

# Institute on Statelessness and Inclusion Americas Network on Nationality and Statelessness

## Joint Submission to the Human Rights Council at the 30<sup>th</sup> Session of the Universal Periodic Review

### Colombia

#### Introduction

1. The Institute on Statelessness and Inclusion (ISI) and the Americas Network on Nationality and Statelessness (Red ANA) make this joint submission to the Universal Periodic Review (UPR) in relation to the right to nationality, statelessness<sup>1</sup> and related human rights in the Republic of Colombia.
2. ISI is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Over the past two years, the Institute has made over 20 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23<sup>rd</sup> to the 28<sup>th</sup> UPR Sessions.<sup>2</sup>
3. Red ANA is a network of civil society organisations, academic initiatives, and individual experts committed to addressing statelessness in the Americas. We believe that all human beings have a right to a nationality and that those who lack nationality altogether – stateless persons – are entitled to adequate protection.<sup>3</sup>
4. This joint submission draws on the combined expertise of ISI and Red ANA, and also draws upon the work of the Open Society Justice Initiative's (OSJI) 2017 *Born in the Americas* report.<sup>4</sup> The submission includes:
  - I. An evaluation of Colombia's nationality law and policy framework, especially in relation to statelessness,
  - II. An overview of populations at risk of statelessness in Colombia,
  - III. An analysis of protection gaps that heighten the risk of statelessness in Colombia, and
  - IV. Joint recommendations by the co-submitting organisations.

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<sup>1</sup> According to Article 1.1 of the 1954 Convention relating to the Status of Stateless Persons, a stateless person is someone "who is not considered as a national by any state under the operation of its law." It is estimated that there are at least 15 million stateless people worldwide.

<sup>2</sup> For more information on the Institute's UPR advocacy, see <http://www.statelessnessandhumanrights.org/upr-universal-periodic-review/resources-database>.

<sup>3</sup> For more information about Red ANA, see <http://www.americasns.org/>.

<sup>4</sup> Open Society Justice Initiative (2017), *Born in the Americas: The Promise and Practice of Nationality Laws in Brazil, Chile, and Colombia*.

## The Universal Periodic Review of Colombia under the First and Second Cycles (2008 and 2013)

5. Colombia was subject to the UPR in 2008 during the Third Session of the First Cycle and again in 2013 during the Sixteenth Session of the Second Cycle. Colombia was subject to a recommendation that was relevant to the right to nationality and statelessness in each of these Cycles. In the First Cycle, the Czech Republic recommended that Colombia ‘Adopt measures ensuring effective national birth registration, including through programmes of mobile registration units and registration of those without documentation’.<sup>5</sup> Although Colombia accepted the recommendation, as this joint submission makes clear, Colombia needs to engage in further work to fulfil this recommendation. During the Second Cycle, the Republic of Ecuador recommended that Colombia ‘Become a party of the international instruments of protection and promotion of human rights still pending ratification, as appropriate, such as the 1961 Convention on the Reduction of Statelessness.’<sup>6</sup> Colombia also accepted this recommendation,<sup>7</sup> and must be commended for acceding to the 1961 Convention on the Reduction of Statelessness in 2014.<sup>8</sup> It must be pointed out, however, that Colombia has only signed, but not yet ratified the 1954 Convention relating to the Status of Stateless Persons.<sup>9</sup>
6. Other recommendations, which are pertinent to populations at risk of statelessness in Colombia, were also put forth during previous UPR sessions. These include adopting all necessary measures to: protect children and their human rights; protect against human trafficking; establish a stronger government presence in rural areas; and improve the quality of life of vulnerable groups, such as Indigenous Peoples and Afro-Colombians. As described further below, individuals at heightened risk of statelessness in Colombia include children born of undocumented parents, indigenous persons and individuals of African descent, as well as those born in rural areas where access to government resources is lacking. All such groups may face challenges in confirming or accessing their Colombian nationality. Moreover, and as various reports point out, those who are (at risk of being) stateless are vulnerable to human trafficking.<sup>10</sup> Minorities, including indigenous persons and those of African descent, can be at heightened risk of trafficking in the Colombian case.<sup>11</sup>

