

THE PROMISE AND PRACTICE OF NATIONALITY LAWS  
IN BRAZIL, CHILE, AND COLOMBIA



# Born in the Americas

OPEN SOCIETY JUSTICE INITIATIVE



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in Brazil, Chile, and Colombia



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**Open Society Justice Initiative**



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The Open Society Justice Initiative bears sole responsibility for any errors in this report.



# Methodology

The research for this report was carried out in Spanish and Portuguese. A small portion of the Brazil research was supported by an in-country research consultant, and some of the information on the practices in Chile was obtained from partner organizations Universidad Diego Portales and Universidad Alberto Hurtado.<sup>1</sup> The author translated the information contained in this report into English as the research progressed.

## Country Selection Criteria

A fully comprehensive study would examine the practices in place in every country in the Americas and compare them, but limited resources made that impossible. Focusing on three countries made it possible for this report to provide a level of detail vital to the questions this report addresses; future research may apply this report's methodology in other countries of interest.

Brazil, Chile, and Colombia were chosen due to several factors, including some variety in the legal frameworks being implemented, historical backgrounds, migration patterns, population size, and economic and political contexts. Brazil, Chile, and Colombia have populations—such as African descendants and indigenous peoples—that have been discriminated against, including in the granting (or withholding) of citizenship.

Brazil was identified as one country of study because it appears to represent particularly solid protection from statelessness. Brazil's Constitution provides for unrestricted *jus soli*; if the law is applied in strict observance of the written text, every child born in Brazilian territory should immediately be recognized as a Brazilian national.

In 2014, Brazil drafted legislation aimed at preventing statelessness throughout the region, and the country has been identified as a leader on this issue.<sup>2</sup> Brazil's history as a Portuguese colony offers some contrast to the former Spanish colonies in the region. Brazil's location makes it a transit destination for many migrants from regions like Africa as well as Latin America. Despite the language barrier for migrants from other Latin American countries, Brazil's past economic development has made it an attractive destination for economic migrants. Thus the country's response to these migration flows might expose any retrenchment in state policies and practices.

Colombia is also a transit destination for many migrants, and Chile's current economic growth has attracted migrants in much the same way as Brazil's has. Unlike Brazil, these countries have explicit legal restrictions to the implementation of *jus soli*. In Colombia, the granting of nationality at birth is subject to at least one parent being a Colombian national or legal resident. Chile used to exclude the children of transient foreigners from acquisition of nationality by birth in the territory. Thus these countries provide a significant contrast with Brazil. At the same time, like Brazil, Chile and Colombia have strong constitutional protections for human rights and positive birth registration policies.

## Methodological Models

The methodology drew on four models to guide the desk research, create a questionnaire and interview questions, and write this report.

The European Union Observatory on Democracy (EUDO) provided the first model. Researchers at EUDO identified a set of methodologies to assess and compare the implementation of nationality laws<sup>3</sup> across European countries by condensing qualitative information into indicators that serve as a basis for a quantitative analysis.<sup>4</sup> The researchers behind EUDO began adapting their methodology to study nationality laws in the Western hemisphere recently, and have studied the grounds of acquisition and loss of citizenship in the Americas and the Caribbean.<sup>5</sup> The present study incorporates the five factors the EUDO methodology takes into account:

- *Promotion*: How government authorities help applicants meet legal conditions to access rights.
- *Documentation*: How easy or hard it is for applicants to provide evidentiary means to meet the legal conditions.
- *Discretion*: The scope of interpretation of legal provisions that is permitted to government authorities.

- *Bureaucracy*: How quickly competent authorities reach decisions to determine nationality when it is contested.
- *Review*: The relative strength of judicial oversight of citizenship determination processes.

Marc Morjé Howard's Citizenship Policy Index<sup>6</sup> constitutes the second methodological model. This index examines citizenship policies in Europe across three factors, two of which the current study used: whether or not the country grants nationality through *jus soli* provisions either automatically or through declaration, and residency requirements (e.g., minimum length of stay) for naturalization. These were used when analyzing existing case law in the focal countries.

The third model uses the report *No Child Should Be Stateless* by the European Network on Statelessness.<sup>7</sup> The research template and questionnaires that the report's authors<sup>8</sup> developed to gather information for the European country profiles served as a guide to draft the questionnaires for this study, particularly questions designed to assess each country's practical and administrative barriers to accessing the right to nationality.

Finally, Bronwen Manby's book *Struggles for Citizenship in Africa*<sup>9</sup> served as an inspiration for the themes and issues addressed during the research activities of this study as well as in the drafting of the final report. While Manby covered a larger number of countries, most of which have citizenship regimes dominated by *jus sanguinis*, her book nonetheless provides a model for case studies of the practice of statelessness and citizenship discrimination in specific countries.

## Research Methods

The existing literature and data on nationality frameworks is based on methodologies that measure how flexible or restrictive legal provisions are, but fail to examine the implementation of those provisions. Only in a few cases, particularly with regard to naturalization procedures or birth registration, do extant studies examine certain aspects of the implementation of these norms. Currently there is no methodology strictly focused on assessing the implementation of nationality laws. The current study's research methods are intended to illuminate patterns of state practice. Most research methods used for this report were aimed at obtaining qualitative data; however, quantitative data were also requested from the authorities in order to determine whether and how states were monitoring issues related to nationality, statelessness, documentation of identity, and populations of concern. Some of the methodologies described below have been used to analyze nationality legal frameworks in Europe and Africa; these served as guidelines for the themes this study's interviews and questionnaires should address.

*Desk research.* Initial desk research covered the existing methodologies used worldwide to study nationality laws, as well as the existing literature on nationality laws and practice in the three countries, with a focus on the historical constitutional and legislative amendments to nationality laws. This research encompassed reports and documents that analyzed the right to nationality in the Americas, as well as similar studies from other regions.

*Mapping of key stakeholders.* The initial desk research identified each country's institutional infrastructures and competent authorities that grant access to rights and services related to citizenship and identity documentation, determining the key officers and units within the ministries and government agencies that should be contacted. This effort also included a list of possible civil society organizations that might have identified cases where access to nationality was restricted, drawing on existing networks of NGOs working on migrant and refugee rights. Lastly, the desk research identified members of academia, both globally and locally in each country, who could potentially serve as sources of information.

*Survey.* Data was gathered initially through questionnaires drafted for each country, posing questions specific to that nation's legislation and applicable regulations. A questionnaire was tailored for each of the administrative authorities that control nationality and identity documentation and for civil society organizations working with potential stateless populations, including unauthorized migrants, ethnic minorities, and displaced persons.<sup>10</sup> The EUDO model was incorporated in the pilot questionnaires, addressing the five aforementioned factors in the implementation of nationality laws. A version of the questionnaire was shared with members of academia working on nationality and migration issues in the region. The questionnaires were then amended several times in response to feedback, in order to produce clearer answers.

*Semi-structured interview study.* Civil society organizations working with potentially stateless populations have limited time and resources, and the response to the questionnaire was sparse in some of the areas of greatest interest to this study. This also reflects the fact that advocacy for the right to nationality has not traditionally been a in any of the three focal countries, and only recently has civil society started to mobilize around the issue.<sup>11</sup> Thus, whenever possible, interviews were scheduled and carried out in a semi-structured format, covering much of the content of the questionnaire. This format allowed the researcher to explore participants' experiences and identify key cases from the perspective of civil society groups.

*Freedom of information (FOI) requests.* The researcher used FOI requests to query governments on their citizenship legislation and administrative orders, training procedures, oversight and cooperation among competent entities, the procedures for establishing nationality and obtaining identity documents, alternatives to required evidentiary information, fee exemptions, data management policies, available statistics, and special-

ized policies for at-risk populations. Transparency laws dictated the form of these FOI requests.<sup>12</sup> This process provided significant information for the study. Specifically, it exposed a wide range of obstacles and gaps in the gaining access to government-held information, particularly in Colombia and Brazil. The barriers included faulty web-based systems, requests needlessly rerouted to entities other than the ones petitioned, and poor quality irrelevance of the information provided. This required follow-up communications and repeated requests.

While this study is intended to contribute to the growing body of assessments of countries' citizenship laws and practices, it is just one step in that process. It is hoped that the research methodology employed for this study can be useful to other researchers conducting further examinations of the gap between citizenship rhetoric and practice.





# Map of the Region



- X: Brazil case study
- Y: Chile case study
- Z1: First Colombia case study
- Z2: Second Colombia case study



# Definition of Terms

From: *The EUDO Glossary on Citizenship and Nationality*<sup>13</sup>  
 (with the exception of those terms marked by an asterisk)

<b>Acquisition of nationality at birth</b>	<p>Any mode of acquisition of nationality that: either occurs automatically (<i>ex lege</i>) and immediately at birth; or can occur immediately after birth by declaration, registration, making use of an option or similar action because all the conditions for acquisition had already been met at the time of birth</p>
<b>Automatic acquisition of nationality</b>	<p>Any <i>ex lege</i> mode of acquisition of nationality, i.e. acquisition of nationality by an act of law that does not require some form of expression of intent (application, declaration, making use of an option or similar action) by the target person or his or her legal agent in order to acquire nationality</p> <p>* Automatic modes are those where a change in nationality status takes place by operation of law (<i>ex lege</i>). According to automatic modes, nationality is acquired as soon as criteria set forth by law are met, such as birth on a territory or birth to nationals of a state. By contrast, in non-automatic modes an act of the individual or a state authority is required before the change in nationality status takes place. (UNHCR Handbook on Protection of Stateless Persons, June 30, 2014, p. 13 available at: <a href="http://www.refworld.org/docid/53b676aa4.htm">http://www.refworld.org/docid/53b676aa4.htm</a>)</p>
<b>Discretionary naturalization —acquisition by discretionary naturalization</b>	<p>Acquisition of nationality following a decision by the public authorities that is not based on a subjective entitlement by the target person. The target person may, but need not, be granted nationality if the conditions specified in the law have been met.</p>

<b>Grant —acquisition of nationality by grant</b>	The term “grant of nationality” is used in some countries for certain modes of acquisition of nationality characterized by: <ul style="list-style-type: none"> <li>• non-automatic acquisition; and</li> <li>• bilateral action, i.e. it requires not only an expression of intent by the target person or his or her legal agent, but also specifically an act by the responsible public authority.</li> </ul>
<b>Jus sanguinis</b>	The determination of a person’s nationality on the basis of the nationality of his or her parents (or one parent or one particular parent) at the time of the target person’s birth and at the time of acquisition of nationality by the target person (the two points in time are different in cases of acquisition after birth).
<b>Jus soli</b>	The principle that the nationality of a person is determined on the basis of his or her country of birth
<b>Mode of acquisition/ Mode of loss of nationality</b>	Any manner of acquiring or losing nationality based on a distinct legal rule. Modes of acquisition and loss are comparable across countries and are defined in this glossary
<b>Naturalization</b>	Any mode of acquisition after birth of a nationality not previously held by the target person that requires an application by this person or his or her legal agent as well as an act of granting nationality by a public authority.
<b>Option —Acquisition of nationality by option</b>	Acquisition of nationality by option is characterized by: <ul style="list-style-type: none"> <li>• a facilitated procedure and (substantially) facilitated conditions;</li> <li>• voluntary (in contrast to automatic) acquisition;</li> </ul> and, in some countries: <ul style="list-style-type: none"> <li>• a unilateral act by the person making use of the option (unlike acquisition based on a decision by the authorities)</li> <li>• the need for the target person or his or her legal agent to choose between two (or more) alternative nationalities; and</li> </ul>
<b>Registration —Acquisition of nationality by registration</b>	Any acquisition of nationality that comes into effect through an act of registration with the public authorities by the target person or his or her legal agent. It is characterized by: <ul style="list-style-type: none"> <li>• a facilitated procedure and (substantially) facilitated conditions;</li> <li>• voluntary (in contrast to automatic) acquisition; and</li> <li>• a unilateral act by the person making use of the option (unlike acquisition based on a decision by the authorities).</li> </ul>
<b>Stateless person</b>	A person who is not considered as a national by any state under the operation of its internal law

Automatic modes are those where a change in nationality status takes place by operation of law (*ex lege*). According to automatic modes, nationality is acquired as soon as criteria set forth by law are met, such as birth on a territory or birth to nationals of a state. By contrast, in non-automatic modes an act of the individual or a state authority is required before the change in nationality status takes place.

# Executive Summary and Recommendations

“The groups...most vulnerable to non-registration of birth due to structural discrimination—including undocumented migrants, indigenous, minority and nomadic groups, refugees, internally displaced persons, and stateless persons—also face a greater risk of having their nationality disputed.”

—United Nations Human Rights Council, December 2015

Countries throughout the Americas have traditionally granted citizenship through birth in their territory, known in Latin as the *jus soli* rule. Most scholarship and research on citizenship in the continental Americas finds that *jus soli* regimes are relatively straightforward to implement and generally prevent people from becoming stateless. However, this study argues that *jus soli*, while laudable in theory, can be problematic in practice. Even facially generous *jus soli* provisions are only as effective as their implementation, and do not guarantee nationality to everyone.

Research conducted for this report identified significant problems in the operation of *jus soli* laws in Brazil, Chile, and Colombia. The citizenship regimes of all three countries are marked by difficulties and systemic flaws in implementation. By closely studying the strengths and especially the weaknesses of *jus soli* in Brazil, Chile, and Colombia, it is possible to draw lessons in improving *jus soli* citizenship policies and practices.

A key conclusion of this report is that **states have no clear notion whether all persons born in their territory, with the attendant right to nationality, can actually prove their nationality in practice.** All three countries studied have incomplete data and lack disaggregated information that would enable them to identify and address gaps in citizenship practices. All three states over-rely on birth registration statistics as the sole measure of progress in ensuring nationality rights. Overreliance on this one data point obscures the fact that many people in Brazil, Chile, and Colombia are unable to secure nationality. States maintain multiple databases that are neither compatible, nor centrally administered, making it nearly impossible to analyze data, and hampering development of targeted policies. To determine why children who are born in the territory are unregistered, or registered but unable to secure nationality, appropriate data collection is paramount.

This report further concludes that **access to civil registration and documentation of identity is the foundation for securing the right to nationality in practice.** For example, having one's birth officially registered is a universal right of all children, and a birth certificate is the central document to prove nationality and the foundational document for other national identity documents. But as this study finds, the actual practice of birth registration is uneven across the three countries, marked by gaps in services, discretion granted to low-level functionaries, and frequent failure to register births among indigenous groups, ethnic minorities, and residents of remote areas.

The countries profiled here represent varied challenges in the implementation of *jus soli* provisions. They represent a range of *jus soli* practices, from unrestricted *jus soli* in Brazil, to *jus soli* subject to exceptions in Chile, to conditional *jus soli* in Colombia. All three countries are bound by the *jus soli* statelessness safeguards of the American Convention on Human Rights.

Brazil, Chile, and Columbia share problems that undermine the right to nationality in practice. These problems are common to many countries in the Americas. First, discrimination and persecution often discourage people—especially members of indigenous and ethnic minority groups—from seeking birth registrations. Discretion in the interpretation of nationality laws coupled with limited oversight of the officials in charge of documentation of identity processes render these fears well founded. Short-term solutions cannot remedy this problem.

Beyond discrimination, there are other problems that affect the right to nationality in Brazil, Chile, and Colombia. These include **legal deficiencies**, such as conflicts between domestic legal frameworks and international obligations; conflicts between nationality regulations and other fields of law, particularly civil registration; unrealistic standards for proof of birth; and the absence of retroactive measures to address gaps left by changes in administrative policies and nationality laws.

**Administrative deficiencies**, such as limited access to identity documents, also present a challenge, particularly for populations in border regions. Insufficient training and supervision of registrars and service providers, inconsistent procedures across government agencies, and a lack of information on rights and services and the processes to access them constitute related barriers to nationality.

Meanwhile, **policy shortcomings** cause additional problems. These inadequacies include the low priority given to the prevention of statelessness and documentation of at-risk populations; lack of consistent policies between the national government and local/provincial authorities; inappropriate linking of documentation of identity and nationality; little or no cooperation between levels of government; insufficient measures to address the needs of vulnerable populations; poor data collection, resulting in a poor understanding of birth registration; and the gap between the state's international commitments and the resources devoted to meeting them in practice.

These challenges are exacerbated by **difficulties in gaining access to justice**. Lack of legal services in areas where bad practices are likely to occur, the high cost and procedural obstacles to seeking redress through judicial mechanisms, and the modest role courts play in clarifying legal norms make it more difficult for those who suffer citizenship problems to find effective redress.

In light of these challenges, Brazil, Chile, Colombia, and other countries in the Americas must do more to extend good practices and policies on nationality. Such efforts must focus in particular on geographically isolated and ethnically and culturally distinct populations. States must invest greater resources in training officials, adjusting legal frameworks and administrative procedures to provide better services, and reaching underserved populations.

States in the Americas have achieved great progress in increasing birth registration, and hence access to citizenship and the protections that come with it. But challenges remain. These obstacles to birth registration disproportionately affect those more likely to face discrimination, such as members of indigenous and ethnic minority groups, residents of remote areas, and the children of migrants. Changes in policy and practice are needed to address these shortcomings.

# Recommendations

The following recommendations apply to many countries in the Americas.

## **To ensure access to documentation of identity:**

- Ensure that birth registration policies are coordinated and implemented uniformly throughout the national territory.
- Review and enact legislation in order to ensure that all children who are at risk of becoming stateless, particularly children of ethnic minority groups and children of migrants, have access to birth registration.
- Invest in training and supervising of officials responsible for documentation of identity and nationality.
- Provide special procedural accommodations (such as simplifying the process for late registration) to address the challenges vulnerable populations face.
- Adopt realistic standards of proof of birth; when necessary, facilitate access to necessary documentation for birth registration through diplomatic cooperation.
- Grant facilitated access to necessary documentation for birth registration through diplomatic cooperation, in which a failure of response by another state may suffice as means of proof.
- Implement or increase mobile registration in remote areas.
- Ease the process for late birth registrations by accepting the same level of evidence as used for on-time registration.
- Interpret all relevant rules and procedures for registration in accordance with the principle of best interests of the child.
- Develop effective communication strategies and awareness-raising campaigns specially tailored to the information needs of at-risk populations.

## **To address the data gap:**

- Register data comprehensively, including by gender, ethnicity, and region of origin.
- Increase technical capacity for data gathering, processing, and analysis within the entities responsible for documentation of identity and nationality.
- Carry out targeted mapping studies to identify populations that are at risk of statelessness due to barriers in registration and access to other documentation of identity processes.



- Analyze available data to determine baseline information and to measure progress and inform policies.
- With due respect to privacy and data protection, improve reporting on birth registration and childhood statelessness, and make it publicly available.

**To prevent discrimination in access to identity documents and nationality:**

- Prioritize attention to patterns of discrimination against specific minorities, particularly in regions where indigenous groups reside, or where migrant populations enter and settle.
- Collaborate with local communities to identify and address any patterns of discrimination.
- Eliminate any risk of deportation or other sanctions for parents seeking to register the birth of their children; instead, offer guarantees and incentives for migrants to register their children's births.
- Enshrine the principle of nondiscrimination in both law and practice, being cognizant, for example, that practices that seem like errors may constitute discrimination if they have that effect.
- Use documentation of identity processes to guarantee rights protection for populations vulnerable to discrimination and exploitation.

**To ensure that officials carry out their responsibilities appropriately:**

- Give special attention to public officials who provide rights and services in remote regions, particularly when there are shifts in administrative policy (as is the case in Chile and Colombia). This study shows that these officials are the last to know about changes in policy and that they deal with populations at great risk of disenfranchisement.
- Furnish trainings founded on a rights-based approach, particularly anchored on the principles of nondiscrimination and the best interests of the child.
- Increase resources to thoroughly monitor the behavior of officials who provide services to at-risk communities, to ensure the prompt identification and resolution of bad practices.
- Ensure communication, information sharing, and unified policies in the implementation and interpretation of nationality laws across different sectors and levels of government (e.g., periodic meetings between relevant authorities, particularly civil registration authorities and ministries or departments in charge of migration and foreign affairs).

- Coordinate efforts to carry out outreach campaigns and activities with populations of concern, and assist them in navigating state bureaucracy by facilitating access to the competent officials.

**To harmonize domestic laws and practices with binding international norms and standards:**

- Comprehensively review all relevant laws, regulations, and practices, particularly those that predate the relevant international human rights treaties, to ensure their compatibility with any international legal frameworks that apply to the country.
- Adopt amendments to nationality and documentation of identity laws to address existing legal gaps, as well as to cement good practices that exist as a matter of administrative policies and are vulnerable to change.
- Use regional forums to address shortcomings and share good practices in identity documentation processes.
- Assess and take into account the best interests of the child as a primary consideration in all actions or decisions that concern the right to nationality or documentation of identity of a child.

The right to nationality, the importance of protecting individuals from statelessness, and the right to documents of identity have gained the attention of the international community as essential human rights. Global initiatives such as the #IBelong Campaign to End Statelessness, led by the United Nations High Commissioner for Refugees, as well as the United Nations Global Sustainable Development Goals agenda, are particularly relevant platforms to address some of the issues detailed in this report. States should capitalize on the technical capacity and funding opportunities that these platforms create to incorporate concrete actions to protect the right to nationality of each child born in the Americas, as well as the means to prove that right.

As this study makes clear, there remains a significant gap between the promise of *jus soli* citizenship and the reality on the ground in Brazil, Chile, and Colombia. These three countries—and others in the region—must do more to ensure that the right to citizenship becomes a reality for all people born in the Americas.

# I. Introduction

## Citizenship in the Americas

Children born in the Americas have an advantage over those born in Europe, Africa, and the Middle East: most states in the Americas grant citizenship by *jus soli*, which confers citizenship through birth on the territory of a state.<sup>14</sup> In the post-colonial establishment of independent states in the Americas, immigration was needed,<sup>15</sup> and the predominance of *jus soli* citizenship acquisition rules facilitated immigration.<sup>16</sup> In Latin America, small populations in the nineteenth century incentivized states to provide nationality by birth on the territory in order to achieve population growth.<sup>17</sup> Citizenship served as a state-building tool, uniting people of different backgrounds.<sup>18</sup>

Since at least the 1948 drafting of the Universal Declaration of Human Rights, South America has been a prominent champion of nationality rights, promoting the right to nationality as a fundamental human right.<sup>19</sup> Most countries in South America have strong statelessness prevention safeguards in their domestic legislation.<sup>20</sup> In addition, most countries in the region are generous in attributing nationality at birth, through a combination of *jus soli* (citizenship through birth in their territory) and *jus sanguinis* (citizenship through descent).<sup>21</sup> (Please see Appendix of this report for a comparative chart of American states' citizenship regimes.) This stands in sharp contrast to Africa, where most Commonwealth countries<sup>22</sup> and a few former French colonies<sup>23</sup> have progressively abandoned *jus soli* citizenship, which had been enshrined in their independence constitutions, in favor of *jus sanguinis*. These changes have increased statelessness in Africa, while the Americas have maintained traditions and expanded access to citizenship through descent without limiting *jus soli* citizenship.<sup>24</sup>

Scholars and practitioners have favored unrestricted *jus soli* as a preferable mode of citizenship acquisition: by granting nationality to all persons born within the territory, statelessness is limited to one generation.<sup>25</sup> Many experts have argued that *jus soli* provisions are the best way to prevent statelessness<sup>26</sup> and can contribute to a more inclusive citizenship regime.<sup>27</sup> In *jus soli* regimes, government authorities have less discretion in granting citizenship than in *jus sanguinis* regimes.<sup>28</sup> When accompanied by a robust, rights-oriented birth registration system, *jus soli*-based legal frameworks provide sound protection of children's right to nationality and prevent statelessness by suggesting that nationality is secured for every child born in the territory.<sup>29</sup> Ensuring nationality upon birth provides benefits into future generations, by avoiding transference of statelessness from parent to child.

Granting nationality to every child born in a territory can promote the integration of long-term residents of a country by recognizing their children as nationals, and thus facilitating—both pragmatically and symbolically—the inclusion of future generations.<sup>30</sup>

New trends in migration and the fact that certain Latin American states have had increased net emigration<sup>31</sup> have led some countries in the region to include or expand *jus sanguinis* provisions within their nationality legal framework.<sup>32</sup> This expansion would seem to further lower the risk of statelessness among children born in the Americas, and Argentina, Brazil, Uruguay, Costa Rica, Mexico, and others have positioned themselves as international leaders in nationality protections and the reduction of statelessness.<sup>33</sup>

Yet within Latin America there are marked differences among states in their approach to statelessness and nationality. The extent of the legal protection conveyed by citizenship status varies from country to country. Different factors may undermine the effective implementation of the existing legal frameworks in practice. These barriers include: the limited number of government offices in remote regions, delays caused by highly bureaucratic procedures, multiple government entities with responsibility for citizenship, the level of discretion public officers hold, ethnic and racial discrimination by government officials, and highly onerous evidentiary requirements set by specific domestic legislation. Brazil's and Colombia's territories include the Amazon rainforest, which has few government services.

