One Step Forward, Half Step Back: Still a Long Way to Go to End Statelessness in Madagascar

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Abstract

This work sheds light on the still unresolved plight of statelessness in Madagascar, a country that has a long history of stateless communities, above all among the Karana people, of Indian origin and Muslim religion. In spite of several important steps undertaken to eradicate statelessness in the country (see, for example, the adoption of the 2016 Law on Nationality that partially amended the 1960 Code on Nationality), the path for the complete eradication of statelessness in the country still seems quite long. This is because of the lack of will by local authorities who seem to ignore the conditions of thousands of people, born and bred in Madagascar who, apparently for no specific reason, still do not hold Malagasy citizenship, causing them to be deprived of several basic rights that citizens are normally entitled to. In this respect, the fact that Madagascar is still not a party to several important international legal instruments adopted to eradicate statelessness, does not facilitate the situation of the thousands of stateless people in Madagascar.

Keywords: statelessness, Madagascar, Karana people, women, children

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INTRODUCTION

According to Article 1(1) of the Convention Relating to the Status of Stateless Persons (CSSP), a stateless person is "a person who is not considered as a national by any State under the operation of its law" (UNGA, 1954). Ewumbue Monono (2021: 43) suggests that "statelessness" is

> [t]he condition in which an individual has no formal, legal or protective relationship with any recognised state, no matter their emotional national identification. In other words, statelessness is a condition where an individual has no nationality. It can also describe the situation where an individual claims the nationality of a "State," but that "State" is not internationally recognised. Statelessness can also be a situation where a person has lost their nationality for security reasons or other grounds associated with fraud. Finally, it can be a situation involving deprivation of nationality through the discriminatory laws of a state, resulting in lack of "effective nationality" due to structural and administrative causes.

Statelessness happens for a number of reasons. These reasons include gaps in citizenship laws, including the application of rules for children born outside the country of nationality of their parents (Manby, 2017: 14-19). In this regard, Manby explains: "The continuing discretion given to states in national laws – as well as the reality of global migration, conflict, and changing borders – means that it is increasingly possible for people to fall between the gaps and end up stateless" (2017: 17). In addition, these reasons also include gender-based discrimination in transmission of nationality to children and spouses; discrimination based on race or ethnicity; the attribution of nationality when sovereignty over a territory changes (the rules on state succession); and the arbitrary denial or deprivation of nationality (UNHCR, undated).

Statelessness can also be the result of policies that aim to exclude people deemed to be outsiders (because of ethnicity or religion), in spite of their ties to a particular country. In Africa, this has often been tied to succession of states, as in relation to people of Eritrean descent in Ethiopia (Open Society Justice Initiative, undated: 2), or in Côte d'Ivoire, where the status of pre-independence migrants of Burkinabé and other descent remains contested (Adjami, 2016: 3-4).

In this article, I analyze the causes of statelessness in the case of Madagascar, with a particular focus on discrimination based both on gender and on ethnicity, especially as applied in the context of the attribution of nationality when Madagascar gained independence from France. The exact number of stateless people in Madagascar is unknown, although the United Nations High Commissioner for Refugees (UNHCR) suggests a figure of 100,000 in a country with 24 million inhabitants (Petrova, 2015).

This article is structured as follows: after analyzing the recent legal and policy developments in Madagascar to remove gender-based discrimination, I investigate

the problematic situation of the Karana people, who still suffer from discrimination in the country. I also consider the efforts to address statelessness. Finally, I consider what is required to eradicate statelessness in Madagascar and the likelihood of its success.

HISTORY OF CITIZENSHIP LAW IN MADAGASCAR

Madagascar's original nationality laws, like many others in Africa, were a product of its colonial history (Manby, 2018: 39-41). The island was a French colony from 1896 to 1960 (History World, undated). In 1960, Madagascar became independent and the new state adopted a law by which citizenship was transmitted on the basis of descent, with no rights to citizenship based on birth in the territory, except in the case of abandoned children who were presumed to be Malagasy, with some restrictions, as noted below – Ordonnance no 60-064, 1960 that instituted the Nationality Code (Republic of Madagascar, 1960). The new laws were discriminatory along both gender and ethnic lines.