### Colombia’s International Obligations

7. Colombia is a signatory to, but has not yet ratified, the 1954 Convention relating to the Status of Stateless Persons. Despite its non-ratification of the 1954 Convention, Colombia considers the 1954 Convention applicable to issues of statelessness within its own national legal framework.<sup>12</sup> On 15 August 2014 Colombia ratified the 1961 Convention on the Reduction of Statelessness, commendably following through with a pledge that it had made to do so. Of note, it placed a reservation on Article 14

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<sup>5</sup> UNGA, *Report of the Working Group on the Universal Periodic Review: Colombia*, A/HRC/10/82, 9 Jan. 2009, para. 62.

<sup>6</sup> UNGA, *Report of the Working Group on the Universal Periodic Review: Colombia*, A/HRC/24/6, 4 July 2013, para. 116.1.

<sup>7</sup> UNGA, *Report of the Working Group on the Universal Periodic Review: Colombia*, A/HRC/24/6/Add.1, 19 July 2013, p. 2.

<sup>8</sup> Convention on the Reduction of Statelessness, 1961, <http://www.unhcr.org/en-us/protection/statelessness/3bbb286d8/convention-reduction-statelessness.html>.

<sup>9</sup> Convention relating to the Status of Stateless Persons, 1954, <http://www.unhcr.org/en-us/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html>.

<sup>10</sup> See, for example, Anne T. Gallagher (2010), *The International Law of Human Trafficking*. Cambridge: Cambridge University Press, pp.158-9; and Conny Rijken, Laura van Waas, Martin Gramatikov and Deirdre Brennan (2015), ‘The Nexus between Statelessness and Human Trafficking in Thailand.’ The Netherlands: Wolf Legal Publishers.

<sup>11</sup> For instance, in its most recent evaluation of Colombia, the Human Rights Committee reported, ‘human trafficking, including internal trafficking, persists, particularly to the detriment of vulnerable persons such as children, Afro-Colombians and indigenous peoples.’ Human Rights Committee, Concluding observations on the seventh periodic report of Colombia, CCPR/C/COL/CO/7, 17 November 2016, para. 26.

<sup>12</sup> Open Society Justice Initiative (2017), *Born in the Americas: The Promise and Practice of Nationality Laws in Brazil, Chile, and Colombia*, p. 66.

of the 1961 Convention, stating that it ‘does not recognize the jurisdiction of the International Court of Justice with regard to the disputes that may arise between Contracting States concerning the interpretation or application of the Convention.’

8. Colombia is also a party to core human rights treaties that include provisions related to statelessness and/or nationality, such as the International Covenant on Civil and Political Rights (ICCPR, 1966), the Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), the Convention on the Rights of the Child (CRC, 1989), the Convention on the Protection of the Rights of All Migrant Workers and Their Families (CMW 1990) and the Convention on the Rights of Persons with Disabilities (CRPD, 2006). In addition to guarantees of the right to nationality, both the ICCPR and CRC contain provisions that oblige Colombia to ensure the *timely* birth registration of *every* child *immediately* after birth. Notably, Colombia made no reservations to provisions on the right to a nationality or to an identity found in any of these treaties.
9. Colombia is also a signatory to the American Convention on Human Rights, which recognises each person’s human right to nationality (Article 20).<sup>13</sup> As explained below, Colombia does not adequately comply with Article 20.2, which requires that that ‘Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.’
10. Colombia has been an active supporter of addressing statelessness regionally, proposing Resolution 2665 on the Prevention and Reduction of Statelessness and Protection of Stateless Persons in the Americas (2011)<sup>14</sup> and Resolution 2826 on the Prevention and Reduction of Statelessness and Protection of Stateless Persons in the Americas (2014)<sup>15</sup> to the Permanent Council of the Organization of American States (OAS).
11. Colombia was also one of 28 countries that adopted the 2014 Brazil Declaration and Plan of Action, which includes a chapter specifically directed toward addressing statelessness in the region.<sup>16</sup> As such, Colombia has agreed to accede to the 1954 statelessness convention, establish a statelessness determination procedure, facilitate the naturalisation procedure of stateless persons and facilitate the confirmation of nationality, among other measures. As this joint submission indicates, Colombia has yet to follow through with the implementation of many of these recommendations.