A 2015 statistical report by the United Nations High Commissioner for Refugees (UNHCR) put the total number of stateless persons reported in the Americas at 210,032. It attributed virtually all of these, 210,000, to the Dominican Republic. It found 13 stateless persons in México, 2 in Brazil, 12 in Colombia, 1 in Nicaragua, 2 in Panama, 1 in Honduras, and 1 in Aruba.<sup>34</sup> Scholars generally agree that the continental Americas have a lower rate of statelessness than other regions.<sup>35</sup> However, these numbers suggest undercounting; there is no clear understanding of the extent and scope of statelessness in the region, and the focus remains almost exclusively in the Dominican Republic. As

one expert has argued, “*Jus soli* provisions—or their implementation in state practice—often leave gaps that create or maintain statelessness situations at birth.”<sup>36</sup> This report explores some of those gaps.

## The Politics of Citizenship

Citizenship laws reflect historical narratives of belonging<sup>37</sup> as well as political and social pressures. They are a “patchwork of historical accretions influenced by different legal traditions, colonial experience, local social and political circumstances, levels of immigration pressure and international conventions.”<sup>38</sup> Of course, all laws are shaped by historical, political, and social forces, but this is particularly with regard to nationality laws, where the nexus between law and identity—however defined and contested—is acutely pronounced. This study seeks to trace these historical and contextual factors in considering the operation of citizenship laws in practice.

In particular, this report examines in depth the specific structural problems that impede the realization of children’s right to nationality from birth in Brazil, Chile, and Colombia, where *jus soli* norms confer to the right to nationality.

Even in countries with unrestricted *jus soli* legal provisions, there are barriers to ensuring that every child secures nationality at birth. Laws are only as good as their implementation. At a practical level, one common barrier is restrictive or limited access to birth registration.<sup>39</sup> In addition, legal gaps can lead to improper implementation of nationality laws.<sup>40</sup> While the lack of birth registration or documentation of identity does not equate to a person being stateless, it does heighten the risk of statelessness. In fact, combined with forced displacement (common in Colombia), irregular migration (which occurs across the Americas), or discrimination against ethnic and indigenous groups (regrettably common in the region), lack of birth registration or documentation of identity makes statelessness more likely.<sup>41</sup>

In short, even facially generous *jus soli* provisions do not guarantee a nationality to everyone in practice.<sup>42</sup> This report identifies and analyzes the root causes and solutions to these systemic flaws, with the aim of contributing to concrete solutions that will make the right to nationality a reality for all within the region.



## II. Regional Context

History shapes citizenship policies.<sup>43</sup> In the Americas, this history begins with independence: with exceptions in the Caribbean, all colonies gained independence almost simultaneously, between the end of eighteenth century and the first quarter of the nineteenth century.<sup>44</sup> For these nascent countries, citizenship and immigration were important tools in building the state. Given the diversity of these emerging states—reflecting immigration from Europe (particularly the United Kingdom, Portugal, and Spain), the forced migration of people of African descent, and the presence of indigenous peoples—citizenship had particular importance as a tool to unite people of different backgrounds.<sup>45</sup> The predominance of *jus soli* provisions and open naturalization policies in the Americas has given rise to a citizen body of diverse origins. However, even today ethnic tensions remain an underlying source of contention and a factor driving policy and practice in the field of citizenship.<sup>46</sup> Neither the normative definition nor the practical implementation of the right to nationality has been immune from ethnic and racial discrimination.<sup>47</sup>

This shared historical context offers one way to understand current citizenship practices. But to further understand citizenship laws and practices—and the gaps between them—it is important to assess the framework of international norms related to nationality that are applicable in the region and the concrete obligations they create. It will also be important to examine the domestic legal frameworks of each focal country. The next two sections look deeper at this context.

# The Inter-American System of Human Rights

The Inter-American System of Human Rights is the regional framework of human rights protection for the member states in the Organization of American States (OAS). The system consists of two distinct bodies: the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights. The commission is a principal and autonomous organ of the OAS, created by the OAS Charter. It is charged with the promotion and protection of human rights in the Western hemisphere.<sup>48</sup> The court is a body created by the American Convention of Human Rights (ACHR). It rules on alleged violations of the ACHR in the 23 countries that have accepted the court's jurisdiction, including Brazil, Chile, and Colombia.<sup>49</sup>

The foundational human rights instrument of the OAS, the American Declaration of the Rights and Duties of Man, was adopted shortly before the UN's Universal Declaration of Human Rights, in May 1948, during the Ninth International Conference of American States in Bogotá, Colombia.<sup>50</sup> The declaration contains a provision specific to the right to a nationality, Article XIX:

Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.

This definition of the right to nationality is quite limited and does not explicitly create substantive safeguards to prevent or address statelessness. Furthermore, unlike Article 15 of the Universal Declaration of Human Rights,<sup>51</sup> it does not create protections against arbitrary deprivation of nationality. It is likely that the framers of the American Declaration did not foresee this problem, given the predominance of *jus soli* provisions in the nationality legislation of OAS states. However, the American Declaration is declaratory and non-binding<sup>52</sup>; its value rests on being the foundation for the American Convention on Human Rights and the further development of rights in the region.<sup>53</sup>

The American Convention on Human Rights, adopted in 1969 and entered into force in 1978, is a legally binding document signed and ratified by 25 American states including this report's focal countries.<sup>54</sup> Its Article XX contains a robust guarantee to the right to nationality:

1. Every person has the right to a nationality.
2. 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.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.



Accordingly, the American Convention not only recognizes nationality as a human right, but creates a safeguard for children who would otherwise be stateless, by requiring the state in which the child is born to grant nationality based on *jus soli*. Furthermore, by ensuring the right to change nationality and prohibiting arbitrary deprivation of nationality, the American Convention establishes limits to the states' discretion.<sup>55</sup>

Eight years after the adoption of the ACHR and a year before it came into force, the Inter-American Commission issued the *Third Report on the Situation of Human Rights in Chile*, which took a robust interpretation of nationality rights:

This right [to nationality] is properly considered to be one of the most important rights of man, after the right to life itself, because all the prerogatives, guarantees and benefits man derives from his membership in a political and social community—the State—stem from or are supported by this right. Because of its unique nature, there is almost no country in the world where the law uses or applies loss of nationality as a penalty or sanction for any kind of crime, much less for activities of a political nature.

It is generally considered that since nationality of origin is an inherent attribute of man, his natural right, and is not a gift or favor bestowed through the generosity or benevolence of the State, the State may neither impose it on anyone by force, nor withdraw it as punishment or reprisal.<sup>56</sup>

The Commission further noted that nationality rights protected interstate relations:

The deprivation of nationality ... always has the effect of leaving a citizen without a land or home of his own, forcing him to take refuge in an alien country. That is, it inevitably impinges on another jurisdiction, and no state may take upon itself the power to adopt measures of this sort. ... The Commission believes that this penalty—anachronistic, outlandish and legally unjustifiable in any part of the world—is a thousand times more odious and reprehensible when applied in our own Americas, and should forever be banned from being applied by governments everywhere.<sup>57</sup>

The Inter-American Court of Human Rights defined nationality in an advisory opinion in 1984:

The political and legal bond that links a person to a given state and binds him to it with ties of loyalty and fidelity, entitling him to diplomatic protection from that state.<sup>58</sup>

Most states in the Americas have unconditional *jus soli* regimes in accordance with the American Convention of Human Rights. Yet legal frameworks alone do not guarantee the prevention of statelessness in practice—or in legislation. The United Nations Human Rights Council stated in 2015 that “some countries in the Americas ... have legislation that may be regarded as not fully in line with applicable international standards.”<sup>59</sup> Even in countries where the legal frameworks comply with international standards, practical restrictions in the access to birth registration can restrict nationality rights.

## Case Law from the Inter-American Court of Human Rights

In 1984, the Inter-American Court of Human Rights interpreted the scope of Article 20 of the ACHR. Advisory Opinion No. 4, requested by Costa Rica, reviewed a set of amendments to the Costa Rican Constitution. The court described the right to nationality as recognized in Article 20 as comprised of two characteristics: first, it “provides the individual with a minimal measure of legal protection in international relations through the link his nationality establishes between him and the state in question; and second, the protection therein accorded the individual against the arbitrary deprivation of his nationality, without which he would be deprived for all practice purposes of all of his political rights as well as of those civil rights that are tied to the nationality of the individual.”<sup>60</sup> The court deemed the proposed amendments to be in compliance with these principles, in spite of the fact that they tightened naturalization rights.<sup>61</sup> It emphasized that because the changes were not retroactive, they did not constitute arbitrary deprivation of nationality.

Even though advisory opinions are not judgments, and accordingly do not have the same binding nature, they are a valuable source of law in which the court interprets the scope of the ACHR. For example, the court’s 1999 decision in *Castillo Petruzzi v. Peru* built on Advisory Opinion No. 4. In that case, Peru tried four Chilean nationals, alleged members of terrorist groups, for treason. The court underscored that international law imposes certain limits on the power states have over nationality, which is now “perceived as involving the jurisdiction of the state as well as human rights issues.”<sup>62</sup> The court did not consider Peru to have violated Article 20 of the convention because their Chilean nationality was never questioned. The court was not persuaded by the petitioners’ argument that Peru had arbitrarily imposed on them and attempted to create an artificial bond of allegiance and loyalty to Peru.<sup>63</sup> Considering that Peru used the term treason according to the legal definition in its own criminal law, the court held that charging the petitioners with treason did not amount to ascribing to them the duties of Peruvian nationality.<sup>64</sup>

By contrast, the court ruled that Peru violated Article 20 in *Ivcher Bronstein v. Peru*.<sup>65</sup> Mr. Bronstein, a naturalized Peruvian citizen, had renounced his Israeli nationality. Peru denationalized him in order to block him from exercising his property rights as majority shareholder and CEO of a TV channel that had publicly spoken against the government. Once deprived of his Peruvian nationality, he became stateless. The court ruled in his favor, blocking Peru's action.<sup>66</sup>

In the landmark decision *Yean and Bosico Children v. The Dominican Republic* of 2005, the court considered the case of the refusal by the Dominican civil registration authorities to register two Dominican-born girls of Haitian descent. The court stated that the link between an individual and a state can be "proved by various elements considered together," which included place of birth, place of residence, or "self-identification with the people of the said State." In the court's view, the "structure of their lives and their relationships are with the Dominican Republic." Furthermore, given that the Dominican Constitution followed *jus soli* as the main basis for the attribution of nationality, the court rejected the use of the nationality or legal status of the parents as a basis to deprive the children of Dominican citizenship.<sup>67</sup>

The *Yean and Bosico* judgment also reiterated that under Article 20 of the Convention, "the fact that a person has been born on the territory of a State is the only fact that needs to be proved for the acquisition of nationality, in the case of those persons who would not have the right to another nationality if they did not acquire that of the State where they were born."<sup>68</sup> Therefore, the Dominican Republic has the obligation to "adopt all necessary positive measures" in order to guarantee that every child born in its territory who would otherwise be stateless acquires Dominican nationality under conditions of equality and nondiscrimination. The court described the situation in which the state placed the Yean and Bosico children as one of extreme vulnerability because of the impossibility of receiving protection of the state, and the denial of their nationality as discriminatory.<sup>69</sup>

In the *Case of Expelled Dominicans and Haitians v. Dominican Republic* of October 2014,<sup>70</sup> the court built upon its case law, particularly with regard to the right to nationality of Dominican-born children of Haitian descent, referencing the principles the *Yean and Bosico* case had established. The case reviewed the September 23, 2013, decision of the Dominican Constitutional Tribunal in the case of *Juliana Deguis Pierre*.<sup>71</sup> The state had stripped thousands of Dominican citizens of foreign descent of their Dominican nationality, by applying retroactively the exception to *jus soli* citizenship as set forth in the 2010 Constitution, which denied nationality to children born to undocumented parents in the country's territory. The Constitutional Tribunal ordered the government to review birth registries and establish a process to implement the decision. In May 2014 in response to international pressure, the Dominican Republic enacted Law 169-14, which established a special regime of naturalization for those affected by the ruling.

The Inter-American Court's evaluation of both the *Juliana Deguis Case* and Law 169-14 concluded that they violated the ACHR.<sup>72</sup>

## Cartagena +30 and Statelessness

The Cartagena Declaration is the landmark regional refugee law that broadened the definition of “refugee” in Latin America and proposed new approaches to the humanitarian needs of refugees and internally displaced persons (IDPs) within a framework of mutual responsibility, and cooperation.

The representatives of thirty governments of Latin America and the Caribbean<sup>73</sup> met in Brasilia in December 2014 to update their commitments under the 1984 Cartagena Declaration. They adopted what is known as the **Brazil Declaration and Plan of Action**, including for the first time specific measures to address statelessness in the region. Chapter 6 of the Plan of Action specifically enumerates commitments and measures to address statelessness, upholding the importance of the right to nationality as a fundamental human right and establishing the goal of eradicating statelessness in Latin America and the Caribbean within ten years.<sup>74</sup> The activities within the Plan of Action include:

- Promote the harmonization of internal legislation and practice on nationality with international standards.
- Facilitate universal birth registration and the issuance of documentation.
- Establish effective statelessness status determination procedures.
- Adopt legal protection frameworks that guarantee the rights of stateless persons, in order to regulate issues such as their migratory status, identity, and travel documents.
- Facilitate naturalization.
- Confirm nationality by facilitating late birth registration, providing exemptions from fees and fines, and issuing appropriate documentation for this purpose.

The Brazil Declaration and Plan of Action process provided a detailed and concrete regional commitment to uphold the right to nationality and identify, and reduce prevent statelessness in the region. It was an important step toward furthering regional awareness on the topic, demonstrating a willingness of governments to address the underlying issues that might lead to statelessness. It recognized that legislation alone cannot prevent statelessness, but that state practice is also highly important, and that there are gaps and obstacles that must be overcome.

The existing regional legal framework, coupled with Inter-American case law and regional efforts to protect the right to nationality and prevent statelessness, seem to provide a solid ground for states to guarantee this essential right to all persons born in their territory. Yet as the next three sections document, these norms are only as strong as their implementation.



# Country Profiles

The next three chapters look closely at the legal frameworks for nationality and documentation of identity—and how they are implemented—in Brazil, Chile, and Colombia. These countries have slightly different *jus soli* norms, ranging from unrestricted *jus soli* in Brazil to *jus soli* subjected to exceptions in Chile to conditional *jus soli* in Colombia. All three are bound by the *jus soli* statelessness safeguard under the ACHR. The countries' distinct historical backgrounds, policy responses to changing migration patterns, and economic and political contexts have resulted in distinct *jus soli* frameworks. However, the following factors affect how all three countries, and likely others in the region, implement their existing legal frameworks:

- Disharmony between outdated domestic legal frameworks and international obligations.
- Structural shortcomings in the provision of identity documents.
- Problems in the interaction between nationality regulations and other fields of law, particularly civil registration.
- Limited geographic distribution of administrative offices providing identity documents and other citizenship services.
- Insufficient training and lack of supervision of registrars and other officials.
- Hard-to-meet evidentiary standards.
- Inconsistent interpretations of legal thresholds.
- Insufficient specialized measures to meet the needs of vulnerable populations.
- Absence of retroactive measures to address denials of nationality created by changes in administrative policies.

- Lack of access to services for populations residing in borders areas.
- Unclear and inconsistent administrative procedures across governmental entities.
- Fear of discrimination and persecution as an obstacle to registration.
- Lack of appropriate information about citizenship rights and services and the processes to access them.
- Insufficient attention to preventing statelessness and providing identity documents to at-risk populations.
- Using increases or decreases in migration as a determining factor in expanding and contracting legal frameworks and administrative policies concerning the right to nationality.
- Absence of consistent policies across national, provincial, and local levels of government.
- Insufficient collection and use of data.
- Inappropriate understanding of the link between documentation of identity and the right to nationality.
- Limited presence of civil society organizations or legal assistance services in areas where problematic practices most commonly occur.
- High cost and procedural obstacles to seeking redress through judicial mechanisms.
- Courts' failure to cement good practices or clarify legal norms in favor of securing the right to nationality and best interests of the child.

In fairness, all three countries have demonstrated some concrete good practices in documentation of identity, as well as a willingness to address underlying obstacles to full realization of the right to nationality. But this report finds that many such efforts have not been enshrined in legal frameworks and that a change in leadership could threaten them. Furthermore, good practices and policies do not extend uniformly through the entirety of any of the focal countries' national territories. Good policies typically privilege populations in urban centers and disregard the needs of geographically isolated and ethnically and culturally distinct populations. Investment in activities such as updating and training public officers, adjusting administrative procedures to improve service, and actively seeking and reaching populations of concern has been insufficient to fully guarantee universal access to the right to nationality.



### III. Brazil

Brazil practices the automatic grant of nationality, providing universal *jus soli* citizenship for all children born in Brazil; the only exception is for children born to parents who are in Brazil in the service of a foreign government. Brazil's unrestricted *jus soli* exemplifies the most common method for acquiring nationality in the continental Americas: 17 other countries in the region follow the same practice.<sup>75</sup>

However, like many other countries in Latin America, Brazil expanded *jus sanguinis* provisions recently, in 2007. A child born outside Brazil's territory can gain Brazilian nationality if born to a Brazilian parent who is in the service of the Brazilian government, or if born to a national of Brazil who either registers the birth at a consular office or goes through a federal procedure to confirm nationality.

Brazil's unrestricted *jus soli* norms, enshrined in early constitutional provisions, have been the law throughout the country's history. In this regard and others, Brazil exemplifies good practices: in addition to unrestricted *jus soli*, the government has supported a civil society campaign to expand *jus sanguinis* provisions for stateless children born outside of the territory to Brazilian parents,<sup>76</sup> and enacted legislation to address statelessness. There are promising signs that Brazil will continue to enact inclusive policies and protections for stateless populations, evidenced by pending draft legislation proposing a statelessness determination procedure and facilitated naturalization for recognized stateless persons. Unfortunately, this promising initiative has yet to secure adoption.<sup>77</sup>

Place of birth and parentage are fundamental factors in proving entitlement to nationality under the law, regardless of whether it stems from *jus soli* or *jus sanguinis*.<sup>78</sup> In Brazil, birth certificates serve as direct proof of nationality, so procedures for birth registration are fundamental to ensuring the right to Brazilian nationality at

birth. However, Brazil's civil registration structure is very complex, which complicates uniform nationwide access to birth registration. Furthermore, the country's geography presents many practical challenges to birth registration, especially for indigenous groups and unauthorized migrants. In response to these challenges, the state has created a number of innovative campaigns to promote registration. Yet such campaigns often falter in practice due to a lack of state oversight over public servants in remote regions, some of whom misinterpret nationality laws (either accidentally or intentionally), creating discriminatory practices.

Because of its economic boom and development, Brazil experienced increased migration between 2004 and 2010,<sup>79</sup> with a particular influx of unauthorized migrants seeking employment in its agricultural and manufacturing sectors.<sup>80</sup> A healthy economy and the small size of the migrant population, compared to the population of the nation as a whole, have generally limited anti-immigrant sentiment. However, Brazil entered a political and economic crisis in 2011,<sup>81</sup> and the resulting social and political response to migration flows pose a threat to this equanimity that may lead to restriction of *jus soli* norms.

## Political and Historical Background

Portugal, which ruled Brazil for three centuries, drafted Brazil's first Constitution in 1822,<sup>82</sup> the same year Brazil gained its independence. For this reason, Brazil did not inherit a set of constitutional rules governing nationality in its first Constitution.<sup>83</sup> In its history as an independent state since September 7, 1822, the country has enacted eight Constitutions, all of which guarantee nationality based on unrestricted *jus soli*.<sup>84</sup> All amendments to these Constitutions related to nationality laws have addressed gaps in the legislation and the restrictions Brazilian parents face in securing nationality for their children based on *jus sanguinis* norms.<sup>85</sup> *Jus soli* norms have remained unaltered in law.

## International Obligations Regarding Statelessness

Brazil is a state party to the ACHR,<sup>86</sup> which binds it to the obligations established in Article 20 of the Convention. Brazil is also a signatory to other relevant international treaties that provide legal protections to the right to nationality, including the Convention on the Rights of the Child (CRC),<sup>87</sup> as well as to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>88</sup> Furthermore, Brazil is a party to both international treaties that specifically address the issue of statelessness:

an original signatory to the 1954 Convention relating to the Status of Stateless Persons (ratified in August 1996), and a party to the 1961 Convention on the Reduction of Statelessness (ratified in 2007).<sup>89</sup> Under Constitutional Amendment No. 45 of 2004, which provides that “international treaties and conventions on human rights approved by both houses of the National Congress, in two different voting sessions, by three-fifths votes of their respective members, shall be equivalent to Constitutional Amendments,”<sup>90</sup> the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, and the ACHR all have constitutional authority.<sup>91</sup>

## Current Legal Framework Regarding Nationality

Brazil’s Constitution enshrines *jus soli* nationality. Article 12 establishes the basic rules on acquisition of Brazilian nationality.<sup>92</sup> The nationality laws and Law 6.815/1980 define the legal status of foreigners in Brazil, establish the National Immigration Council, and stipulate the legal requirements for naturalization<sup>93</sup>; the former was amended in 1994 and the latter amended twice, once in 1999 and then in 2007.<sup>94</sup> The Constitution of Brazil explicitly provides that naturalized Brazilians and Brazilians born in the territory are “equal”; the only distinction it permits is that “certain offices ... are restricted to nationals of origin.”<sup>95</sup> Those born abroad to a Brazilian parent who is in the service of the Federal Republic of Brazil automatically become nationals of Brazil. Children born in a foreign territory to a Brazilian parent can opt for Brazilian nationality after reaching majority if the Brazilian parent register the birth with a competent Brazilian authority or if they return and reside in the country.<sup>96</sup> The Constitution establishes that the federal government has exclusive authority to legislate on matters of nationality, citizenship and naturalization,<sup>97</sup> as well as civil registration including birth registration.<sup>98</sup>

## Implementation of Nationality Laws

The federal authority that implements Brazilian nationality matters is the Ministry of Justice (*Ministério da Justiça*). However, entities in charge of civil registration and documentation of identity processes, which are distinct and separate from the Ministry of Justice, are also essential actors in the implementation of norms that relate to the right to nationality. The federal government has the power to regulate civil registration, but it delegates the country’s civil registration system and notary service structures to private actors,<sup>99</sup> creating multiple challenges to delivering a uniform birth and civil registration system.<sup>100</sup>

Brazil's civil registry is operated exclusively by notary offices. These notaries are not public officers but rather private actors providing a public service, delegated to them by law.<sup>101</sup> Brazilian consular offices administer the civil registry for Brazilians abroad, by exercising notary functions, such as the issuance of birth, death, and marriage certificates.<sup>102</sup> This civil registration system is unique in the region; the only other country in which notaries register births is Colombia, but the National Civil Registry Office manages Colombia's civil registration activities and state actors also serve this function. Brazil lacks such a central government entity in charge of civil registration and national identification.

## Right to Identity and Process to Secure Identity Documents

Article 5 of the 1988 Constitution recognizes the right of every person to have a birth certificate,<sup>103</sup> and Law 6.015 of 1973 and Law 9.534 of 1997 regulate the functioning of the civil registry throughout the national territory. The latter establishes that birth registration is free of charge in Brazil.<sup>104</sup> In Brazil, a birth certificate is the foundational document for other national identity documents in later childhood as well as in adulthood. The birth certificate of a child born in Brazil is also his or her first document of identity. Without a birth certificate, a person is unable to prove his or her Brazilian nationality and will not be able to obtain other official documents of identity, including: (i) *registro geral*—RG (general registry or national identity card),<sup>105</sup> (ii) *cadastro de pessoa física*—CPF<sup>106</sup> (registry of physical person), and (iii) *título de eleitor* (voter's registry card).<sup>107</sup> Each of these documents will determine access to rights and services as a national of Brazil.

The Brazilian Civil Code Article 2 states that a person's civil personage begins with live birth. Birth registration is the official recognition of the existence of that person by the state in which the person was born; Article 236 of the Constitution specifies that state-level legislation establishes the procedures for birth registration within each state.

Each of the 26 states and the federal territory in Brazil conduct and regulate civil registration differently. This decentralized approach has resulted in the under-registration of births among certain groups. Rural and impoverished communities, undocumented migrants, and members of ethnic minorities have faced structural barriers in accessing identity documents, particularly birth certificates.<sup>108</sup>

New social policies developed in the late 1990s and early 2000s<sup>109</sup> under Luiz Inácio Lula da Silva's government,<sup>110</sup> for which birth registration and birth certificates were necessary to access new benefits, uncovered a high number of undocumented people in Brazil. These new benefits provided a strong incentive for undocumented

populations to acquire identity documents, and served as a platform for the government to implement more ambitious registration campaigns and outreach activities.<sup>111</sup>

The process to secure a birth certificate in Brazil can be carried out in one of two ways: either at the hospital where the birth occurs, or directly at the local notary office (which requires the testimony of two witnesses). Parents from indigenous groups are encouraged to use one of those avenues, but may seek registration in the civil registry or from a federal office that has a mandate of assisting indigenous people.

Law 12.662 of June 5, 2012, regulates the issuance of the “Live Birth Declaration,” which are issued by the professional who attended the child’s birth or the hospital where the birth occurred. In cases where the child is born outside of a hospital, a midwife can issue the declaration.<sup>112</sup> In 2010, a nationwide order was issued to facilitate registration, allow parents to leave the hospital with both the born alive declaration and the child’s birth certificate.<sup>113</sup>

Article 50 of Law 6.016 of 1973 stipulates that registration of a birth must be carried out within 15 days of the birth; if the registration of the birth is to be carried out by the mother, without the child’s father, the deadline is 45 days after the birth.<sup>114</sup> The law also extends the deadline to three months after the birth for births that occur more than 30 kilometers from the headquarters of the registry office.<sup>115</sup> Once the deadline has expired, late registration is possible, but must occur before a notary located in the parent’s jurisdiction of residence. This represents an expansion of nationality rights: late registration previously required judicial authorization.<sup>116</sup> Law 10.215 of 2001 establishes that parents cannot be charged a fine for late registration.