Before the adoption of the last modifications in 2017, the Malagasy Nationality Code had been changed several times in the past, always highlighting two main aspects of the country – its cultural diversity and its national identity (Razafiarison et al., 2022: 6). For example, Law No. 61-052 of 1961 (Article 24(1)) introduced several modifications to the 1960 Ordonnance. Modifications were about the acquisition of nationality, extending to two years the term by which the government can oppose the acquisition of Malagasy nationality by marriage, introducing reasons of indignity and physical or mental incapacity (Republic of Madagascar, 1961). Additionally, by modifying Article 50(4) and (5) of the 1960 Ordonnance, the 1973 Ordonnance No. 73-049 determines that a Malagasy citizen will lose their nationality if condemned, in Madagascar or abroad, for any crime considered as such by Malagasy law and by which they had been condemned to at least five years of detention. Moreover, once the nationality has been withdrawn, the former Malagasy citizen may appeal this decision. Article 28(2) states that if the first application for reinstatement of citizenship is rejected, a new application can only be submitted two years after the rejection (Republic of Madagascar, 1973). Furthermore, Law No. 95-021 of 1995 added a fourth paragraph to Article 38 of the Nationality Code that introduced a variable term (from five to ten years) that the naturalized person is required to wait before fully benefiting from the civil and political rights as a Malagasy citizen (Republic of Madagascar, 1995). Paragraph 38(4) was abrogated by Law No. 2003-027 of 2003 to permit the participation of naturalized persons in the economic development of Madagascar (Republic of Madagascar, 2003).

The Code on Nationality, as amended, distinguishes between those who are considered Malagasy at birth – called attribution of Malagasy citizenship – versus those who have to follow an administrative process, referred to as acquisition of Malagasy citizenship. Title I of the Code on Nationality defines those who are

attributed Malagasy citizenship at birth. Title II sets out the rules for acquisition of citizenship, by declaration, by marriage, or by naturalization.

GENDER-BASED DISCRIMINATION

One of the most common causes of statelessness in Africa, and particularly in Madagascar, is gender-based discrimination. In this regard, Manby (2011: 8) states:

> Gender discrimination is one of the commonest causes of statelessness, especially in the case of children who cannot obtain their mother's nationality because of gender discrimination and who cannot otherwise acquire the nationality of the State of birth or of their father (for example, because the child was born out of wedlock, the inadequacy of civil registration procedures or other challenges). Nonetheless, gender discrimination was until recently the norm in citizenship laws across the world; some of the older international treaties on nationality law in fact assumed that gender discrimination would be applied, while trying to minimise statelessness that could result. In Africa at independence and until recently, most countries discriminated because of gender in granting citizenship. Female citizens were not able to pass on their citizenship to their children, if the child's father was not also a citizen, nor to their foreign spouses.

In Africa, this comes in various forms, for example, when women cannot pass on their nationality to their spouses (this is the case in 25 countries on the continent, as a study commissioned by the African Commission on Human and Peoples' Rights (ACHPR) has shown) or when children are denied their mother's (and father's) nationality. This last circumstance often happens when a child is born out of wedlock. In this regard, the ACHPR (2015: 27) has affirmed:

> Sometimes, the administration has discretionary powers in that area. For example, in many countries, foreign wives are entitled to their husband's nationality, but only on condition that the public authorities are not opposed to the decision. In certain countries, such as Botswana, Egypt, Liberia and Zambia, non-national husbands of wives who are nationals must meet the general conditions stipulated by the law on naturalisation to acquire the nationality; in others, the acquisition of nationality is on easier terms than other foreigners but still discretionary, such as in Malawi and Nigeria.

There are generally five circumstances where inequality in nationality law may lead to statelessness: (a) when the father is stateless; (b) when the father is unknown; (c) when the father is not married to the mother of the child at the time of birth; (d) when the nationality law of the father does not allow him to confer his citizenship to the child; for example, this happens when the child is born abroad; and (e) when

the father is unable to take administrative steps to confer his nationality to the child; for example, when the father is dead or unwilling to take any administrative action to confer his nationality to the child in the case where the father has abandoned the family (Ujvari, 2017: 107).

