

Statelessness: A Minorities Issue
Questionnaire to the Special Rapporteur on Minority Issues

(May 2018)

The Portuguese Ombudsman institution, in its capacity of national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the call for input received from Special Rapporteur on Minority Issues on the topic: “*Statelessness: A Minorities Issue*”. The current mandate holder, Maria Lúcia Amaral, took office in November 2017.

1. What are the main obstacles to minority people obtaining and/or retaining nationality? Why do minorities seem to be particularly affected or even targeted in this respect?

In Portugal there is no recognition of “official minorities”. Questions traditionally considered as *minorities issues* are dealt with by immigration authorities. Therefore, when mapping the difficulties faced by minority people for obtaining nationality, these difficulties may be confused with difficulties faced by migrants in general.

In Portugal, there are mainly two types of obstacles for nationality acquisition that may affect stateless persons. The first obstacle concerns voluntary acquisition of nationality at birth through *ius soli* for “second generation immigrants”. The Portuguese Nationality Act¹ sets forth that the child of foreigners who is born in Portugal can acquire Portuguese citizenship if one of the parents has lived legally in Portugal for at least five years. In the experience of the Portuguese Ombudsman, one of the biggest obstacles faced by the individuals concerns the *proof* of the parents’ legal residence for the minimum of time required. In this context, several associations of immigrants, namely of African descent (such as *Solidariedade*

¹ Organic Law n. 37/81, of 3 October, as last amended by Organic Law n. 9/2015, of 29 July.



Imigrante, Djass, amongst others²) have made a petition to the Portuguese Parliament claiming that the Nationality Act should be changed in order to award Portuguese nationality on a pure *ius soli* basis. The law is being currently amended, in order to grant Portuguese nationality to those who are born in Portuguese territory from immigrants who are legally residing therein. Still, one cannot claim that a pure *ius soli* principle will be acknowledged, since legal residence is still required.

The second type of difficulty is faced by residents who, having been born abroad and being stateless, wish to acquire the Portuguese citizenship through naturalisation. Many of them are faced with difficulties in obtaining documentary evidence, due to the destruction, incompleteness or deficiency of records, or due to discrepancies with the types of documentation existent in the countries of origin and the documents required in Portugal.

2. What are the challenges and gaps you identify in terms of existing international and regional instruments?

Existing international and regional instruments should address more broadly the specific situation of forced migrants, who may be considered as *de facto* stateless persons. Forced migrants have a more urgent need to acquire the citizenship of the host country, since they cannot benefit from the protection of their home country. Therefore, more favorable regimes targeting forced migrants should be foreseen in existing international and regional instruments. This shall encompass not only people who were forced to flee due to persecution (according to the 1951 Geneva Convention on the Status of Refugees), but also those who are fleeing from general violence or natural disasters. All these persons have an urgent need to acquire nationality. Moreover, they may not have the necessary evidence to promptly have access to a procedure for the acquisition of citizenship, so more flexible rules should be applicable.

Besides more favorable regimes for forced migrants, a broader concept of statelessness should be adopted, in order to encompass those who are born in host countries with *ius sanguinis* tradition and who cannot, due to wars, conflicts or any type of crisis, register themselves in the consulates of their parents' country of origin in order to obtain their nationality.

² Initiative "Who is born in Portugal shall be Portuguese".



3. What is the specific legislative, institutional and policy framework at the national and local level that governments undertake to address the issue of statelessness? Please provide examples of key laws, policies and practices, including good practices, as well as gaps.

In what regards, *enjoyment of rights from stateless persons*, the Portuguese Constitution guarantees the principle of equivalent treatment between national citizens, foreigners and stateless persons on the enjoyment of rights and duties. This encompasses a wide range of rights, encompassing social rights such as the right to health, to social security, to work, education and access to justice, amongst others. However, in practice, access to these rights is not as effective as the constitutional text may suggest. That is because Portugal does not have a specific procedure to recognize and grant a specific legal status to stateless persons. It is true that, in practice, they may be awarded with international protection status. However, recent studies show that there are several stateless persons living irregularly in Portugal³.

