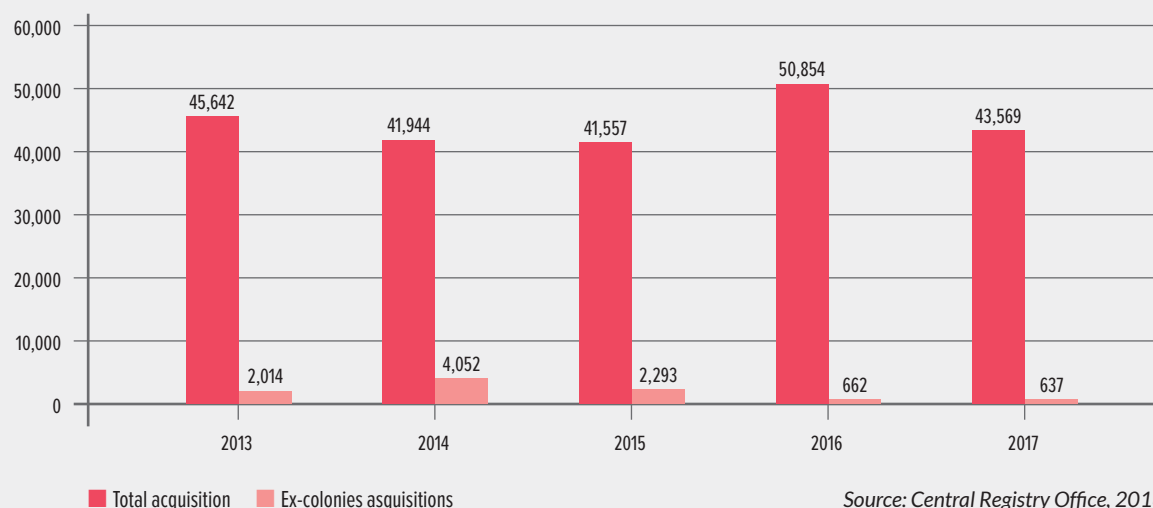
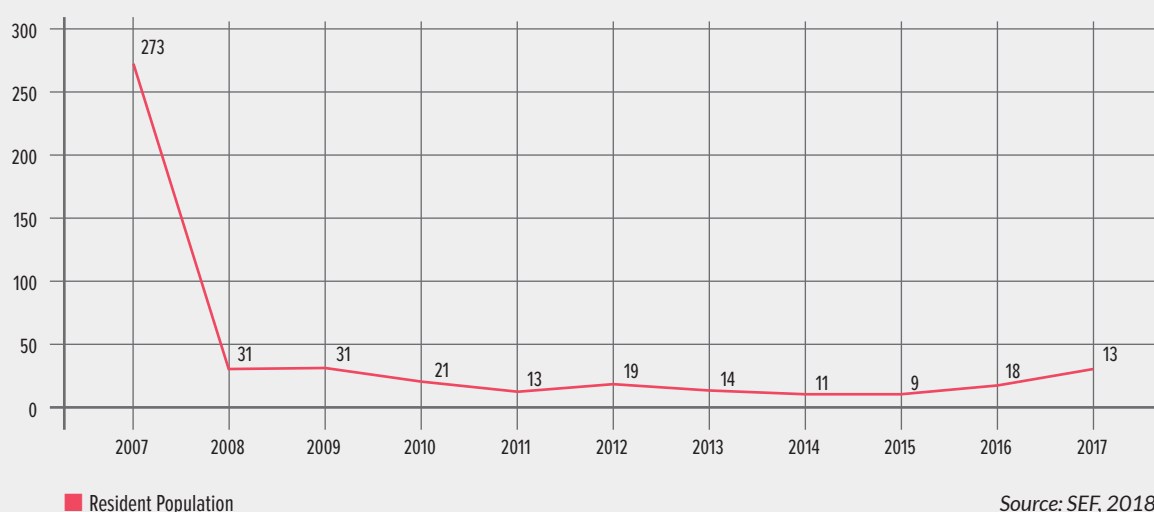


Figure 3: Stateless resident population



4.1.2.3 RESIDENT POPULATIONS

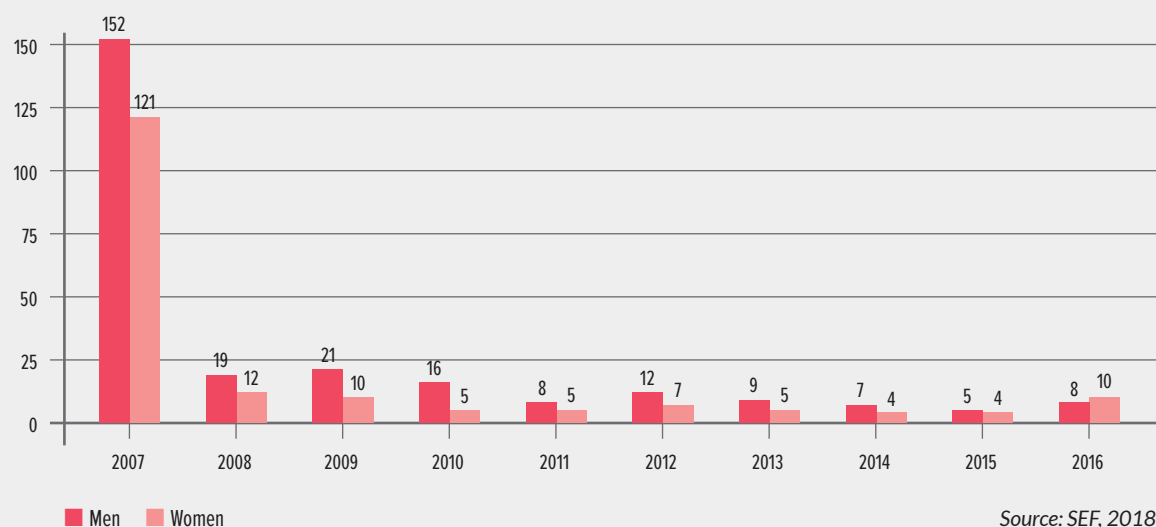
SEF's statistics on the nationality of resident populations in Portugal, provided in its "RIFA" reports,¹²⁸ reveal once again that the statelessness phenomenon has long been known in the country.

These quantitative elements account for population by stock and flow¹²⁹ and are based on the residence permits issued by SEF ever year, as well as border control. Inasmuch as SEF is not equipped with means to identify and grant stateless status, its statistics on resident stateless persons solely include those who already arrived in the country with such a status pre-determined elsewhere (see below Section 4.2.3). The data presented in figure 3 can be broken down by gender, as the following chart demonstrates.

¹²⁸ SEF's RIFA reports are available at: <https://sefstat.sef.pt/relatorios.aspx>.

¹²⁹ In the 2007, 2008, and 2009 RIFA reports, it seems that only population stocks are considered.

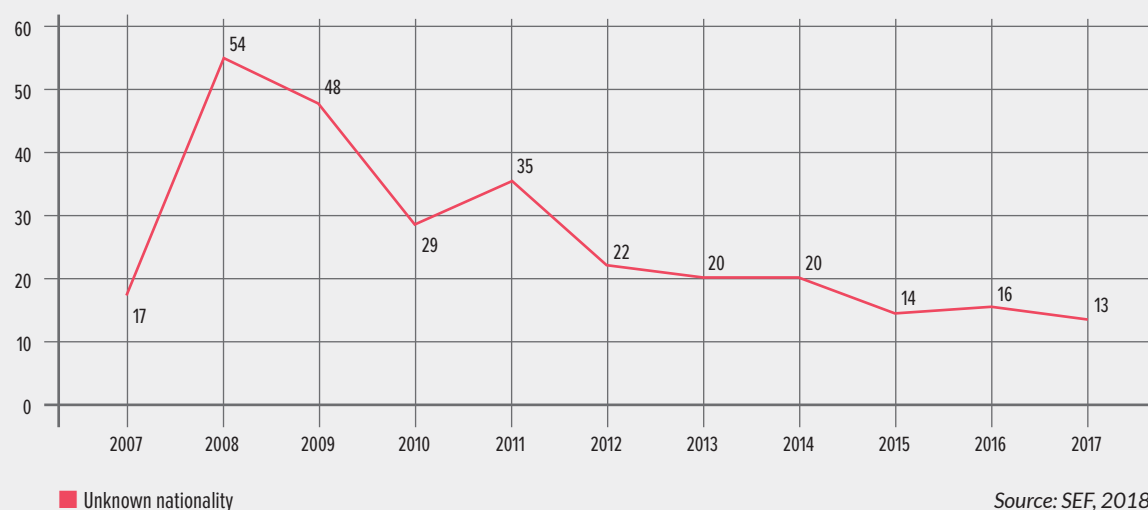
Figure 4: Stateless resident population disaggregated by gender



The charts above indicate that, within a ten-year timeframe, the official number (and gender distribution) of stateless individuals resident in Portugal has not varied considerably, with a significant exception in 2007, when 273 individuals were identified. It is of note that this number had remained the same since SEF's first RIFA report, dated from 2000, which raises some uncertainty as to the accuracy of this data's treatment. Furthermore, a significant discrepancy can be noted between SEF's quantitative data regarding 2011, which indicates 13 cases, and the census results of that same year, pointing to 553 self-declared stateless persons. It is therefore arguable that, if a SDP were to exist in Portugal, and if these 553 individuals were to present their case to the SDP, the dimension of the stateless population in Portugal could be considerably higher.