## Colombia’s Nationality Law Framework

12. Colombia allows for both *jus sanguinis* (nationality by descent) and conditional *jus soli* (nationality by birth on the territory) citizenship acquisition. Thus, children born abroad to Colombian parents are entitled to obtain Colombian citizenship at birth and, as long as a non-Colombian parent can establish valid residency in Colombia, a child born on Colombian soil is entitled to acquire Colombian citizenship as well. As this submission illustrates, however, children born of Colombian nationals who fled during the decades-long armed conflict between the State and the Fuerzas Armadas Revolucionarias Colombianas (FARC) have not always been able to access Colombian nationality. Furthermore, and as explained below, there are obstacles that hinder specific populations born on the territory from having their right to a nationality fulfilled via *jus soli*.

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<sup>13</sup> American Convention on Human Rights, ‘Pact of San Jose, Costa Rica’ (1969), [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>14</sup> Resolution is available at [https://www.oas.org/dil/AG-RES\\_2665\\_XLI-O-11\\_eng.pdf](https://www.oas.org/dil/AG-RES_2665_XLI-O-11_eng.pdf).

<sup>15</sup> Resolution is available at [http://www.oas.org/en/sla/dil/docs/AG-RES\\_2826\\_XLIV-O-14.pdf](http://www.oas.org/en/sla/dil/docs/AG-RES_2826_XLIV-O-14.pdf).

<sup>16</sup> The declaration in full is titled, “A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean” <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2014/9865.pdf>.

13. According to Colombian nationality law, *jus domicili* is a key factor in being able to acquire Colombian citizenship for those born on the territory. *Jus domicili* under Colombian laws consists of proof of residency and the intent to remain in the country. Noncitizens can establish such intent through possession of resident and non-resident visas. Colombian authorities accept several categories of foreign persons who hold non-resident, or temporary visas, as meeting the *jus domicili* condition:<sup>17</sup> students, workers, and retirees; members of faith-based organizations or religious orders recognised by the State; individuals who enter as a partner or an owner of a company; people receiving medical treatment; refugees; the partner of spouse of a Colombian citizen; and persons who enter to engage in independent trade.
14. Importantly, Law 962 of 2005,<sup>18</sup> stipulates that the Colombian State does not require proof of residency if a child is born to noncitizens who are unable to transmit their own nationality. While this is an important safeguard to protect children against being born into statelessness, as explained below, it has its limitations and does not adequately safeguard against statelessness in practice.

## Populations at Risk of Statelessness

15. Article 1.1 of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as someone “who is not considered as a national by any State under the operation of its law.” This definition is part of customary international law and has been authoritatively interpreted by UNHCR as requiring “a careful analysis of how a State applies its nationality laws in an individual’s case in practice and any review/ appeal decisions that may have had an impact on the individual’s status. This is a mixed question of fact and law.”<sup>19</sup> Notwithstanding reports that Colombia has no significant population at risk of statelessness,<sup>20</sup> or that the Office of the High Commissioner for Refugees (UNHCR), which has the mandate for the identification and protection of stateless persons and the prevention and reduction of statelessness globally, does not list statelessness as a key priority for its 2017 within country operations,<sup>21</sup> numerous populations are at risk of statelessness in Colombia. These populations are not mutually exclusive. Individuals may fall within several of these at-risk groups, which include:
  16. Displaced Persons: In 2017, Colombia has more than 7 million Internally Displaced Persons (IDPs) within its borders,<sup>22</sup> the majority of whom are indigenous peoples, persons of African descent, and people who originally resided in rural areas. IDPs, while not necessarily stateless, can be at risk of statelessness as they are often unable to confirm their Colombian nationality for several reasons. First, when IDPs flee conflict, they are typically unable to secure their Colombian identity documents prior to flight, thereby making it difficult to pass on their Colombian citizenship to their offspring via *jus sanguinis*. Second, IDPs are not always in a position to access Civil Registries in conflict zones, again making their ability to acquire the necessary Colombian identity documents to pass on citizenship to their own children difficult. Third, some IDPs have taken the next step of fleeing across an international border – thus becoming refugees. In such contexts, the births of their children often go unregistered because they find themselves in a similar, rural institutional setting as they were in Colombia, where civil registry services are lacking.<sup>23</sup>