Regarding *acquisition of nationality*, the Portuguese Nationality Act foresees a general clause aimed at preventing statelessness (point g) of paragraph 1 of article 1). According to this Article, those who were born on Portuguese territory and who do not have any other citizenship are considered Portuguese citizens.

Legal arrangements for the loss of citizenship are also important for preventing statelessness. They are strongly influenced by the Portuguese Constitution which states that citizenship is a fundamental right of the individual (art. 26(1)) and forbids the loss of citizenship for political reasons (art. 26(4)) or as a consequence of serving a prison sentence (art. 30(4)). The Portuguese Nationality Act does not allow any *ex lege* loss of Portuguese citizenship or loss of citizenship due to state intervention. Art. 8 of the Nationality Act only allows for the loss of citizenship through the individual's own free will and only so long as he or she holds another citizenship. Thus, loss of Portuguese citizenship is not possible if the citizen in question becomes stateless.

In practice, though, even this regime was already proven to be insufficient to prevent statelessness. The Portuguese Ombudsman dealt with some cases of Portuguese citizens who,

³ UNHCR, Mapping Statelessness in Portugal, 2018, p. 65 *et seq.*



having Angolan nationality, successfully renounced to the Portuguese nationality. However, Angolan authorities afterwards decided to withdraw their Angolan citizenship. Thus, these former Portuguese citizens became stateless. The only solution for these cases is to reacquire Portuguese citizenship, which is a possibility foreseen by Article 6(3) of the Nationality Act.

Despite these provisions, nullity of a registration of birth or the registry of citizenship acquisition after birth based on falsehood are not treated as loss of citizenship and have retroactive effects. The same can be said regarding other types of administrative mistakes. In a recent case, Portuguese authorities have wrongly issued the Portuguese Citizenship ID card to several immigrants, who then thought they were Portuguese citizens. When the ID card expired and these persons asked for renovation, the Portuguese Administration realized the mistake, and “revoked” their Portuguese nationality. These immigrants, largely individuals with African descent, then claimed that their Portuguese nationality was unilaterally repealed. Recognizing that this case led to serious damages to these peoples’ lives, the Parliament is currently amending the Nationality Act, in order to foresee that “bona fide” holders of Portuguese nationality, originated or acquired for at least 10 years, shall have their Portuguese citizenship consolidated.

Finally, the Portuguese Nationality Act sets forth a subjective right to naturalization. That is to say, all those who fulfill the requirements set forth in Article 6 are entitled to acquire Portuguese nationality⁴. These legally binding requirements are also a fundamental tool to combat statelessness.

4. How are legislative and policy measures implemented and what is their impact on reducing statelessness?

Despite the several mechanisms foreseen by law in order to prevent statelessness, in practice access to citizenship for stateless persons is not facilitated. That is mostly due to *evidence* difficulties. Statelessness has to be proved, namely through documents issued by the authorities of the countries with which the applicant had relevant links, such as the country of

⁴ Requirements encompass a minimum period residence, Portuguese language skills and a criminal record certifying that the applicant has no convictions for serious crimes.



origin, or the country of the last nationality or of the nationality of the applicant's ancestors⁵. Thus, statelessness evidence are often dependent on the cooperation of foreign Embassies, which have to issue a statement of “non citizenship”. In difficult cases, the documentary evidence can be exempted (Article 26 of the Nationality Regulation)⁶. However, a recent study shows that decisions to exempt documentary evidence may vary in the practice according to the specific Registry officers, which creates legal insecurity⁷.

Besides that, documents generally required for naturalisation are difficult to obtain to stateless persons or even unknown in their countries of origin. For example, for those who were not born in Portugal, the lack of a birth certificate (required by Article 19(2)(a) of the Portuguese Nationality Regulation) may constitute an almost insurmountable obstacle. In some cases, applicants are forced to travel to their country of origin, for gathering necessary documentation evidence, which may not be feasible given the associated costs, as well as the condition of some stateless persons as irregular migrants.