Finally, it is worth noting that situations of undetermined/unclear nationality status also find their way into SEF's statistics through the category "nationality unknown," as represented in Figure 5. Here, as before, stateless cases may be hidden behind the quantitative elements available.

Figure 5: Resident populations of unknown nationality

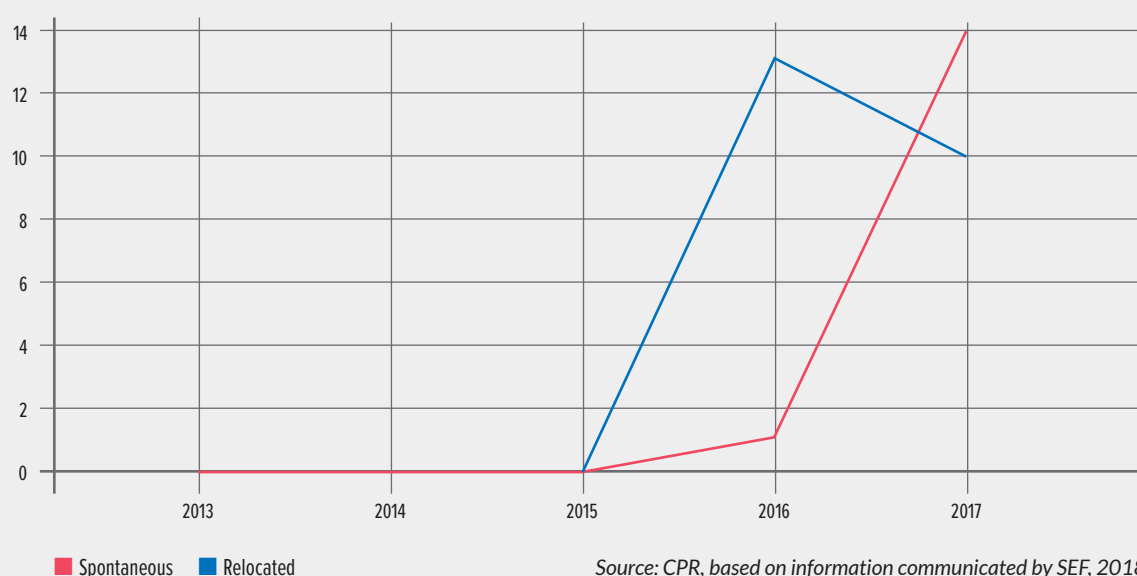


4.1.2.4 APPLICANTS FOR INTERNATIONAL PROTECTION

Stateless persons have also been registered by SEF within the asylum context, among spontaneous asylum-seekers and those relocated in the framework of the EU relocation programme (2015-2017).¹³⁰

The chart below indicates that in 2016 there were 14 applications for international protection made by stateless persons, and that this number rose to 24 in 2017. Stateless asylum-seekers mainly originated from Angola, Iraq, Palestine, and Western Sahara.¹³¹ It is important to note that SEF has recently clarified internally that all applicants coming from Palestine and Western Sahara are to be considered stateless. This means, for example, that SEF's previous statistics on asylum-seekers of Palestinian origin, reproduced in Figure 7, should rather be read as referring to stateless persons.

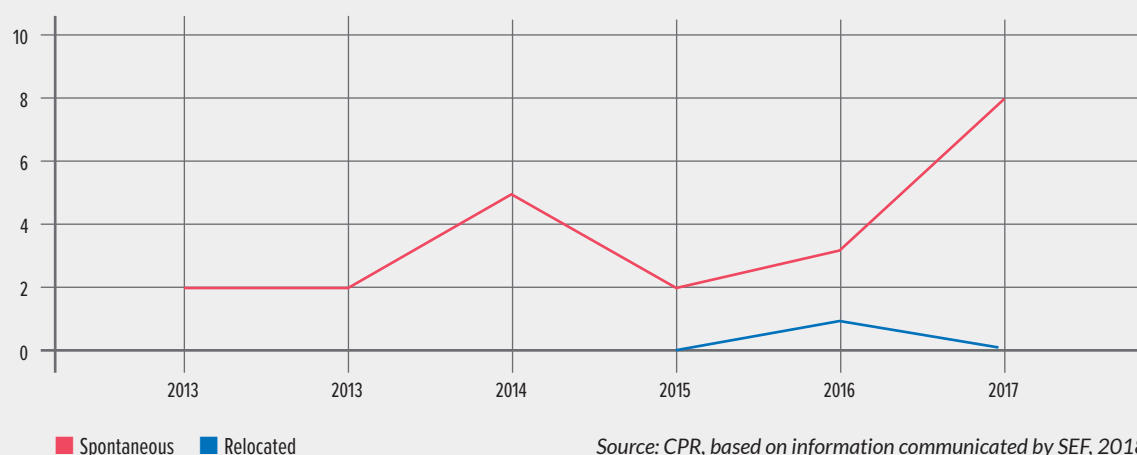
Figure 6: Spontaneous and relocated stateless asylum-seekers



¹³⁰ For more information on the EU relocation programme, see: <https://bit.ly/2jVVQtl>.

¹³¹ Information provided by CPR.

Figure 7: Spontaneous and relocated asylum-seekers of Palestinian origin



4.2 Avenues of Identification and Registration of Stateless Persons

Portugal does not have a procedure in place to recognize and grant a designated legal status to a stateless person. This significantly hampers the implementation of the 1954 Convention, since only those who have been granted a legal status under the Convention can benefit from its full provisions. Although the 1954 Convention does not impose the establishment of a SDP, a coherent and efficient set of procedures to identify stateless persons is fundamental to the implementation of the Convention (see below Section 4.4).

Stateless persons, persons at risk of statelessness, or persons of unknown/undetermined nationality, may still be identified in various contexts, when the individual has to establish his/her identity and nationality for a given purpose. As will be seen in the following sections, such verification does not correspond to a determination of statelessness, leading to the grant of the status and its attendant safeguards. This verification points, in any event, to the necessity of establishing adequate mechanisms of protection of said individuals. While in some instances, individuals should be granted access to Portuguese nationality, in others, access to a SDP is the most appropriate – if intermediary – solution.

4.2.1 Birth Registration

The registration of a child's birth in Portuguese territory is mandatory.¹³² It can take place either at a civil registry office or at the hospital/maternity ward.¹³³ The latter is the modality most commonly used, as Portugal has a system in place called “*Nascer Cidadão*” (i.e. “Born as a Citizen”), which allows for the registration of births immediately at the hospital/maternity ward, before an officer of the

¹³² See: Article 1(1)(a) Civil Registration Code.

¹³³ The regime regulating birth declarations and registration is set out in Articles 96-104 of the Portuguese Civil Registration Code.



Case of Guan and Somaie



Name: Guan and Somaie

Country and year of birth: Syria, 1993

Arrival in Portugal: 2016

Current status: Stateless/beneficiaries of international protection

Somaie and Guan met as students in Syria, the country where they were both born in 1993. They share a similar family background as they both have Palestinian origin. As the war began in Syria, they were forced to flee. Somaie possessed a Palestinian passport because of her father and managed to settle in Gaza in 2012. Guan joined her in 2013. In the summer of 2014, they got married. Soon after, however, conflict forced them again to leave. Their first child was born in Lebanon in 2015. As they were irregular in the country, they could not obtain her birth certificate. They arrived irregularly in Turkey by the beginning of 2016 and were smuggled into Greece a few weeks later. In their interview with EASO, they were registered as stateless – a status that attached to the family as they arrived in Portugal, in December 2016, through relocation. In March 2017, their second baby was born. Despite some difficulties, the baby was given a birth certificate at the hospital and was also registered with social security and tax authorities. In the birth certificate sections regarding the parents' origin, "stateless" is recorded. Somaie's and Guan's inquiries with different Portuguese public authorities and social institutions regarding the possibility of registering their baby as a Portuguese national were met with unfamiliarity, and thus, vague responses. According to SEF, the file of the baby is attached to the parents' file as beneficiaries of international protection, with nationality matters being a different question to which it did not respond. Somaie and Guan feel welcomed in Portugal. Still, they remark that sometimes people do not seem to understand their situation.

