

United Nations Human Rights Council

Stakeholder Submission of the Center for Justice and International Law, host organization of
the Americas Network on Nationality and Statelessness
for the 3rd Universal Periodic Review of Peru

March 30, 2017



Red de las Américas sobre Nacionalidad y Apatridia
Americas Network on Nationality and statelessness
Réseau des Amériques sur la Nationalité et l'Apatrie
Rede das Américas sobre Nacionalidade e Apátrida



The Center for Justice and International Law (CEJIL), founded in 1991, protects and promotes human rights in the Americas through the strategic use of the tools offered by international human rights law. CEJIL offers advice and free legal representation to victims of human rights abuses - and to organizations that defend their causes - when justice proves impossible to achieve in their own countries. The Center for Justice and International Law is an organization that holds ECOSOC status since 1996 and it currently hosts the Americas Network on Nationality and Statelessness, a network of civil society organizations, academic initiatives, and individual experts committed to address statelessness and nationality issues in the Americas.

Francisco Quintana
Program Director for the Andean, North America and Caribbean Region
fquintana@cejil.org
Center for Justice and International Law, CEJIL
www.cejil.org

Ivonne Garza
Americas Network on Nationality and Statelessness Coordinator
Ivonne.garza@americasns.org
Americas Network on Nationality and Statelessness
www.americasns.org

1630 Connecticut Avenue NW Suite 401
Washington, DC, United States of America
20009

United Nations Human Rights Council
Universal Periodic Review
28th Session Oct-Nov 2017
Country: Peru

A. Consultation Process

The State did not engage with a consultative process in preparation for this review. Civil society was not called upon to participate in any kind of activity to share information or receive it from other stakeholders.

B. Background concerning the review of Peru in the Universal Periodic Review process and human mobility issues

Peru was previously reviewed on November 2012, during the 14th Session of the Universal Periodic Review. The Report of the Working Group issued by the Human Rights Council included recommendations that addressed human mobility issues. Specifically, Philippines made a recommendation to consider the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)¹ –Recommendation 117.2-. This recommendation was supported by Peru and the State considered it as being already implemented. This was in fact verified because Peru signed the previous mentioned Convention in 2004 and the Ratification/Accession formalized in 2005, when it then became a State Party to the legal instrument.

Furthermore, we note that during this process Belarus reported human rights violations consisting of discrimination against migrants and refugees², however, no recommendations made by this country addressed this issue directly.

Moreover, we observe that no reports nor recommendations were made concerning the refugees or stateless persons.

C. Object of this submission

The object of this submission is to address human mobility issues in Peru and to report on challenges and risks that the Peruvian legal framework presents specifically to refugees and stateless persons.

D. Current legal framework on statelessness

a. Constitutional Framework

The Peruvian Constitution of 1993³ recognizes the right to nationality in Article 2.21. The exact phrasing of this Article is the following:

¹ Report of the Working Group on the Universal Periodic Review. Peru. Universal Periodic Review. Human Rights Council. Twenty-second session. Agenda item 6. A/HRC/22/15. 27 December 2012. Paragraph 117.

² Report of the Working Group on the Universal Periodic Review. Peru. Universal Periodic Review. Human Rights Council. Twenty-second session. Agenda item 6. A/HRC/22/15. 27 December 2012. Paragraph 56.

³Political Constitution of Peru. 1993.

“Artículo 2. Toda persona tiene derecho a: [...]21.A su nacionalidad. Nadie puede ser despojado de ella. Tampoco puede ser privado del derecho de obtener o de renovar su pasaporte dentro o fuera del territorio de la República.”

The Constitution establishes a system of *jus soli* and *jus sanguinis* for the acquisition of nationality, making it possible for persons that are born in Peruvian territory, or born to a Peruvian father or mother, to be recognized as Peruvians. The *jus sanguinis* path to access nationality is however conditioned to age, as it only allows fathers and mothers to confer nationality as long as the child is still a minor.

“Artículo 52°.- Son peruanos por nacimiento los nacidos en el territorio de la República. También lo son los nacidos en el exterior de padre o madre peruanos, inscritos en el registro correspondiente durante su minoría de edad.”