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<sup>17</sup> In March 2015, the Civil Registry enacted Regulation 059, which instructed registrar offices to treat documents from persons within these populations as proof of domicile.

<sup>18</sup> Law 962 is available at <http://www.refworld.org/pdfid/522717bd4.pdf>.

<sup>19</sup> UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>, para 23.

<sup>20</sup> See information from <http://reporting.unhcr.org/node/2542>.

<sup>21</sup> See UNHCR’s 2017 Key Priorities in Colombia at <http://reporting.unhcr.org/node/2542?y=2017#year>.

<sup>22</sup> Information from UNCHR’s 2017 Colombia Populations Trends, available at: <http://reporting.unhcr.org/node/2542?y=2017#year>.

<sup>23</sup> Refer to Red ANA’s video, ‘La apatridia en Colombia’ by Monica Jimenez Amorocho, available at <http://www.americasns.org/video/>.

17. Among the displaced populations, ethnic minorities, including indigenous peoples and Afro Colombians, have been disparately affected by the impact of the armed conflict due to long-standing structural discrimination. They are therefore at a heightened risk of statelessness.
18. Returnees: Colombians who fled the decades-long internal conflict and who have now returned to Colombia face the obstacle of having to secure confirmation of their Colombian nationality. As UNHCR points out, ‘a significant number of Colombians born in neighbouring countries whose births were not registered due to their irregular migration status’ are now ‘in need of confirming their Colombian nationality.’<sup>24</sup> Children born to returnees who have been unable to confirm their Colombian nationality are obviously at a heightened risk of statelessness. It is important to note however, that the Colombian government has demonstrated flexibility in the evidentiary requirements required of Colombian returnees from Venezuela.<sup>25</sup>
19. Indigenous Peoples: Indigenous Colombians often face a triple threat of being at risk of statelessness. Many groups live in remote or rural areas where access to civil registry services is lacking and they have also been the primary group affected by the decades-long armed conflict (rendering them the largest IDP group). Moreover, language and cultural barriers often hinder their ability to secure the necessary Colombian identity and nationality documents, an issue that ‘the country has not specifically addressed.’<sup>26</sup> Various reports describe how the Wayuu indigenous community, who live on the border between Colombia and Venezuela, is particularly affected by lack of proof of Colombian citizenship, undermining their exercise of their right to nationality.<sup>27</sup>
20. Rural populations: Rural populations often lack the necessary institutional resources to access civil registries that could provide confirmation of their Colombian nationality. Moreover, civil registry officers posted in these areas often lack the necessary training to implement Colombian nationality law and policies and are also insufficiently trained on the issue of statelessness. That the Colombian State has been unable to provide sufficient institutional resources in this regard demonstrates that it has not yet met the recommendation made by the Czech Republic during the First Cycle that it ‘Adopt measures ensuring effective national birth registration, including through programmes of mobile registration units.’
21. Undocumented Migrants: Despite the commendable flexibility the Colombian State has demonstrated in its acceptance of a range of residency statuses to provide proof of domicile, thereby allowing for the passing of nationality via *jus soli*, children born of undocumented parents are at risk of being born into statelessness. Children born on Colombian soil to parents in an irregular migratory situation do not have automatic access to Colombian nationality. A prime example of a group that has been affected by this protection gap is children born of undocumented Cubans on Colombian territory. Cubans in an irregular migratory position are the largest population of such migrants in Colombia. As Cubans in an irregular migratory situation, they do not have the permission of the Cuban government to be overseas. They therefore have problems in accessing Cuban nationality via descent. Since they are born in Colombia to parents without a residency permit, they are also unable to secure Colombian citizenship via *jus soli*. They are consequently at a heightened risk of statelessness.<sup>28</sup>

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<sup>24</sup> Quote from UNCHR’s 2017 Colombia Populations Trends, available at: <http://reporting.unhcr.org/node/2542?y=2017#year>.