Central Registry Office. "*Nascer Cidadão*" was set up in the past decade to eliminate bureaucratization and constitutes a fundamental means to avoid the phenomenon of children at risk of statelessness in Portugal.¹³⁴

While birth registration as such seems to operate well, it is exceptionally possible that the resulting certificate will identify the parents' nationality wrongly in cases where they are undocumented, given that this information may be conveyed on a declaratory basis. In this investigation, it was possible to check two birth certificates of children born to potentially stateless women, which indicated, as the mother's nationality, a nationality that she did not possess.

Once the stateless condition of an individual born in Portuguese territory is proven, it is to be specifically added to his or her birth certificate as an identity element (Articles 3(c) and 6 of the Portuguese Nationality Regulation). Statelessness can however be detected right at birth, if the baby is born to stateless parents. Although this is quite exceptional in Portugal (as only a very limited number of individuals is officially recognized as stateless), it is highly likely to occur occasionally in the future, all the more so considering the increasing number of asylum-seekers who are or may be stateless arriving in the country every year. As the story above demonstrates, public administration services are not sufficiently familiar with this situation. UNHCR therefore calls upon Portuguese

¹³⁴ See: UNHCR, *Good Practices Paper – Action 7: Ensuring Birth Registration for the Prevention of Statelessness*, 2017, available at: <http://www.refworld.org/docid/5a0ac8f94.html>.

authorities to raise awareness regarding such occurrences and to grant direct access to Portuguese nationality to children born in Portugal to stateless parents.

When it comes to children born to women serving prison sentences, no problems of registration have been identified. Moreover, as was noted by the Central Registry Office in an interview conducted for this study, sometimes an officer is present at the prison in order to establish affiliation on behalf of the father. In the case of migrant women placed in a temporary installation center (see below Section 4.2.5), the registration of their children is likewise unproblematic. As clarified by SEF, sometimes the Public Prosecutor opens an inquiry to establish paternity.

In light of Article 99 of the Civil Registry Code, it is possible to effect late birth registrations at any time following specified procedures, which is very useful for possible cases of adult stateless persons wishing to acquire Portuguese nationality by birthright, whose birth was not registered by their parents.

With regard to foundlings, and as already mentioned in Section 3.2.3.1.1, it is possible not only to register newborn infants but also persons with an apparent age of less than fourteen years old, as well as those with a mental illness.

4.2.2 Applicants and Beneficiaries of International Protection

The Portuguese refugee status determination procedure is not linked to a formal mechanism for the identification of cases of stateless asylum-seekers. Yet, the issue of statelessness may surface alongside asylum applications, either because the documentation regarding asylum-seekers so indicates, or because the asylum-seeker declares him/herself stateless. In addition, as indicated by SEF, asylum-seekers of Palestinian or Western Saharan origin are also assumed by SEF to be stateless.

In the process of registration of asylum applications,¹³⁵ SEF collects information on the identity, nationality or statelessness, and former country(ies) or place(s) of residence of applicants on the basis of their statements and evidence provided (such as, identification/travel documents).¹³⁶ Inaccuracies in the registration of the nationality status of the asylum-seeker may occur for various reasons. For instance, the applicant may not know his or her correct nationality or stateless status, or may be reluctant to reveal his/her statelessness. Moreover, certain situations may go undetected, such as, the potential statelessness of asylum-seeking children arriving in Portugal solely accompanied by their mothers, and who are not entitled to the latter's nationality owing to gender discriminatory nationality laws in their country of origin. Finally, challenges in interpretation services may result in collection of insufficient or inaccurate information.¹³⁷

In principle, the nationality or the statelessness status claimed at the time of registration with SEF attaches to the applicant throughout the whole process, unless the collection of additional documentary evidence indicates otherwise. The process of identification is, in any event, rather passive (which is arguably unavoidable in some instances). For one, the individual's declarations as to his or her identity are taken as valid by SEF, with minimal proof required. Furthermore, SEF will normally not undertake efforts to either corroborate or disprove the person's self-declared

¹³⁵ See: Conselho Português para os Refugiados, AIDA Country Report: Portugal, 2017, p. 24 ("AIDA Country Report: Portugal, 2017").

¹³⁶ See Articles 13 and 15 of the Asylum Law.

¹³⁷ AIDA Country Report: Portugal, 2017, *supra* note 135, p. 24.

or registered (if relocated) statelessness.¹³⁸ Special attention should be paid to the situation of stateless persons who may also be refugees or be entitled to a complementary form of protection. States must ensure that confidentiality requirements for refugees who might also be stateless are upheld. Refugee status determination requires the identification of either an individual's country of nationality or, for stateless persons, the country of former habitual residence for the purposes of assessing an individual's fear of persecution.¹³⁹

The registration of stateless asylum-seekers does not seem to lead to follow-up by SEF in terms of the guidance it provides. For instance, there is no supporting mechanism connecting those identified as stateless with the Central Registry Office – which explains why SEF did not inform Somaie and Guan (see their story in Section 4.2.1) about the possibilities of access to Portuguese nationality offered to their child, born in Portugal. This concern applies as well to stateless persons identified by SEF outside the asylum context (see below Section 4.2.3). It can thus be concluded that appropriate referral mechanisms are currently not available for SEF to be adequately equipped to work on resolving statelessness.

The case of rejected asylum-seekers who are also recognized stateless persons raises particular concern. Once the request is rejected, the applicant is entitled to remain in Portuguese territory for a maximum period of 30 days, after which he or she becomes subject to the Portuguese Immigration Law (Article 31 Asylum Law). The latter regime does not envisage particular safeguards for rejected applicants who are also stateless, such as, the grant of a residence permit on the sole ground of statelessness. This means that they may only regularize their stay on the basis of the more exceptional circumstances provided for in Articles 122 and 123 of the Portuguese Immigration Law. Yet, it also means that they face the possibility of detention for forced removal purposes (see below Section 4.2.5).

Finally, an additional concern that is common to any country hosting beneficiaries of international protection relates to the increased risk of statelessness run by children born in Portugal to these persons, in cases where the acquisition of the parents' nationality is conditioned upon registration with the diplomatic services of their country.

4.2.3 “In Situ” and Resident Populations

In Portugal, the category of stateless is rarely used by public entities. Municipal administrations do not seem to have stateless persons or persons of unknown nationality registered in their databases; and social security services do not have the category of stateless listed in their registration system, which unavoidably means that individuals are incorrectly registered with the nationality of their country of origin. In this investigation, it was only possible to obtain official quantitative data on the stateless population in Portugal, as well as persons of undetermined nationality, through SEF (Section A) and the Central Registry Office (Section B).

¹³⁸ This information was gathered in two separate interviews with SEF.

¹³⁹ See: UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, December 2011, paras 87-93 and 101-105.

a) SEF and the issuance of residence permits

The issuance of residence permits by SEF, as well as SEF's border control activities, provide an overview of the stateless population resident in Portugal each year (recall the statistical elements provided above in Section 4.1.2.3). As confirmed by SEF, given that it does not have the capacity to identify stateless cases throughout the residence permit application process, the statistics on stateless "in situ" and resident individuals (outside the asylum context) necessarily refer to those who entered the country with such a status pre-determined elsewhere.

In this investigation, it was possible to identify several problems as to the terms in which statelessness is dealt with by SEF. These unavoidably affect the accuracy of the data provided. To start with, statelessness means different things for different officers and in certain departments, the concept is not used. This means that potential cases of statelessness are not framed in such terms. Persons with an undetermined/unclear nationality status are registered as having an "unknown nationality," with no further inquiries being made as to their possible statelessness. Moreover, the inexistence of guidelines for the evaluation of nationality, as well as the unfamiliarity of officers with statelessness and its implications, mean that requests for residence permits made by undocumented, potentially stateless, individuals can be systematically refused based on the latter's inability to present the

Case of Samuel



Name: Samuel

Country and year of birth: Angola, 1986

Arrival in Portugal: 1991

Current status: without legal status in Portugal, may be stateless

Samuel was born in Angola in 1986 to Angolan parents and went with his father to Portugal in 1991. He was born at home, and thus, his birth was not registered. Samuel entered Portugal with a fake document produced in Angola (not an I.D., but something akin to it) and, since then, his true identity has never been established. As a lone child, Samuel ended up being raised by a fisherwoman, who he came to call his grandmother. Albeit absent, his father registered him with SEF and managed to obtain a residence permit for him, which he renewed on Samuel's behalf every two years. Samuel's so-called grandmother also took care of his "foreigners' ID" (a document that does not exist nowadays and was replaced by the "citizen card"). In both documents, he was registered as an Angolan national. Throughout the years, Samuel studied and worked in Portugal as an Angolan, and even managed to have a passport issued by the Angolan consulate in 2006. Five years later, when he was required to renew his passport for the purposes of renewing his residence permit with SEF, his problems began. The Angolan consulate found out that the document initially presented by Samuel's father was fake and that the Angolan civil registration office indicated therein did not possess any information regarding Samuel's existence. Since 2012, Samuel has not managed to establish his nationality with Angolan authorities, as he cannot fulfill the attendant requirements. At the same time, the Portuguese Central Registry Office has rejected Samuel's attempts to naturalize as Portuguese as it requires the presentation of a birth certificate. He is currently being helped by a lawyer, in the quest for a solution.