In response to the complexities of Brazil’s civil registration system and the many different competent actors involved in registration, the Human Rights Secretariat, a specialized federal government office, has developed several good practices and policies to encourage birth registration. These practices are aimed at reaching the populations with the most difficulty in accessing registration.

Among these policies to promote registration, in 2007 Brazil adopted the “Social Agenda on Birth Registry and Basic Documentation” through Decree 6289, declaring a national commitment to eradicating under registration of births and increasing access to basic documentation. It also created a national week of mobilization for birth registration and a campaign promoting basic documentation.<sup>117</sup> In the implementation of Decree 6289, Brazil has engaged in several nationwide registration campaigns as well as pilot projects for specific municipalities or provinces suffering under registration. These campaigns have been focused on collective efforts (*mutirões*) and itinerant services/river services registration posts.<sup>118</sup> Rural female workers, indigenous groups, and riverside populations, as well as *quilombola*<sup>119</sup> communities and other traditional peoples have been the targeted beneficiaries of these specialized registration efforts and campaigns.<sup>120</sup>

- 2008 National Campaign<sup>121</sup>—In 2008 the Human Rights Secretariat launched a nationwide campaign for birth registration and access to basic documentation. The campaign targeted 300 municipalities in rural areas of the Amazon and Piauí states, where under-registration is highest. Actions within this campaign included: the identification of populations in need by community health officers, the addition of birth registration and basic documentation to literacy programs, and the addition of identity documents to a national program for the documentation of rural work. Leaflets were distributed by the children’s pastoral ministry in municipalities with social security offices as well as by agencies and offices of the Bank of Brazil. Posters were displayed in the offices of several governmental agencies.
- 2009 Partnership between the federal government and the National Council of Justice<sup>122</sup>—Since January of 2009 special registration units have been installed in hospitals in the Northeast and the Amazon. These units tightened the connection between hospitals and registries, allowing all mothers to obtain a birth certificate and ensure the recording of her child in the civil registry before leaving the hospital.
- 2011 National Campaign<sup>123</sup>—This initiative, titled “Certificate of Birth: A human right, a duty of Brazil,” included a video, jingle, television commercial, posters, and leaflets, with popular musician Ivete Sangallo as the spokesperson. The campaign was publicized as a national priority, and it primarily targeted the North and Northeast, regions with the highest numbers of unregistered children younger than one year old. 2012 Regional Campaign<sup>124</sup>—In 2012, the Secretariat for Human Rights signed a technical cooperation agreement with other governmental partners to combine efforts and ensure access to basic documentation for indigenous peoples. Specific methodologies were developed to ensure that these efforts demonstrated respect for the communities. Consultations were held with indigenous peoples about their willingness to register their children and state’s willingness to respect indigenous naming practices. The National Council of Justice and the National Council of the Public Ministry issued a joint resolution guaranteeing the certificate would include: indigenous name, ethnicity, and the indigenous village, in addition to the correction of certificates already issued to include the aforementioned information.

Reflecting the accomplishments of the 2008 and 2009 measures, under-registration<sup>125</sup> of births in Brazil fell from 20.9% in 2002 to 6.6% in 2010.<sup>126</sup> While this result is encouraging, the measures that produced it are unlikely to resolve the problem of that remaining 6.6%. It is the hardest to reach and the most likely to face discrimination.<sup>127</sup>

## Case Law

There is very limited case law in Brazil related to citizenship. The Brazilian Federal Supreme Tribunal (*Superior Tribunal de Justiça*), the highest court in Brazil, has not made any rulings on restrictions to the right to nationality based on *jus soli* norms. The “” court has, however, made rulings under Brazil’s refugee determination procedure concerning statelessness and the recognition of the status of stateless refugees,<sup>128</sup> but none relate to Brazilian-born children who cannot access their nationality due to a denial of birth registration. Most nationality cases litigated before federal court relate to nationality based on *jus sanguinis* through the expedited process of writ of nationality (*Ação de Opção de Nacionalidade*).<sup>129</sup> Brazil requires claimants to petition issues related to birth registration before ordinary (non-federal) courts. Brazil’s Constitutional Court (*Supremo Tribunal Federal*), offers no relevant legal cases. This absence of jurisprudence might be the result of difficulties accessing justice, particularly the cost and burden of litigating the series of appeals that reaching one of these courts would require.

## Populations at Risk of Statelessness

The indigenous population of Brazil numbers only 817,963 people (0.4%) out of the country’s population of over 200 million,<sup>130</sup> but this group has the highest rate of birth under-registration in the country. Nationally, 93.4% of Brazilian children under age one have a birth certificate, but only 57.9% of indigenous children within that age range do; similarly, 98.1% of Brazilian children all children under age 10 have a birth certificate, whereas only 67.8% of indigenous children do.<sup>131</sup> Brazil’s civil registration outreach campaigns target indigenous groups in order to address this gap.<sup>132</sup>

The Brazilian Constitution, Chapter 8, creates a constitutional framework specifically aimed at the recognition and protection of the rights of indigenous people. Furthermore, Decree 5,051 of 2004 incorporates the International Labor Organization Convention 169 on indigenous and tribal peoples, and under the mandate of the Ministry of Justice the National Foundation of the Indigenous (FUNAI), the decree oversees the promotion and implementation of public policies in favor of indigenous groups. FUNAI has reported<sup>133</sup> that it periodically coordinates activities with the different federal and local government agencies in charge of identity documentation processes to ensure the promotion of the right to identity among indigenous groups. Within regions where services are lacking or communities are hard to reach, FUNAI works with the National Social Security Institute and its mobile units to facilitate registration. FUNAI local officers assist in registration of births for indigenous communities that do not

speak Portuguese. In coordination with the Human Rights Secretariat, FUNAI drafted and distributed a handbook on registration for indigenous groups in 2014.<sup>134</sup>

Law 6.001 of 1973, known as the “Statute of the Indigenous Peoples,” established the Administrative Indigenous Birth Registry (*Registro Administrativo de Nascimento Indígena*—RANI), under the jurisdiction of FUNAI, to issue documentation that serves as proof of birth registration.<sup>135</sup> Indigenous parents can present this credential to carry out the civil registration of their child; it serves as a subsidiary means of proof of the child’s birth and his or her identity, but it is not equivalent to a birth certificate and cannot serve as a foundational document to obtain other national identity documents.<sup>136</sup> Furthermore, it is unclear how registration under RANI facilitates birth registration, and the process may create an additional bureaucratic burden for members of indigenous groups. It also may discourage birth registration by encouraging the assumption that it provides a substitute. Incorporation into the national civil registry and the issuance of a document of identity equivalent to a birth certificate would make RANI a genuine tool to prevent statelessness.

Despite possible complications associated with RANI, Brazil’s outreach efforts and specialized policies are considered exemplary good practices that other countries seeking to reduce statelessness in a population spread across large and remote territories might replicate. However, despite Brazil’s laudable efforts, the under-registration of births among indigenous groups remains a problem. The case study of Guajará-Mirim demonstrates that the complexities of the civil registration process and the absence of a central authority can leave room for discretion and arbitrariness, potentially limiting birth registration.

## **CASE STUDY**

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### **Guajará-Mirim, Brazil**

Guajará-Mirim is a municipality within the Brazilian state of Rondonia in the Amazon. It sits on the Brazilian side of the Mamoré River, across from the Bolivian city of Guayamerín. Many indigenous people reside in the area, and have traditionally migrated back and forth for commercial purposes.<sup>137</sup> The control of the border by the two countries is asymmetrical. The Bolivian side is not policed and allows unrestricted entrance without papers or customs inspection. The Brazilian side has a military outpost securing and controlling the border.<sup>138</sup>

There have been reports of arbitrary and discriminatory behavior by Brazilian authorities against people crossing from the Bolivian side of the river.<sup>139</sup> On July 5, 2007, a local court (*Comarca*)<sup>140</sup> judge in Guajará-Mirim issued an ordinance



stating that any child of foreign migrants could only be registered if his or her parents were in regular migratory status at time of birth. Further, the judge instructed registrars that the testimonies of unauthorized migrants could not be accepted in registering births in Brazil. The judge also ruled that giving false testimony over a birth was a federal crime punishable by 1–5 years in prison, and that any witnesses who aided in the commission of such crime would also incur the same criminal liability.<sup>141</sup>

Although the judge's order was unconstitutional, at least one local notary and his employees have followed it in practice under the belief it was a correct interpretation. Pastoral do Migrante, a local NGO that works with immigrant communities, confirmed that the policy exists and remains in place, and that some immigrants remain subject to the policy.<sup>142</sup> Some local officials justified the existence of such a policy in interviews carried out by a local researcher in August 2015, stating it was a necessary tool to address unauthorized migration and to avoid giving undocumented people access to social security benefits, (although they are legally entitled to them).<sup>143</sup>

The case of Guajar-Mirim may be viewed as a local problem, and it is not clear if this problem exists in other municipalities. However, this case suggests that similar practices could occur, particularly in remote regions. It reveals that judges exert a considerable degree of discretion on these matters and that an administrative order within the judge's judicial power can have far reaching effects and be difficult to challenge. The situation in Guajar-Mirim shows how Brazil's decentralized system of providing identity documents, combined with discretion granted to local actors, can make it difficult to obtain nationality as a practical matter, especially for indigenous peoples and others living in remote areas.

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## IV. Chile

Chilean nationality is granted predominantly by *jus soli*; in recent years, following the regional trend, *jus sanguinis* acquisition rules have been expanded. All children born in Chile automatically acquire the country's nationality unless their parents are foreign diplomats or "in transit" foreigners.<sup>144</sup> No law<sup>145</sup> defines the "in transit" exception, which is also present in the Dominican Republic.<sup>146</sup> The determination of whether a person is in transit and subject to the constitutional exception has been left to the competent government authorities and courts, which have to date defined it on a case-by-case basis.<sup>147</sup> The effect of court rulings, even those the Supreme Court issues, are limited to addressing the petitions of specific claimants, and the effects of a positive ruling are limited to those claimants. They lack impact on the broader population denied the right to nationality under the same administrative policies and practices.

In a policy shift in 2014, the Department of Foreign and Migration Affairs issued an administrative order stating the "in transit" exception would only encompass the children of tourists and crew members serving on a vessel. Under this new interpretation, undocumented migrants are *not* considered to be in transit, and accordingly their children born in Chile are considered Chilean.<sup>148</sup> However, full realization of *jus soli* norms requires implementing the policy retroactively throughout Chile. Children of diplomats or parents "in transit" can obtain Chilean nationality by declaration within a year of reaching majority of age<sup>149</sup> by demonstrating five years of continuous legal residence.<sup>150</sup>

Chile is considered to be the one of the strongest democracies in the region,<sup>151</sup> exhibiting respect for the rule of law. By recognizing the right to nationality of children of undocumented migrants on a case-by-case basis, domestic courts seem to demonstrate that there are strong legal protections safeguarding the right to nationality.<sup>152</sup>

Given its geographical location and the topographical difficulties to accessing its territory, Chile has traditionally had low immigration flows compared to other countries in the region. In fact, emigration flows have been higher. Immigrants represent one to two percent of the total population of Chile, and about six percent of the country's population lives abroad.<sup>153</sup> However, since the return to democracy, and mainly thanks to its political stability and economic development,<sup>154</sup> Chile has recently experienced a sustained increase in immigration.<sup>155</sup> This has led to increased political and social tensions<sup>156</sup> between migrant and host communities, especially in northern regions and particularly in Antofagasta. It has driven nationalist sentiment and heightened protests against migrant populations, particularly Colombian refugees and economic migrants.<sup>157</sup> Regional and local newspapers have reported on the denial of Chilean nationality to children born in Antofagasta to unauthorized migrant parents of Colombian descent.<sup>158</sup>

Despite the positive implementation of an administrative order by the government with regard to the “in transit” exception beginning in 2014, there is reason for concern that anti-immigration sentiment within specific interest groups may drive the adoption of harsher domestic legislation, particular the “in transit” exception, restricting the right to nationality of children born in Chile to foreign nationals. Furthermore, under the previous interpretation of the transient foreigner exception, many children were unable to access Chilean nationality. These children must file a petition before the Department of Foreign and Migration Affairs or through a judicial recourse before the Supreme Court in order to gain Chilean nationality.

## Political and Historical Background

Throughout Chile's legal and political history, nationality has been granted predominantly through *jus soli*. When Chile gained independence from Spain in 1810, due to its geographical location in the far west of the continent, the state's priority was maintaining its population. Thus from the mid-19th century onward, a selective migration policy was implemented, seeking to attract European settlers to populate Chile's uninhabited land, with the expectation that these migrants would modernize and improve the country.<sup>159</sup> As some scholars have argued, the country's geographical isolation facilitated early European immigrants' role “as arbiters of who could arrive next, engendering early discriminatory policies.”<sup>160</sup>

As with other countries in the region, changes in political dynamics in Chile led to the adoption of nationality and immigration legislation in response to various context-specific issues, resulting in an overall lack of consistency in laws and policies.<sup>161</sup> The 1973 coup d'état and two decades of military dictatorship led to high emigration and a

sustained increase in Chilean nationals residing more or less permanently in foreign countries. In response to this emigration trend and the increasing importance of maintaining links with its expatriate community, in the last decade Chile has expanded *jus sanguinis* provisions.<sup>162</sup> The 2005 constitutional referendum is the most recent provision granting Chilean nationality to persons born abroad to a citizen parent or grandparent who is Chilean by birth.<sup>163</sup> This reform has been described as the product of a “period of intense and complex political debates culminating in the reform of 2005. While the military dictatorship had come to an end ... in 1989, the transition to a fully democratic regime took more than a decade”<sup>164</sup>

Current Chilean immigration and nationality laws were enacted during the Pinochet military dictatorship. Decree 1094 of 1975, the “Aliens Act,” and Supreme Decree No. 597 of 1984, known as the Immigration Regulations, constitute the applicable legal framework for nationality and immigration. This legal framework forms part of a national security policy<sup>165</sup> that reflects open concern over the presence of migrants and distrust toward them.<sup>166</sup> Furthermore, this framework entails extreme selectivity in the assessment of criteria for the granting of residence permits, and excessive controls and entry requirements at border crossings.<sup>167</sup> Chilean migration legislation has not been substantially modified since the 1970s, and it has failed to address the changes in Chile since the return to democracy.<sup>168</sup> Specifically, it has not been updated to deal with Chile’s status as a country of destination for migrants.

During the first term of President Michelle Bachelet (2006–10), the executive branch’s general policy platform incorporated migration issues for the first time. Under the responsibility of the Ministry of Interior,<sup>169</sup> through Presidential Directive No. 9 of September 2, 2008, the following broad principles framed government action on the issues of migration:

- Chile is a host country where international conventions and treaties must be respected and upheld.
- Local integration of migrants is key to generate positive acceptance by the national community, to ensure the respect of their cultural, economic, and political differences.
- Managing transnational migration must involve collaboration with governments of countries of destination, transit, and origin.
- In accordance with international human rights law, Chile must have institutional capacity to regulate and administer access to residency for migrants in the national territory.<sup>170</sup>

The Ministry of Interior withdrew draft migration legislation proposed by the government of Sebastián Piñera (2010–14) for further review when President Bachelet regained the presidency in 2014, in order to ensure that a focus on human rights standards and local integration of the migrant population was included.<sup>171</sup>

The government's ongoing efforts to propose a new migration framework has created a climate of hope with regard to immigration in Chile.<sup>172</sup> However, the fact that Chile still lacks a rights-based legislative framework on nationality and migration overshadows progress in policy.<sup>173</sup> This was evident during the 2014 Universal Periodic Review (UPR) process,<sup>174</sup> which highlighted the need for comprehensive immigration policies, modifying current legislation, and guaranteeing the right to nationality of children of migrants.<sup>175</sup>

In October 2014, Chile's Ministry of Housing and Urban Planning made an announcement exemplifying progress toward more inclusive immigration policies. It eliminated the former requirement of five years of permanent legal residence for eligibility for its programs; immigrant families now qualify upon obtaining legal residency.<sup>176</sup> A nationwide government campaign for a new migration law termed "For the Chile that Is Coming" ("*Por el Chile que Viene*") also provides some cause for optimism.<sup>177</sup>

Likewise, a small group of parliamentarians proposed a bill in December 2014 for an interpretative statute to the Constitution that would address the legal definition of the term "transient foreigner," in order to ensure that the current interpretation is secured in a legally binding instrument.<sup>178</sup> On January 6, 2015, the bill was submitted for an initial review and processing by the Commission on Constitution, Legislation, and Justice of the Chamber of Deputies. As of June 2016, the bill remains within this first stage of the legislative process.

## International Obligations Regarding Statelessness

Chile is not a party to either of the Statelessness Conventions. In 1990, it acceded to the ACHR, and accordingly, it is bound by the obligations that correspond to the right to nationality in the terms that the Convention defines, as well as to the interpretation that the Inter-American Court of Human Rights establishes in its case law. Furthermore, that same year, Chile acceded to the CRC, and thus is bound by Articles 7 and 8 of the Convention relating to children's right to nationality and to legal identity.

In Chile, human rights established or recognized by treaties to which the country is a party have constitutional rank.<sup>179</sup> Accordingly, the human rights guarantees in Article 20 of the ACHR, as well as those of Article 5 of the CRC, are understood to be legally binding for all national authorities in the same way as other rights in the Constitution, including the right to a nationality.

# Current Legal Framework Regarding Nationality

Article 10 of the Constitution of Chile states that persons recognized as Chilean are:

1. All those born in the territory of Chile, with the exception of children of foreigners who are in Chile in service of their government, and of the children of transient foreigners.
2. The children of a Chilean father or mother, born in foreign territory. However, it will be required that one of his ancestors in a direct line of first or second degree has acquired Chilean nationality by virtue of reasons established in sections 1, 3, or 4.
3. The foreigners who obtain a card of nationalization in accordance with the law.
4. Those who obtained special grant (*gracia*) of naturalization by law.<sup>180</sup>

The *jus sanguinis* nationality as provided by Articles 10.3 and 10.4 were incorporated through a 2005 amendment. This amendment extended *jus sanguinis* for children born in a foreign territory to at least one parent or grandparent who acquired nationality through birth in the territory, naturalization, or special grant. In order to acquire nationality by virtue of the *jus sanguinis* provision, parents must register the birth of the child requesting citizenship either before the Chilean consulates or, if within the national territory, before the Civil Registry.<sup>181</sup>

The Constitution likewise provides that “the law will regulate the procedures for opting for Chilean nationality; of [the] granting, denial, and cancellation of naturalization papers and for the creation of a register for all these acts.” Accordingly, Decree 175 of 1973, which was drafted during the military dictatorship and predates both the 1980 Constitution and the 2005 amendment to Article 10, regulates the process of naturalization, and has yet to be adjusted to reflect the more recent provisions. Chile lacks a statute on nationality and matters regarding nationality are regulated through administrative orders and case law that interpret the content of Article 10. The absence of a clear understanding of the right to nationality through secure legal norms that expand the constitutional framework, coupled with a lack of consistent and coherent interpretations of the constitutional provisions, have allowed each new government to interpret and shift the policy.<sup>182</sup>

## Implementation of Nationality Laws

The Chilean government entities responsible for nationality matters are the Department of Foreign and Migration Affairs, which sits under the Ministry of Interior and Public Security; and the Civil Registry and Identification Office, which sits under the Ministry of Justice. A lack of clarity in delineating responsibilities between these two government entities has in some cases complicated the process of gaining Chilean nationality. Changes in policy and in the definition of “in transit” have further complicated the situation.

Law 19.477 of 1996 establishes that the Civil Registry and Identification Office is a functionally decentralized public service, with an independent legal personality under the supervision of the president of the republic through the Ministry of Justice.<sup>183</sup> The main function of the office is to register acts of marriage and other vital facts related to the identification and civil status of persons.<sup>184</sup> The Civil Registry and Identification Office is comprised of 469 offices and sub-offices that include mobile office units and a maritime office, with a total staff of 2,931 persons.<sup>185</sup>

The Ministry of Interior until 1995 held the position that parents who were in the country for over a year intended to permanently reside in the country and hence were not considered to be transient foreigners.<sup>186</sup> However, this interpretation was not consistently applied throughout the country. The Civil Registry and Identification Office had an inconsistent policy as to whether to register a child born in Chile to foreign undocumented parents as a Chilean national. Some registrars designated the child as Chilean, omitting any distinction or notation in the birth certificate. Others registered the birth but would note in the certificate that the child was born to transient foreigners, and accordingly not eligible for Chilean nationality.<sup>187</sup>

In 1995, through an administrative order, the Ministry of Interior, as the governmental entity in charge of nationality matters, established its interpretation that all undocumented migrants were “in transit” and therefore their children were not citizens.<sup>188</sup> Administrative orders, in this case in the form of an administrative order, are the acts through which government entities establish and instruct the staff and offices of the entity’s interpretation of legal or regulatory provisions, develop a law or regulation, or establish a framework for action.<sup>189</sup>

The Ministry of the Interior, making use of its powers under the current Immigration Act, stated in administrative order No. 6241 of October 25, 1995:

[T]here was a need to make the constitutional concept of transient foreigners explicit while the corresponding law is enacted, so in the view of the Ministry, interpreting these terms in their natural and obvious sense, transient foreigners are those who are in the country in a situation of temporary residence, as tourists or crew, or illegal residents.<sup>190</sup>



The Civil Registry and Identification Office issued a number of internal administrative orders detailing procedures to comply with this order.<sup>191</sup> These orders effectively ensured that the children of undocumented parents born in the Chilean territory were considered children of transient foreigners. The notation stating “child of in transit parents” in a birth certificate requires children born in the country to seek a visa in order to maintain legal residency in the territory. At 18, the legal age of majority in Chile, they can initiate a naturalization process.<sup>192</sup> President Bachelet’s new policy in 2014 reversed the change, deeming undocumented migrants no longer “in transit”; their children born in Chile are entitled to Chilean nationality.<sup>193</sup> This new policy applies retroactively, but it is non-automatic and redress continues to require a special procedure.

The Department of Foreign and Migration Affairs has widely publicized through its website<sup>194</sup> and Twitter account<sup>195</sup> its change in policy toward the interpretation of the “in transit” exception. It created a comparative chart distinguishing the post-2014 policy from its predecessor, terming the change as “repairing an error.” (*reparando un error*) The Civil Registry, in turn, issued an internal memorandum to all its offices instructing them to restrict the “transient” exception to tourists or international vessel crew members.<sup>196</sup>

Parties now entitled to Chilean nationality (or their legal guardians) may initiate one of two procedures to gain proof of status. The first is to petition the Supreme Court under a special constitutional procedure, according to Article 12 of the 1980 Constitution. The drafting history indicates that the main purpose of this recourse was to provide a guarantee to those who had been arbitrarily deprived of nationality.<sup>197</sup> However, with the passing of time, those whose parents were deemed transient have benefited from it.<sup>198</sup> Unfortunately, petitions normally require at least one year before a final decision is made. Procedural formalities also make filing difficult for petitioners in remote regions. For example, rules of procedure to petition the Supreme Court require that the power of attorney of the person representing the applicant must be formalized before a notary or a minister of public faith; in remote regions of the country these may be scarce or even absent. Also, there is no right to appeal the Supreme Court’s decision, and the case can only be filed in the capital, Santiago. Despite these complications, children born in the territory to undocumented migrants have consistently gained the right to nationality when they or their legal guardians petition.<sup>199</sup>

As an alternative to petitioning the Supreme Court, interested parties can also petition the Department of Foreign and Migration Affairs to correct the birth certificate. The Department of Foreign and Migration Affairs will carry out an initial review, and if it finds that the child was registered as that of transient foreigners under the 1995 policy (now reversed), it will give an order of approval recognizing the petitioner as a Chilean, and then it will submit the case to the Civil Registry to make the appropriate correction of the information within the civil registry, and provide a new birth certificate

in which the petitioner is recognized as a Chilean national and not a child of a transient foreigner.<sup>200</sup> In the past, this process was as lengthy as the petition before the Supreme Court, requiring a year or more; however, at present the processing time has been reduced to 4 months. This process has fewer procedural formalities than a Supreme Court petition, but is still highly inaccessible for those living in remote areas. Both procedures require some degree of legal guidance, but unlike the Supreme Court petition, legal representation is not a requirement to pursue the administrative recourse.<sup>201</sup>

Since 2014, the Centre for Human Rights at the Migrants and Refugee Clinic of the Universidad Diego Portales (UDP) and the Migrants Clinic at Universidad Alberto Hurtado (UAH)—building on their experience litigating nationality cases nationality before the Supreme Court of Chile—have been working jointly to identify and resolve cases in which children of migrants were denied Chilean nationality through the 1995–2014 interpretation of the “in transit” exception.<sup>202</sup> They engage in case documentation, advocacy, and legal representation before judicial and administrative bodies. These legal clinics have done outreach with immigrant populations in the northern provinces of Chile and consulates in Santiago, hoping to identify cases where individuals have been registered as children of in transit parents and seeking to correct the registration and establish the individuals’ Chilean nationality. The clinics have discovered a much higher number of cases of children registered as “in transit” than originally anticipated, particularly among indigenous and migrant populations living along Chile’s northern border, in Arica and Tarapacá. The clinic team joined the Jesuit Refugee Service in filing a case in November 2015 before the Supreme Court of Chile, petitioning the court to recognize the Chilean nationality of 161 persons who had been born in the territory and registered as children of transient foreigners.<sup>203</sup> The advocates involved in this joint project estimate that thousands were denied nationality under the previous interpretation of the law, many of whom are likely to be stateless.<sup>204</sup>

Implementation of the new policy outside of Chile’s capital has presented a wide range of challenges, including inconsistent interpretations by local authorities implementing Ministry of Interior and Civil Registry policies, limited institutional capacity, and the geographic isolation of certain groups.<sup>205</sup> The government has not engaged in outreach to identify the populations affected by the previous policies.<sup>206</sup> Those most acutely affected by the 1995–2014 restrictions are minority groups in hard-to-reach locations, with limited access to the state authorities and in regions where civil society presence is minimal or nonexistent. These communities may be unaware of the change of policy and/or unaware of, or unable to access, means to redress the past denial of their right to Chilean nationality. Linguistic, cultural, and socioeconomic barriers are frequently factors as well.