<sup>25</sup> Open Society Justice Initiative (2017), *Born in the Americas: The Promise and Practice of Nationality Laws in Brazil, Chile, and Colombia*, p. 74.

<sup>26</sup> *Ibid.*, p. 77.

<sup>27</sup> *Ibid.*, p. 78; see also OSJI (2017), ‘On Venezuela’s Border with Colombia, the Need for Papers Threatens an Indigenous Way of Life,’ <https://www.opensocietyfoundations.org/voices/venezuelas-border-colombia-need-papers-threatens-indigenous-way-life>.

<sup>28</sup> For more information on the case of children born of Cubans in an irregular migratory situation, refer to Red ANA’s webinar on statelessness in Colombia (fn. 22).

## Factors Heightening the Risk of Statelessness

22. Non-automatic and discretionary naturalisation procedure: Children born in Colombia to parents who are unable to pass on their citizenship via *jus sanguinis* are permitted to naturalise as Colombian nationals. Although Law 962 of 2005 makes an exception to Colombia's *jus domicili* provision if a child is born to noncitizens that are unable to transmit their own nationality, several problems arise in the implementation of this provision. First, the law requires that the Colombian-born child's parents prove that they are unable to transmit their nationality to their child in order for the latter to begin the naturalisation process. This entails securing proof from their country of nationality's diplomatic mission that they cannot pass on their citizenship via descent. Parents who cannot access their country's diplomatic mission, or who face an uncooperative diplomatic mission, will not be able to provide said proof of non-transmission. It is possible that children born of noncitizens, such as those noted in the Cuban case earlier, could face obstacles in securing access to their parents' nationality. Therefore the lack of an exception to this statelessness safeguard, in situations where the parent is unable to fulfil this condition, places the child at risk of statelessness, in violation of his or her right to acquire a nationality.
23. Second, the application to naturalise is an online procedure<sup>29</sup> that requires applicants to provide information from a government issued identity document. Individuals who do not have readily available access to the internet, or who are undocumented, are thereby placed at a disadvantage in the naturalisation application procedure.
24. Third, the fee to process the application for naturalisation is high and cannot be waived. This fee, due at the time of application, may pose a substantial burden for low-income parents and consequently hinder their ability to file their child's application for naturalisation. It is of note that although the Colombian legal framework does not permit naturalisation requirements to be waived for children born in Colombia who would otherwise be stateless, the Ministry of Foreign Affairs has stated it could waive certain naturalisation requirements on a case-by-case basis.<sup>30</sup> This process, however, is ad hoc in nature.
25. It is thus clear that Colombia's safeguard against childhood statelessness is non-automatic and discretionary, posing protection problems. Consequently, the safeguard falls short of Colombia's obligations under Articles 2 (non-discrimination), 3 (best interests of the child) and 7 (right to acquire a nationality) of the Convention on the Rights of the Child. Furthermore, it poses significant problems related to rights enjoyment into adulthood. Individuals who acquire Colombian citizenship via naturalisation, despite birth on Colombian soil, do not enjoy the same political rights as persons who acquire Colombian citizenship through *jus soli*.
26. Lack of institutional capacity: the Colombian State's inability to comprehensively provide access to civil registry services, especially to those populations living in remote areas or who have fled their homes and had to internally relocate, continues to pose problems. Without access to identity documents, individuals are at risk of being unable to confirm their Colombian nationality. Similarly, the Colombian State, despite issuing directives to relax certain evidentiary requirements (such as those for returnees from Venezuela) has been unable to adequately disseminate these policies to all of its local registry offices. On a positive note, Colombia offers an appeals process for individuals denied identity documents. People denied documents may present an administrative appeal before the government authority that denied them their documents and then appeal to the administrative courts if the denial continues.