Samuel writes and sings about his story, life, and love – also as a way to evade his sleepless nights. All he wants is to be complete and, despite everything, he feels grateful and wishes to thank all those who have helped him along the way.

required documentation. Most interviewees for this study, whose origins are mainly to be found in former Portuguese African colonies, are irregular in the country and are not included in SEF's statistics. Finally, it is (exceptionally) possible that residence permits indicate a nationality that the individual does not actually have. In this investigation, some cases were identified of individuals registered by SEF with a certain nationality, who found out at a later stage (normally when in need of a passport or its renewal) that their embassies/consulates did not recognize them as citizens.

b) The Central Registry Office and the attribution of Portuguese nationality

Stateless persons, as well as persons of undetermined nationality, may be identified in processes of acquisition of Portuguese nationality. As was seen above, the Portuguese nationality regime embraces provisions specifically granting access to Portuguese nationality to stateless persons, both by birthright (Articles 1(1)(g) and (1)(2)) and through naturalization (Article 6(3)). These grants constitute the basis for the official statistical data provided in Section 4.1.2.2.

It is, however, important to note that the low numbers presented above do not seem to be representative of the statelessness phenomenon in Portugal. As discussed in Section 4.1.2.2, stateless persons (or those at risk of statelessness or of undetermined nationality) may have naturalized through any other provision of Article 6. In addition, it should be recalled that the majority of cases of loss of Portuguese nationality on grounds of flawed attribution were solved by the Central Registry Office through Article 6(6), which is foreseen for individuals who already possess another nationality, while in various situations identified in this study this was actually not the case.

It was thus possible to conclude throughout this investigation that Portuguese registration services sometimes act upon the incorrect assumption that individuals – mostly those born in Portuguese territory – possess the nationality of one of their parents, by descent, while the former may have never been registered at the pertinent embassy/consulate. Here as before, this means that (potential) cases of statelessness are not being framed in such terms, and thus, that the appropriate treatment is not being given to those in need of protection.

4.2.4 Minors in Foster Care Centres

Significant problems related to the nationality status and regularization of children have been detected in Portugal. Representatives of a foster care centre interviewed for this study reported several cases of children of undetermined nationality, who were born to foreign parents residing irregularly in Portugal. Prior to their institutionalization, these children's nationality had not been registered by their parents, and the attempts of the foster care centre to solve their situation were met with numerous bureaucratic obstacles either raised by the pertinent embassies or by Portuguese authorities. Often, these children are not entitled to Portuguese nationality owing to their foreign parents' irregularity. At the same time, they may lack the necessary documentation to acquire a foreign nationality. All this is further complicated by the lack of collaboration from their parents.

In judicial processes of removal of children, when their nationality is undetermined, the Public Prosecutor may take initiatives before the pertinent embassies, or send requests of judicial cooperation to the children's countries of origin, to clarify their identity. However, the process of removal may be halted without this information ever being obtained – the main interest being the

protection of the child and his/her swift institutionalization, with nationality matters only receiving secondary attention.¹⁴⁰

The protection of institutionalized children was recently picked up by the Portuguese Parliamentary Assembly. Notably, a new legislative text was adopted in May 2018 whereby automatic legal residence is granted to these children and access to Portuguese nationality through naturalization is largely facilitated.¹⁴¹

4.2.5 Persons in Detention

Potential stateless persons in Portugal who are undocumented run the risk of detention and subjection to a removal procedure, conducted by SEF, on the basis of a judicial or administrative decision. When placed in a Temporary Installation Centre (*Centros de Instalação Temporária*, CIT), such as UHSA,¹⁴² the registration of individuals may be affected by inaccuracies. In UHSA, even in cases where the lack of documentation and uncertainty as to an individual's nationality status could lead to the suspicion of statelessness, the lack of a SDP means that the detainee will not be registered as stateless. In addition, registration can operate merely on a declaratory basis, which means that the individual detained may be identified as a citizen of a given country without actually being so.

Individuals may be detained for a maximum period of sixty days (Article 146 of the Portuguese Immigration Law).¹⁴³ In cases where the detainee is undocumented and SEF is unable to determine his or her country of origin, on grounds of lack of collaboration from a given embassy for example, this person becomes “un-returnable” and is simply released into Portuguese territory.¹⁴⁴ UHSA has reported that there have been cases where individuals claiming to have a certain nationality were not considered by the relevant embassies/consulates as citizens. Moreover, as clarified in two interviews, if persons released into Portuguese territory are apprehended once more, they might be detained for a last time, for a maximum period of ninety days. It was furthermore noted that there may be cases where a travel document, valid for a single trip, is issued (in accordance with Article 27 of the Portuguese Immigration Law), without there being absolute certainty as to the individual's country of origin.

¹⁴⁰ These clarifications were given by the Prosecutor General's Office in an interview conducted for this study.

¹⁴¹ The Parliamentary debates around the legislative proposal can be found at: <https://bit.ly/2Moj0Zh>. As can be read in the preamble of the proposal: “There are innumerable concrete situations of children in a legal stalemate, for which they did not contribute, and which deprives them of the enjoyment of basic rights. Despite the State's guardianship of these children, it is their parents' good will or the generous proactivity of the representatives of institutions hosting them that enable the unraveling of their situation ... To allow these children to re-write their history, putting an end to the inhumanity for which they were involuntarily dragged, implies that administrative procedures and cultures be reviewed by the State...” (unofficial translation). The title of the legal text adopted is: Decreto N.º 210/XIII, *Regularização do estatuto jurídico das crianças e jovens de nacionalidade estrangeira acolhidos em instituições do Estado ou equiparadas*.

¹⁴² The “Unidade Habitacional de Santo António” of Porto (CIT – UHSA) is the only center that was specifically created to function as a CIT (see: Decree-Law N. 44/2006, of 24 February). Next to this, individuals who do not fulfill the conditions for entry in Portuguese territory may be barred at the airport (see: Article 32 of the Portuguese Immigration Law). In such instances, they are placed in a detention facility at the border to await re-embarkation. There are three detention facilities in the international areas of Lisbon, Porto, and Faro airports. While not CIT *per se*, they have been classified as such by Decree-Law N. 85/2000, of 12 May.

¹⁴³ The Portuguese Ombudsperson reported isolated instances where the sixty days limit has been exceeded in the CIT – UHSA, notably, in eight cases in 2015 and five cases in 2016. See: Portuguese Ombudsperson, *Tratamento de Cidadãos Estrangeiros em Situação Irregular ou Requerentes de Asilo nos Centros de Instalação Temporária ou Espaços Equiparados*, September 2017, p. 24, available at: <http://bit.ly/2z15JPu> (Portuguese Ombudsperson Report on Detention, 2017).

¹⁴⁴ Another reason, reported by UHSA, which sometimes grounds the release of undocumented detainees relates to their lack of collaboration in obtaining the necessary identification information for the issuance of a travel document.

In the table below, further information is provided on the number of “un-returnable” persons in Portugal in the past two years, i.e., those who were released following 60 days of detention, without documentation. Among these individuals, it is possible that some cannot be returned owing to their condition of statelessness.

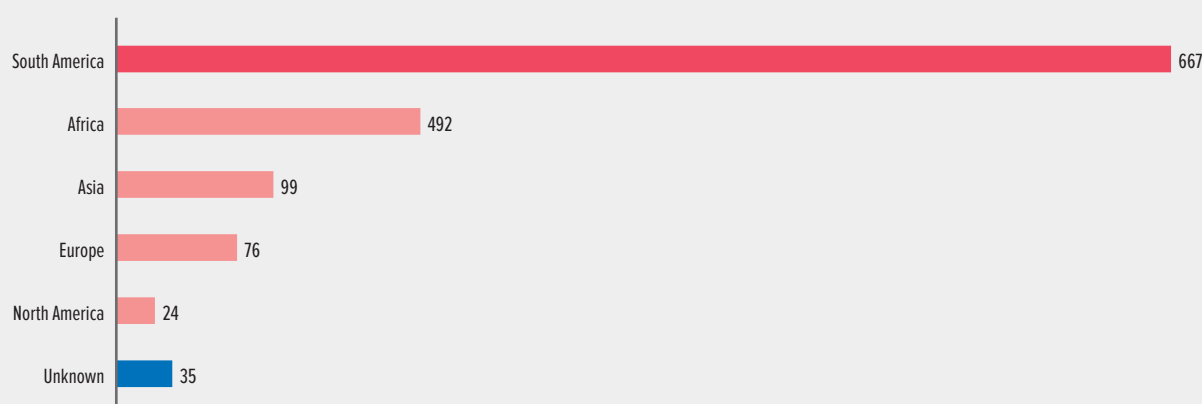
Table 4: “Un-returnable” persons in Portugal registered by UHSA