The Chilean Civil Registry reported that between January 2008 and January 2014 1,414 children were registered in the Birth Registry with notation “HET” (*hijo de*

*extranjero transeúnte*—“child of transient foreigner”).<sup>207</sup> This would amount to an average of 235 entries per year. In October 2014, the Civil Registry reported that a total of 2,843 persons had been registered with notation “HET.”<sup>208</sup> Around half of the 2,843 persons who were registered as children of transient foreigners resided in the northern regions of Tarapacá, Arica, and Parinacota, in hard-to-reach rural areas.<sup>209</sup> There is no certainty about the percentage of these children who would be eligible for Chilean nationality under the new interpretation, and who may be effectively stateless now. The Department of Foreign and Migration Affairs does not record the number of people who have been naturalized as Chilean who were previously registered as children of transient foreigners.<sup>210</sup>

## Right to Identity and the Process to Secure Identity Documents

Like most countries in the region, Chile requires a birth certificate to access healthcare and education that the government provides to all citizens. A birth certificate also serves as the foundational document to obtain other documents of identity, such as national identity cards and passports. A child without a birth certificate may or may not be able to attend school, and many children have to repeat grades while their parents regularize their migratory status.<sup>211</sup> They also may be ineligible for benefits linked to school enrollment, such as subsidies for transportation and nutrition, and university scholarships.<sup>212</sup> Children without birth certificates can access vaccination and emergency health services, but other state-funded health benefits require a birth certificate. Other services, such as education subsidies and scholarships, require Chilean nationality.<sup>213</sup> Every child born in Chile has the right to obtain a birth certificate, and Chile has a robust civil identification system which has resulted in low levels of unregistered births. But some challenges remain, particularly to address the registration of persons born in Chile but born to parents deemed transient foreigners before 2014.

Registration occurs through the presentation of a certificate of live birth (*comprobante de parto*), which the doctor or midwife who attended the birth of the child can provide; failing that, two witnesses over the age of 18 who personally know the mother must testify under oath before a civil officer to the fact and circumstances of the birth.<sup>214</sup> The parents or legal guardians requesting the registration of a birth must prove their identity; adults without documents cannot register their child. While lacking identity documents is against the law for any adult resident in Chile, including members of indigenous communities,<sup>215</sup> migrants and indigenous groups often lack documentation, and may have lacked it for generations.<sup>216</sup>

In Chile, the competent authority regarding the legal identity of all residents in the territory, nationals or foreigners, is the Civil Registry and Identification Office, which is part of the Ministry of Justice.<sup>217</sup> The Civil Registry and Identification Office grants identification documents such as identity cards<sup>218</sup> and passports, as well as documents and titles needed by foreigners.<sup>219</sup> It assigns a number (*Rol Único Nacional*) to all registrants<sup>220</sup> at the time of administering the registration and documentation of all births in Chile in the Civil Registry.<sup>221</sup> According to UNICEF’s statistics on Chile, based on Chile’s reported vital statistics of 2011, 99 % of children younger than five years of age had been registered.<sup>222</sup> In practice, the civil registrar’s authority to indicate whether a child is born to “in transit” parents gives it the power to establish or deny nationality.

The Chilean National Statistics entity estimates that late registration (defined as registration more than 30 days after birth<sup>223</sup>) was 0.6% in 2007, down from 17.4% in 1970, 5.8% in 1990, and 1.3% in 2000.<sup>224</sup> The Civil Registry and Identification Office, in response to FOI requests, explicitly recognized that birth registration is a fundamental requirement for accessing certain social rights and benefits.<sup>225</sup> Since 1998, Chile has implemented a series of programs to improve territorial management (*Programa de Mejoramiento de la Gestión*) to facilitate better identification procedures. These efforts include a program called “Identity cards in field services” (*Cédulas de identidad en atenciones en terreno*), which focuses on increasing institutional capacity to facilitate documentation processes for the elderly and persons with disabilities.<sup>226</sup>

Chile has the institutional capacity and legal frameworks to provide persons born in the territory with proper documentation of identity, and it has sustained good birth registration statistics. But it has yet to adopt specialized policies to address the challenges that remain. The Civil Registry should develop a policy to identify the population affected by the pre-2014 policy and rectify erroneous registrations. In addition, more can be done to meet the needs of vulnerable populations, as examined in the next section.

## Case Law

The Supreme Court, under the jurisdiction granted to it by Article 12 of Chile’s 1980 Constitution,<sup>227</sup> has reviewed over a dozen cases in which children born in Chile to undocumented migrants were denied nationality based on the “in transit” exception in Article 10 of the Constitution. In all of these rulings, the court has recognized the claimants’ right to Chilean nationality, repeatedly overturning attempted denials by the Office of the Civil Registry and the Department of Foreign and Migration Affairs of the Ministry of Interior. The decisions of the Supreme Court are not binding on lower courts or the executive beyond the clarification of the rights between parties to the particular case.

Through its case law, the Supreme Court has demonstrated a willingness to look at the facts of each individual case to assess whether a child of undocumented parents falls within the transient foreigners exception. An example of this is a 1989 decision in which the court established that even if the parents of a child born in Chile are not legally residing in the country, the length of their stay could qualify them as in residence, *not* in transit, entitling their child to Chilean nationality.<sup>228</sup>

The court has also considered that ordinary activities, such as leasing property or obtaining income in Chile, demonstrate parents' intent to reside and remain in the territory, which serves as proof of domicile and leads to the conclusion that the child's parents are not in transit, regardless of their immigration status. In these judgments, the Supreme Court has also used international human rights law to support its rulings,<sup>229</sup> particularly Article 20 of the ACHR.<sup>230</sup>

These decisions by the Supreme Court, however, hardly result in a comprehensive safeguard to guarantee the right to a nationality. A combination of factors—including economic hardship, geographic location, restricted access to legal services, and lack of awareness about the effects of the “in transit” designation—have limited petitions to the Supreme Court: in 2008–2014, only 11 claims of nationality were decided.<sup>231</sup>

## Populations at Risk of Statelessness

As in Brazil, Colombia, and other countries in the Americas, the groups in Chile that are most vulnerable to statelessness are the children of unauthorized migrants and children belonging to indigenous groups, particularly those residing in border regions. The work of UDP's and UAH's migrants' rights clinics have exposed the risks children of undocumented migrants face.

Chile's resident migrant population is predominantly Peruvian, but Bolivians, Colombians, and Ecuadorians represent the majority of immigrants who have crossed the northern border of Chile in the last five years.<sup>232</sup> Most Colombian and Ecuadoran migrants are of African descent, while most Bolivians and Peruvians are either members or descendants of indigenous groups, and they have encountered racial discrimination in Chile.<sup>233</sup> All of these sending countries provide for nationality under *jus sanguinis* as well as *jus soli*. Thus the children nationals from these states should have access to their parents' nationality. However, all four require registration of birth before a national consulate or diplomatic representative and the meeting of certain evidentiary requirements, such as proof of the parents' nationality. Meeting these requirements is virtually impossible in remote regions.<sup>234</sup> Furthermore, these children are entitled to Chilean citizenship under *jus soli* and should be able to access documents establishing

their status as nationals within the territory. As residents of Chilean territory, they stand to benefit from the rights and services—such as healthcare and education—to which they are entitled.

According to the principle outlined by the International Court of Justice in 1955, “nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments”; thus habitual residence and genuine links to a territory, such as those that children born and raised in Chile possess, should afford them the *jus soli* nationality enshrined in Chilean law.<sup>235</sup> Unfortunately, our findings suggest that racial and ethnic discrimination, prejudice against undocumented migrants, and lax oversight of public officers in remote regions combine to deny children of migrants the documents of identity and nationality they are entitled to, in spite of the law.<sup>236</sup>

Although updated statistics are hard to come by, data from the 2002 national census indicate that 4.6% of the total population of Chile—or approximately 700,000 people—identified themselves as members of the eight ethnic and indigenous groups officially recognized in Chile.<sup>237</sup> Unlike other countries in the region, Chile’s Constitution, written in 1980, lacks any special protection for the rights of indigenous or other ethnic or racial minorities. However, the country ratified International Labor Organization Convention 169, the principal international treaty concerning indigenous and tribal rights. It also enacted legislation to address indigenous rights, focused primarily on land rights recognition and restitution as well as the right to political participation in Congress. But the Civil Registry and Identification Office lacks any special policies or practices for reaching and registering members of indigenous communities, some of which are nomadic.<sup>238</sup>

Law 19.253 of 1993, which establishes norms for the protection, promotion, and development of indigenous peoples, and which creates the National Corporation of Indigenous Development, recognizes the obligation of the Civil Registry to note the first and last names of indigenous persons in the way that the parents determine and with the rules of phonetic transcription that they indicate.<sup>239</sup> Despite this explicit recognition of the right to an indigenous name, and to be registered under it, members of indigenous groups in Chile remain hesitant to use and register their traditional names, fearing discrimination.<sup>240</sup> Furthermore, researchers continue to report cases of discrimination by civil registrars against indigenous parents seeking to register their children with traditional names.<sup>241</sup> Likewise, the Civil Registry and Identification Office has not implemented registration procedures that serve the needs of people in remote regions.

## CASE STUDY

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### The Aymaras in Arica and Taracapá

The Aymaras are an indigenous group that has lived on the border of Chile and Peru since before the founding of the two countries. The Aymaras are nomadic shepherds and crafters who sell their wares in town markets as they travel.<sup>242</sup> Thus the birth of Aymara children can occur in either Chile or Peru, depending on the group's movements.

Researchers have documented nearly 200 cases of Aymara children who were registered in Chile as born to “in transit” parents and were therefore denied Chilean nationality. Rectifying the situation for these children and ensuring others do not fall into the same gap has been complicated by language barriers—some Aymaras do not speak Spanish, and the authorities do not speaking Aymara—cultural barriers, and the absence of governmental entities in the area. Fortunately, the children of Aymaras have been able to attend public schools despite lacking Chilean nationality. However, their years of schooling are not officially recognized, affecting their promotion from grade to grade, and they cannot access the “*beca indígena*,” a special scholarship the Chilean government provides to indigenous people to finance the cost of post-secondary education. The situation of Aymaras who lack nationality is likely to become more dire: as borders within their ancestral lands become increasingly securitized, and the Aymara are forced to abandon their traditional way of life, the education of their young people takes on mounting importance. Without greater outreach efforts by Chile's government, more Aymaras are likely to be left without nationality, without educational opportunities, and thus without prospects for the future.

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As the Aymaras' case study illustrates, Chile struggles to extend citizenship to all of its people, especially minority groups in remote locations. Changes in government policy and the interpretation of the “in transit” designation, often combined with discrimination, have created significant challenges in realizing citizenship rights. These challenges can be surmounted, but only through concerted effort by Chile's government.





## V. Colombia

The right to nationality as established in the Colombian Constitution has undergone little to no modification from the enactment of the first Constitution in 1886 to the adoption of the most recent Constitution, in 1991. Nationality is granted by birth or by naturalization.<sup>243</sup> Unlike most Latin American countries,<sup>244</sup> Colombia has a long history of legal provisions recognizing nationality by descent (*jus sanguinis*), automatically granting Colombian nationality at birth to foreign-born children of a Colombian parent.<sup>245</sup> However, citizenship by birth on the territory (*jus soli*) is not available for all children born in Colombia. A child born in Colombia must have either a Colombian parent, or a parent domiciled in Colombia at the time of their birth<sup>246</sup> unless they have no access to nationality in any other country, in which case they have grounds to naturalize.<sup>247</sup>

Because of the internal armed conflict that began in the mid-1960s and continued for five decades, Colombia is marked by emigration.<sup>248</sup> Of all South American countries, Colombia has the highest net number of nationals residing on foreign soil, with approximately 340,000 emigres living outside the country. An additional 6.5 million people, more than 10% of the Colombian population, have been internally displaced by the conflict,<sup>249</sup> which forced many out of their rural homes and into urban areas.<sup>250</sup> However, due to its geographic location at the northern point of South America, with coasts on both the Pacific and Atlantic Oceans, Colombia is also a key point of entry and country of transit for many migrants.<sup>251</sup>

Colombia's population has been wracked by widespread human rights violations, including violence against human rights defenders, gender-based violence, and drug trade-related violence.<sup>252</sup> There are limited resources available to assist victims of the conflict and internally displaced persons. In this situation, few resources have been dedicated to undocumented migrants, leaving them with little access to aid or services.

These undocumented migrants lack the resources or influence to assert their rights, leaving their children prone to statelessness.

## Political and Historical Background

Early citizenship laws in Colombia reflected the country's transition from a Spanish colony to an independent state. Like Chile's first Constitution, Colombia's first was modeled on the Spanish Constitution of 1812, the *Constitución de Cádiz*,<sup>253</sup> maintaining the distinction between nationality (*nacionalidad*) and citizenship (*ciudadanía*)<sup>254</sup> throughout its Constitutions, including the current one. A citizen is a national who has reached age of 18 and can exercise the right to vote.<sup>255</sup> The Constitution retains a special naturalization process for citizens of Spain, as well as for citizens of Latin American and Caribbean countries, as a result of the region's historical connections.

As one researcher has pointed out, historical factors—especially low rates of immigration—have shaped Colombia's approach to nationality as distinctive from that of other states in the region:

The Colombian citizenship regime was also influenced by the long and arduous conflicts between Liberals and Conservatives and the difficult process of state building. These conflicts, along with the historically low rates of immigration, even during the peak of Latin American immigration at the turn of the twentieth century, helped create a citizenship regime that stands in contrast to most other states in the Americas.<sup>256</sup>

As in most countries in the Americas, when Colombia was established as an independent state, birth in the territory was the main basis for nationality.<sup>257</sup> Colombian nationality also extended to those who resided in the territory prior to independence. In addition, children born abroad to Colombian nationals also had the right to nationality; thus nationality based on descent, exceptional in the region, extends back to the country's beginnings, at which time it included territories that now comprise Venezuela, Ecuador, and Panama. Colombia's evolving constitutional framework has always had *jus sanguinis* provisions.<sup>258</sup>

Since 2005, economic and political crises in Venezuela<sup>259</sup> have led to a major influx of immigrants into Colombia from Venezuela.<sup>260</sup> For approximately five years, migrants from Venezuela were mainly wealthy families who established legal permanent residence in Colombia. The country welcomed the financial resources they brought, and Colombia's flexible immigration framework<sup>261</sup> made it easy for Venezuelans to integrate into Colombian society, particularly in the country's large urban centers. But

Venezuelans of lesser means began to enter Colombia in 2010.<sup>262</sup> By 2014, approximately 52 Venezuelans were entering Colombia every day. That same year, the Colombian migration authority reported a 318% increase in requests for work authorizations.<sup>263</sup>

Yet the diaspora of Colombians fleeing internal armed conflict, seeking employment opportunities, and settling in neighboring countries remains much larger than Venezuelan immigration, and continues to increase.<sup>264</sup> Colombians have sought residence in Venezuela even as Venezuelans enter Colombia, and heightened tensions between the two governments have directly affected Colombian migrants in Venezuela. Colombians living in Venezuela have suffered from mass deportations,<sup>265</sup> ill treatment by authorities, and discrimination.<sup>266</sup> However, Colombia continues to welcome Venezuelans: Presidential Decree 1814 of 2015 set up a special procedure to obtain a permit for entry and residency, with naturalization rights attached, for nationals of Venezuela who are part of families of mixed nationality entering Colombia as a result of the Venezuelan deportations.<sup>267</sup> The Inter-American Commission reported that during its visit to the Colombia-Venezuela border (August 22–September 7, 2015), 1,654 complaints (all brought by adults) were registered from 345 deportees and 1,254 returnees, 931 of them women; 73 percent of those who filed complaints had an irregular immigration status in Venezuela. They also reported that the grave humanitarian crisis in the border affected 2,027 children, 439 adolescents, and 195 elderly people.<sup>268</sup>

Within Colombia's borders, the sheer size of its internally displaced population presents an ongoing challenge to the country's citizenship regime. Although Colombia has numerous public policies and abundant case law intended to address internal displacement,<sup>269</sup> the overwhelming number of internally displaced persons renders these measures insufficient. Local communities, especially in urban centers, have been very resistant to accepting IDPs, and this rejection and discrimination has carried over to the treatment of other foreign migrant populations. The IDP population is made up predominantly Afro-descendants and members of indigenous groups.<sup>270</sup> Racism, combined with concerns about competition for jobs, fear of insecurity and violence, and general distrust, and has led many host communities to oppose the integration of newcomers.<sup>271</sup>

Since there was virtually no immigration into Colombia prior to 2005, the country never needed to adopt a migration policy platform.<sup>272</sup> Its regulations were limited to the granting of an authorization to extended residence through visas and keeping a registry of foreigners physically present in the national territory. However, in 2009, responding to the increase in emigration numbers and an impetus to attract foreign investment, the Colombian Council for Economic and Social Policy, headed by the Administrative Department of Planning and Technical Services, enacted a new national migration policy.<sup>273</sup> It established guidelines for the development and implementation of strategies to support both Colombians living abroad, as well as the foreign population residing in Colombia. The 2009 policy had two main objectives: protecting the rights of immi-

grants in Colombia and incorporating the contributions of Colombia's diaspora into the country's economic development. Human rights language is embedded throughout the 2009 policy. However, the policy has not been thoroughly and concretely implemented, and it is nonbinding. There has been neither a political nor a social push for its enforcement, in the absence of any legal impetus.<sup>274</sup> The applicable legal framework and the means of implementing the policy are still undefined, particularly with regards to administrative procedures for seeking asylum and refugee status, as well as the treatment and rights of other migrant populations.

## International Obligations Regarding Statelessness

Colombia is signatory to the ACHR,<sup>275</sup> and its safeguard for children born on the territory who would otherwise be stateless nominally complies with Article 20. It is also a signatory to the CRC<sup>276</sup> and CEDAW. The rights and obligations contained in treaties to which this country is a signatory automatically have the force of constitutional provisions.<sup>277</sup>

Through Law 1588 of 2012, Colombia incorporated the content of both Statelessness Conventions, without any reservations, into its domestic legislation. However, it made the following reservation when acceding to the 1961 Convention on the Reduction of Statelessness:

In accordance with the provisions of Article 17 (1) of the Convention, the Republic of Colombia makes a reservation to Article 14 to the effect 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.

Likewise, Colombia signed the 1954 Convention relating to the Status of Stateless Persons the same year the treaty was adopted, but has not deposited the ratification instrument before the Secretary General of the United Nations. It seems likely that Articles 33 and 38 of the 1954 Convention, which grant compulsory jurisdiction to the International Court of Justice for any dispute, explain this failure.<sup>278</sup>

The Ministry of Foreign Affairs has nonetheless recognized the 1954 Convention as the legal framework applicable to issues of statelessness. In 2013 it made this statement during its intervention in the decision of constitutional review <sup>279</sup> of Law 1588 of 2012:

The [1954 Convention] aims to establish a legal framework to regulate the situation of stateless persons that are not subject to discrimination and therefore make full exercise of their fundamental rights. ... [It also] aims to prevent statelessness, guaranteeing the right to a nationality, in consideration of the factors of birth, residence, [and] hereditary transmission and pursuant to the principles of equality, non-discrimination, protection of minorities and territorial integrity.<sup>280</sup>

The Ministry of Foreign Affairs highlighted that the adherence of Colombia as a party to both Statelessness Conventions would fill a legal gap in domestic legislation and that it is desirable to harmonize the Colombian legal system with international developments to address statelessness.<sup>281</sup> The ministry also suggested that the recognition of the constitutionality of these conventions, and their further incorporation in domestic legal norms, would renew the international commitment of the state to the protection of human rights.<sup>282</sup>

The Colombian government has made international commitments in international forums showing its support for the prevention and reduction of statelessness. The permanent mission of Colombia to the OAS was recorded as the proponent of Resolution 2665 of 2010 on the Prevention and Reduction of Statelessness and Protection of Stateless Persons in the Americas,<sup>283</sup> as well as of Resolution 2826 of 2014 on the Prevention and Reduction of Statelessness and Protection of Stateless Persons in the Americas, which it proposed jointly with Uruguay.<sup>284</sup>

In 2013, the Constitutional Court elaborated on the importance of the right to nationality, describing statelessness as

the condition of the citizen who is not considered a national of the country of his birth, or any other State which may be de jure, when it exists under the laws of a country, or de facto, when people do not enjoy the same rights of other citizens, as their country does not grant [them] a passport or does not allow [them] to return, or when [they] cannot prove through documents [their] nationality.

Statelessness is directly related to the concept of citizenship, understood as the legal bond between a State and an individual and signifying its legal existence and the enjoyment of fundamental, economic, social and cultural rights, as well as determining political, social and economic responsibilities of both the State and the person.

It could be believed that given the current conditions of the States, the phenomenon of statelessness is an isolated and rare occurrence; however, due to geopolitical changes, to poor systems of birth registration, a poorly designed law, cultural beliefs, issues of racial and gender discrimination, and political changes

among others, it is a condition which affect[s] approximately 15 million people worldwide, according to figures from the UN Agency for Refugees, UNHCR.<sup>285</sup>

The Constitutional Court’s recognition of the applicable international legal framework, the context in which statelessness occurs, and the relevance of the right to citizenship in the enjoyment of other rights provides the authority to hold the state accountable for effectively complying with the duties it owes to those born in its territory.

## Current Legal Framework Regarding Nationality

The nationality legal regime of Colombia—unlike other countries in the region—combines both *jus sanguinis* and *jus soli* grounds for nationality at birth. This places great importance on both the element of domicile in the territory and the element of descent. Children born in the territory to Colombian parents, or to parents with proof of domicile, as well as those born abroad to Colombian parents, will be Colombians by birth.

Article 96 of the Colombian Constitution,<sup>286</sup> Law 43 of 1993,<sup>287</sup> and an amendment enacted after the adoption of the 1991 Constitution,<sup>288</sup> establish Colombian nationality. In order to determine that a person born in the national territory is a Colombian “by birth” (*por nacimiento*), the child must be born to a Colombian parent or a parent proven to be domiciled in the Colombian territory. Proving domicile is thus the first challenge foreign parents face in seeking to secure their Colombian-born child’s Colombian nationality at birth.

The nationality law states, “Domicile is the residence in Colombia accompanied by the intention to remain in the country in accordance with the relevant provisions of the Civil Code.”<sup>289</sup> Article 80 of the Civil Code, enacted in 1887, establishes the presumption of the intention to reside in the following terms: “The intention to reside and settle is presumed by the fact of opening a store, pharmacy, factory, workshop, inn, school or another durable establishment, to administer in person; by the fact to accept in said place a fixed employment of the type that is regularly conferred for a long time; and by other analogous circumstances.” Colombian courts have required a valid resident visa to establish domicile.<sup>290</sup> Accordingly, the Office of the Civil Registry, which operates as an independent and autonomous governmental entity,<sup>291</sup> follows the Ministry of Foreign Affairs<sup>292</sup> in allowing nonresident visas, such as student refugee visas and temporary work visas, to demonstrate domicile for the purposes of birth registration.<sup>293</sup> However, parents without such documentation cannot demonstrate domicile.