Furthermore, the nationality constitutional framework contained in the aforementioned Article 52 allows for the acquisition of nationality through naturalization or option, as long as the person holds resident status in Peru.

“Artículo 52°.- [...]Son asimismo peruanos los que adquieren la nacionalidad por naturalización o por opción, siempre que tengan residencia en el Perú.”

In addition, Article 53 of the Constitution makes reference to the domestic nationality laws and determines that they will regulate the ways in which nationality is acquired or recovered. Finally, the Constitution is clear in defining the irrevocable character of Peruvian nationality. The only way in which a person can lose their Peruvian nationality is through express renounce presented to the Peruvian authorities.

“Artículo 53°.- La ley regula las formas en que se adquiere o recupera la nacionalidad. La nacionalidad peruana no se pierde, salvo por renuncia expresa ante autoridad peruana.”

b. Domestic Legislation

i. Migration Law, Legislative Decree N 1350 (Ley de Migraciones, Decreto Legislativo N 1350)

Our organization salutes de inclusion of statelessness in the content of this law. However, we make some observations. The definition of stateless person contained in Article 8 is not in coherence with the definition established by Article 1 of the Convention Relation to the Status of Stateless Persons of 1954, to which Peru is State Party since January 23, 2014. As it is defined today –“persona no considerada como nacional por ningún Estado”-, the definition is limited to “a person who is not considered as a national by any State”, leaving out the substantial phrase “under the operation of its law” included in the 1954 Statelessness Convention. Consequently, the national law does not protect those persons that might find themselves in risk of statelessness or in statelessness due to the interaction and or practical application of the legal framework.

Furthermore, Article 15 establishes a regime for identification of foreign persons in the territory. A concern about this Article is that it designates the issuance of residence

cards to the Ministry of Foreign Affairs and the issuance of temporary permits to the Migrations Institution. This opens space for multiple challenges in the practical application of the law, as it allows for the unrecognition of documents by State agents that must verify them to provide rights to the persons entitled to them.

A positive element of this law is Article 29 k. which provides for humanitarian visas that can be given to refugees, stateless persons, persons at great risk, persons in life danger, victims of trafficking, children, among others. This visa is granted by the Ministry of Foreign Affairs for 183 days that can be extended for as long as the vulnerable conditions persist. Moreover, Article 19 n. grants residency based on international treaties and agreements that are still in force. Among them, the Article recognizes the Political Asylum and Refugee Statutes. The Statelessness Statutes are not recognized by this Article expressly, but they are under the scope of the international legal framework that Peru is a Party to.

The law recognizes the principle of family unification in Articles 37 and 38, and provides measures to ensure its enjoyment by families composed by nationals and foreigners.

The Law includes a whole chapter on Asylum and Refugee status. This chapter is composed by Articles 39 to 44. No detail as to the process for recognition and the requirements to follow those processes are mentioned in this general law. No article or provision further details the applicable process to follow for the recognition of stateless status.

ii. Supreme Decree N 001-2017-IN (Decreto Supremo N 001-2017-IN)⁴

We salute the adoption of Supreme Decree N 001-2017-IN that provides for one-year temporary residence authorizations in the country for mothers or fathers of Peruvian minors; Peruvian persons with permanent disabilities; and Peruvian victims of acts of violence against women and the members of their family group⁵. We note that the legal entry condition established by Article 7 of the Decree as one of the requirements to fulfill to process the permit represents a challenge for migrants on irregular status⁶. The Decree also includes an exemption for victims of crime, acts of domestic violence and persons that are beneficiaries of protection measures granted for acts of domestic violence. This exemption automatically grants residence with working status⁷. Another factor that represents a concern is that the Decree only provides for 120 days to present requests after the entry into force of the Decree. This makes of the Decree a temporary measure that does not provide a medium or long term solution to the situation that the persons it intends to protect are currently facing in the country.