	2016	2017
Total number of detainees	184	196
“Un-returnable” persons	50	66

Source: SEF, 2018

The chart below provides an overview of the areas of origin of foreigners who entered CITs during the 2nd semester of 2016. While the chart only conveys a half-yearly representation, it can be seen to follow the annual tendency.¹⁴⁵

Figure 8: Origin of foreigners who entered CITs during the 2nd semester of 2016



Source: Portuguese Ombudsman Report on Detention, 2017

Potentially stateless persons, or persons of unknown/undetermined nationality, may also be convicted and detained for crimes unrelated to their immigration status. Their identification is made by the criminal police as well as the criminal Court, which means that, at the moment of detention and subjection to a screening process, it is unlikely that questions arise on nationality status. As explained by an interviewee for this study, prison services (as well as educational centres for minors) have direct communication channels with both SEF and the Central Registry Office, and thus, problems of lack of documentation, or the renewal of expired documents, for instance, are normally catered for while serving a prison sentence.¹⁴⁶ Still, during this investigation it was observed that, exceptionally, the end of a prison (or an alternative) sentence may be reached without the detainee’s nationality every being determined – and, indeed, some of the potentially stateless persons identified in this investigation were in such a situation. Being initially registered by the criminal police as having a certain origin (and not nationality) is sufficient, as identification information, for the subsequent proceedings to unfold, and thus, no specific measures seem to be taken to clarify the individual’s nationality status.

¹⁴⁵ Portuguese Ombudsperson Report on Detention, 2017, p. 18.

¹⁴⁶ Referrals to SEF or the Central Registry Office are not done with regard to those who have been subjected to an additional penalty of expulsion.

4.2.6 Trafficked Persons

Victims of trafficking may face considerable difficulties in establishing their identity or nationality. For instance, a trafficked person may have had her/his documents confiscated or stolen upon arrival in a third country, rendering it impossible to prove her/his status when attempting to re-enter the country of origin or habitual residence.

The phenomenon of human trafficking has become increasingly noticeable in Portugal, mostly in the agricultural field. In an interview with the Labour Inspectorate Organization conducted for this investigation, serious concerns were raised in this respect, which have also been reiterated in the media.¹⁴⁷ It was not possible during this investigation to inquire into the connection between statelessness and the phenomenon of human trafficking in Portugal, but the matter is certainly worthy of further attention by Portuguese authorities.

When it comes to the signaling of (potential) victims of human trafficking, it can be made by any legal or individual person, including the victim herself/himself, before the police or judicial authorities. Regarding institutional screening, SEF has a specialized unit dealing with human trafficking, which operates in collaboration with the Portuguese Public Prosecutor.

There are mechanisms set in place to assist victims of trafficking, as regulated by Articles 109-115 of the Portuguese Immigration Law. Apart from social support, temporary residence permits, which are valid for a year and renewable for equal periods, may be granted under certain conditions (Article 109).

4.3 Challenges faced by Stateless Persons in Accessing Human Rights

The inexistence of a SDP in Portugal, coupled with the fact that the only form of acknowledgement of stateless status by SEF is through the asylum process or when the individual was already granted such status elsewhere, means that only a very small group of individuals benefit from human rights provisions directed at stateless individuals (described above in Section 3.3). As will be seen below, others are mostly treated as irregular migrants, with some exceptions.

4.3.1 Stateless Persons who are Asylum-Seekers or Beneficiaries of International Protection

According to Article 65 of the Asylum Law, beneficiaries of international protection enjoy the same rights as foreigners residing in Portugal¹⁴⁸ (see also Articles 70-75), and thus, the regime applicable to them corresponds to the one described in Section 3.3. This instrument furthermore grants asylum-seekers access to human rights in terms that are generally similar, with the specifications provided for in Articles 51-55. Access to human rights is therefore certainly guaranteed under the asylum regime to stateless persons who are applicants or beneficiaries of international protection.

¹⁴⁷ See, e.g. a Diário de Notícias news article, dated 19 April 2018, entitled "Human trafficking is out of control in Portugal", available at: <https://bit.ly/2QyPrBH>.

¹⁴⁸ As further specified in Article 65, this regime must be read in conjunction with the 1951 Convention and its 1967 Protocol.

Within the asylum context, stateless persons interviewed for this investigation have not reported significant obstacles in terms of access to human rights, except for acknowledging several difficulties in the recognition of diplomas and academic qualifications, hampering their access to the job market.¹⁴⁹ On the basis of a recent assessment made by CPR of the reception conditions of asylum-seekers and beneficiaries of international protection in general,¹⁵⁰ both positive aspects and constraints in some areas can be noted. Positive aspects include: the provision of access to Portuguese language training programs, managed by different entities throughout the country; and the setting up of a Refugee Support Unit by the High Commission for Migration (*Alto Comissariado para as Migrações*, ACM), complemented by tailored services, to provide free legal support and information to asylum-seekers.¹⁵¹ Next to this, challenges are mostly bureaucratic and include: difficulties in the issuance of a social security identification number (*Número de Identificação da Segurança Social*, NISS) on the basis of a temporary residence permit, which discouraged employers from hiring asylum-seekers;¹⁵² problematic placement of students in secondary education and limited access to professional training by adults;¹⁵³ significant difficulties in accessing specialized care in the SNS;¹⁵⁴ and shortage of access to public housing.¹⁵⁵

4.3.2 “In Situ” and Resident Stateless Persons

Interviews conducted for this study shed some light on the conditions of access to human rights faced by persons who may be stateless residing in Portugal. As the causes leading to statelessness varied significantly, it was not possible to establish a pattern in this respect – beyond the distress that the lack of an identity causes every single person. Some of those who had Portuguese nationality and ultimately lost it possessed a registration number in public services to which they could still resort – e.g., the national health system. The same holds true with regard to individuals born abroad who came as minors to Portugal and were registered in such services with the documents they possessed at the time. With very few exceptions, the cases of possible statelessness identified were deeply intertwined with an irregular stay in the country, as will be described below.

Education

Only a few interviewees raised concerns in the area of education. In general, it can be asserted that, with some insistence, schools typically allow undocumented children to study until their adulthood, notably in primary and secondary education. A system has been set in place at national level to register children of irregular migrants in order to ensure their access to education (and also health).¹⁵⁶ ACM provides support in this context. Still, an irregular presence in the country means that these children,

¹⁴⁹ This question is not specifically regulated in the Asylum Law and the general rules for the recognition of foreign diplomas at basic and secondary level, as contained in Decree-Law 227/2005, of 20 August, impose particularly challenging conditions for asylum seekers and beneficiaries of international protection. With regard to relocated asylum-seekers, a legislative order was adopted in 2016 by the Directorate-General for Education, applicable only to children and young adults (see: DGE, “*Agenda Europeia para as Migrações – medidas a implementar no sistema educativo*”, 1 March 2016, available at: <http://bit.ly/2jqFkok>). These guidelines were subsequently extended to all asylum seekers and beneficiaries of international protection (see: DGE, “*Crianças e jovens refugiados – medidas a implementar no sistema educativo*”, 21 October 2016, available at: <http://bit.ly/2z0dgzf>).

¹⁵⁰ AIDA Country Report: Portugal, 2017, *supra* note 135.

¹⁵¹ *Ibid.*, pp. 78, 79.

¹⁵² *Ibid.*, p. 77.

¹⁵³ *Ibid.*, p. 80.

¹⁵⁴ *Ibid.*, p. 81.

¹⁵⁵ *Ibid.*, p. 109.

¹⁵⁶ See: Decree-Law N. 67/2004 of 25 March.

and their families, do not have access to child benefit allowances from the State, thereby remaining dependent on CSO (or other) support for school food fees or study materials.

Health

As noted above in Section 3.3.2, irregular migrants are allowed access to the SNS in specified instances, such as, in case of an emergency or for maternal care, for example.¹⁵⁷ Beyond such instances, no support is provided by the State. This means that those in need of an operation, physiotherapy, or medicine are totally dependent on CSO (or other) support. Santa Casa da Misericórdia de Lisboa (SCML), Centro Padre Alves Correia (CEPAC), and Médicos do Mundo are three institutions to which interviewees had resorted.

Employment

While it is possible for irregular migrants to have an employment contract – which can be mediated by institutions such as the Jesuit Refugee Service (JRS), SCML, and CEPAC – this was exceptional among the cases identified in the study. For most, it had been extremely difficult to access the formal market, which led to large periods of unemployment and occasional informal jobs. This was linked in a few cases to addiction and criminal record issues.

Access to documents

Obtaining or renewing residence permits proved complicated for various persons interviewed for this study, mostly due to the lack of documentation that is required by SEF to launch the procedure. While some on-the-ground institutions supporting these persons were more knowledgeable than others in terms of the orientation provided, guidance from SEF itself was often lacking. It was sometimes emphasized that without support by CSOs or lawyers, less well-informed individuals are incapable of establishing a meaningful dialogue with SEF, let alone starting a procedure to regularize their stay.