Further, a combination of legislative provisions, judicial decisions, and administrative orders<sup>294</sup> has established that children who cannot produce a Colombian birth certificate, a national identity card for children (which the state issues for nationals

aged 7–17), or a national citizenship card (after the age of 18), can prove nationality<sup>295</sup> by providing proof of domicile.<sup>296</sup>

The requirements to access nationality by naturalization (*nacionalidad por adopción*) are established by Law 43 of 1993 and its relevant decrees and administrative regulations.<sup>297</sup> A characteristic of this type of nationality, in contrast to nationality by birth, is that by law this is a sovereign and discretionary act of the national government, specifically the president of the republic, delegated to the Ministry of Foreign Affairs. No other local or departmental authority is competent to grant or deny nationality.<sup>298</sup> The petitioner must provide to the Nationality Unit of the Ministry of Foreign Affairs all the necessary documents as required by law, through a virtual filing done online. Documentation includes proof of continuous residency in the Colombian territory for one year for citizens of Latin American and Caribbean countries, two years for citizens of Spain, and five years for all others.<sup>299</sup> A person denied naturalization can petition the Ministry of Foreign Affairs or appeal the denial before an administrative court.<sup>300</sup>

In accordance with Article 20 of the ACHR, Article 5(3) of Law 43 of 1993 establishes, within the legal provisions regarding Colombian nationality through naturalization, that

the children of foreigners born in the Colombian territory, which no other state recognizes as citizens, can prove their citizenship with a birth certificate without requiring proof of domicile. However, it is necessary that foreign parents prove through certification of the diplomatic mission of their country of origin that their country does not grant the nationality of the parents to the child.<sup>301</sup>

There is no certainty that naturalization processes related to otherwise stateless children will be nondiscretionary; in fact, Colombian domestic law renders naturalization both discretionary and non-automatic. Thus this provision represents only an additional ground to request Colombian nationality, rather than a legal protection for children born in the territory. Further, children whose parents succeed in naturalizing them through the onerous and expensive process are granted *nacionalidad por adopción*, which means they cannot hold certain public offices as they are not considered Colombian nationals by birth, in spite of being born in the territory.<sup>302</sup> This places children who are successfully naturalized through this method at a disadvantage compared to those granted Colombian nationality by birth.

# Implementation of Nationality Laws

In Colombia, effective access to the right to nationality, and the means to document this right, depend on how the competent government authorities interpret and implement the legal provisions. Colombia's complex nationality framework requires that people who are not both born in the territory and born to Colombian nationals with standard paperwork navigate various entities across its institutional landscape if they are to access the right to nationality. This section describes the processes and competent authorities in the implementation of nationality laws and the provision of documentation of identity in Colombia. This process is marked by structural issues and gaps.

Birth certificates are the first step in securing legal identity in Colombia. They serve as proof of nationality for children younger than 14 and as the foundational document to obtain a national identity card, a citizenship card, and a passport. The National Civil Registry (*Registraduría Nacional del Estado Civil*), an independent and autonomous governmental entity, provides birth certificates as well as these other vital documents. While the Ministry of Foreign Affairs implements all nationality matters, the provision of documents makes the Civil Registry the lynchpin of asserting nationality to the ministry.

A child born in Colombia to a Colombian parent in possession of identity documents, or to a foreign parent who is able to provide proof of domicile in the territory at time of birth, will be recognized as Colombian and registered as such in the civil registry. The child can thus prove his or her Colombian nationality with a birth certificate.

However, in some cases the implementation process runs counter to the objective of ensuring that every child born in the territory has access to a nationality at birth. First, the legal requirement that a parent produce a document from his consulate in order to prove that the child cannot have access to the parents' nationality presents a problem for parents who cannot access a diplomatic mission or who find such mission uncooperative. Second, the online naturalization process also requires applicants to provide information from a government issued identity document (e.g., a passport from another country or foreign identity card) to upload any request. Accordingly, parents who lack such documentation cannot apply for naturalization on behalf of their children. Likewise, requiring applications to be filed online harms applicants who have neither internet access nor the resources necessary to upload documents. Third, the processing fee for naturalization also poses a substantial burden. At 363,000 COP,<sup>303</sup> it exceeds the national minimum wage for half a month, and petitioners must pay at the time of filing, with no guarantee that nationality will be granted.<sup>304</sup> The Ministry of Foreign Affairs stated in response to a freedom of information request that there are no exemptions from the fee for processing naturalization requests.<sup>305</sup> More problemati-



cally, the law does not provide any means to waive the requirements of naturalization for children born in Colombia who would otherwise be stateless.

The Ministry of Foreign Affairs claims it is willing to identify cases of statelessness that fall within the normative safeguard (enumerated in Article 20 of the American Convention) and to facilitate naturalization. For example, the ministry has said it will waive some of the requirements set by the naturalization law (such as knowledge of Spanish, history, geography and the Constitution of Colombia), and allow applications to be filed by the parents on behalf of children, rather than requiring the stateless child to reach an age in which he or she is able to sit for and successfully pass these examinations. However, the ministry only grants such waivers in an ad hoc manner and there are no clear exceptions in the law or within administrative orders, leaving potentially stateless children at the mercy of individual ministry officials.

The bureaucratic, financial, and practical obstacles petitioners face demonstrate that administrative procedures to access nationality have not been adjusted and harmonized in order to ensure access to Colombian nationality for otherwise stateless children. In this regard, Colombia is failing to meet its obligations under Article 20 of the American Convention on Human Rights. The fact that the ministry has not mobilized significant resources to address the implementation of this safeguard against statelessness evidences clear gaps between the law and its operation in practice. To fully meet its obligations, Colombia should make the naturalization process for otherwise stateless children automatic instead of discretionary. Colombia should also undertake special outreach efforts, including clarifying available information about the process and conducting trainings for public officials. Finally, the ministry should collect data on its own work: currently it has no data on the number of children who have been naturalized as Colombians under the statelessness safeguard provided by Article 5(3) of Law 43 of 1993.<sup>306</sup>

## Right to Identity and the Process to Secure Identity Documents

While lacking an identity document does not equate to statelessness, it can make it difficult to prove nationality or to exercise it. In Colombia, documents of identity play a fundamental role in accessing rights and services. Thus the process to secure documents is intertwined with the problem of statelessness; this section will examine state practices and gaps that may contribute to statelessness.

Ordinarily, Colombia grants at least three identity documents over the course of a lifetime: a birth certificate, a national identity card covering ages 7 to 17, and a citizen-

ship card (*cédula de ciudadanía*) after reaching majority at age 18. Competent national authorities oversee the processes for obtaining these documents on three distinct occasions. For populations living in remote areas or for those who flee violence and relocate to different parts of the national territory, as well as for children of undocumented migrants, these processes become burdensome or even impossible. The Colombian government has implemented some domestic policies to increase access to services, but challenges still remain.

Article 25 of Law 1098 of 2006, the Children’s and Adolescent’s Code, establishes the right of every child and adolescent to an identity: “Children and adolescents have the right to an identity and to preserve the elements that constitute it like a name, a nationality and filiation in accordance with the law. To this end they shall be registered immediately after birth in the civil registry. They have the right to preserve their native language, culture and traditions.”

The extent to which Colombia does or does not live up to the Children’s and Adolescent’s Code is unclear. Data provided by the Office of the Civil Registry was inconsistent,<sup>307</sup> suggesting that the registry struggles with data collection and management. The registry could not supply statistics as to the number of children, if any, who were deemed nationals by virtue of the statelessness protection or proving domicile. If the registry does not track this population, there is no way to know if Colombia is meeting its obligations with respect to them.

The process to secure such identity documents requires individual initiative to petition the appropriate national authorities and procure the relevant document. People denied documents can present an administrative appeal before the government authority that denied them,<sup>308</sup> and can appeal to the administrative courts if the denial persists.<sup>309</sup>

In Colombia, birth registration is an expedited legal procedure, meant to provide universal public access.<sup>310</sup> The offices of the National Civil Registry, a public notary, or, in the case of births that occur abroad, foreign consulates can register births in Colombia or to Colombian nationals. This action generates an entry in the Colombian Civil Registry 55, a database the National Civil Registry Office administers.<sup>311</sup> The entity registering the child provides a personal identification number (*Número único de identificación personal*), which appears on all future identity documents. Birth registration is free of charge.

Parents wishing to register their children for a birth certificate listing Colombian nationality must present proof of live birth and proof of at least one parent’s nationality or domicile within Colombia. Proof of live birth can take three forms. For births that take place in clinics or hospitals within Colombia, the health institution provides the parents with a certificate of live birth (*certificado de nacido vivo*). Parents may also provide a baptism certificate to prove live birth. The parents must present the certificate to the

civil registrar or to a notary public office to obtain a birth certificate (*certificado civil de nacimiento*) within a month of the birth.

Parents who do not have a certificate of live birth or of baptism, or who do not report within a month of the birth, must make a statement and be accompanied by two witnesses who will attest to being present at the time of the birth.<sup>312</sup> There are no fees or penalties for late birth registration, but the witness qualification process poses a problem that affects disadvantaged populations. There is a discretionary threshold for notaries to assess the credibility of the witnesses: Order No. 07 of 1997 of the Superintendence of Notary and Registration Service<sup>313</sup> establishes that “equal credit cannot be given to someone of questionable morality or someone who exhibits a low degree of intellectual preparation (*bajo grado de preparación intelectual*).”<sup>314</sup>

Because notaries have discretion in qualifying or disqualifying witnesses, the process is open to discrimination. Further, the research undertaken for this report identified a common practice among registrars and notaries of only taking the testimonies of two witnesses if a judge had previously granted an order. Thus only parents who filed a judicial petition through an individual writ of protection (*acción de tutela*), could obtain nationality for their children in the absence of proof of a live birth.<sup>315</sup> In addition to creating an unreasonable barrier for parents, this burdens the judicial system with unnecessary cases. The Civil Registry Office responded to this practice by instructing registrars to accept the testimonies as established by the law,<sup>316</sup> without the need for verification by a judge. Barriers created by these discretionary practices are not insignificant, although they can be minor compared to problems associated with proving domicile, as examined in the next section.

In Colombia, only one parent must provide proof of domicile, and only if neither parent can provide proof that he or she is a national of Colombia.<sup>317</sup> Yet this requirement can pose a significant barrier for foreign nationals and the stateless.

In accordance with Law 43 of 1993 through legal concept S-GNC 15-016796,<sup>318</sup> in 2014 the Ministry of Foreign Affairs determined that in addition to a resident visa the following temporary visas serve as proof of domicile in Colombia:

- foreigner in academic program
- employment based visa
- member of a faith based organization or order recognized by the state
- foreigner entering as a retiree, as a partner or owner of a company, as a recipient of medical treatment, or to carry out an independent trade or activity
- refugee;
- spouse or life partner of a Colombian national.<sup>319</sup>

The Civil Registry enacted Regulation 059 in March 2015, instructing registrars to consider these documents as proof of domicile. This was a positive change, in that previously a resident's visa was the only acceptable proof of domicile.<sup>320</sup> UNHCR has identified the initiative as a good practice.<sup>321</sup> However, asylum seekers, if their application is pending at the time of the birth of their children, cannot demonstrate domicile.

In Colombia, many initiatives have been implemented to facilitate registration of IDPs, recognizing the multiple difficulties this population faces in accessing birth registration offices, and the challenge of registering a birth when security and life are at risk.<sup>322</sup> Efforts to remediate the problem of birth registration for the children of IDPs include the May 2004 creation of a Unit of Attention for vulnerable populations within the Civil Registry Office.<sup>323</sup> This unit is responsible for reaching the most remote and conflict affected regions of the country. It has deployed seven mobile units equipped with satellite communications, computers, printers, electricity, and digital photography systems. The unit's report of April 1, 2011, states that 237 registration and documentation of identity campaigns had been held, in 630 municipalities, serving 985,462 persons, including the registration of 251,172 births.<sup>324</sup> But despite the positive nature of these campaigns, Colombia retains a registration gap: UNICEF reported that between 2005 and 2012, universal birth registration in Colombia was at 96.5%, with 97.2% urban registration and 94.6% rural registration.<sup>325</sup>

Venezuela's 2014 mass deportation of Colombians residing in Venezuela increased the number of IDPs significantly, as returnees did not necessarily return to places where they had been established before they fled to Venezuela. At that time, the Colombian government put into place several emergency measures to assist the returnee population.<sup>326</sup> For example, in 2015 the Civil Registrar issued internal orders creating exemptions and making certain evidentiary requirements more flexible. These urgent measures have been implemented in recognition of the difficulties that the population faces in fulfilling certain formalities, due to the humanitarian crisis.<sup>327</sup> The impact of these measures has not been quantified, but the Ministry of Foreign Affairs has reported a significant increase in requests for nationality recognition, after the new policies were issued.

As in Brazil and Chile, remote regions of the country pose difficulties in Colombia, as public officers lack training on the statelessness safeguard and on the documents that are now valid to attest to domicile. Unfortunately, people in these regions are at heightened risk of requiring these means to attain nationality, but may be unaware of the relaxed policies. Thus they are less able to assert their rights when they do come into contact with governmental entities that administer identity processes.

In interviews undertaken for this report, UNHCR and civil society organizations described public officials' misinterpretation or lack of knowledge of the applicable laws—combined with lack of access to documentation of identity—as the primary fac-

tors pushing Colombians into a condition of “unconfirmed nationality” (*personas en confirmación de nacionalidad*).<sup>328</sup> People in this condition are not stateless, but are unable to prove their nationality. According to UNHCR, the designation “unknown” or “pending clarification” places children at risk and may have effects into adulthood.

## Case Law

Colombian high courts heard cases in 2005, 2008, 2010, 2013, and 2015 in relation to the right to nationality and guarantees under the statelessness safeguard. These cases point to two sets of issues: the difficulty of harmonizing domestic legal frameworks with specific international obligations related to statelessness, and gaps between law and practice in issuing identity documents. Taken together, the five cases suggest the Constitutional Court is more concerned about erroneously extending Colombian nationality than about addressing statelessness.

In 2005 the Colombian State Council, the highest court in the administrative jurisdiction, responded to a request by the Ministry of Foreign Affairs seeking clarity on the interpretation of the meaning of *domicile* for the purposes of the nationality law. The council determined that domicile required a resident visa.<sup>329</sup> Thus the court clarified that nonresident visas and attestations of the desire to reside do not serve as proof of domicile, because they do not demonstrate an intention to reside in the country permanently.<sup>330</sup>

This interpretation does not result in an effective and full realization of the prevention of statelessness.

In 2008, the Constitutional Court, Colombia’s highest court within the constitutional jurisdiction and the final appellate court for matters involving the interpretation of the Constitution,<sup>331</sup> heard the case of an 18-year-old man who was born near Colombia’s southern border.<sup>332</sup> His birth was registered in Leticia, the capital of Amazonas state, and his birth certificate states his biological parents were nationals of Peru. The records do not state that they were domiciled in Colombia at the time of his birth. The applicant was raised by Colombian nationals; he could not remember his biological parents, and he was unaware of their whereabouts. The Civil Registry Office denied him a citizenship identity card on the grounds that he was not a national of Colombia. The court affirmed the registry’s decision that because the applicant could not prove his birth parents’ domicile at the time of his birth, he was not Colombian. This decision runs counter to the statelessness safeguard and left the plaintiff’s nationality undetermined.<sup>333</sup> The court thus did not live up to its obligation as set forth by UNHCR’s guidance in the Statelessness Handbook, and Article 20 of the American Convention on Human Rights,

which states that Colombia has an obligation to resolve the nationality status of its residents, in this case by affirmatively investigating or facilitating access to competent authorities in Peru to ensure nationality or provide naturalization to this lifelong resident of Colombia.

In 2010, the Constitutional Court heard a similar case. The applicant was also born in the Amazonas state to Peruvian parents. The Civil Registry Office had granted her both a birth certificate and a national identity card, but denied her a citizenship card.<sup>334</sup> The court cited the 2008 judgment in rendering its decision, finding that the National Civil Registry Office in Leticia had erred in granting her a national identity card.<sup>335</sup> It ordered the Civil Registry to instruct its officers in border regions to verify the proof of domicile—at that time through a resident’s visa—for children born to foreign parents before granting documentation to avoid giving individuals false perceptions of their rights.<sup>336</sup>

In 2015,<sup>337</sup> the Constitutional Court decided the case of a child born in Colombia to Chinese parents, one of whom had a nonresident work visa at the time of the child’s birth. They had received a birth certificate listing the child’s nationality as Colombian but the local passport office, under the jurisdiction of the Ministry of Foreign Affairs, had denied the child a passport.<sup>338</sup> The local passport office claimed the child was not entitled to a Colombian passport because neither of the parents had proven domicile. The court considered that this legal provision was contrary to what the Ministry of Foreign Affairs had established in its administrative orders S-GAUC-14-093078 (December 16, 2014) and S-GAUC-14-095488 (December 29, 2014) in which it extended the means that served as proof of domicile to include a non-resident work visa. It ordered the ministry to implement a nationwide policy with concrete mechanisms of disseminating the new interpretation of this requirement for the issuance of passports. Thus, while the most recent case law provides some cause for optimism, a broader view shows the case law to be uneven at best. Such inconsistency is especially hard on populations at risk of statelessness, as examined in the next section.

## Populations at Risk of Statelessness

Internally displaced persons, refugees, and migrants are the primary populations at risk of stateless in Colombia. Research conducted for this report identified the complex steps required to obtain documents, such as notarization and apostilles, as a significant barrier for members of these groups. As the case studies in this chapter suggest, children entitled to Colombian nationality have been denied it because of these formalities. Similarly, children who would be entitled to nationality under an absolute *jus soli* prin-

ciple (as in Brazil) have suffered under Colombia's regime. Children of undocumented migrants who must be naturalized to gain Colombian nationality face serious obstacles in the state practice, including:

- The cost of applying;
- The fact that the process is only accessible online;
- The lack of institutionalized coordination and cooperation between the Civil Registry and the Ministry of Foreign Affairs to help petitioners transit the administrative processes;
- The absence of a campaign to inform undocumented migrants of the statelessness safeguard and children's right to access Colombian nationality under such safeguard; and
- Public officials' lack of knowledge regarding proper interpretation and implementation of the norms.

According to the 2005 census, 3.4% of Colombia's population in Colombia, or 1,392,623 persons, self-identified as members of an indigenous group. Colombia has a constitutional mandate as well as several legal provisions and protections specific to indigenous groups.<sup>339</sup> Yet the country has not specifically addressed indigenous groups' challenges and needs in acquiring documentation of identity and nationality. These hurdles include lack of access in remote regions, as well as language and cultural barriers that make the birth registration processes challenging and even burdensome.<sup>340</sup>

Colombia's nationality laws and practices exist in a complex context. The country's conditional approach to *jus soli*, its long running internal conflict, and its significant populations of IDPs, former emigres returning from Venezuela, and indigenous groups all make the provision of nationality documents and prevention of statelessness highly challenging. And the country has taken important steps to address these challenges. Yet, clearly, more must be done to close the gap between aspiration and practice.

## CASE STUDY

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### The Wayuu People

The Wayuu people reside in the northern part of South America, in an area extending across the national borders of Colombia and Venezuela.<sup>341</sup> The Wayuu traditionally moved freely across borders and have strongly advocated before the authorities of both countries for the right to continue to do so.<sup>342</sup> Border police do not always require a national identity card or a passport, particularly from those wearing traditional Wayuu clothing or speaking Wayuunaiki, but they have been known to do so, which makes any difficulty in obtaining identification documents a significant problem for members of the group.<sup>343</sup>

The Constitutions of both Colombia and Venezuela entitle the Wayuu people to dual nationality on a *jus soli* basis, based on a principle of reciprocity between the two states.<sup>344</sup> However, the administrative processes governing issuance of identity documents in both countries<sup>345</sup> leave most Wayuus with only one nationality and leave some in a state of unconfirmed nationality, entitled to dual nationality yet in many respects functionally stateless.<sup>346</sup> Wayuu applicants are unable to obtain identity documents.<sup>347</sup> In addition to occasionally causing problems in crossing the border, the lack of documentations prevents the Wayuu from accessing services at hospitals, government offices, and schools.

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## CASE STUDY

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### The Darién Gap

Migrants seeking to enter the United States from Africa, Asia, or the Caribbean often start their journey in South America before moving northward. When they reach the border between Colombia and Panama, they have two options. One is to cross through the controlled border where Panamanian officials check for documentation; the other is through the rainforest. The terrain is so difficult that this region is known as the Darién Gap.<sup>348</sup> This route has been long used for drug smuggling as well as human trafficking.<sup>349</sup>

With little to no state presence or service provision, births in the region are usually unregistered. Displacement of the indigenous communities by violent attacks from Colombian armed groups, particularly drug trafficking guerrillas, worsened the situation.<sup>350</sup> Meanwhile, increased migration has increased the number of children born to migrant women passing through the region. For both members of the indigenous communities and migrants, their children's right to Colombian nationality and the process by which they might establish it are unclear.

In response to increased migration through the area, Panama tightened immigration controls on May 9, 2016, leaving about 1,300 migrants stranded in the town of Turbo, close to the Panama border, unable to cross. The Colombian Ombudsman's Office calculated that 1,273 of these stranded migrants were Cuban, including 300 children, and 11 pregnant women (with one reported birth<sup>351</sup>). As law and practice in Colombia stand, a child born to Cuban parents, with no proof of domicile, will not have access to Colombian nationality under the statelessness safeguard. Thus, the child born in Turbo to Cuban parents has a birth certificate, but no nationality, as Cuba will only grant nationality if parents request it while being physically present in Cuban territory. The same destiny awaits other children born in Colombia to these stranded migrants.

Like the Aymaras in Chile and various communities in Rondonia, Brazil, this case illustrates the challenges of documenting the identity of populations in border regions, where there are virtually no registration services available—and in this case with the added complexity of an influx of migrants. This situation would pose a problem for most states, but is particularly challenging for Colombia, with its conditional *jus soli* and gaps between its citizenship laws and practices.



## VI. Conclusions

States in the Americas enjoy a reputation as exemplars in granting citizenship and preventing statelessness. Yet every state in the region must recognize and address the challenges they face in granting citizenship as a practical matter. Brazil, Chile, and Colombia all grant *jus soli* citizenship (to varying degrees), but for many people born in the three countries, achieving it is another matter.

This report is one effort to study state practice in the field of statelessness and documentation of identity, and the contexts and situations in which statelessness can result even in the face of generous national legal frameworks based on *jus soli* norms.

Based on the findings of this report, there are areas where the gap between the text of the laws and their implementation can be bridged through concrete actions by legislators, policy makers, local officials, and other relevant stakeholders.

**Access to civil registration and documentation of identity is the foundation of the right to nationality.** Birth registration is a universal right of all children, and it is the duty of each state to register births that occur in its territory. While birth registration and nationality are distinct, the first is often a critical element for the recognition of the right to the second.<sup>352</sup> This is especially the case in *jus soli* countries where a birth certificate is generally the central document to prove nationality for children, as well as the foundational document for other national identity documents in later life. This report has demonstrated that wide-ranging shortcomings and obstacles in birth registration procedures have affected specific communities and individuals in Brazil, Chile, and Colombia. In all three countries, lack of clarity in the legal frameworks and gaps in administrative orders lead to the denial of nationality and/or documentation. Bureau-

cratic discretion can give way to discriminatory action. Despite efforts by the central governments of Brazil, Chile, and Colombia to increase birth registration and hence access to citizenship, problems remain for specific populations. The groups that struggle to access birth registration—including members of indigenous groups, internally-displaced persons, and ethnic minorities—are also the communities at a higher risk of suffering discrimination.

**Authorities should gather and use comprehensive data—disaggregated by gender, ethnicity, and internal displacement<sup>353</sup>**—to guide their nationality efforts. None of the competent authorities in the three countries on which this study focused were able to provide such statistics. This study provides preliminary findings based on our identification of the gaps in state law and practice, but in the absence of data, it is impossible for countries to track the impact of policy initiatives or to determine the policy and legislative changes that will close these gaps.

**Authorities must invest in training and supervising public officials.** The most vulnerable populations often reside in areas where state infrastructure is under-resourced or absent, complicating any efforts to redress the denial of rights. Discretion in the interpretation of nationality laws, coupled with limited oversight of public officials responsible for documentation of identity processes, worsen the problem. States should increase investment in training their officers, especially following shifts in administrative policy and/or law (as in Chile and Colombia).

**States must address discriminatory patterns in the access to the right to nationality and documentation of identity.** As the U.N. Human Rights Council notes, undocumented immigrants, indigenous people, people of color, refugees, and IDPs are at the greatest risk of non-registration of birth and at the greatest risk of experiencing discrimination when they cannot produce documentation.<sup>354</sup> Therefore, states should monitor patterns of discrimination, such as the patterns this study has identified in discrimination against undocumented migrants, members of indigenous communities, and other minorities, through disaggregated equality data.<sup>355</sup> Addressing discriminatory practices will require collaboration with communities at the local level.

All three focal countries have government entities with a constitutional or legal mandate to protect the rights of members of ethnic minorities, but their presence, funding, and mandate vary. Brazil has specialized policies for birth registration of indigenous minorities, Chile lacks specialized policies, and Colombia, by having strong constitutional protections addressing the rights of ethnic minorities, but lacking specialized policies in relation to birth registration or the right to nationality, falls somewhere in between. Regardless, ethnic minorities and indigenous groups in all three countries

face discrimination in birth registration and nationality processes that the states should address. Birth registration should be guaranteed to all children born in the territories, a guarantee that is lacking in Colombia and not fully implemented in Brazil or Chile, and countries should take specific steps to ensure full implementation.

**Government entities with complementary or shared competences should coordinate their efforts.** Based on the research conducted for this report, it appears that communication among competent government agencies is sparse. Improving inter-agency cooperation would help address administrative barriers preventing children's access to nationality and prevent one from entity contradicting, or duplicating the efforts of another.

**Law and practice at the domestic level must be harmonized with binding international norms.** Incorporation of an international obligation into nationality legislation falls short if domestic procedures are not adjusted accordingly. The findings of this report indicate that it is urgent that international law inform the day-to-day implementation of nationality laws in American states. States must harmonize legal frameworks as well as administrative procedures, service delivery, and trainings to officers, to ensure that international norms and principles, including the best interests of the child, inform law, procedure, and decisions to guarantee the right to nationality and the prevention of statelessness.