This article now considers whether the 2017 reforms have removed these potential causes of statelessness in Madagascar. On 25 January 2017, Malagasy authorities promulgated Law No. 2016-38, amending several articles of the Nationality Code and guaranteeing the equal right of citizens, regardless of their gender, to confer their nationality on their children (Republic of Madagascar, 2017). Later, in July 2020, the Malagasy Senate unanimously adopted draft Law No. 001/2019 that aimed to tackle the persistent forms of discrimination and to provide for concrete solutions to eliminate statelessness in Madagascar by 2024 (Republic of Madagascar, 2020). Finally, in 2021, the National Assembly introduced a new draft law, No. 001/2021 PL with the objective of reformulating the Code on Nationality (Republic of Madagascar, 2021). Yet, through a disparaging campaign, a group of opposition parliamentarians reported the debate on this draft law sine die (Razafiarison et al., 2022: 14-15).

Through all these initiatives, Madagascar became the first country in Africa, since the 2014 UNHCR Global Action Plan to End Statelessness's conception (UNHCR, 2014), to afford women the same right as men to pass on their nationality to their children, irrespective of marital status. In the words of the UNHCR (2017a): "The nationality reform is an encouraging and important step in preventing and reducing statelessness. UNHCR will continue our support to the Government of Madagascar, its Parliament and civil society actors to implement the law." Yet Madagascar is, in fact, one of the slowest to have adopted these reforms, with most of the other African countries having done so before 2014.

The fight to reform the nationality law has been a protracted effort first promoted by women's rights activists, including the Madagascar-based organization, Focus Development. This fight has been led by individuals, who collectively made an intensive effort to heighten awareness of the significant harm caused by discriminatory nationality laws and the need for reform. Mobilization in Madagascar had also been reinforced by calls for reform by international human rights bodies, including the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Women's Refugee Commission, 2017).

According to Article 9, a combination of Articles 17(1) and 18(1) of the French Code on Nationality (Razafiarison et al., 2022: 5, footnote 32) and amending the correspondent Article 9 of the original 1960 Code on Nationality, a child is Malagasy if both parents are Malagasy. It is noteworthy that, according to the recommendations by institutional organs, this article is considered retroactive, allowing Malagasy women to transfer their nationality to their children born before the enforcement of the 2017 reform (Razafiarison et al., 2022: 7-8). Regarding this law, however, Manby (2018: 14) concludes:

> The nationality code adopted in Madagascar included explicitly discriminatory transitional provisions … The law did not include a provision for the automatic attribution of nationality to the second generation born in the country, whether before or after independence, a departure from the norm for the territories of French West and Central Africa …

However, retaining the validity of Article 22 and Article 47 of the Nationality Code, the amended nationality law (Republic of Madagascar, 2017) still does not permit Malagasy women to confer their nationality to their non-national spouses (as Malagasy men can). In this regard, Article 20 of the Nationality Code continues to provide that a child born out of wedlock who is legitimized during their minority, acquires nationality only if the father is a national. This provision, based on descent for those born after independence, continues to discriminate based on birth in or out of wedlock.

In addition, the general provision of the law on adoption provides for the right of an adoptive child to acquire nationality by declaration, if resident in Madagascar for five years, without discrimination based on the gender of the adopting parent (Article 17). Yet the procedure can be the object of government opposition based on a number of grounds, including lack of integration and mental or physical incapacity (Article 18). However, the Nationality Code additionally still provides for automatic acquisition of nationality through a "légitimation adoptive" if the adopting father is a national (Article 21). Yet, there is no definition of "légitimation adoptive" and the interpretation of this article is not entirely clear, given the overlap with Article 17 (on adoption generally) (Manby, 2018: 32, footnote 115). Conversely, Madagascar provides for the withdrawal of nationality of a child if one parent acquires another nationality and the other does not remain a national, with gender discrimination within the provision (Article 48).

It is also worth noting that in Madagascar – sole among the states belonging to the Southern African Development Community (SADC) – a person has the right to obtain from a court a certificate of nationality that is proof of that status unless overturned by another court (Article 87). Madagascar also incorporates the civil law concept of "apparent status" – a person's nationality can be treated as established, and a nationality certificate issued by a court, if they have always been treated as a national, in the absence of proof to the contrary (Article 81).

Moreover, all declarations of nationality must be registered with the Ministry of Justice; otherwise, they will not be considered valid (Article 58). However, all declarations of nationality can be contested by all interested parties (Article 61(2)). Finally, another provision showing the attempt by Malagasy authorities to eliminate gender discrimination concerns the deprivation of nationality, now considered as a personal act, and it does not concern the wife and children of the man whose nationality has been revoked, as it applied before the 2017 reform of the National Code (Article 52) (Republic of Madagascar, 2017).