Significant delays in the renewal of residence permits by SEF were also frequently noted. As it currently stands, the system only allows individuals to make an appointment for renewal in the 45 days prior to the expiry date of the residence permit. However, SEF's heavy workload has often led to the scheduling of appointments only 6 months later. If, in the meantime, the individual is asked for documentation by police authorities, the possession of a document certifying the scheduled meeting is normally accepted. However, certain barriers arise, such as, the inability to travel.

Without a document proving one's identity, access to human rights is significantly curtailed, as exemplified in the following sections.

Social security

In several cases identified in this study, the lack of documents or their expiry has translated into lack of access to social allowances. For instance, all of those interviewed who had children reported that they did not benefit from child support allowances. Zelinda (recall story above in Section 3.2.3.2.2), who dedicates all her time to her daughter (who is blind and has serious health conditions), was not

¹⁵⁷ One of the persons interviewed for this study mentioned, however, that once, when she was pregnant, she was refused access to health-care, as she could not present any identification document. She had to “make a scandal” to come out of the stalemate.

able to sign documents for social security support due to her lack of identity documentation, and only managed to overcome this obstacle through her son.

Housing

Some of the persons interviewed for this study slept in homeless drop-in centres. Others rented their own apartment through public housing arrangements with municipalities and others lived in apartments of family members. Identification documents are necessary to sign a rental contract and, from the experience of CSOs dealing with migrant issues, there is prejudice against migrants in the rental market. One of the interviewees for this study who lived in a public housing apartment remarked that he had been living without light for 3 years. When it was cut and he approached the electricity company, he was not able to renew his contract due to the expiration of his documents.

Access to free legal aid

Individuals with insufficient income may have access to free legal aid through the submission of an application to the Institute of Social Security (*Instituto da Segurança Social*, ISS).¹⁵⁸ ISS then refers successful applications to the Portuguese Bar Association (*Ordem dos Advogados*), responsible for appointing a lawyer.¹⁵⁹ The only interviewee who tried to apply to this mechanism was barred from doing so due to the lack of documentation. With regard to individuals detained in CITs, a 2017 report of the Portuguese Ombudsman notes gaps in the provision of information on available mechanisms of access to justice, which in itself poses obstacles to an effective enjoyment of the right to legal protection.¹⁶⁰

4.4 The Establishment of a Statelessness Determination Procedure

Problems related to the unclear status of various persons who may be stateless in Portugal, as described in Sections 4.2 and 4.3, could be solved through the establishment of a dedicated SDP. This mechanism would be crucial for the identification and protection of stateless persons, notably by making way for adequate solutions to be found in each individual case. While ultimately only the acquisition of a nationality would offer a solution, being granted stateless status would safeguard, in the interim, access to the rights enshrined in the 1954 Convention.

The terms by which a SDP is to be established are not defined in the 1954 Convention. UNHCR has developed guidelines for the institutionalization of a fair and efficient mechanism, which can be found in its *Handbook on Protection of Stateless Persons*¹⁶¹ and Good Practices Paper – Action 6, entitled “Establishing Statelessness Determination Procedures to Protect Stateless Persons.”¹⁶² Using such documents, the remainder of this section will indicate key elements that should be considered by the Portuguese Government when establishing a SDP.

¹⁵⁸ Articles 1 and 22 of Law 34/2004, of 29 July.

¹⁵⁹ *Ibid.*, Article 30(1).

¹⁶⁰ Portuguese Ombudsperson Report on Detention, 2017, *supra* note 143, pp. 36-40.

¹⁶¹ Referred *supra* note 6. See especially pp. 27-43.

¹⁶² UNHCR, “Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons”, 11 July 2016, available at: <http://www.refworld.org/docid/57836cff4.html>.

Institutional location

While UNHCR does not have a specific stance on where to locate a SDP within a State's institutional, legal or administrative framework, its overall recommendation is to opt for a centralized procedure. What is important is to ensure that examiners develop expertise on statelessness determination, while guaranteeing that the procedures are accessible to interested parties.

Efficient referral mechanisms should be established across diverse public entities, most notably within the Central Registry Office, SEF, and the High Commission for Migration, but also within municipalities or the Public Prosecutor. Officials from these entities who may be in contact with potentially stateless persons should be trained to identify possible applicants for stateless status and refer them to the SDP as appropriate.

Access to procedures

Anyone claiming to be stateless should have access to the SDP without time limits and regardless of whether or not that person already has lawful residence in the country. With particular regard to asylum-seekers, their statelessness claim should be separately assessed and both types of status should be explicitly recognized.¹⁶³ The procedure and counseling services must be available in a language that applicants can understand.

Many individuals may not be aware that they are stateless. Administrative authorities in contact with people who may be stateless, such as the Central Registry Office, SEF, or services of the High Commission for Migration, could initiate a SDP *ex officio* when approached by potentially stateless individuals or inform them that they could apply for statelessness status through the existing procedure.

Procedural guarantees

In order to ensure fairness and efficiency, basic procedural safeguards should be incorporated in a SDP. While a comprehensive list of procedural guarantees may be found in Part Two of UNHCR's *Handbook on Protection of Stateless Persons*, some of the most important ones will be herein outlined:

- access to an individual interview;
- interpretation assistance;
- access to legal aid;
- respect for the specific protection needs presented by women, children and people with disabilities;
- a right to receive a grounded decision in writing, within a reasonable time;
- a right of appeal;
- a right not to be detained for reasons related to an individual's statelessness; and
- a right not to be expelled from the State while the procedure is ongoing.

¹⁶³ It is possible that the refugee status ceases without the individual having acquired a nationality, meaning that he or she will require international protection as a stateless person.

Evidentiary requirements

Given the nature of statelessness, claimants are often unable to support their claim with documentary evidence. Moreover, contact with foreign authorities to request specific information about an individual's case, or general guidance on a country's nationality laws, may prove quite problematic. These difficulties must be taken into consideration in a SDP. UNHCR recommends that the burden of proof be shared between the applicant and the examiners, and that an appropriate standard of proof be established whereby the statelessness status is granted if the individual is deemed to meet, to a "reasonable degree", the 1954 Convention's definition of a stateless person (recall above Section 1.2).

The grant of a residence permit

Most of the rights granted under the 1954 Convention, which are also enshrined in the Portuguese Constitution and domestic legislation, are dependent on lawful stay. Since statelessness does not constitute an independent ground for the acquisition of a residence permit in Portugal, mere recognition of the status does not, strictly speaking, ensure an effective enjoyment of said rights. Although the 1954 Convention does not require a State to grant entry and residence to the stateless persons it identifies, it is UNHCR's understanding that: "When States recognize individuals as being stateless, they should provide such persons with a lawful immigration status from which the standard of treatment envisaged by the 1954 Convention flows. Having a lawful status contributes significantly to the full enjoyment of human rights."¹⁶⁴

Hence, the determination of statelessness should be complemented by the grant of a residence permit. Moreover, during a SDP, applicants should be granted a temporary residence permit and their access to basic human rights should be safeguarded.

4.5 Conclusions and Recommendations

The present chapter confirms the presence of dozens of stateless persons in Portugal. Furthermore, it points to the high likelihood that many more stateless persons could be found among resident populations, notably individuals from former Portuguese African colonies (and their descendants), children in foster care centres, or persons detained in CITs who turn out to be un-returnable.¹⁶⁵ This highlights the need for a SDP to be established in Portugal in order for stateless persons to be adequately identified and protected. Such a procedure would also allow for more accurate public data on the stateless population in the country.

Indeed, based on the statistical findings presented above, it is difficult to estimate the total number of stateless persons living in Portugal – which, it should be noted, is a pervasive problem globally. The lack of clear and consistent registration guidance and practice both within the Central Registry

¹⁶⁴ UNHCR, "Statelessness Determination Procedures and the Status of Stateless Persons Summary Conclusions", Summary Conclusions of the Expert Meeting, Geneva, 6-7 December 2010, para. 25. Para. 27 provides for some exceptions, including when it is possible for the individual to (re-)acquire the nationality of another State within a reasonable period of time through simple, accessible, and purely formal procedures.

¹⁶⁵ It is of note that while in other European countries statelessness has been identified among Roma communities, this was not the case in Portugal, where both Portuguese-Roma communities and Eastern European-Roma communities reside. Several institutions were contacted in the course of this investigation to clarify this point, and all of them confirmed that statelessness is not an issue with regard to the former, as they are Portuguese nationals. Regarding Eastern European-Roma communities, only one interviewee seemed to be informed about the subject and indicated that he was not aware of statelessness problems being raised among them.

Office and SEF, combined with imprecise assessments of individual cases, mean that potential cases of statelessness are not being framed in such terms.