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<sup>29</sup> Colombian authorities do not prohibit the use of paper applications for citizenship, but they do not provide publically accessible information on how individuals can go about applying for Colombian citizenship in this way. Additionally, some discretion is introduced into the non online procedure as it requires the applicant to know whom to reach in the Ministry of Foreign Affairs for assistance.

<sup>30</sup> OSJI (2017), *Born in the Americas*, p.71.

27. **Discrimination:** Discrimination in access to nationality is one of the key risk factors for statelessness globally.<sup>31</sup> The Committee on the Rights of the Child recently observed that discrimination continues to pose a problem for indigenous and Afro-Colombian children who ‘continue to face discrimination and numerous challenges in accessing...civil registration services and justice.’<sup>32</sup> Although lack of documentation does not equate to statelessness, birth registration and other government-issued nationality documentation plays an essential role in nationality confirmation. Without proof of citizenship in a State, a child’s rights to healthcare, an education, family unity, an identity, access to justice, and a nationality, among a host of other rights, is placed in jeopardy. Furthermore, it is of note that even when minorities are able to document their nationality, they ‘face a greater risk of having their nationality disputed.’<sup>33</sup>
28. **Lack of a formal statelessness determination procedure:** While Colombia has an obligation to ensure that all persons who have a right to Colombian nationality can exercise this right without any impediment, it should also implement a dedicated statelessness determination procedure to ensure that all stateless persons who live in Colombia (and who do not have a right to Colombian nationality) are identified, protected and offered pathways to facilitated naturalisation.
29. However, Colombia does not at present have a specific procedure for the determination of statelessness. The identification of stateless persons is critical in a country’s ability to guarantee the rights of stateless persons living within its borders. Although, as noted earlier, Colombia has not yet ratified the 1954 Convention, the government has made clear that the convention’s provisions are part of its own national legal framework when it comes to statelessness. Thus, Colombia has the obligation to ‘identify stateless persons in order to accord them appropriate standards of treatment under the Convention.’<sup>34</sup> A formal statelessness determination procedure would offer the most effective means to protect the rights of stateless persons who do not have the right to Colombian nationality, and would assist the State in its implementation of its statelessness safeguard.<sup>35</sup> It would also allow Colombia to better understand the extent of statelessness on its territory and to better monitor the status and treatment of stateless persons.<sup>36</sup>
30. In order to determine statelessness in full accordance with the 1954 Convention, a statelessness determination procedure should, according to the UNHCR Handbook on Protection of Stateless Persons, be simple, accessible to everyone within the territory, and be fair and efficient.<sup>37</sup> The procedure should be formalised in law and observe due process guarantees.<sup>38</sup> In compliance with these standards, Colombia’s statelessness determination procedure should provide for a shared burden of proof, the standard of proof should be reduced and applicants should be offered an individual

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<sup>31</sup> De Chickera, Amal and Joanna Whiteman, ‘Addressing statelessness through the rights to equality and non-discrimination’ in Laura van Waas L and Melanie Khanna (eds), *Solving Statelessness*, Wolf Legal Publishers, 2016, p. 100; see also Manly, Mark (2007), ‘The Spirit of Geneva – Traditional and New Actors in the Field of Statelessness,’ *Refugee Survey Quarterly* 26(4): 255-261, p. 256.

<sup>32</sup> *Committee on the Rights of the Child*, Concluding observations on the combined fourth and fifth periodic reports of Colombia, CRC/C/COL/CO/4-5, 6 March 2015, para. 55

<sup>33</sup> U.N. Human Rights Council, *Impact of the Arbitrary Deprivation of Nationality on the Enjoyment of the Rights of Children Concerned, and Existing Laws and Practices on Accessibility for Children to Acquire Nationality, Inter Alia, of the Country in Which They Are Born, If They Otherwise Would Be Stateless*, 16 December 2015 A/HRC/31/29, para 15, <http://www.refworld.org/docid/56c42b514.html>

<sup>34</sup> UNHCR, *Statelessness Handbook*, para 144.

<sup>35</sup> 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>, p. 2.