DISCRIMINATION AGAINST THE KARANA PEOPLE

Historically, Madagascar is a country of immigration (Rabary-Rakotondravony and Rakotonanahary, 2015). The most significant wave of migration from India to Madagascar took place during the latter half of the nineteenth century, when seafaring trade on the Indian Ocean became more competitive and many people from India settled in Madagascar, especially on the western coast (UNHCR, 2017b). Although the laws adopted for the attribution of citizenship at independence did not explicitly discriminate on the basis of race or ethnicity in the acquisition of citizenship by descent, they were applied in such a way that individuals were often denied citizenship documents by authorities who claimed that their names did not "sound" Malagasy. In this regard, Harrington (2017: 498) explains:

> Many of the arguments used by those opposed to enacting reforms are quite similar to arguments used in debates regarding immigration policy and expanding access to citizenship more generally. For example, many opposed to reforms express fears regarding the loss of jobs, especially to foreign men, as well as anxiety over potential loss of political power.

This was especially the case for the Karana people or those with Comorian origins (d'Orsi, 2017). The Karana people, a minority of about 20,000 persons of Indo-Pakistani origin, have lived in Madagascar for over a century (Aikomus, 2017). On the basis of geographic-ethnic discrimination, the Karana people were generally not given citizenship when Madagascar won independence from France in 1960 because they were not considered to be ethnically Malagasy (UNHCR, 2017b: 14).

Racial and ethnic discrimination was, however, present in the provision of the law on foundlings, and remains so within the 2017 reforms. Moreover, new Article 11 explains that: "1) It is Malagasy if the infant born in Madagascar from unknown parents presuming that at least one of the two parents is from Madagascar […] 4) The infant found in Madagascar is presumed having born there until otherwise proven." In this regard, Manby notes, "the law retains the previous restriction of protection to those children where, according to new Article 11(2), "one can presume that at least one parent is Malagasy," based on the name, physical characteristics, and other aspects of the child's environment, opening the door to arbitrary discrimination" (Manby, 2018: 22).

The majority of the Karana people were born in Madagascar and they have spent their entire lives on the island. According to Mahajan (2020),

> Madagascar also has pockets of minorities, of whom the most visible and successful are the Indians, who came across the Indian Ocean as traders and settled here 150 years ago. Yet the Indians today are defined by a problem: despite their deep ties to Madagascar, most of them are not – and cannot become – citizens.

Most Karana people live in urban areas, including the capital, Antananarivo, and the city of Mahajanga on the northwest coast. The fact that the Karana people are predominantly Muslim, in a country where more than 70% of the population is Christian (US Department of State, 2022: 1) has contributed to a perception of them as outsiders. The Karana people for generations have been very successful in business and many have become wealthy compared to the rest of the Malagasy population (Razafiarison et al., 2022: 4, 16). This success has further perpetuated the cultural isolation of the Karana people in Madagascar and in some instances has resulted in targeted attacks against Karana communities (Razafiarison et al., 2022: 16). Preventing the Karana people from accessing citizenship disincentivizes some of the wealthiest in the country from investing in its growth (McInerney, 2014: 183). Moreover, the Karana people are less likely to seek citizenship in the country through marital paths than in the broader Muslim community.

The Karana people have traditionally married within their own communities, and the children of these marriages thus inherit statelessness. As more people who are stateless have children, the population of individuals in the country who do not have access to Malagasy citizenship grows. In this circumstance, the only mechanism for escaping from this cycle is to join in matrimony with a Malagasy person. In this way, the children of the marriage can be provided a path to citizenship through the Malagasy spouse (McInerney, 2014: 187). However, within the Karana communities there are diverse marriage rules based on socio-religious groups. The most liberal rules are those of the Sunni Muslims, who can get married within their own community and also within other Muslim Malagasy communities. Some Sunni Muslim men have married non-Muslim women and have produced mixed Indo-Malagasy children, who are not identified as either Indian or Karana, and are recognized as Malagasy citizens (McInerney, 2014: 188).