However, those who are born in national territory benefit from the mandatory registration regime. 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 Central Registry Office. This measure constitutes a fundamental means to avoid the phenomenon of children at risk of statelessness in Portugal. But, as a recent study points out, 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 basis⁸. Moreover, as explained below, where parents have their foreign nationality established, national authorities normally do not apply the general clause for statelessness prevention.

5. What are the challenges to effectively address statelessness, including its causes and impact on minorities?

⁵ Nuno Piçarra, Ana Rita Gil, *Country Report – Portugal*, European Institute of Florence, 2012, in <http://globalcit.eu/wp-content/plugins/rscas-database-eudo-gcit/?p=file&appl=countryProfiles&f=Portugal.pdf>, p. 37.

⁶ Decree-Law n. 237-A/2006, of 14 december, as last amended by Decree-law n. 71/2017, of 21 june.

⁷ UNHCR, *Mapping Statelessness in Portugal*, 2018, p. 37.

⁸ UNHCR, *Mapping Statelessness in Portugal*, 2018, p. 40.



Overall, since Portugal lacks a system of more favorable legal arrangements for the acquisition of nationality by stateless persons, migrants are required to live in a limbo during six years until they may apply for naturalisation. The same is true for children, since specific legal arrangements for acquisition of nationality by children are only applicable for those who were born in Portuguese territory, pursuant that their parents have resided five years therein or that children have completed the first cycle of compulsory education in Portuguese schools⁹. More favourable legal arrangements could be important to address the special vulnerability of unaccompanied minors, specially those who are residing in foster care centres.

On the other hand, Portuguese national authorities still adopt a concept of statelessness exclusively based on *mere legal citizenship*. Children who are born in Portuguese territory to foreign citizens can hardly be considered as stateless persons, and, thus, benefit from the general clause aimed at awarding Portuguese nationality to stateless born children. That is because Portuguese authorities normally claim that they shall acquire their parents' citizenship. But the problem is that, even in cases where their country of origin is based on a *ius-sanguinis* system, children may face severe difficulties in registering their nationality in consular services. This may happen specially when their parents have some type of international protection status and the consulates of the country of origin are not adequately functioning, due to general destabilization or even war conflicts. That is currently being the case of children born in Portugal to Syrian parents. Despite being faced with several difficulties to register the Syrian nationality, Portuguese competent authorities still refuse to consider them as stateless persons and, thus, do not apply to them the general clause for statelessness prevention.

6. Please provide specific case studies of stateless populations and their human rights situation.

There are some cases that were experienced in Portugal where stateless persons faced severe difficulties to obtain nationality.

⁹ Article 6 (2).

First, one should mention again the cases affecting Syrian children who are born in national territory, which, as explained above (5.), illustrate the specific problems with which forced migrants may be faced with frequently.

There are also several cases affecting individuals due to difficulties in proving statelessness. This can be showed with a case quoted in a recent study, involving a woman and her child of undetermined nationality (the possibilities being Russian or Estonian), where the Central Register officer considered the statelessness proof to be insufficient. The interested persons presented all required declarations from the pertinent embassies, but the authority still found them insufficient and requested further information, in order to exhaust all possibilities by clarifying the parents' nationality¹⁰. These problems are usually faced by migrants who came at a very young age to Portugal, fleeing conflicts in African countries. In such cases, either registration offices and churches were destroyed, or the certificates obtained are not properly authenticated.

7. Please provide detailed information and data on the gender-perspective of statelessness, including any legislative and policy developments with regard to acquisition and transfer of nationality and how this impacts on minority women and girls.

There are no specific legislative and policy developments with regards to acquisition and transfer of nationality on minority women and girls.

8. How have minorities in particular been affected by forced population movement and migration? Have those consistently resulted in statelessness among minorities? Please provide case studies in that regard, in particular in the context of conflict and humanitarian crises.