Every country in the Americas should implement nationality procedures that fully guarantee the right to nationality as established by Article 20 of the American Convention on Human Rights, one of the strictest treaties with respect to statelessness safeguards. Colombia's laws clearly fall short of these standards. Colombia must grant access to Colombian nationality to stateless children born in the territory automatically, without requiring naturalization of children not entitled to nationality in other states and without withholding nationality from children who cannot prove they have no access to another nationality. Current policy creates insurmountable obstacles for many of the parents of children most likely to be affected.

**Regional forums should be used to address shortcomings in documentation of identity processes, especially in border regions.** There are several regional and sub-regional forums where governments of neighboring countries regularly meet, and these tend to be underutilized platforms for exchanging good practices, coordinating efforts to document populations and to ensure a facilitated access the right to nationality for children, and addressing older generations who have remained undocumented and unable to prove their identity and nationality.

**Existing global platforms have potential to address statelessness in the Americas.** There are two global initiatives particularly relevant to the issues this report describes. The first is UNHCR’s #IBelong Campaign to End Statelessness.<sup>356</sup> The goal of this initiative is to make the Americas the first region to overcome statelessness. It calls on nations to meet ten objectives, including improving the gathering of qualitative and quantitative data, preventing statelessness by ensuring birth registration to every child born in the territory, and issuing nationality documentation as a means to identify stateless populations and populations with undetermined nationality.<sup>357</sup>

The second global initiative is the U.N. Global Sustainable Development Goals (SDGs),<sup>358</sup> a series of goals for U.N members to achieve in the next 14 years to address discrimination, exclusion, and inequality. Goal 16.9 reads: “By 2030, provide legal identity for all, including birth registration.” The SDGs call on states to focus efforts, coordinate activities, and follow through with concrete and specific actions at the domestic level to match the global commitments established in this development agenda. Both initiatives provide stakeholders with a framework which builds upon relevant international human rights obligations and development initiatives and funding to further some of the aforementioned recommendations.

For all states, providing access to birth registration and identity documents is a challenge, especially in reaching and serving members of indigenous groups, ethnic minority groups, migrants, and IDPs. Yet for *jus soli* states, the steps to address these challenges are known and relatively straightforward to implement. Brazil, Chile, Colombia, and other states in the region must take these steps if they are to meet their obligations to everyone born in the Americas.

# Appendix: Comparative Chart of American States' Citizenship Regimes

The following chart examines a sample of countries in the Americas, illustrating the tendency of American states to combine *jus soli* and *jus sanguinis* citizenship, with the first usually operating automatically, and the second being either optional or equally automatic.

COUNTRY	AUTOMATIC <i>JUS SOLI</i>	OPTIONAL <i>JUS SANGUINIS</i>	<i>JUS SOLI</i> OR <i>JUS SANGUINIS</i> EXCLUSIVELY	NOTES
Argentina*~	X	X	No	
Bolivia*~	X + <i>jus sanguinis</i>	automatic	No	
Brazil*~	X	X	No	
Canada*	X + <i>jus sanguinis</i>	automatic	No	
Chile*~	X + <i>jus sanguinis</i>	automatic	No	No entitlement to nationality at birth if born in the territory to parents who are foreign diplomats or in transit.
Colombia*~	conditional	conditional	No	Colombia grants nationality automatically upon birth to children born in the territory to a Colombian parent or to a parent domiciled in Colombia. A child born outside of Colombia will be Colombian by birth if born to a Colombian parent. The child must be registered either upon returning to Colombia or at a consulate abroad. The childhood statelessness safeguard for children born in the territory is non automatic and discretionary.
Costa Rica*~	X	X	No	If born in the territory to foreign parents, the child must be registered as a citizen before reaching the age of 25. If born abroad, he must be registered in the Civil Registry before reaching the age of 25.
Cuba*359	X + <i>jus sanguinis</i> (if citizen parent is abroad carrying out an official mission in the service of Cuba.)	no provision	No	No entitlement to nationality at birth if born in the territory to foreign diplomats or employees of an international organization. No provision for children born out of the territory to citizen parents.
Dominican Republic*~	X (subject to exceptions) + <i>jus sanguinis</i>	X	No	A child born abroad to a citizen parent has automatic Dominican nationality. If the child holds dual national (nationality of country at birth), upon majority the person must opt for or renounce Dominican nationality.



COUNTRY	AUTOMATIC JUS SOLI	OPTIONAL JUS SANGUINIS	JUS SOLI OR JUS SANGUINIS EXCLUSIVELY	NOTES
Ecuador*~	X + <i>jus sanguinis</i>		No	
El Salvador*~	X + <i>jus sanguinis</i>		No	
Guatemala*~	X + <i>jus sanguinis</i>		No	
Guyana*	X + <i>jus sanguinis</i>		No	
Honduras*~	X + <i>jus sanguinis</i>		No	
Mexico*~	X + <i>jus sanguinis</i>		No	
Nicaragua*~	X + <i>jus sanguinis</i>		No	
Panama*~	X	X	No	
Paraguay*~	X	X	No	
Peru*~	X + <i>jus sanguinis</i>		No	
Surinam*~	X	X	No	
United States*	X	X	No	Nationality by descent is granted to those born to two citizen parents who have resided in the US or its outlying possessions prior to the birth; to a citizen parent who has been physically present in the US or its outlying possessions for a continuous period of 1 year prior the birth, and other parent is a national but not a citizen <sup>360</sup> ; to a foreign parent and a citizen parent who has been physically present in the US or its outlying possessions for a total period of 5 years, at least 2 of which were after attaining the age of 14.
Uruguay*~	X + <i>jus sanguinis</i>		No	
Venezuela*	X + <i>jus sanguinis</i>		No	

\* Member of the Organization of American States

~ Parties to the American Convention on Human Rights



# Endnotes

1. See also, Universidad Diego Portales, Centro de Derechos Humanos, Clínica de Migrantes y Refugiados, available at: <http://www.derechoshumanos.udp.cl/derechoshumanos/index.php/clinicas/clinica-de-migrantes-y-refugiados>.
2. UNHCR, press release: “Gobierno de Brasil anuncia anteproyecto de ley para proteger a personas apátridas” August 20, 2014, available at: <http://www.acnur.org/noticias/noticia/gobierno-de-brasil-anuncia-anteproyecto-de-ley-para-proteger-a-personas-apatridas/>. See also Francisco Quintana and Lilliana Gamboa, “Four Reasons Why the Americas Could Become the First Region to Prevent and Eradicate Statelessness,” March 11, 2015, available at: <http://www.statelessness.eu/blog/four-reasons-why-americas-could-become-first-region-prevent-and-eradicate-statelessness>.
3. Thomas Huddleston, *Explanatory Paper on EUDO Implementation Indicators*, available at: <http://eudo-citizenship.eu/docs/CITIMP%20Explanatory.pdf>.
4. See also, Kristen Jeffers, Iseult Honohan, and Rainier Baubok, “CITLAW Indicators: How to Measure the Purposes of Citizenship Laws,” 2012, available at: [http://eudo-citizenship.eu/docs/CITLAW\\_explanatory%20text.pdf](http://eudo-citizenship.eu/docs/CITLAW_explanatory%20text.pdf); EUDO, Comparative Analysis, List of Publications, available at: <http://eudo-citizenship.eu/publications/comparative-analyses>.
5. E.g., Vonk, op. cit.
6. Marc Morjé Howard, op. cit.
7. *European Network on Statelessness, No Child Should Be Stateless*, September 2015, available at: [http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_NoChildStateless\\_final.pdf](http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_NoChildStateless_final.pdf).
8. *Ibid.*, 43.
9. Bronwen Manby, *Struggles for Citizenship in Africa* (Zed Books, April 2009), available at: <https://www.opensocietyfoundations.org/publications/struggles-citizenship-africa>.
10. Thirty three questionnaires were sent to civil society organizations and reserachers working in the region. Roughly half of them responded through semi-structured interviews and about five responded in writing.

11. CEJIL, press release: “Directora Ejecutiva de CEJIL inaugura red regional luchando en contra de la apatridia durante el evento del ACNUR,” November 18, 2014, available at: <https://cejil.org/es/directora-ejecutiva-cejil-inaugura-red-regional-luchando-contra-apatridia-durante-evento-del-acnur>; UNHCR and ANA Network, “El Plan de Acción de Brasil y el rol de las organizaciones de la sociedad civil (La erradicación de la apatridia en las Américas, y el debido proceso en los procedimientos de asilo),” Reunión de las Organizaciones de la Sociedad Civil de las Américas, June 2015, available at: <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2015/10069.pdf?view=1>; UNHCR, press release: “Organizaciones de la sociedad civil de las Américas unidas para erradicar la apatridia,” June 19, 2015, available at: <http://www.acnur.org/t3/noticias/noticia/organizaciones-de-la-sociedad-civil-de-las-americas-unidas-para-erradicar-la-apatridia/>.

12. Colombia FOI requests: National Registry Office: 5 (Radicado No. 21212938, Radicado No. 21202142, Radicado No. 21191847, Radicado No. 2107919, Radicado No. 21231335); Ministry of Foreign Affairs: 5 (Expediente 2015/1010807, Expediente 2015/1028068, Expediente 2015/1053992, Expediente 2015/1040465, Expediente 2015/1040322); Judicial Branch: 2; Chile Civil Registry: 2 (AK002W0005312, AK002C0006230); Instituto Nacional de Estadística: 1 (AH007T0000301); Department of Migration and Foreign Affairs: 1 (No. AB001C0001716); Brazil, Ministry of Justice: 2 (SIC-09200000233201515, SIC-09200000174201585); Ministry of Interior: 1 (SIC-09200000232201571); FUNAI: 1 (No. 08850.002236/2015-76).

13. <http://eudo-citizenship.eu/databases/citizenship-glossary/glossary#Acqtrh>.

14. 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*, December 16, 2015, A/HRC/31/29, para 18, available at: <http://www.refworld.org/docid/56c42b514.html>. See also Charlene Becker, “Jus Soli: A Miraculous Solution to Prevent Statelessness?,” *European Network on Statelessness*, April 9, 2015, available at: <http://www.statelessness.eu/blog/jus-soli-miraculous-solution-prevent-statelessness>. See also, Francisco Quintana and Lilliana Gamboa, “Four Reasons Why the Americas Could Become the First Region to Prevent and Eradicate Statelessness,” March 11, 2015, available at: <http://www.statelessness.eu/blog/four-reasons-why-america-could-become-first-region-prevent-and-eradicate-statelessness>.

15. Olivier W. Vonk, *Nationality Law in the Western Hemisphere: A Study on Grounds for Acquisition and Loss of Citizenship in the Americas and the Caribbean*, 2014, 9.

16. Shaina Aber and Mary Small, “Citizen or Subordinate: Permutations of Belonging in the United States and the Dominican Republic,” *Journal on Migration and Human Security* 1, no. 13 (2013): 91.

17. Vonk, op. cit., 9.

18. Vonk, op. cit., 9–12.

19. Uruguay, Bolivia, and Chile played a leading role in drafting Article 15 of the Universal Declaration of Human Rights, 7.

20. Guillermina Gutnisky and Charline Becker, “Ámerica frente a la apatridia (posición internacional de los países de la Organización de Estados Americanos frente a la Apatridia y a la Nacionalidad),” *UNHCR* (November 2014): 7.

21. *Ibid.*, 7–9.

22. Sierra Leone, Malawi, Uganda, Swaziland, Ghana, Nigeria, Botswana, Kenya, Zambia, Seychelles, Mauritius, Gambia, Zimbabwe, Tanzania, Lesotho; in Bronwen Manby, *Citizenship and Statelessness in Africa: The Law and Politics of Belonging*, 2015, 94.
23. Côte d'Ivoire, Nigeria, and Algeria; in *Ibid.*, 96–97.
24. *Ibid.*, 91–93.
25. Scholars such as Aleinikoff and Joppke are critical of both framing nationality laws in a strict dichotomy and advocate for complementarity between *jus soli* and *jus sanguinis* provisions. See e.g., Marc Morjé Howard, *The Politics of Citizenship in Europe* (Cambridge: Cambridge University Press, 2009), 20; Thomas Alexander Aleinikoff and Douglas B. Klusmeyer, *Citizenship Policies for an Age of Migration* (Washington, D.C.: Carnegie Endowment for International Peace, 2002); C. Joppke, “Comparative Citizenship: A Restrictive Turn in Europe?,” *Law and Ethics of Human Rights* 2, no. 1 (2008): 1–41.
26. *Preventing Childhood Statelessness in Europe: Issues, Gaps and Good Practices*, 3, available at: <http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Preventing%20childhood%20statelessness%20in%20Europe%20-%20issues%2C%20gaps%20and%20good%20practices.pdf>.
27. Iseult Honohan, “The Theory and Politics of Ius Soli,” Robert Schuman Centre for Advanced Studies, European University Institute (June 2010): 2, available at: <http://eudo-citizenship.eu/docs/IusSoli.pdf>.
28. Honohan, *op. cit.*, 3.
29. Yamilée McKenzie, *The Campaign for Universal Birth Registration in Latin America: Ensuring All Latin American Children's Inherent Right to Life and Survival by First Guaranteeing Their Right to a Legal Identity*, 37 Ga. J. Int'l & Comp. L. 519 (2009), 521–522, available at: <http://digitalcommons.law.uga.edu/gjicl/vol37/iss3/McKenzie>.
30. *Preventing Childhood Statelessness in Europe: Issues, Gaps and Good Practices*, 3, available at: <http://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/Preventing%20childhood%20statelessness%20in%20Europe%20-%20issues%2C%20gaps%20and%20good%20practices.pdf>.
31. See also, Migration Policy Index, “On the Other Side of the Fence: Changing Dynamics of Migration in the Americas,” May 27, 2010, available at: <http://www.migrationpolicy.org/article/other-side-fence-changing-dynamics-migration-americas>.
32. Regarding the response by Latin American countries, see Vonk, *op. cit.*, 9.
33. Gutnisky and Becker, *op. cit.*
34. Chile reports no stateless persons, *UNHCR Statistical Yearbook*, 2015, available at: <http://www.unhcr.org/protection/statelessness/546e01319/statistics-stateless-persons.html>. Under UNHCR's statistical compilation on statelessness, several categories of stateless persons are not counted as stateless. This includes those who also fall within the protection mandates of other agencies of the United Nations (at present, only U.N. Relief and Works Agency) and those who also come under UNHCR's other protection mandates (such as refugees, asylum-seekers, and to some extent, IDPs).

35. Vonk, op. cit., 8; Laura Van Wass, *Nationality Matters: Statelessness under International Law*, 61, available at: <http://stichtingros.nl/site/kennis/files/Onderzoek%20statenloosheid%20Laura%20van%20Waas.pdf>.
36. Becker, op. cit.
37. Jo Shaw and Igrig Sticks (eds.), *Citizenship Rights* (Ashgate, 2013), xiii.
38. Iseult Honohan, "The Theory and Politics of *Ius Soli*," Robert Schuman Centre for Advanced Studies, European University Institute (June 2010): 3. See also, C. Joppke, "Comparative Citizenship: A Restrictive Turn in Europe?," *Law and Ethics of Human Rights* 2, no. 1 (2008): 1–41.
39. *Ibid.*, 521–23.
40. Becker, op. cit.
41. Institute on Statelessness and Inclusion, op. cit., 46; see also Robert Brill and Wendy Hunter, "Documents, Please": *Welfare State Extensions and Advances in Birth Certification in the Developing World*, July 18, 2014, available at SSRN: <http://ssrn.com/abstract=2468204> or <http://dx.doi.org/10.2139/ssrn.2468204>.
42. Becker, op. cit.
43. Marc Morjé Howard, op. cit., 50.
44. José Del Pozo, *Historia de América Latina y del Caribe 1825–2001* (LOM Ediciones, 2002), 11–12, 42.
45. *Ibid.*, 11–12, 9–12. Gabriel Echeverría, "Report on Citizenship Law: Chile," Series/Report no.: EUDO Citizenship Observatory; 2016/02, 2, available at: [http://cadmus.eui.eu/bitstream/handle/1814/40849/EUDO\\_CIT\\_CR\\_2016\\_07.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/40849/EUDO_CIT_CR_2016_07.pdf?sequence=1&isAllowed=y).
46. Del Pozo, op. cit., 42.
47. *Ibid.*, 4. See also, Rafael Gaune, *Historia del Racismo y Discriminación en Chile*, UQBAR editores, Santiago, Chile, 2009.
48. See also, Inter-American Commission of Human Rights website, available at: <http://www.oas.org/en/iachr/mandate/what.asp>.
49. See also, Inter-American Court of Human Rights website, available at: <http://www.corteidh.or.cr/index.php/en/about-us/historia-de-la-corteidh>.
50. Organization of American States, "American Declaration of the Rights and Duties of Man," Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948, available at: [www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm](http://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm).
51. Article 15.2, "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." United Nations General Assembly, Resolution 217 A, Universal Declaration of Human Rights, December 10, 1948, available at: <http://www.un.org/en/universal-declaration-human-rights/>.
52. Fabián Salvioli, "El aporte de la Declaración Americana de 1948 para la protección internacional de los derechos humanos." Memoria del seminario sobre El Sistema Interamericano de Protección de los Derechos Humanos en el Umbral del Siglo XXI, Corte Interamericana de Derechos Humanos, San José de Costa Rica (2003).

53. María Jose Recalde, *How Far Has the Protection of the Right to Nationality under International Human Rights Law Progressed from 1923 until the Present Say? An Analysis of This Progress against the Backdrop of the 5 Elements of Article 20 of the American Convention on Human Rights*, LLM thesis, Tilburg University, December 2014, available at: <http://arno.uvt.nl/show.cgi?fid=136225>.
54. Argentina, Barbados, Brazil, Bolivia, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.
55. See also, Federico Lapova, “Comentario al Artículo 20 de la Convención Americana,” in Enrique Alonso Regueira, (Coord), *La Convención Americana de Derechos Humanos y su proyección en el Derecho Argentino*, 333–53, available at: <http://www.derecho.uba.ar/publicaciones/libros/pdf/la-cadh-y-su-proyeccion-en-el-derecho-argentino/020-lavopa-nacionalidad-la-cadh-y-su-proyeccion-en-el-da.pdf>; and Recalde, op. cit.
56. Third Report on the Situation of Human Rights in Chile, IACHR OEA/Ser/L/V/II.40 Doc 10, February 11, 1977, 80–81.
57. Ibid.
58. IACtHR, Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84, January 19, 1984, Inter-Am. Ct. H.R. (Ser. A) No. 4 (1984) para. 35.
59. U.N. Human Rights Council, op. cit., para. 18.
60. IACtHR, Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84, January 19, 1984, Inter-Am. Ct. H.R. (Ser. A) No. 4 (1984) para 35.
61. IACtHR, Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, op. cit., para. 35.
62. IACtHR in *Castillo Petruzzi et al.*, Judgment, May 30, 1999, para. 101.
63. Ibid., paras. 97 and 103.
64. Ibid., para. 102.
65. See also, IACtHR, *Baruch Ivcher Bronstein vs. Peru*, February 6, 2001, para. 88–97, available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_74\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_74_ing.pdf).
66. Ibid.
67. Inter-American Court of Human Rights, *Case of the Yean and Bosico Girls v. Dominican Republic*, Judgment, September 8, 2005, para. 155., available at: <http://www.refworld.org/docid/44e497d94.html>.
68. Ibid., para. 156.
69. Ibid., paras. 171–73.
70. Inter-American Court of Human Rights, *Case of Expelled Dominicans and Haitians v. Dominican Republic*, Judgment, August 28, 2014, available at: <http://www.refworld.org/docid/546db31f4.html>.
71. Constitutional Tribunal of the Dominican Republic, TC-168-13, September 23, 2013, available at: <http://www.refworld.org/pdfid/52fc82f94.pdf>.

72. Inter-American Court of Human Rights, *Case of Expelled Dominicans and Haitians v. Dominican Republic*, Judgment, August 28, 2014, available at: <http://www.refworld.org/docid/546db31f4.html>.

73. Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Cayman Islands, Chile, Colombia, Costa Rica, Cuba, Curaçao, El Salvador, Ecuador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Suriname, Trinidad and Tobago, Turks and Caicos Islands, Uruguay, and Venezuela.

74. Brazil Declaration, “A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean,” December 4, 2014, available at: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2014/9865>.

75. Other countries with automatic unrestricted *jus soli* provisions in the region are: Argentina, Bolivia, Canada, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Guyana, México, Panamá, Paraguay, Perú, Surinam, United States of America, Uruguay, and Venezuela. See Appendix of this report.

76. A civil society led campaign, with the support of the media and politicians, resulted in a successful constitutional reform (Amendment No. 54, September 20, 2007), granting the right to Brazilian nationality to stateless children (*brasileirinhos apátridas*) born abroad to Brazilian parents, through registration at a Brazilian consulate. See <http://brasileirinhosapatridas.org/>.

77. UNHCR, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report—Universal Periodic Review: Brazil, November 2011, 2, available at: <http://www.refworld.org/docid/4ed361722.html>.

78. Institute on Statelessness and Inclusion, *op. cit.*, 21–22.

79. See also, Rosana Baeninger, “O Brasil no Contexto das Migrações Internacionais da América Latina,” *Com Ciência*, no. 16 (2001); *idem*, “O Brasil na Rota das Migrações Internacionais Recentes,” *Jornal da Unicamp*, 2003, available at: [http://www.unicamp.br/unicamp/unicamp\\_hoje/ju/agosto2003/ju226pg2b.html](http://www.unicamp.br/unicamp/unicamp_hoje/ju/agosto2003/ju226pg2b.html).

80. Ernesto Friedrich Amaral and Wilson Fusco “Shaping Brazil: The Role of International Migration,” Migration Policy Institute, June 2005, available at: <http://www.migrationpolicy.org/article/shaping-brazil-role-international-migration>.

81. Franklin Serrano and Ricardo Summa, “Measuring Recovery: Aggregate Demand and the Slowdown of Brazilian Economic Growth from 2011–2014,” CEPR Reports and Issue Briefs, Center for Economic and Policy Research, 3, available at: <http://cepr.net/documents/publications/Brazil-2015-08.pdf>. See also, <http://www.economist.com/blogs/graphicdetail/2016/04/economic-backgrounder>; <http://www.bloomberg.com/quicktake/brazils-highs-lows>; and [http://www.nytimes.com/2015/09/11/world/americas/brazils-economic-crisis-intensifies-raising-pressure-on-president.html?\\_r=0](http://www.nytimes.com/2015/09/11/world/americas/brazils-economic-crisis-intensifies-raising-pressure-on-president.html?_r=0).

82. See also, Rex A. Hudson, ed., *Brazil: A Country Study* (Washington, D.C.: GPO for the Library of Congress, 1997).

83. Roderick J. Barman, *Citizen Emperor: Pedro II and the Making of Brazil, 1825–1891* (Stanford, CA: Stanford University Press, 1999).



84. Vonk, *op. cit.*, 214–15.

85. See also, Luma Goularte Sant’anna and Maria Fernanda Pereira Rosso, “Brasileirinhos Apátridas: O Caso dos Filhos de Brasileiros Nascidos no Exterior,” *Revista de Direito Brasileira* 1, no. 1 (2011), available at: <http://www.rdb.org.br/ojs/index.php/revistadireitobrasileira/article/view/68>; UNCHR website: <http://www.acnur.org/t3/portugues/quem-ajudamos/apatridas/campanha-das-convencoes-sobre-apatridia/apatridia-entre-expatriados-brasileiros/>.

86. Signed on July 7, 1992, and ratified on September 25, 1995, available at: [http://www.oas.org/dil/esp/tratados\\_B-32\\_Convencion\\_Americana\\_sobre\\_Derechos\\_Humanos\\_firmas.htm](http://www.oas.org/dil/esp/tratados_B-32_Convencion_Americana_sobre_Derechos_Humanos_firmas.htm).

87. Signed January 26, 1990 and ratified on September 24, 1990.

88. Signed March 31, 1981 and ratified February 1, 1984.

89. With regards to the 1961 Convention, the Government of Brazil made the following declaration: “The National Congress of Brazil approved the text of the Convention on the Reduction of Statelessness by means of Legislative Decree n. 274, of October 4, 2007. In accordance with Legislative Decree n. 274/2007, the text of the Convention is approved expressly with the restriction allowed for in Article 8 (3) (a) (ii) of the Convention, so that the Federative Republic of Brazil retains the right to deprive a person of his nationality when he conducts himself in a manner seriously prejudicial to the vital interests of the Brazilian State.” In this regard, it is noted that the instrument of accession to the Convention deposited by Brazil with the Secretary-General on October 25, 2007 did not specify the above restriction, in accordance with Article 8 (3) of the Convention, thus leaving the *jus soli* safeguard provision unaltered, and hence being bound by it. Available at: <https://treaties.un.org/doc/Publication/CN/2009/CN.916.2009-Eng.pdf>.

90. Constitution of the Republic of Brazil, Article 5 LXXVIII §3°, available at: [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf).

91. *Ibid.*, Article 60, available at: [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf).

92. Constitution of the Republic of Brazil, Chapter 3, available at: [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf).