One question that arises in relation to the status of the Karana people as stateless people, is their possible claim to Indian citizenship. The majority of the Karana people had their origins in Gujarat, on the borders between India and Pakistan, but largely fall in what became India at the partition of the territory between India and Pakistan at independence in August 1947. They are of mixed Hindu and Islamic religions – the majority are Muslims from the Gujarat district of Pakistan, while in the Indian Gujarat, the majority of the population are Hindus (Republic of India, 2011). Within a year of Madagascar's independence in 1960, India established an embassy in Antananarivo, which started taking care of the people of Indian origin. However, India afforded Indian citizenship only to those Hindus who desired it. As for the Muslims, only a small number of them were recognized as Indian citizens; the majority of them were denied Indian citizenship. Consequently, many people of Indian origin in Madagascar were left stateless (Pirbay, 2007: 282-283).

France, the former colonial power, also did not acknowledge those people who had originated from a British territory. According to existing French laws, all inhabitants who were born in Madagascar under French rule were recognized as

French citizens. Indeed, the 1946 Constitution of the French Fourth Republic made Madagascar a territoire d'outre-mer (overseas territory) within the French Union (Republic of France, 1946). The Constitution accorded full citizenship to all Malagasy parallel with that enjoyed by citizens in France (Republic of France, 1946: Article 80).

Moreover, French authorities disregarded the Karana people when transferring sovereignty to the Malagasy people. It is reasonable to believe that French "advisers" helped with the drafting of the text of the new Malagasy law on citizenship given that Malagasy legislators referred to the Ordonnance No. 45-2447 of the French Nationality Code (Republic of France, 1945), "borrowing" several articles from it. Examples are the articles concerning the acquisition of nationality by adoption or the loss of nationality (Razafiarison et al., 2022: 5).

However, in Madagascar, apart from the Karana people, there is an unknown number of people belonging to other ethnic groups who are stateless (Aikomus, 2017). The fact that some other minority communities are still labeled as "Karana Sinoa" (the Sinoa are descendants of Chinese immigrants) reinforces their stigmatization. While not deliberate, individual actions toward the minority communities exacerbate the challenges of statelessness (Rakotonindrina, 2012).

INTERNATIONAL LAW AND THE ROLE OF HUMAN RIGHTS TREATY BODIES

It is unfortunate that the 1999 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) itself does not challenge these issues. In Article 6 (h) ("Marriage"), it stipulates that, "A woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation …" (AU, 1999). The specification provided by the last part of the article shows that, in this domain, African countries appropriate the right to have the last word to decide which child is entitled to acquire nationality and which child is not (Davis, 2009: 964-965). Madagascar has not yet signed the Maputo Protocol.

However, Madagascar ratified the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 17 March 1989. Article 9 of this convention provides for equal rights for men and women in nationality, and stipulates as follows:

> 1) States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
>
> 2) States Parties shall grant women equal rights with men with respect to the nationality of their children (UNGA, 1979).

Legislation is thus required to eliminate gender and marital status from the determination of citizenship (Southard, 1996: 36-37). CEDAW's substantive equality provisions provide theoretical and normative tools to challenge traditionalist, cultural, and religious patriarchy and exploitation of women that still occur in many African countries, Madagascar included (Raday, 2012: 530).

In this regard, it is interesting to note that in the first report Madagascar submitted to CEDAW (1979), the representative of this country who, incidentally, was also a woman (Ms Rajaonson) affirmed that, in respect of Article 9, there were no inequalities in matters of nationality in the country (CEDAW, 1994: para 7).

In response, the Chairperson of the Committee (Ms Tallawy) noted that the Malagasy National Code provided that children born of a foreign father could claim the nationality of their Malagasy mother exclusively once reaching the age of majority. It therefore seemed to her that if the parents of such a child were divorced before the latter attained the age of majority, the child would be denied the right to Malagasy citizenship (CEDAW, 1994: para 30). Additionally, in 2008 the CEDAW committee urged Madagascar to amend the Nationality Code, consistent with CEDAW's Article 9 (CEDAW, 2008: para 25). Precedent paragraph 24 reads as follows:

> While noting that the State party has adopted Law No. 2008-017, which authorizes the ratification of the Convention on the Nationality of Married Women and is aimed at rectifying the inequality of rights between women and men with respect to nationality, the Committee notes with concern that the Nationality Code does not comply with Article 9 of the Convention in that it does not allow a Malagasy woman married to a foreigner to transmit her nationality to her husband or children on the same basis as a Malagasy man married to a foreigner.