With regard to the Central Registry Office, interviews for this study revealed that, in processes of acquisition of Portuguese nationality, it sometimes acts upon the assumption that individuals possess a foreign nationality, while that is actually not the case. Hence, instead of triggering more appropriate provisions aimed at preventing/reducing statelessness, other legal avenues are used – which can work to the detriment of stateless persons. Moreover, nationality processes will not even be initiated (and thereby placed on record) when interested parties do not possess the necessary documentation. Here, as before, these persons are not covered by official administrative data on statelessness.

SEF's fundamental role in the identification of potential cases of statelessness has been counteracted by limited institutional capacity. To start with, although the issue of statelessness may surface alongside asylum applications, the refugee status determination procedure is not linked to a formal mechanism for the identification of stateless asylum-seekers. Inaccuracies in the registration of the nationality or stateless status of asylum-seekers may occur for various reasons and, in principle, this information attaches to the applicant throughout the whole process. Imprecision in SEF's nationality registrations is likewise noticeable with regard to resident populations. Lack of technical capacity and awareness as regards statelessness have meant on occasion that, in processes of issuance of residence permits (which are crucial moments for the identification of statelessness cases), individuals are rather treated like irregular migrants, with no guidance being offered regarding possible solutions. Likewise, in CITs, which are run by SEF, statelessness is not taken into account. In sum, SEF does not undertake measures specifically tailored to address statelessness, as it is not equipped to identify potential cases.

Against this backdrop, UNHCR recommends that the definition of a stateless person provided by Article 1 of the 1954 Convention be expressly incorporated into national law, and that the authorities responsible for registering individuals in the course of establishing their identity for civil and immigration purposes develop clear and harmonized guidelines for the assessment of statelessness/nationality. This will help ensure accuracy and consistency in registration.

The establishment of a SDP, in the terms described in Section 4.4, would be most useful to elucidate the cases mentioned above. This mechanism would also be crucial to clarify situations of undetermined/unknown nationality in particularly worrying contexts such as those of foster care children, convicted persons, and victims of trafficking (where specified measures are not currently undertaken), or in any other context where persons with an unclear status are identified, such as in a school or a hospital. UNHCR is prepared to assist Portuguese authorities in the implementation of a SDP and the elaboration of its legal and administrative framework.

Without statelessness status determination, only a small group of individuals was seen to have (in principle) access to the human rights provisions contained in the Portuguese Constitution and legislation directed at foreigners and stateless individuals. These consist of stateless persons who are also asylum-seekers and beneficiaries of international protection (and that therefore benefit from human rights protection under the asylum regime) and those who have been granted a residence permit by SEF. Most cases of potential statelessness identified in this study, however, were rather marked by the obstacles facing irregular migrants. While fewer problems were noted in terms of access to primary and secondary education, various difficulties were raised regarding access to general health care (with some exceptions such as emergency or maternal care), formal employment, documentation, and social security allowances.

5. Concluding Remarks and Recommendations

5.1 Concluding remarks

The phenomenon of statelessness in Portugal has generally received increased attention in the law – a development that has not always been matched by improvements in the country’s administrative practice. Portugal is to be commended for having acceded to the 1954 and 1961 Conventions in 2012. However, their incorporation in the Portuguese legal regime has not been accompanied by a deeper understanding of statelessness and its implications, in terms that allow for a harmonized interpretation and application of the concept by Portuguese authorities.

The Portuguese Nationality Law is quite broad when it comes to granting access to Portuguese nationality and offers some important safeguards to prevent and resolve cases of statelessness. It is, however, of note that these safeguards have so far been under-used, which may partially be explained by the lack of awareness of the phenomenon on the side of Portuguese administrative authorities. Further obstacles may be found in the procedural requirements contained in the Portuguese Nationality Regulation. As it now stands, the regime imposes challenging hurdles upon stateless individuals wishing to acquire Portuguese nationality.

It is difficult to provide total estimations of persons who are or may be stateless based on the statistical findings presented in this report. Official quantitative data solely points to dozens of individuals, while many more could potentially be found, including among persons still affected today by the impacts of the Portuguese decolonization in Africa (and possibly their children). The lack of a SDP constitutes the main obstacle in this respect. Moreover, the lack of clear and consistent registration guidance and practice both within the Central Registry Office and SEF, combined with imprecise assessments of individual cases, mean that potential cases of statelessness have not been framed in such terms.

The registration practice of Portuguese authorities raises concerns in relation to obligations under the 1954 Convention. Indeed, the stateless status must first be determined if States are to identify the rights-holders under the Convention. Furthermore, the *prevention* and *reduction* purposes underlying the 1961 Convention are likewise put into question if Portugal does not ensure that stateless persons are duly identified.

5.2 Recommendations

THE IDENTIFICATION AND PROTECTION OF STATELESS PERSONS

1. Consistency in the identification and registration of stateless persons

Portugal should ensure that the concept of “stateless” contained in its domestic legislation is interpreted in line with the universal definition set forth in Article 1 of the 1954 Convention. To that end, it is recommended to include an explicit definition of stateless persons in domestic legislation.

In line with this definition, consistent administrative guidelines should be developed for use by public authorities who may register an individual’s statelessness as part of the establishment of identity during immigration and civil registration processes. Such guidelines would set out the criteria and procedural standards for considering someone as stateless, and the terms in which they should be applied. This would contribute to harmonizing and streamlining the working methods applied in practice of the entities involved. Moreover, it would ensure consistency in these entities’ approach to statelessness: firstly, only those individuals who are stateless would be registered as such; secondly, the risk of having the same individual registered in a different manner in the existing registration systems would be avoided.

Concomitantly, the registration systems of public entities requiring individuals to establish their identity and nationality for a given purpose (e.g. Social Security services, the National Health System, Town Halls, or the Police) should include both the category “stateless” and “undetermined/unknown nationality.” This recommendation is likewise made to the various agencies producing relevant statistics in Portugal, such as INE, SEFSTAT, or the *Instituto de Gestão Informática e Financeira da Saúde*. It is of note that said categories should be differentiated since uncertainty about one’s nationality is not tantamount to being stateless. Moreover, with particular regard to SEF, it should ensure that separate data is recorded on stateless persons and on refugees, not excluding the option of a person being a stateless refugee.

2. Establishment of an effective statelessness determination procedure

Portugal should set up an accessible and efficient SDP in order to effectively meet its obligations towards stateless persons under the 1954 Convention and human rights law. This mechanism should adhere to international procedural standards as described in Section 4.4, which are further developed in the *UNHCR Handbook on Protection of Stateless Persons*.¹⁶⁶

¹⁶⁶ Since this investigation identified several cases where difficulties concerning proof of statelessness related to lack of responses from embassies/consulates of African Lusophone countries, it should be noted that during the SDP, “information provided by foreign authorities is sometimes of central importance to statelessness determination procedures, although not necessary in cases where there is otherwise adequate proof ... Some foreign authorities may accept enquiries that come directly from another State while others may indicate that they will only respond to requests from individuals ... States may wish to set up bilateral or multilateral arrangements for making nationality enquiries.” (see: paras. 96 – 97, note 57, *UNHCR Handbook on Protection of Stateless Persons*, *supra* note 6). In addition, it is important to note that “under no circumstances is contact to be made with authorities of a State against which an individual alleges a well-founded fear of persecution unless it has definitively been concluded that he or she is neither a refugee nor entitled to a complementary form of protection.” (see: para. 96, *ibid.*).

UNHCR recommends that during a SDP, applicants be issued an identity document. Moreover, applicants should be granted a temporary residence permit for the duration of the procedure and have access to basic human rights.

3. Ensuring effective enjoyment of rights by stateless persons

Stateless persons in Portugal should be able to enjoy their rights as set out in the 1954 Convention. It is recommended that persons determined by Portugal to be stateless through a SDP be granted a residence permit on the ground of their statelessness. This would enable their access to most rights enshrined in the 1954 Convention and other human rights instruments, which are also set forth in the Portuguese Constitution and legislation.

Travel documents should be made available upon application to stateless persons in Portugal. While SEF has already approved a Convention Travel Document in machine-readable format for stateless persons, this model has not yet been endorsed in a legal document. UNHCR urges the Portuguese Government to do so.

4. Addressing the situation of un-returnable persons

Un-returnable persons may be in a particularly vulnerable situation. There may be simply no country to which to return them. With this in mind, Portugal should ensure that its CITs have means to systematically verify whether a person in a return situation is or may be stateless. It is recommended that “un-returnable” persons have access to a SDP where there are indications that the individual may be stateless.¹⁶⁷

THE PREVENTION AND REDUCTION OF STATELESSNESS

5. Access to Portuguese nationality by stateless persons and the standard of proof

Portugal should modify Articles 36 and 21(2)(b) of the Portuguese Nationality Regulation, which regulate, respectively, the application of Articles 1(1)(g) and 6(3) of the Portuguese Nationality Law, in order to establish a burden sharing scheme between the applicant and the examiner for proof of statelessness. Flexibility in the assessment of proof is warranted.