⁴ Supreme Decree N 001-2017-IN (Decreto Supremo N 001-2017-IN). Published at El Peruano Diario Oficial del Bicentenario. January 3, 2017. Year XXXIV. N 13923. Page 6.

⁵ Supreme Decree N 001-2017-IN (Decreto Supremo N 001-2017-IN). Published at El Peruano Diario Oficial del Bicentenario. January 3, 2017. Year XXXIV. N 13923. Page 6.

⁶ Supreme Decree N 001-2017-IN (Decreto Supremo N 001-2017-IN). Published at El Peruano Diario Oficial del Bicentenario. January 3, 2017. Year XXXIV. N 13923. Page 8.

⁷ Supreme Decree N 001-2017-IN (Decreto Supremo N 001-2017-IN). Published at El Peruano Diario Oficial del Bicentenario. January 3, 2017. Year XXXIV. N 13923. Page 8.

iii. Supreme Decree N 002-2017-IN and Fe de Erratas con Oficio N 006-2017-DP/SCM (Decreto Supremo N 002-2017-IN y Fe de Erratas con Oficio N 006-2017-DP/SCM)

We salute the adoption of Decree N 002-2017-IN that addresses the situation of Venezuelan migrants in Peru⁸. The Decree provides one-year temporary residence authorizations in the country for Venezuelans that have entered Peru regularly until the date of entry into force of the Decree. Again, the conditions included on Article 7 of the Decree constitute a challenge for Venezuelans that have entered the country on irregular status. Another factor that represents a concern is that the Decree only provides for 120 days to present requests after the entry into force of the Decree. This makes of the Decree a temporary measure that does not cover the situation of many Venezuelans that are arriving daily to Peru fleeing the critical situation in which their country is currently submerged.

iv. Bylaws to the Migration Law Supreme Decree N 007-2017-IN (Reglamento de la Ley de Migraciones, Decreto Supremo N 007-2017-IN)

The Migration Law Bylaws adopted in late March 2017 include the complete stateless person definition established by Article 1.1 of the Convention relating to the Status of Stateless Person. It does not, however, create a statelessness determination procedure to recognize the status of statelessness. As such, the challenge of enacting domestic legislation that includes such a procedure remains.

E. Achievements, best practices and priority areas of concern

The adoption of the statelessness definition and the recognition of people as stateless in the recently adopted Migration Law and its Bylaws is an achievement for the country. However, the country still needs to integrate a statelessness determination procedure for the recognition of the status of stateless person.

F. Human Rights Instruments and other documents relevant to statelessness in Peru

Peru is a State Party to the American Convention on Human Rights and to both the Convention on the Status of Stateless Persons of 1954⁹ and the Convention on the Reduction of Statelessness of 1961¹⁰.

G. Conclusions

- Decrees are good practices that provide short-term measures but do not offer medium and long term solutions to situations that the country has recently been facing in large numbers.

⁸ Supreme Decree N 002-2017-IN and Fe de Erratas con Oficio N 006-2017-DP/SCM (Decreto Supremo N 002-2017-IN y Fe de Erratas con Oficio N 006-2017-DP/SCM). Published at El Peruano Diario Oficial del Bicentenario. January 3, 2017 and January 5, 2017. Year XXXIV. N 13923 and 13926. Page 8 and Page 21.

⁹ Peru acceded to the 1954 Convention on January 23, 2014.

¹⁰ Peru acceded to the 1961 Convention on December 18, 2014.

- Migration Law recognizes refugees and stateless persons but does not provide detailed norms concerning the process for their recognition in such status as well as the rights they are entitled to. Additions and changes need to be made for this law to meet the standards set by the Refugee and Statelessness Conventions.
- The Migration Law Bylaws integrate an adequate definition of stateless person but do not include a procedure to determinate this status.

H. Recommendations

1. To adopt the measures contained in both Decrees for a longer period of time that allows for at least a medium term solution to the situation of the protected persons.
2. To adopt the necessary changes for the law to meet the standards set by the International Instruments that Peru is a Party of.
3. To establish a statelessness determination procedure through a law that can effectively apply what is established in the Migration Law and its Bylaws.