This recommendation was reiterated in 2014, when the CEDAW committee also provided suggestions on the changes in the "draft" of the Nationality Code – changes that were officially adopted two years later (CEDAW, 2014: paras 4-8). The committee was also concerned that 20% of births in the country remained unregistered, increasing the risk of statelessness, and about the difficulties faced by women in ensuring the registration of their children (CEDAW, 2015: para 26). That is why the CEDAW committee recommended expediting birth registration of all children by simplifying the birth registration procedure. Additionally, the committee recommended ensuring the retroactive application of the law in discussion so that all persons in Madagascar who were stateless due to the discriminatory law were granted nationality (CEDAW, 2015: para 27(b)).

Furthermore, Madagascar adopted both the 1989 United Nations Convention on the Rights of the Child (CRC) (UNGA, 1989) – ratified on 19 March 1991, and the 1990 African Charter on the Rights and Welfare of the Child (ACRWC) (AU, 1990) – ratified on 30 March 2005. These two legal instruments agree on every child's

right to a nationality. Article 7(1) of the CRC states, "The child … shall have … the right to acquire a nationality," and Article 6(3) of the ACRWC stipulates, "Every child has the right to acquire a nationality." Along these lines, Article 6 (4) of the ACRWC further stipulates:

> States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

The CRC, in the wake of similar guidelines provided by the CEDAW, urged Madagascar to amend its law on nationality to provide legal protections against statelessness at birth and to allow children adopted by a mother from Madagascar and a foreign father to gain the Malagasy nationality (CRC, 2020: para 20(b)). Madagascar is yet to ratify both the 1954 Convention Relating to the Status of Stateless Persons (CSSP) and the 1961 Convention on the Reduction of Statelessness (CRS) (UNGA, 1961). In this regard, Ujvari (2017: 111) explains:

> According to Article 1 of the 1961 Convention on Reduction of Statelessness, a contracting state shall grant its nationality to a person born on its territory who would otherwise be stateless, and according to Article 4, a contracting state shall grant nationality to a person, not born in the territory of a contracting state, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that state.

The ratification of the two above legal instruments has also been recommended to Madagascar by other governments, as documented by the Human Rights Council (HRC, 2019a: paras 122(3) and 122(9));[2] this would tie Madagascar to internationally recognized standards of protection. These conventions also provide guidelines for states, with respect to policies that ought to be adopted to minimize statelessness (Kohn, 2011).

Madagascar's nationality law also has not taken all the steps to remove discrimination against women. For example, Malagasy women are still denied the right to confer nationality on spouses, a right that is reserved for Malagasy men. In this regard, in the Concluding Observations on the Fourth Periodic Report of Madagascar, the UN Human Rights Committee (2017: para 19) appreciated the 2016 reform of the Malagasy Nationality Code but remained concerned that women were

[2] Para 122(3) reads: "Namibia urges Madagascar to ratify the United Nations statelessness conventions"; para 122(4) reads: "Ukraine urges Madagascar to accede to the Convention on the Reduction of Statelessness"; para 122(9) reads: "Cote d'Ivoire urges Madagascar to consider ratifying the Protocol relating to the Status of Refugees and acceding to the Convention on the Reduction of Statelessness" (UNGA, 1961).

still not able to transmit their nationality to a foreign or stateless spouse or to their adoptive children.

Furthermore, the Human Rights Committee (2017: para 19) advised the Malagasy Government to implement measures to expedite the revision of all relevant legislation to ensure equality between men and women, including in the areas of nationality. On the other hand, the Human Rights Committee (2017: para 43) found regrettable that Madagascar has yet to take any steps to establish an office for stateless persons. Finally, the Human Rights Committee was concerned that, owing to the still restrictive effect of the rules on nationality, several persons, like the Karana people, and children born in Madagascar remain stateless. As such, the Human Rights Committee (2017: para 47) urged the relevant Malagasy authorities to ensure that the country's laws and regulations on nationality address all problems of statelessness. Against this backdrop, Madagascar has not yet set up procedures for identifying stateless persons (HRC, 2019b: para 113). Ironically, Article 6(2) of the Malagasy Constitution plainly stipulates:

> All individuals are equal before the law and enjoy the same fundamental freedoms protected by the law without discrimination founded on gender, the level of instruction, wealth, origin, religious belief or opinion (Republic of Madagascar, 2010).