93. [http://www.planalto.gov.br/ccivil\\_03/leis/l6815.htm](http://www.planalto.gov.br/ccivil_03/leis/l6815.htm).

94. RCA No. 3, 1994; CA No. 23, 1999; CA No. 54, 2007.

95. Article 12 II section 3 of the Brazilian Constitution enlists the following public offices as exclusive to Colombian nationals by birth: president and vice president of the republic, president of the Chamber of Deputies, leader of the first chamber, president of the Federal Senate, leader of the second chamber, minister of the Supreme Federal Tribunal, any diplomatic career, officers of the armed forces, and minister of defense. Other constitutions in the region similarly only distinguish between naturalized citizens and citizens born in the territory for the purpose of restricting certain public offices. However, an explicit recognition of the principle of equality in relation to nationality, as framed in the Brazilian Constitution, is not found in other constitutions in the region. Nonetheless, the barring of naturalized citizens from holding certain public offices was litigated in Mexico, where the Supreme Court ruled that such a distinction was constitutional. See also, <http://www2.scjn.gob.mx/AsuntosRelevantes/pagina/SeguimientoAsuntosRelevantesPub.aspx?ID=130605&SeguimientoID=370>.

96. *Jus sanguinis* provisions in Brazil have been altered through a series of constitutional amendments. The current framework is a result of political pressure by the Brazilian diaspora. A 1994 amendment eliminated the attribution of Brazilian citizenship by the mere effect of registration at a Brazilian consulate; a 2007 constitutional amendment subjected the process to a judicial request. In 2008 the Brazilian Ministry of Justice interpreted the 2007 amendment with retroactive effects, meaning that any children born abroad between June 7, 1994 and September 19, 2007 would have Brazilian nationality if one of the parents was a Brazilian; there is no longer a need to “opt” for Brazilian nationality through judicial request, resulting in a decrease in the number of petitions before federal courts. See also, A.T. Saliba, “Nacionalidade brasileira e Direito Internacional: Um breve comentário sobre a Emenda Constitucional n° 54/2007,” *Revista de informação legislativa* 45, no. 180 (2008); Patricia Jerónimo, “Report on Citizenship Law: Brazil,” EUDO Citizenship Observatory; 2016/01; Country Reports, 2, 18–32, available at: [http://cadmus.eui.eu/bitstream/handle/1814/38885/EUDO\\_Cit\\_CR\\_2016\\_01.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/38885/EUDO_Cit_CR_2016_01.pdf?sequence=1&isAllowed=y).

97. Article 22, paragraph 13, of the 1988 Brazilian Constitution.

98. *Ibid.*, Article 22, paragraph 25.

99. Article 236, “Notarial and registry services shall be exercised privately upon delegation from the Government. §1°. The law shall regulate the activities, discipline the civil and criminal liability of notaries, registrars and their agents and define supervision of their acts by the Judiciary. §2°. Federal law shall establish general rules for fixing fees for notarial and registration services. §3°. Becoming a notary public or registrar depends on public competitive examinations and comparison of professional credentials. No office may remain vacant for more than six months without opening a public competition to fill it, either by approval of a new entrant or a transferee.”

100. Since the 1988 Federal Constitution, the public authorities have empowered notaries to practice on a private basis, giving them previously unheard of functional independence. In some states, however, notaries are still generally considered to be subordinate to the local judiciary, as reflected in judicial interference in notarial activity through the imposition of administrative rules that notaries are obliged to respect. On the other hand, in two states (Bahia and Acre), local judicial legislation continues to consider notaries to be civil servants. In the state of Acre, notarial work is currently being privatized.

101. Article 22 of the 1988 Brazilian Constitution reads: “The Federal Union has the exclusive power to legislate on: XIII—nationality, citizenship and naturalization; XXV—public registry.” Likewise, Article 236 of the 1988 Brazilian Constitution provides: “Notary and registration services shall be exercised by private entities by Government delegation.”

102. Article 32, Law No. 6.015, December 13, 1973.

103. Article 5, LXXVI reads: “Everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the Country the inviolability of the rights to life, liberty, equality, security and property, on the following terms: (...) LXXVI. The following shall be free of charge for persons recognized as poor, as provided by law: a). civil birth certificate,” available at: [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf).

104. An analysis of birth registration statistics for Brazil between 1998 and 2008 is available at: <http://www.ibge.gov.br/home/estatistica/populacao/registrocivil/2008/comentarios.pdf>.

105. See also, <http://www.brasil.gov.br/cidadania-e-justica/2009/10/emissao-da-carteira-de-identidade-RG-e-gratuita-em-todo-pais>.

106. See also, <http://www.receita.fazenda.gov.br/Aplicacoes/ATCTA/CPF/>.

107. See also, [http://www.tre-rj.jus.br/site/servicos\\_eleitor/titulo/titulo\\_eleitor.jsp](http://www.tre-rj.jus.br/site/servicos_eleitor/titulo/titulo_eleitor.jsp).

108. Information obtained through several interviews in October and December 2015 with Leilá Leonardos, General Coordinator for the Advancement of Civil Registry at Birth, Human Rights Office of the Presidency (formerly the “*Secretaria de Direitos Humanos da Presidência da República*” now the “*Ministério das Mulheres, Igualdade Racial e Direitos Humanos*”). See also, Wendy Hunter and Natasha Borges Sugiyama, “Documenting Citizenship: Contemporary Efforts Toward Social Inclusion in Brazil,” 2011, APSA 2011 Annual Meeting Paper, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1899755](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1899755).

109. Programs such as: *Bolsa Família*, *BOLSA Escola*, and *Benefício de Prestação Continuada*.

110. See also, Wendy Hunter, “Making Citizens: Brazilian Social Policy from Getúlio to Lula,” *Journal of Politics in Latin America* 6, no. 3 (2014): 15–37, available at: <https://journals.sub.uni-hamburg.de/giga/jpla/article/view/792>, 23–25. See also, Kathy Lindert, Anja Linder, Jason Hobbs, and Bénédicte de la Brière, “The Nuts and Bolts of Brazil’s Bolsa Familia Program: Implementing Conditional Cash Transfers in a Decentralized Context,” Social Protection Discussion Paper No. 0709, World Bank (Washington, DC: Rawlings, 2007, available at : <http://siteresources.worldbank.org/INTLACREGTOPLABSOCPRO/Resources/BRBolsaFamiliaDiscussionPaper.pdf>.

111. See also, Hunter and Sugiyama, op. cit.; Brill and Hunter, op. cit.

112. See more on the role of midwives in traditional births in Brazil: <http://memoria.ebc.com.br/agenciabrasil/noticia/2012-06-17/mulheres-que-fizerem-parto-em-casa-devem-procurar-cartorio-para-emitir-declaracao>; <http://www.brasil.gov.br/governo/2010/06/governo-torna-obrigatoria-a-declaracao-de-nascido-vivo-para-todos-os-recem-nascidos>; <http://www.douradosagora.com.br/noticias/politica/declaracao-de-nascido-vivo-podera-ser-obrigatoria-para-todos-os-recem-nascidos>.

113. See also, Conselho Nacional de Justiça, Provimento No. 13, September 3, 2010, available at: [http://www.cnj.jus.br/images/stories/docs\\_corregedoria/provimentos/provimento\\_13.pdf](http://www.cnj.jus.br/images/stories/docs_corregedoria/provimentos/provimento_13.pdf).

114. The law provides the possibility of only one parent being present, but if the father does the registration, he must present the child’s mother’s express consent for the registration or present a paternity recognition before the public notary.

115. Art. 50 of Law 6.015/1973. See also, <http://www.tjdft.jus.br/aceso-rapido/informacoes/perguntas-mais-frequentes/extrajudicial/nascimento>.

116. Pereira Hill, “A desjudicialização do procedimento de registro tardio de nascimento. Inovações trazidas pela lei federal no 11.790/08,” *Revista Eletrônica de Direito Processual* 2 (2008), 123–25, available at: <http://www.arcs.org.br/periodicos/revista-eletronica-de-direito-processual/volume-ii/a-desjudicializacao-do-procedimento-de-registro-tardio-de-nascimento-inovacoes-trazidas-pela-lei-federal-no-11790-08>.

117. Article 7 of Decree 6289 states that the Special Secretariat for Human Rights determines national mobilization week annually as a period in which to develop joint and coordinated actions between the federal, state, and municipal authorities to guide universal access to basic civil documentation.

118. Secretaria de Direitos Humanos and United Nations Development Fund Brazil, Cartilha, “Como organizar mutiroes,” *Brasília* (2010): 1–14; Secretaria Especial dos Direitos Humanos-Ministério do Desenvolvimento Social e Combate a Fome, “Registro Civil de Nascimento, orientacoes para getssores do Bolsa Familia,” 2007.

119. *Quilombolos* is the term used to refer to the descendants of fugitive African slaves who had established settlements named “*quilombolos*.” See also, <http://minorityrights.org/minorities/afro-brazilians/>.

120. See also, Brasil. Secretaria de Direitos Humanos da Presidência da República. Programa Nacional de Direitos Humanos/Secretaria Especial dos Direitos Humanos da Presidência da República, Brasília, 2010, 65–68, available at: <http://www.sdh.gov.br/assuntos/direito-para-todos/programas/pdfs/programa-nacional-de-direitos-humanos-pndh-3>.

121. See also, [http://www.unicef.org/brazil/pt/media\\_15706.htm](http://www.unicef.org/brazil/pt/media_15706.htm); [http://www.crianca.mppr.mp.br/arquivos/File/publi/sedh/sdh\\_cartilha\\_certidao\\_2008.pdf](http://www.crianca.mppr.mp.br/arquivos/File/publi/sedh/sdh_cartilha_certidao_2008.pdf).

122. See also, [http://www.crianca.mppr.mp.br/arquivos/File/publi/sedh/sdh\\_cartilha\\_certidao\\_2009.pdf](http://www.crianca.mppr.mp.br/arquivos/File/publi/sedh/sdh_cartilha_certidao_2009.pdf).

123. See also, [http://www.crianca.mppr.mp.br/arquivos/File/publi/sedh/sdh\\_cartilha\\_certidao\\_2011.pdf](http://www.crianca.mppr.mp.br/arquivos/File/publi/sedh/sdh_cartilha_certidao_2011.pdf).

124. See more, <http://www.ebc.com.br/2012/11/campanha-nacional-pela-certidao-de-nascimento-e-lancada-em-comunidade-indigena-o>.

125. Under registration of birth is defined as the total number of births during the reference year that were not registered within the same year.

126. Data of the 2010 Census Brazilian National Department of Geography and Statistics, available at: <http://www.ibge.gov.br/english/estatistica/populacao/censo2010/>.

127. U.N. Human Rights Council, *op. cit.*, para 15.

128. Agravo Regimental Recurso Especial No. 1417918 RN 2013/0377298-7, August 15, 2014, available at: <http://stj.jusbrasil.com.br/jurisprudencia/25232718/agravo-regimental-no-recurso-especial-agrg-no-resp-1417918-rn-2013-0377298-7-stj>.

129. See also, <http://www.jusbrasil.com.br/jurisprudencia/busca?q=op%C3%A7%C3%A3o+de+nacionalidade>.

130. A 2010 census puts the population of Brazil at 190,732,694. See also, <http://www.ibge.gov.br/english/estatistica/populacao/censo2010/default.shtm>. The same census determined the number of indigenous groups as 817,963. See also, <http://www.funai.gov.br/index.php/indios-no-brasil/quem-sao>.

131. Data of the 2010 Census Brazilian National Department of Geography and Statistics, available at: <http://www.ibge.gov.br/english/estatistica/populacao/censo2010/>.

132. <http://www.brasil.gov.br/cidadania-e-justica/2014/04/governo-federal-lanca-registro-civil-de-nascimento-de-povos-indigenas>.

133. Ministério da Justiça FUNAI, FOI request reply No. 8/2015/CGPDS/DPDS/FUNAI-MJ, dated July 24, 2015.

134. Ministério da Justiça, FUNAI, Secretaria de Direitos Humanos, Cartilha, “Registro Civil de Nascimento para os Povos Indígenas do Brasil,” 2014, available at: [http://pib.socioambiental.org/anexos/28172\\_20140808\\_123412.pdf](http://pib.socioambiental.org/anexos/28172_20140808_123412.pdf).
135. Ibid.
136. Ibid.
137. Patrícia Oliveira da Silca, “Aspectos gerais da migração fronteiriça entre Brasil e Bolívia,” available at: [http://www.abep.nepo.unicamp.br/encontro2008/docspdf/ABEP2008\\_1491.pdf](http://www.abep.nepo.unicamp.br/encontro2008/docspdf/ABEP2008_1491.pdf); see also, Olga Becker, “Mobilidade Espacial da População: Conceitos, Tipologia, Contextos,” in Roberto Lobato Correa, et al. *Explorações Geográficas* (Rio de Janeiro, 1997), 319–67.
138. “*a presença do Estado brasileiro na região é, pode-se dizer, ostensiva, embora aparentemente silenciosa*” as cited in Filizola and Furlanetto, op. cit., 1120.
139. Ibid., no. 2.
140. A *comarca* is a local administrative division. For judicial matters, it indicates the territorial limits of the jurisdiction of a particular court or first instance judge. See also, <http://www.tjmg.jus.br/portal/conheca-o-tjmg/estrutura-organizacional/comarcas/>.
141. Poder Judiciário, Comarca de Guajará-Mirim, Portaria No. 001/07-VRP, Juíza Silvana Maria de Freitas, July 5, 2007.
142. Information provided by Carolina Claro de Abreu, December 2015.
143. “The Nuts and Bolts of Brazil’s Bolsa Familia Program: Implementing Conditional Cash Transfers in a Decentralized Context”, Social Protection Discussion Paper No. 0709, World Bank. (Washington, D.C.: Rawlings, 2007) <http://siteresources.worldbank.org/INTLACREGTOPLAB-SOCPRO/Resources/BRBolsaFamiliaDiscussionPaper.pdf>.
144. Constitution of the Republic of Chile, chapter 2, “Nationality and Citizenship,” Article 10-18 (1980).
145. Fernández González and Miguel Ángel. “*La Nacionalidad en la Constitución* Rev. derecho (Valdivia), dic. 12, no. 2 (2001): 175–90.
146. Vonk, op. cit, 194.
147. Macarena Rodríguez and Delia Valdés Riesco, Nacionalidad en la Jurisprudencia de la Corte Suprema, Dirección Estudios, Corte Suprema de Chile, 1–20, available at: [http://decs.pjud.cl/Documentos/Academicos/Nacionalidad\\_en\\_la\\_Jurisprudencia\\_de\\_la\\_Corte\\_Suprema.pdf](http://decs.pjud.cl/Documentos/Academicos/Nacionalidad_en_la_Jurisprudencia_de_la_Corte_Suprema.pdf).
148. Ministerio del Interior y Seguridad Pública, Departamento de Extranjería y Migración, Oficio Ordinario No. 27601 14 de agosto de 2014 and Ministerio de Justicia, Registro Civil e Identificación, Resolución Exenta No. 3207 de 8 de agosto de 2014.
149. As reported on the website of the Department of Foreign Affairs of Chile: “Congress has approved amendments to the Charter of Nationalization standard, so that as of 8/1/2016 nationalization may be granted to those who have completed 18 years of age; having 5 or more years of residence in Chile (as of the first visa stamped) and who hold Permanent Residency. They may also request Charter Nationalization children of foreigners who have reached 14 years of age, with 5 or more years of residence in Chile (as of the first visa stamped), hold permanent residency and have

to do with a notarized authorization his father, mother or whoever is in charge of your personal care (must present legal document granting such care)” available at: <http://www.extranjeria.gob.cl/solicitud-de-carta-de-nacionalizacion/>.

150. Article 10 Decree No. 5142. Detailed information and form to petition for naturalization, available at: <http://www.extranjeria.gob.cl/media/2016/02/REQUISITOS-PARA-LA-NACIONALIDAD-NCH-1-3.pdf>.

151. The Economist Intelligence Unit ranked Chile as the top ranked democracy in Latin America in 2015 Index Of Democracy Index. See: The Economist, “Democracy Index 2015: Democracy in an age of anxiety”, 32, available at: <http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=EIU-Democracy-Index-2015.pdf&mode=wp&campaignid=DemocracyIndex2015> Remarks by President Obama on Latin America in Santiago, Chile, March 21, 2011, available at: <http://www.whitehouse.gov/the-press-office/2011/03/21/remarks-president-obama-latin-america-santiago-chile>.

152. See also, Sentencia Corte Suprema, Recurso de Reclamación de Nacionalidad Cristopher Fabián Cantero Bernia con Servicio de Registro Civil e Identificación, Rol 300-2013, considerando sexto. Razonamientos en el mismo sentido se encuentran en el resto de las sentencias analizadas, Sentencias Corte Suprema Recuso de Reclamación de Nacionalidad: Mery Gamarra Palma con Servicio de Registro Civil e Identificación, Rol 8.808-2010; Ernesto Almarales Rivero con Servicio de Registro Civil e Identificación Rol 7.580-2012; Pascuala Retuerto Goñi con Servicio de Registro Civil e Identificación Rol 9.168-2012; Farah El Husein El Husein con Servicio de Registro Civil e Identificación, Rol 3.255-2012; Margarita Quenta Ticona con Servicio de Registro Civil e Identificación, Rol 8.008-2012; Melissa Angélica Rupay Chávez con Servicio de Registro Civil e Identificación, Rol 5.482-2013; Noemí Marianela Meza Goñi con Servicio de Registro Civil e Identificación, Rol 9.422-2013; René Choque Acho con Servicio de Registro Civil e Identificación, Rol 10.897; Jorge Luis Mendives Pastor con Servicio de Registro Civil e Identificación, Rol 12.551.

153. Cristán Dona-Reveco and Amanda Levinston, “Chile: A Growing Destination Country in Search of a Coherent Approach to Migration,” June 6, 2012, available at: <http://www.migrationpolicy.org/article/chile-growing-destination-country-search-coherent-approach-migration>.

154. “Over the past six years the migrant population in Chile grew from 184,500 in 2002 to 317,000 in 2008: a 71.9 per cent increase. The main reasons are linked to political and economic stability,” International Organization for Migration, Chile country profile, available at: <http://www.iom.int/cms/en/sites/iom/home/where-we-work/americas/south-america/chile.default.html?displayTab=contact-us>.

155. Universidad Diego Portales, Centro de Derechos Humanos, Informe Anual 2014, 335.

156. IOM has highlighted that “explosive increase in the migrant population demanding new integration spaces and rights protection is affecting the juridical, economic and political structure of Chilean society which is not sufficiently prepared to receive this massive flow. Chile is still in need of a legislative reform to protect migrants in line with international standards, especially victims of trafficking in persons.” Chile country profile, available at: <http://www.iom.int/cms/en/sites/iom/home/where-we-work/americas/south-america/chile.default.html?displayTab=contact-us>.

157. See also, “El Nuevo éxodo latino,” <http://www.elespectador.com/noticias/el-mundo/el-nuevo-exodo-latino-articulo-529025>; “Polémica por marcha anti colombianos en Chile” [http://www.bbc.co.uk/mundo/noticias/2013/10/131018\\_chile\\_colombianos\\_antofagasta\\_jgc](http://www.bbc.co.uk/mundo/noticias/2013/10/131018_chile_colombianos_antofagasta_jgc).

158. As reported by the Mercurio de Antofagasta, “Los niños antofagatsinos a los que s eles niega la naiconaldiad,” August 3, 2014, available at: <http://www.mercurioantofagasta.cl/impres/2014/08/03/full/46/>.

159. Verónica Cano and Magdalena Soffia, *Normativa y política migratoria en Chile, a la luz de los derechos humanos* in Entre Tierras Boletín sobre Políticas Migratorias y Derechos Humanos Edición Especial—Septiembre/2009, Grupo de Trabajo de Migraciones de la Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo, 6. See also, Inmigrantes en Chile: Jensen Solivella, María Florencia *La exclusión vista desde la política migratoria chilena*, , available at: [http://www.alapop.org/alap/SerieInvestigaciones/InvestigacionesSIraSi9/Migraciones\\_ParteII-1.pdf](http://www.alapop.org/alap/SerieInvestigaciones/InvestigacionesSIraSi9/Migraciones_ParteII-1.pdf) See also, Gabriel Echeverría, “Report on Citizenship Law: Chile,” Series/Report no.: EUDO Citizenship Observatory; 2016/02, 2, available at: [http://cadmus.eui.eu/bitstream/handle/1814/40849/EUDO\\_CIT\\_CR\\_2016\\_07.pdf](http://cadmus.eui.eu/bitstream/handle/1814/40849/EUDO_CIT_CR_2016_07.pdf); D. Fitzgerald and D. Cook-Martin, *Culling the Masses: The Democratic Origins of Racist Immigration Policy in the Americas* (Cambridge, MA: Harvard University Press, 2014); R. Gaune, *Historia de Racismo y Discriminación en Chile [History of racism and discrimination in Chile]* (Santiago de Chile: Uqba, 2009).

160. Dona-Reveco and Levinston, op. cit.

161. Cano and Soffia, op. cit., 6–7.

162. Teodoro Ribera Neumann, *La Nacionalidad Chilena luego de la reforma constitucional de 2005-La jurisprudencia y la práctica administrativa*, available at: [http://bibliotecadigital.indh.cl/bitstream/handle/123456789/511/La\\_nacionalidad\\_chilena\\_luego\\_de\\_la\\_reforma\\_de\\_2005\\_-\\_05\\_abril\\_2010\\_Libro\\_soc.\\_de\\_Derecho\\_Constitucional\\_Francisco\\_Cumplido.pdf?sequence=1](http://bibliotecadigital.indh.cl/bitstream/handle/123456789/511/La_nacionalidad_chilena_luego_de_la_reforma_de_2005_-_05_abril_2010_Libro_soc._de_Derecho_Constitucional_Francisco_Cumplido.pdf?sequence=1), 9–13; Echeverría, op. cit., 2.

163. Echeverría, op. cit., 2; and Vonk, op. cit., 155.

164. Echeverría, op. cit., 6.

165. Universidad Diego Portales, Centro de Derechos Humanos, Informe Anual 2014, op. cit., 344; see also, Delfina Lawson, *Crisis en Siria: la urgente necesidad de una ley migratoria en Chile* in El Dínamo, September 11, 2015, available at: <http://www.eldinamo.cl/blog/crisis-en-siria-la-urgente-necesidad-de-una-ley-migratoria-en-chile/>.

166. Cano and Soffia, op. cit., 6–7.

167. Universidad Diego Portales, Centro de Derechos Humanos, Informe Anual 2014, op. cit., 345.

168. Ibid.

169. Cano and Soffia, op. cit., 6–7.

170. Universidad Diego Portales, Centro de Derechos Humanos, Informe Anual 2014, op. cit., 345.

171. Ibid., 346. See also, Ministerio del Interior y Seguridad Pública, Departamento de Extranjería y Migración, <http://www.extranjeria.gob.cl/noticias/2014/05/20/jefe-de-extranjeria-y-migracion-nuestro-compromiso-es-tener-una-nueva-ley-de-migracion-y-extranjeria-para-chile/>.

172. Tania González, Nueva Ley de Migración se presentaría en el segundo semestre de 2015, June 6 of 12105, available at: <http://radio.uchile.cl/2015/06/06/nueva-ley-de-de-migracion-se-presentaria-en-el-segundo-semestre-de-2015>.

173. Universidad Diego Portales, Centro de Derechos Humanos, Informe Anual 2015, 302; and Universidad Diego Portales, Centro de Derechos Humanos, Informe Anual 2014, op. cit., 345.

174. The UPR is a review process of the human rights records of all U.N. Member States. Resolution 60/251, which the U.N. General Assembly adopted on March 15, 2006, which also established the Human Rights Council, created the process. It is a state-driven process under the auspices of the Human Rights Council, which provides the opportunity for each state to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. See also, Juliana Vengoechea, “The Universal Periodic Review: A New Hope for International Human Rights Law or a Reformulation of Errors of the Past?” in *International Law- Edición Especial*, “60 años de la Declaración Universal de los Derecho Humanos y 30 años de entrada en vigencia de la Convención Americana sobre derechos humanos,” no. 12 (2008), available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

175. Universidad Diego Portales, Centro de Derechos Humanos, Informe Anual 2014, op. cit., 347; UPR Report 2014, para. 121.

176. Ministerio de Vivienda y Urbanismo, Inmigrantes podrán postular a subsidios habitacionales al momento de obtener su visa permanente, October 25, 2014, available at: [http://www.minvu.cl/opensite\\_det\\_20141025131333.aspx](http://www.minvu.cl/opensite_det_20141025131333.aspx). More information on the campaign available at: <https://twitter.com/Chilequeviene>.

177. Rodrigo Sandoval Ducoing, Director of the Department of Foreign and Migration Affairs explaining the need for a new migration law and supporting the campaign “El Chile que viene,” available at: <http://impresa.lasegunda.com/2015/07/21/A/33202G6Q/L82O2I90>.

178. Boletín No. 9831-07 of December 18, 2014, “Establece ley interpretativa del artículo 10 de la Constitución Política de la República, en materia de nacionalidad de los hijos de extranjeros nacidos en Chile,” available at: [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=10254](https://www.camara.cl/pley/pley_detalle.aspx?prmID=10254).