As already answered in questions 5. and 6., forced migrants are in general more likely to suffer from statelessness. In first generations, statelessness may only be a *de facto* situation. But in countries with a *ius sanguinis* tradition, children of forced migrants, may born as “*de iure* stateless”. That is due to the practical impossibility to register them with the nationality of their parents.

¹⁰ UNHCR, *Mapping Statelessness in Portugal*, 2018, p. 37.

9. What is the impact of statelessness on the human rights situation of nomadic and crossborder minorities? Please provide information on and examples of regions most affected.

As already stated, in Portugal there is no recognition of “official minorities”. There are also no studies reporting the impact of statelessness on the human rights situation of nomadic and crossborder communities. The Portuguese Government has adopted a national strategy for promoting the integration of Roma citizens¹¹. However, it does not address specifically the problems of statelessness amongst this community.

10. Please provide any relevant information and statistics (including surveys, administrative data, legal and policy documents, reports and studies, and in particular those addressing the intersectionality between statelessness and minority rights)

Cronologically, the first concerns regarding statelessness in Portugal are related to the decolonization period. Following decolonization, the Decree-Law n. 308- A/75 brought with it the loss of Portuguese nationality for thousands of individuals, among whom many were left stateless¹². It is likely that most of these persons have in the meantime acquired a certain nationality (Portuguese or other nationality), although there are cases in Portugal that remain unresolved until today¹³. In the most recent Portuguese censos, organised in 2011, the self-declared stateless population comprised 553 individuals. The highest number of stateless persons was found among those born between 1972-1976 (100 persons), and between 1977-1981 (76 persons)¹⁴. Many of them are still people who were born in the ex-colonies and who came to Portugal in the aftermath of decolonization 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/75¹⁵.

¹¹ Alto Comissariado para as Migrações (High Commissioner for Migration), *Plano Estratégico para as Migrações, (Strategic Plan for Migration), 2017-2020.*

¹² See Nuno Piçarra, Ana Rita Gil, op. cit., p. 6.

¹³ UNHCR, *Mapping Statelessness in Portugal*, 2018, p. 37.

¹⁴ *Op. ult. cit.*, p. 48.

¹⁵ *Ibidem.*

However, subsequent nationality laws tried to create special and more favorable procedures for those who, due to the decolonization process, had lost the Portuguese citizenship¹⁶.

Other official statistics provide a different perspective on numbers of statelessness. The Aliens and Borders Service has registered the following numbers of stateless persons in the past years¹⁷:

2013	2014	2015	2016	2017
14	11	9	12	n/a

However, due to the natural invisibility of the phenomenon, it is highly possible that actual numbers may be higher than these official numbers.

The national authority responsible for registering acquisition of Portuguese nationality¹⁸ has registered the numbers of birthright acquisition of Portuguese nationality by persons who would otherwise be stateless. These numbers only respect application of the general clause for statelessness prevention.

2013	2014	2015	2016	2017
1	3	4	4	4

11. What further role could the United Nations and international organisations play to increase awareness of statelessness as a minority issue?

It is important to raise awareness regarding prevention of statelessness. Individuals may act as the first agents to avoid statelessness. Birth registry is, thus, very important to enact clauses aimed at preventing statelessness. UN and international organisations shall increase awareness for the importance of registering children, even when parents are irregularly staying in the host country. In this respect, safeguard clauses could be adopted, preventing registry officers from reporting the parents' illegal status.

¹⁶ See Nuno Piçarra, Ana Rita Gil, op. cit., p. 8 *et seq.*

¹⁷ SEF, Portal de Estatística, available at <https://sefstat.sef.pt/relatorios.aspx>.

¹⁸ Central Registry Office, 2018.



Moreover, authorities must be sensitized for assessing cases concerning stateless persons with more flexibility.

Also, States should be strongly advised to provide facilitated naturalisation of stateless persons and forced migrants in general. This is especially important for children who may be in foster care. Acquisition of nationality of the country hosting unaccompanied minors should be seen as a measure aimed at protecting them and, thus, respecting the State's duty to protect every children.