An analysis of the national report submitted by Madagascar to the HRC in 2019 clearly shows the four priority areas of the general state policy: combating trafficking in persons, irregular migration and forced labor; combating gender-based violence; national statistics; and older persons. It is evident that the elimination of statelessness in the country is not a priority of the Malagasy authorities (HRC, 2019a: paras 163-169).

IMPACTS OF STATELESSNESS

Apart from a sense of identity, belonging to a state is crucial to a person's ability to access education and healthcare and fully participate in political processes. Without a nationality, individuals do not have the right to vote or the unrestricted right to enter and live in a country under international law. Stateless people, therefore, end up without any residence status or, worse, in prolonged detention.

Like stateless people worldwide, stateless Karana people in Madagascar are often unable to access formal education and opportunities for employment, leaving them with little hope of escaping a situation of extreme poverty (UNHCR, 2017b: 14). Frustration with temporary residency permits, changing documentation requirements, and exorbitant fees are consistently expressed in conversations with the Karana people. Although they are issued with genuine Malagasy passports for a fee to travel abroad for medical treatment, these documents are confiscated

upon return. However, most stateless Karana people are unable to afford such travel documents (UNHCR, 2017b: 17).

Although stateless people globally face challenges in accessing key rights and services, there is abundant evidence indicating that women in Africa face major challenges in accessing those rights and services because of gender discrimination and inequalities. Consequently, stateless people's lived reality is worse than that of citizens, particularly in terms of income levels and access to healthcare. In this scenario, the gendered impact is significant, given that women have less access to education than men and are generally paid less than men, while bearing greater home and childcare responsibilities (Beninger and Manjoo, 2022: 27). Moreover, research indicates that stateless women are particularly vulnerable to violence – both domestic violence and sexual exploitation and trafficking (HRC, 2013: para. 53).

PROSPECTS FOR FURTHER REFORM

An urgent issue directly linked to the gender and ethnic discrimination remains the conditions of stateless children in Madagascar. Against this backdrop, in 2016 and 2017, the Ministry of Justice, in partnership with the UNHCR, held public consultations at the provincial level and carried out awareness-raising activities. The report highlights that the Malagasy Government is aware that any child born to stateless parents will not have a nationality, with the exception if the child's parents were born in Madagascar. Unfortunately, it is not clear if the public consultations have had a positive outcome or not (CRC, 2022: para 62).

Since 2019, the country conceived, but not implemented yet, a Plan National d'Action pour la Réduction et l'Elimination de l'Apatridie à Madagascar (PNAREA: a national plan of action to reduce and eliminate statelessness in the country). That is why the plan has not been published, yet (Razafiarison et al., 2022: 16).

In June 2020 the Malagasy Senate approved an amendment to the Code on Nationality introducing a new definition of "Malagasy nationals" encompassing everyone who was born or arrived in Madagascar before 1960 and to their descendants (Madagasikara, 2019; Citizen Rights in Africa Initiative, 2020; Randriamanga, 2020). Nevertheless, to date (June 2023), there is no news that this amendment has been concretely incorporated in the Code on Nationality.

One other way to address the situation of stateless persons in Madagascar would be to facilitate naturalization, as provided for by Article 32 of the 1954 Convention Relating to the Status of Stateless Persons. Article 27 of the Nationality Code stipulates that naturalization may be granted to aliens fulfilling certain conditions, including discretionary factors such as being in good physical condition, being of good moral character, and assimilated into Malagasy society. Unfortunately, over the years, the naturalization process proved to be ineffective, presenting a serious problem for those who are stateless and for non-Malagasy foreigners hoping to access citizenship (McInerney, 2014: 187). Since its independence (June 1960), only 1,599 foreigners have been naturalized in Madagascar and between 1989 and 2020 out of 194 assessed

applications only six naturalizations have been granted (Rakotoarivonjy, 2022). In practice, therefore, these groups are unable to access naturalization and even those who are hypothetically eligible for nationality face complications in acquiring documentation and proof of citizenship because of discriminatory administrative practices (Mbiyozo, 2019: 16). This inaction is mostly due to electoral reasons: given the bad reputation of Karana people among Malagasy, political parties do not want to lose consensus being too "generous" toward the Karana people, granting them Malagasy nationality (Razafiarison et al., 2022: 18).