Portugal is advised to adopt the same standard of proof as that required in refugee status determination, namely, a finding of statelessness would be warranted where it is established to a “reasonable degree” that an individual is not considered as a national by any State under the operation of its law. Guidelines on the required standard of proof should be adopted in order to ensure a consistent treatment of cases. In evident cases, proof of statelessness should be treated promptly, such as when children are born in Portugal to stateless parents. In these cases, direct access to Portuguese nationality should be granted. This would also be in line with Portugal’s commitments under the Convention on the Rights of the Child.

In processes of acquisition of Portuguese nationality in general, it is possible that the potential statelessness of the interested party comes to the fore. Here, particular flexibility should be employed by the Central Registry Office in the assessment of procedural requirements such as documentary evidence. For instance, in cases where it becomes evident that the interested party

¹⁶⁷ On statelessness in the context of detention, see: UNHCR, *Stateless Persons in Detention: A tool for their identification and enhanced protection*, 2017, available at: <http://www.refworld.org/docid/598adacd4.html>.

cannot reasonably present his or her birth certificate, more leeway should be granted for the use of Article 26 of the Portuguese Nationality Regulation, which exempts the applicant from the presentation of documents.

6. Facilitated naturalization for stateless persons through the removal of procedural obstacles

In line with its international obligations under the 1997 European Convention on Nationality to which it is a party, Portugal should introduce changes in its naturalization regime to render access to Portuguese nationality easier for stateless persons. Naturalization may be facilitated by reducing the residence period required, discarding legal residence requirements, and by loosening procedural evidentiary conditions.

7. Safeguards in case of potential loss of nationality

Portugal should adopt guidelines to clarify how to interpret and apply the concept of possession of Portuguese nationality in “good faith” in practice, so as to ensure a consistent treatment of cases where the loss of Portuguese nationality is at stake. In cases where Portuguese nationality is withdrawn before the 10-year limit, the possibility of re-acquisition of nationality through naturalization should be offered in an expedited and simplified manner.

8. Clarifying the situation of foundlings

Despite positive practice in this area, the terms by which foundlings are granted access to Portuguese nationality, as laid out in Article 1(2) of the Portuguese Nationality Law and Article 105 of the Civil Registration Code, could be further clarified to bring these provisions in line with Article 2 of the 1961 Convention.

BUILDING INSTITUTIONAL CAPACITY

9. Awareness raising

Portugal should raise awareness with regard to statelessness among the various Government institutions that may encounter stateless persons, including: SEF, the Central Registry Office and civil registries, the High Commission for Migration (through its CNAIM centers and CLAIM network), the Public Prosecutor, the Police, Courts, Social Security, and the National Health Service, among others.

The Government could appoint a focal point, potentially within the Portuguese Ombudsperson’s office, to pay particular attention to the situation of stateless persons in Portugal, notably, their enjoyment of human rights and their access to Portuguese nationality.

10. Inter-institutional collaboration

Portugal should ensure inter-institutional collaboration to address statelessness. For example, SEF, the High Commission for Migration, and relevant civil society organizations should be equipped with mechanisms that allow these entities to refer potential cases of statelessness to either a SDP or to the Central Registry Office, whichever is more appropriate.

Annexes

Annex I: Stakeholders Consulted for this Investigation¹⁶⁸

I. State Organs

Ministry of Internal Administration
Miguel Barros; Fernando Silva

Ministry of Justice
Luísa Proença; José Luís Dias; Jorge Monteiro
(*Direção Geral de Reinserção e Serviços Prisionais*)

Ministry of the Presidency and of
Administrative Modernisation
*Paula Moura (Gabinete da Secretária de Estado
para a Cidadania e Igualdade)*

Parliament
Constança Urbano de Sousa; Gustavo Behr

II. Public Entities

Amadora Town Hall
Rute Gonçalves

Cascais Town Hall
Helena Bonzinho

Center for Judicial Studies
Luís Silva Pereira

Central Registry Office
Maria de Lurdes Serrano; Joana Flores

Former President of the Portuguese Republic
Jorge Sampaio

High Commission for Migration
*Pedro Calado; Cristina Casas; Marina Pedroso;
Rute Carvalho; Tânia Marques*

Immigration and Borders Service (SEF)
*Carlos Alberto Matos Moreira; Paula da Velha;
Maria Emília Lisboa; Esmeralda Louro,
Helena Cabral (UHSA)*

Labour Inspectorate Organisation
Pedro Pimenta Braz; Paula Lopes Vieira

Social Security Services
Arminda Vaz Pereira

Parque das Nações Parish Council
Anabela Pinto

Portuguese Ombudsman
*Teresa Anjinho; Miguel Feldmann; João Portugal;
Ana Rita Gil*

Public Prosecution Service
*Helena Gonçalves (Procuradoria-Geral da
República)*

III. International Organizations

International Organization for Migration
Luís Carrasquinho; Sofia Cruz

IV. Embassies/Consulates

Angolan Consulate
André Lourenço Lopes; Rosangela Silva

¹⁶⁸ Stakeholders are presented in chronological order.

V. Social Institutions/Civil Society Organizations

Academia do Johnson
Johnson

Associação Assomada
Conceição Correia

Associação de Solidariedade Social com a Comunidade Cigana e das Minorias Étnicas do Médio Tejo
Almerindo Lima

Associação de Solidariedade Social do Alto Cova da Moura
Paulo Rodrigues

Associação de Intervenção Comunitária, Desenvolvimento Social e de Saúde (AJPAS)
Nuno Antão

Associação Luso Cabo-Verdeana de Sintra
Rosa Moniz

Associação Médicos do Mundo
Carla Paiva; Paulo Silva

Associação Olho Vivo
Flora Silva

CAIS
Conceição Cordeiro

Casa de Apoio ao Sem Abrigo
Maria Loureiro

Casa do Brasil
Gustavo Behr

Casa Damião
Igor Rodrigues

Cáritas
Inês Melo

Centro Padre Alves Correia (CEPAC)
Carla Cardoso; Margarida Branquinho

CLAII Oeiras
Assunção Fernandes

Comunidade Vida e Paz
Isabel Oliveira

Conselho Português para os Refugiados
Mónica Farinha; Inês Carreirinho

Desafio Jovem
Francisco Chaves

Instituto Padre António Vieira
Madalena Saldanha

Jesuit Refugee Service Portugal
João Lima, Sofia Teles

Moinho da Juventude
Rosário Mendes, Jakilson, Flávio

Nasce Renasce
Eunice Correia

Paróquia Senhora da Conceição
Miriam Rocha; Maria da Conceição Cardoso

Pastoral dos Ciganos
Fernanda Reis

Portuguese Red Cross
Diana Araújo

Renovar a Mouraria
Aurélie Rosado

Santa Casa da Misericórdia de Lisboa
Celeste Brissos; Bruno Caldeira

Solidariedade Imigrante
Timóteo Macedo

SOS Racismo
José Falcão

Vitae Centro de Acolhimento De Xabregas
Irene Fonseca; Sónia Gonçalves

VI. Foster care centres

Aldeia de Crianças SOS
Mário Baudouin, Ana Rita

Associação a Casa do Caminho
Fernanda Lima Basto

Centros de Acolhimento Temporário da ABEL
Filipa Falcão

Crescerser
Fátima Serrano

Refugio Aboim Ascensão
Verónica Tomé

Terra dos Sonhos
Mara Santos

VII. Immigration Lawyers/Jurists

*Adriano Malalane, Jerónimo David,
Miguel Reis*

VIII. Academics

*Cristina Nogueira da Silva, João Sardinha,
Nuno Dias*

IX. Media

Sofia Pinto Coelho

X. Independent workers

Christian, Maria Gil

ANNEX II: Types and Causes of (Potential) Statelessness Cases in Portugal

1. Decolonization and the application of Decree-Law N. 308-A/75
2. Law N. 37/81 – strict regime towards children of irregular migrants (whose nationality was not registered, as minors, either in Portugal or in a foreign country)
3. Law N. 37/81 – flawed attribution of Portuguese nationality and subsequent withdrawal due to:
 - Insufficiencies in the information contained in the birth certificates of persons born in Portugal with regard to the parents' foreign nationality
 - Lack of awareness of new residence criteria by officials from the Central Registry Office
4. Burdening administrative requirements regarding proof of statelessness
5. Failure to operationalize Article 1(1)(C) of the Portuguese Nationality Law: non-registration of child born abroad to Portuguese parents
6. Loss on the basis of false documents
7. Loss on the basis of renunciation without possessing another nationality (owing to problems with foreign countries' consular authorities)
8. Stateless asylum-seekers
9. Children born to single asylum-seeking women, from countries applying gender-discriminatory nationality laws

STATELESSNESS



UNHCR
The UN Refugee Agency

UNHCR Regional Office for Southern Europe, October 2018