<sup>36</sup> UNHCR, *Global Action Plan to End Statelessness, Action 6*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>; UNHCR, *Mapping Statelessness in Austria*, January 2017, available at: <http://www.refworld.org/docid/58b6e5b14.html>, para 125.

<sup>37</sup> UNHCR, *Statelessness Handbook*, paras. 63, 68 and 69.

<sup>38</sup> *Ibid*, para 71.

interview.<sup>39</sup> Moreover, information and counselling about the procedure should be widely disseminated in order to facilitate access to the procedure.<sup>40</sup> Additional procedural and evidentiary safeguards for child applicants should be put in place, including ‘priority processing of their claims, provision of appropriately trained legal representatives, interviewers and interpreters as well as the assumption of a greater share of the burden of proof by the State’.<sup>41</sup> Government officials who may come in contact with stateless persons through their regular work (for example, social services or immigration control) should be trained to identify potential applicants and should refer them to the determination procedure.<sup>42</sup> Finally, authorities involved in the identification of stateless persons should be provided with training on statelessness and the human rights of stateless persons.<sup>43</sup>

## Recommendations

31. Based on the preceding overview, the Institute on Statelessness and Inclusion and the Americas Network on Nationality and Statelessness make the following recommendations, proposing that Colombia:

- I. Ensure that all children born in the territory of Colombia, or to Colombian parents, are guaranteed without discrimination to their right to a nationality as enshrined in Article 7 of the Convention on the Rights of the Child.
- II. Fully promote, respect, protect and fulfil its obligations towards stateless persons under international human rights law.
- III. Ratify and fully implement the 1954 Convention relating to the Status of Stateless Persons.
- IV. Establish a statelessness determination procedure, ensuring that the procedure is fair, effective and accessible to all persons in Colombia regardless of their legal status. The procedure should comply with international standards of due process and follow the procedural safeguards outlined in UNHCR’s Handbook on Protection of Stateless Persons.
- V. Allow for automatic acquisition of Colombian nationality for all children born in Colombia who would otherwise be stateless on a non-discretionary basis and in accordance with its obligations under Articles 2, 3 and 7 of the Convention of the Rights of the Child. Such children should not be required to naturalise and Colombian nationality should not be withheld from them if they cannot prove that they have no access to another nationality.
- VI. Ensure universal and immediate access to birth registration with a special emphasis eradicating discrimination and other barriers to access faced by vulnerable populations, such as indigenous peoples, IDPs, returnees and Afro-Colombians.
- VII. Institute a regular and comprehensive programme of mobile civil registry units that provide services to all communities living in remote, rural and border areas where such services are lacking.
- VIII. Collect and make publicly available reliable, disaggregated data on statelessness, including data on stateless men, women and children, stateless persons in the asylum procedure and in detention, as well as on vulnerable populations such as indigenous peoples and Afro-Colombians.

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<sup>39</sup> Ibid, paras. 71, 89-93.

<sup>40</sup> Ibid, para 68; UNHCR, *Good Practices Paper – Action 6*, p. 5.

<sup>41</sup> UNHCR, *Statelessness Handbook*, para 119.

<sup>42</sup> UNHCR, *Good Practices Paper – Action 6*, p. 4.

<sup>43</sup> Although Colombia only granted statelessness status to one individual in 2016, it is of note that Colombia’s provision of a three-year travel document to those it identifies as stateless surpasses the one-year travel document duration suggested in the 1954 Convention.



- IX. Provide regular training and awareness-raising on statelessness and the protection of human rights of stateless persons to all relevant State authorities.
- X. Provide regular training and awareness-raising to all relevant State authorities on changes of government policy or law in relation to nationality and identity documents.
- XI. Provide regular sensitivity training to all relevant State authorities on the rights of indigenous peoples.
- XII. Institute public information campaigns on documentary requirements, and nationality provisions and laws, in a culturally and linguistically appropriate manner among indigenous communities.
- XIII. Institute a public information campaign directed toward undocumented migrants that provides information about Colombia's statelessness safeguard and a child's right to access Colombian nationality under this safeguard.