CONCLUSION

As the UNHCR (2015: 23) affirmed, "[s]tateless children … are not asking for special treatment. They are only asking for equal treatment, the chance to have the same opportunities as other children. It is our responsibility to give them this chance." Incidentally, I agree with Worster (2019) who argues that there is sufficient state practice with opinio juris to establish an obligation on states to secure nationality, by granting their own nationality if necessary, to otherwise stateless children born in their territory. In this regard, the author explains:

> [W]e can find that states must grant nationality to stateless children born in their territory, though two exceptions might still be permissible under the law. The first is when a state requires some kind of non-burdensome, non-discretionary nationality application, as this practice is evidenced in many cases. The second is a situation where the state of birth can definitively secure de jure nationality for the child from another state, as this option has been affirmed as compliance with the human right to a nationality (Worster, 2019: 237-238)

The reform of the nationality law in Africa generally serves to create – in most states – some basic rights to nationality deriving from birth and residence as a child in that country (Manby, 2020: 8). There are still many improvements to be made in order to extirpate statelessness in Madagascar. This country is still not a party to legal pillars for the abolition of statelessness.

Most recommendations from the international community place full responsibility for ending statelessness on the government. Yet, civil society has the temerity to sometimes reinforce barriers faced by stateless persons, including through community actions tending to marginalize, and often completely exclude, minorities from society. That is why civil society should strive to remove those barriers.

Among the proposed solutions to end the stateless conditions of the Karana people, Pirbay (2007: 284) proposes that if Malagasy authorities hesitate to confer Malagasy nationality to Karana children, India should then intervene, having the "moral obligation" to protect its stateless children in Madagascar, as a simple gesture of "basic humanity." However, the best alternative remains giving Malagasy

citizenship to the Karana people. Giving the Karana people a viable path to citizenship would help to ease some of the social tensions and foster integration. Granting them citizenship would also align these business leaders with the growth of Madagascar and encourage them to invest in the nation and its future. As Madagascar develops, access to citizenship will come to the forefront of the political agenda (McInerney, 2014: 183).

In this regard, there are attempts by the competent authorities in Madagascar to still improve the Code of Nationality. This does not mean that the legislator wants to grant Malagasy nationality to foreigners more easily but to solve the most urgent problems linked to statelessness in the country. Interestingly, it is believed in the collective imagination that the Karana people (and the Chinese) without Malagasy nationality are rich enough and does not need to be granted another nationality (Rakotoarivonjy, 2022). Importantly, human rights apply to all persons notwithstanding nationality or immigration status, including stateless persons. Additionally, the principle of equality and non-discrimination prohibits any discrimination based on the lack of nationality status (UNHCR, 2012: para 21).

The UNHCR also reminds that the fact that Karana people are in their "own country," in line with what is envisaged by Article 12(4) of the International Covenant on Civil and Political Rights (UNGA, 1966),[3] imposes a political and moral imperative on the State to facilitate their full integration into the society of Madagascar (UNHCR, 2012: para 45). Madagascar is a party to ICCPR since 21 June 1971.

The light at the end of the tunnel is still far and treacherous. Yet, given the slow but constant progresses that Malagasy authorities are making in this domain, I am confident that through the continuous good will of the concerned authorities, Madagascar could end the plight of stateless persons in a relatively brief period, giving dignity to all the human beings living on that island. Nevertheless, while national authorities and the Malagasy population seem to be sensitive and empathetic to end the statelessness derived from gender discrimination, the same cannot be said about the people from Indo-Pakistani and Chinese origin. In Madagascar, women's empowerment in the last decades has become a priority for the authorities (Ramamonjisoa, 1993; Fencl, 2005; Gaye 2020) while non-citizens still suffer various forms of discrimination (US Department of State, 2022: 21-22). From all the considerations in this work, it is evident that Malagasy women are considered in the country as "100% Malagasy" and as such, openings to implement their rights in transmitting Malagasy nationality are clear. Conversely, communities of foreign origin living in Madagascar are still commonly believed, for several reasons (cultural, religious) to be "alien" to the country and, as such, I think that the situation of stateless Karana people will take longer to be solved compared to the situation of gender discrimination.

[3] Article 12(4) of the ICCPR stipulates as follows: "No one shall be arbitrarily deprived of the right to enter his own country" (UNGA, 1966).

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