179. Claudio Nash, *Centro de Derechos Humanos Facultad de Derecho de la Universidad de Chile: Derecho Internacional de los Derechos Humanos en Chile*, September 2012, 19–25, available at: <http://www.cdh.uchile.cl/media/publicaciones/pdf/91.pdf>.

180. Constitución Política de la República de Chile, August 16, 1980, available at: <http://www.leychile.cl/Navegar?idNorma=242302>. Translated by Anna I. Vellvé Torras, Adela Staines, and Jefri J. Ruchti for Constitution Project, available at: [https://www.constituteproject.org/constitution/Chile\\_2012.pdf](https://www.constituteproject.org/constitution/Chile_2012.pdf).

181. Echeverría, op. cit., 6.

182. For more on the Chilean nationality legal framework, Oliver W. Vonk, op. cit; European Union Democracy Observatory on Citizenship Country profile for Chile, available at: <http://eudo-citizenship.eu/country-profiles/?country=Chile>.

183. Law No. 19477 of October 15, 1996, available at: <http://www.leychile.cl/Navegar?idNorma=30844>.

184. Reply by the Legal Division of the Civil Registry and Identification Service to freedom of information request. No. 1727. June 17, 2015.

185. Ibid.



186. Rodríguez Atero and Valdés Riesco, op. cit.; Universidad Diego Portales, Centro de Derechos Humanos, Informe Anual 2014, op. cit., 358–60.
187. Rodríguez Atero and Valdés Riesco, op. cit., 3.
188. Cristóbal Bley and Daniela Pérez, in “Niños sin bandera,” *Revista La Segunda* no. 77 (November 27, 2015), 13, available at: <http://impresa.lasegunda.com/2015/11/27/V/fullpage#slider-13>.
189. See also, Eduardo Cordero Quinzacara, Las normas administrativas y el sistema de fuentes. *Revista de Derecho Universidad Católica del Norte*, Año 17 -Nº 1, 2010, 35, available at: <http://www.scielo.cl/pdf/rducn/v17n1/arto2.pdf>.
190. Original text in Spanish reads: “existía la necesidad de explicitar el concepto constitucional de extranjeros transeúntes mientras no se promulgara la ley correspondiente, por lo que a su juicio, interpretándolo en su sentido natural y obvio, extranjeros transeúntes son aquellos que se encuentran en el país en una situación de residencia transitoria, como los turistas o tripulantes, o en forma irregular en el territorio nacional.” As cited by Rodríguez Atero and Valdés Riesco, op. cit.
191. Registro Civil de Chile Circular DG Nº 51/95 de 26.10.96, Circular DG Nº 05/96, de 14.04.96, Circular DG Nº 28/96 de 23.07.1996, SDO ORD Nº 735 de 21.10.99, en DN CIR Nº 20/99 de 22.10.99, Circular DN Nº20/08 de 01.10.08 and Circular DN Nº18/09 de 07.05.09.
192. See more on the naturalization process as regulated by Decree 5194 of October 29, 1960 and amended by Law 20888 of January 8, 2016, available at: <http://www.leychile.cl/Navegar?idNorma=19444> and <https://www.leychile.cl/Navegar?idNorma=1086208&idParte=9664299&idVersion=2016-01-08>.
193. Ministerio del Interior y Seguridad Pública, Departamento de Extranjería y Migración, Oficio Ordinario No.27601 14 de agosto de 2014 and Ministerio de Justicia, Registro Civil e Identificación, Resolución Exenta no.3207 de 8 de agosto de 2014.
194. Departamento de Extranjería y Migración, Ministerio de Interior y Seguridad Nacional, *Iniciativas y avances del Departamento de Extranjería y Migración 2014–2015*, 2, available at: <https://esquinanomada.files.wordpress.com/2015/04/iniciativas-dem-2014-2015.pdf>.
195. Department of Foreign and Migration Affairs twitter account: June 13, 2016, <https://twitter.com/DptoExtranjeria/status/742499365336449025/photo/1>; November 16, 2015, <https://twitter.com/DptoExtranjeria/status/666284692161728513>; October 6, 2015, <https://twitter.com/DptoExtranjeria/status/651857086708514820>; September 30, 2015, <https://twitter.com/DptoExtranjeria/status/649244885753528321>; 14 September 2015, <https://twitter.com/dptoextranjeria/status/643590115042852864>; April 16, 2015, <https://twitter.com/dptoextranjeria/status/588680778273304576>.
196. Chilean Ministry of Justice, Civil Registry Resolution No. 3207, August 8, 2014.
197. For an example of a case petitioning the Supreme Court to review the arbitrary deprivation of nationality through a decree ordering cancelation of letter of naturalization, see Cosrte Suprema de Justicia, sentencia June 18, 1993 in Fallos del mes, Nº 415, año 1993, pág. 367 as cited in *Revista de Derecho* 12 (diciembre 2001): 175–90; Fernández González and Miguel Angel, “La nacionalidad en la Constitución,” *Revista de Derecho* 12 (diciembre 2001): 117.
198. Rodríguez Atero and Valdés Riesco, op. cit.
199. Ibid.

200. Ibid. Process as set out by Administrative Order No. 1375 of 2014, available at: [https://www.registrocivil.cl/PortalOI/transparencia/marcoNormativo/Rex\\_3207.pdf](https://www.registrocivil.cl/PortalOI/transparencia/marcoNormativo/Rex_3207.pdf).

201. Bley and Pérez, op. cit.

202. These organizations continue their work identifying the population in Chile that can benefit from the change in the administrative interpretation, and to guarantee their access to means of rectifying their documents of identity. As a result of their engagement with other partner NGOs, UNHCR and the Ministry of Foreign and Migration Affairs increased progress was achieved in 2016. In 2017 they expect to provide up-to-date mapping of the affected population, and numbers of registrations rectified.

203. Universidad Diego Portales, Centro de Derechos Humanos, Comunicado de Prensa, November 11, 2015, available at: <http://www.derechoshumanos.udp.cl/derechoshumanos/index.php/section-table/item/215-presentan-recurso-de-reclamacion-de-nacionalidad-para-161-ninos-nacidos-en-chile>.

204. Delfina Lawson, quoted by Bley and Pérez, op. cit.

205. Universidad Diego Portales, Centro de Derechos Humanos, Informe Anual 2014, op. cit., 299.

206. Ibid.

207. However, Amnesty International reported that 2,841 children were registered as child of transient foreigners between 2011 and 2014, “Niños y niñas apátridas en Chile: El abandono por parte del Estado” December 1, 2014, available at: <http://www.theclinic.cl/2014/12/01/ninos-y-ninas-apatridas-en-chile-el-abandono-por-parte-del-estado/>.

208. Claudio Fuentes Maureira, Víctor Hugo Lagos, Delfina Lawson, and Macarena Rodríguez, “3,000 niños esperando su nacionalidad: La necesidad de contar con remedios colectivos para resolver vulneraciones individuales de derechos,” in *Anuario de Derecho Público Universidad Diego Portales*, August 2016, 549, citing Freedom of Information Request SRCel No. AK002W004336.

209. Rural areas such as Huara, Pica, Pozo Almonte, Colchane, and Valle de Azapa. See also, Maureira, Lagos, Lawson and Rodríguez, op. cit., 558.

210. Reply by the Legal Division of the Civil Registry and Identification Service to freedom of information request No. 11027, June 2, 2015.

211. Information gathered through interviews held with the researchers at Universidad Diego Portales and Universidad Alberto Hurtado in the month of October 2015.

212. Ibid. A case of a child born in Chile to undocumented parents, who had been registered as child of transient foreigner, had excelled in his academic schooling and his grade point average had made him eligible to receive a computer to help his schooling activities. However, given his status as a non-national, he had been ineligible to receive the computer.

213. Bley and Pérez, op. cit.

214. Law 4808, Article 31; Decree with Force of Law 2128 of 1930 Article 121 and 122.

215. This obligation is established for citizens by *Decreto-Ley No. 26 of 1924* and for foreigners by *Decreto Ley No. 1094* of 1975 and Supreme Decree No. 597 of 1984. As cited in the reply by the Legal Division of the Civil Registry and Identification Service to freedom of information request. No.

1727, June 17, 2015. The law establishes an obligation to hold documents, but it does not establish a penalty for not holding documents.

216. Information gathered through interviews held with the researchers at Universidad Diego Portales and Universidad Alberto Hurtado during the month of October 2015 accounted for cases of intergenerational lack of documents of identity, highlighting the case of an adult member of an indigenous group who was illiterate and had not been able to attend school, due to being unable to obtain a birth certificate and subsequent documents of national identity, given that both his parents and grandparents lacked documents of identity of their own.

217. See also, <http://www.registrocivil.cl/PortalOI/home.html>.

218. *Decreto No 26*, October 7, 1924, available at: [http://www.registrocivil.cl/transparencia/marcoNormativo/DTO\\_LEY\\_26.pdf](http://www.registrocivil.cl/transparencia/marcoNormativo/DTO_LEY_26.pdf).

219. *Decreto No. 1094*, July 14, 1975, available at: <http://www.leychile.cl/Navegar?idNorma=6483&idVersion=2011-04-08&buscar=1094>.

220. Law 4808 February 10, 1930, amended October 20, 1999, available at: <http://www.leychile.cl/Navegar?idNorma=24928&idParte=&idVersion=1999-10-20>.

221. As established by Article 3 and 4 of Law 19477, October 19, 1996, available at: <http://www.leychile.cl/Consulta/Navegar?idNorma=30844&idParte=0>.

222. UNICEF website, Information by country: Chile- Statistics, available at: [http://www.unicef.org/infobycountry/chile\\_statistics.html](http://www.unicef.org/infobycountry/chile_statistics.html).

223. See also, [https://www.registrocivil.cl/PortalOI/Herramientas/PreguntasFrecuentes/Material\\_Informativo/PDF/nacimiento.pdf](https://www.registrocivil.cl/PortalOI/Herramientas/PreguntasFrecuentes/Material_Informativo/PDF/nacimiento.pdf).

224. As cited in reply by the Legal Division of the Civil Registry and Identification Service to freedom of information request, no. 1727, June 17, 2015.

225. Reply by the Legal Division of the Civil Registry and Identification Service to freedom of information request, no. 1727, June 17, 2015.

226. *Ibid.*

227. Article 12 reads: “The person affected by [an] act or resolution of administrative authority which deprives him of his Chilean nationality or which denies [*desconoce*] it, can appeal, on his own behalf or through anyone in his name, within the period of thirty days, to the Supreme Court, which shall take cognizance of it as a jury and in plenary tribunal. The interposition of the recourse will suspend the effects of the act or resolution appealed.”

228. Corte Suprema, Sentencia September 1989, Fallos del Mes N.º 370 as cited by Ribera Neumann, “La nacionalidad chilena luego de la reforma constitucional de 2005,” 8n15.

229. Corte Suprema de Chile, Rol 9.168-2012, Rol 9.168-2012, Rol 7.580-2012, and Rol 5.482-2013 as cited in Macarena Rodríguez Aatero and Delia Valdés Riesco, *Nacionalidad en la Jurisprudencia de la Corte Suprema*, Dirección Estudios, Corte Suprema de Chile, available at: [http://decs.pjud.cl/Documentos/Academicos/Nacionalidad\\_en\\_la\\_Jurisprudencia\\_de\\_la\\_Corte\\_Suprema.pdf](http://decs.pjud.cl/Documentos/Academicos/Nacionalidad_en_la_Jurisprudencia_de_la_Corte_Suprema.pdf).

230. Universidad Diego Portales, Centro de Derechos Humanos, Informe Anual 2014, op. cit., 359.

231. Macarena Rodríguez Atero and Delia Valdés Riesco, *Nacionalidad en la Jurisprudencia de la Corte Suprema*, Dirección Estudios, Corte Suprema de Chile, 5, available at: [http://decs.pjud.cl/Documentos/Academicos/Nacionalidad\\_en\\_la\\_Jurisprudencia\\_de\\_la\\_Corte\\_Suprema.pdf](http://decs.pjud.cl/Documentos/Academicos/Nacionalidad_en_la_Jurisprudencia_de_la_Corte_Suprema.pdf).

232. Marcela Tapia Ladino, Frontera y migración en el norte de a partir del análisis de los censos población: Siglos XIX–XXI. *Rev. geogr. Norte Gd.* 2012, n53, 177–98, available at: <http://dx.doi.org/10.4067/S0718-3402201200030001>; Instituto Nacional de Derechos Humanos—Misión de Observación Iquique y Colchane—29 y 31 May 2013, 8, available at: [http://www.scielo.cl/scielo.php?pid=S0718-3402201200030001&script=sci\\_arttext](http://www.scielo.cl/scielo.php?pid=S0718-3402201200030001&script=sci_arttext).

233. Shadow report to the Committee on the Elimination Racial Discrimination by the Afrodescendant civil society in Chile, 83rd session of CERD, Geneva, August 12–30, 2013, 10, 12, 17, available at: [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CHL/Sociedad%20Civil%20Afrodescendiente%20en%20Chile\\_14839\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CHL/Sociedad%20Civil%20Afrodescendiente%20en%20Chile_14839_S.pdf).

234. In Bolivia, the process is regulated through Supreme Decree No. 0216 of July 22, 2009, see also, <http://boliviala.org/nacimientos/>; in Peru, the process is carried out in the same manner as other naturalization procedures, see also, <https://www.migraciones.gob.pe/index.php/nacionalizacion-de-hijos-peruanos-nacidos-en-el-extranjero-menores-de-edad-2/>; in Colombia, through carrying out civil registration in the consulates abroad, see also, [http://www.cancilleria.gov.co/tramites\\_servicios/tramites\\_exterior/registro\\_civil](http://www.cancilleria.gov.co/tramites_servicios/tramites_exterior/registro_civil).

235. Nottebohm Case (Liechtenstein v. Guatemala); Second Phase, International Court of Justice (ICJ), April 6, 1955, 23, available at: <http://www.icj-cij.org/docket/files/18/2057.pdf>.

236. See Cristóbal Bley and Daniela Pérez, “Niños sin bandera,” *Revista La Segunda* 77 (November 27, 2015): 13, available at: <http://impresa.lasegunda.com/2015/11/27/V/fullpage#slider-13>.

237. Instituto Nacional de Estadística, *Estadísticas Sociales de los pueblos indígenas en Chile Censo 2002*, 12, available at: [http://www.ine.cl/canales/chile\\_estadistico/estadisticas\\_sociales\\_culturales/etnias/pdf/estadisticas\\_indigenas\\_2002\\_11\\_09\\_09.pdf](http://www.ine.cl/canales/chile_estadistico/estadisticas_sociales_culturales/etnias/pdf/estadisticas_indigenas_2002_11_09_09.pdf). For more on Chile’s indigenous groups, see Dirección de Obras Públicas, Guía de Antecedentes Territoriales y Culturales d elos Pueblos Indígenas de Chile, 2012, available at: <http://www.mop.cl/asuntosindigenas/Documents/TerritorialCultural.pdf>.

238. Reply by the Legal Division of the Civil Registry and Identification Service to freedom of information request. No. 1727, June 17, 2015.

239. Article 28 of Law No. 19.253. Text in Spanish: “(...) e) *La obligatoriedad del Registro Civil de anotar los nombres y apellidos de las personas indígenas en la forma como lo expresen sus padres y con las normas de transcripción fonética que ellos indiquen.*”

240. See also, M. Cristina Llanquileo, *La identidad cultural en los procesos de modernización. Un análisis de los cambios de nombres en sujetos mapuches, 1970–1990*, 1996, available at: <http://www.sitiosur.cl/publicacionescatalogodetalle.php?PID=3223>; see also, Lorena Letelier, *Cerca de mil mapuches cambiaron sus apellidos por temor a discriminación*, August 27, 2000, La Tercera, <http://www.mapuche.info/news01/terco00827.html>.

241. Laura “Xiwe” Santillán, “INADI reconoce discriminación por parte del Registro Civil de Río Negro contra familias mapuche,” March 17, 2015, *La Izquierda diario*, available at: <http://www.laizquierdadiario.com/INADI-reconoce-discriminacion-por-parte-del-Registro-Civil-de-Rio-Negro-contra-familias-mapuche>.

242. Biblioteca Nacional de Chile, Memoria Chilena, Habitantes de las alturas: El pueblo aymara, available at: <http://www.memoriachilena.cl/602/w3-article-605.html>; and Carlos Choque Mariño, “Los primeros cazadores en América y el mundo andino (del 20.000 a.c al 9.000 a.c.)” in *Historia Aymara: cazadores y agricultores*, February 17, 2008, available at: <http://payaymara.blogspot.com/2008/02/los-primeros-cazadores-en-america-y-el.htm>.

243. Constitution of the Republic of Colombia, July 4, 1991, Article 96.

244. These include: Argentina, Brazil, Costa Rica, Cuba, Chile, Panama, and Paraguay. See also, Olivier W. Vonk, *Nationality Law in the Western Hemisphere: A Study on Grounds for Acquisition and Loss of Citizenship in the Americas and the Caribbean*, 2015.

245. Constitution of the Republic of Colombia, Article 96.1.b. See also, Vonk, *op. cit.*, 161.

246. Vonk, *op. cit.*, 161.

247. [http://www.cancilleria.gov.co/tramites\\_servicios/nacionalidad/adquisicion](http://www.cancilleria.gov.co/tramites_servicios/nacionalidad/adquisicion). Extending citizenship to the stateless is in accordance with Articles 7 and 8 of the Convention of the Rights of the Child and Article 20 of the American Convention on Human Rights. Cited by the Consejo de Estado in Decision No. 1653, section 3.2.

248. In the late 1930s, immigrants accounted for 0.63% of the population (54418 individuals); in 1973, it dropped to 0.39% (82,848 people) and in 1985 to 0.28% (78,396 people). As reported in Sánchez, Velásquez, and Vidal, “Políticas públicas sobre migración en Colombia,” L. Chiarello (Coord.), *Las Políticas Públicas sobre Migraciones y la Sociedad Civil en América Latina. Los casos de Argentina, Brasil, Colombia y México*. Nueva York, Scalabrini International Migration Network, 2011, 284.

249. Marissa Esthimer, “Protecting the Forcibly Displaced: Latin America’s Evolving Refugee and Asylum Framework,” Migration Policy Institute, Migration Information Source, January 14, 2016, available at: <http://www.migrationpolicy.org/article/protecting-forcibly-displaced-latin-americas-evolving-refugee-and-asylum-framework>.

250. IOM Migration profile of Colombia 2012, 45, available at: <https://www.iom.int/files/live/sites/iom/files/pbn/docs/Perfil-Migratorio-de-Colombia-2012.pdf>.

251. Migrants in transit in Colombia have been registered to come from Eritrea, Ethiopia, Nigeria, Somalia, China, Bangladesh, and Nepal, in *Extra Continental Migrants in South America: Case Studies*, IOM, Cuadernos Migratorios N.5 (2013), 30, available at: [http://publications.iom.int/bookstore/free/Cuaderno5\\_Migrantes\\_extracontinentales\\_AmericadelSur.pdf](http://publications.iom.int/bookstore/free/Cuaderno5_Migrantes_extracontinentales_AmericadelSur.pdf).

252. See also, Human Rights Watch, “World Report 2015: Colombia,” available at: <https://www.hrw.org/world-report/2015/country-chapters/colombia>.

253. Constitución de la República de Colombia 1821, Título III, available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=13690>.

254. Further clarification in terminology, see Vonk *op. cit.*, 24–30.

255. Constitution of the Republic of Colombia. Article 96, enacted July 7, 1991. Article 98.

256. Cristina Escobar, Report on Citizenship Law: Colombia, 1. Research for the EUDO Citizenship Observatory, May 2015, 1–5, available at: [http://cadmus.eui.eu/bitstream/handle/1814/35997/EUDO-CIT\\_2015\\_10-Colombia.pdf?sequence=31](http://cadmus.eui.eu/bitstream/handle/1814/35997/EUDO-CIT_2015_10-Colombia.pdf?sequence=31).

257. Constitución de la República de Colombia 1821, Art. 4, available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=13690>.

258. Escobar, op. cit., 2.

259. See also, María Robayo, María. *Venezolanos en Colombia, un eslabón más de una historia compartida*: Universidad del Rosario, April 2013, available at: [http://www.urosario.edu.co/urosario\\_files/2e/2ee3361e-eec6-4230-925b-3e6d91c83abo.pdf](http://www.urosario.edu.co/urosario_files/2e/2ee3361e-eec6-4230-925b-3e6d91c83abo.pdf). Letter by OAS Secretary General, Luis Almagro invoking Article 20 of the OAS Democratic Charter and requesting a Permanent Council meeting to address the crisis in the Venezuelan constitutional order, May 30, 2016, available at: <http://www.oas.org/documents/spa/press/OSG-243.es.pdf>, the *Venezuelan Politics and Human Rights*, a blog hosted by the Washington Office on Latin America (WOLA), available at: <http://venezuelablog.tumblr.com/>.

260. The World Bank (2010) reports that there are 110,297 foreigners in Colombia with a predominance of Venezuelan nationals representing 33.9 % of the total foreign population. Cited by IOM in *Migration profile of Colombia 2012*, 65.

261. See also, <http://www.dinero.com/opinion/columnistas/articulo/migracion-venezolanos-reto-para-economia-colombiana/192786> and <http://www.informador.com.mx/internacional/2010/224485/6/migracion-de-colombianos-a-venezuela-por-violencia-y-pobreza.htm>.

262. See also, María Robayo, *Venezolanos en Colombia, un eslabón más de una historia compartida*. Universidad del Rosario, April 2013, available at: [http://www.urosario.edu.co/urosario\\_files/2e/2ee3361e-eec6-4230-925b-3e6d91c83abo.pdf](http://www.urosario.edu.co/urosario_files/2e/2ee3361e-eec6-4230-925b-3e6d91c83abo.pdf); and Ángel Bermúdez, “La apuesta por Colombia,” *El Espectador* (September 2014), available at: <http://www.elespectador.com/noticias/el-mundo/apuesta-colombia-articulo-519475>.

263. The statistic is unclear, as the authority did not name the period of time for which this increase occurred. See [http://www.larepublica.co/doctorado-empresario-e-inversionista-es-el-adn-del-migrante-venezolano\\_176921](http://www.larepublica.co/doctorado-empresario-e-inversionista-es-el-adn-del-migrante-venezolano_176921).

264. As accounted by IOM, there was a wave of immigrants from Colombia to Venezuela in the mid-1980s primarily motivated by the economic boom in the neighboring country. *Migration profile of Colombia 2012*, 12, available at: <https://www.iom.int/files/live/sites/iom/files/pbn/docs/Perfil-Migratorio-de-Colombia-2012.pdf>. See also, Leonir María Chairello, ed., *Public Policies on Migration and Civil Society in Latin America* (Scalabrini International Migration Network, 2013), 283.

265. IACHR, press release “IACHR Conducts Visit to Colombia-Venezuela Border,” September 9, 2015, available at [http://www.oas.org/en/iachr/media\\_center/PReleases/2015/101.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/101.asp).

266. IACHR, Preliminary Observations Visit to Colombia’s Border with Venezuela, September 28, 2015, available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2015/109A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/109A.asp). See also, *Crise frontalière: La Colombie rappelle son ambassadeur au Venezuela, qui fait de même*. *Le Monde*. fr avec AFP, August 28, 2015, available at: [http://www.lemonde.fr/international/article/2015/08/28/la-colombie-rappelle-son-ambassadeur-au-venezuela-qui-fait-de-meme\\_4738833\\_3210.html](http://www.lemonde.fr/international/article/2015/08/28/la-colombie-rappelle-son-ambassadeur-au-venezuela-qui-fait-de-meme_4738833_3210.html); Javier Ciurizza, “Venezuela’s Dangers Spill across the Colombian Border,” (International Crisis Group, September 2015), available at: <http://blog.crisisgroup.org/worldwide/2015/09/02/venezuelas-dangers-spill-across-the-colombian-border/>.

267. Applicants must present the following documents: 1. A copy of the certificate issued by the Unit for Disaster Risk Management, which includes the name of Colombian spouse or partner

registered in the National Register of Victims. 2. A copy of the Venezuelan national identity card or passport. 3. A copy of the document issued by Colombian or Venezuelan authorities proving marriage or marital union with a Colombian national. 4. A copy of Colombian document of identity of the Colombian spouse or partner. Decreto 1418, September 15, 2015, Por el cual se reglamenta el Decreto 1772 de 2015, “Por medio del cual se establecen disposiciones excepcionales para garantizar la reunificación familiar de los nacionales colombianos deportados, expulsados o retornados como consecuencia de la declaratoria del Estado de Excepción efectuada en la República Bolivariana de Venezuela,” available at: <http://wp.presidencia.gov.co/sitios/normativa/decretos/2015/Decretos2015/DECRETO%201814%20DEL%2014%20DE%20SEPTIEMBRE%20DE%202015.pdf>.

268. As reported by the IACHR: “With regard to the mass arrival of Colombians and, to a lesser extent, Venezuelans in Colombian territory, the IACHR received information about various measures that are being implemented by the Colombian state, civil society organizations, and international agencies to provide humanitarian assistance and protect the rights of those affected by the grave humanitarian crisis that has unfolded as a result of these mass deportations and returns. The Commission acknowledges the importance of the Colombian state’s response, the emergency financial decrees that have been enacted, and the coordinated efforts of various state entities in delivering prompt assistance to address the extreme vulnerability of those affected by the mass deportations and returns from Venezuela.” Inter-American Commission of Human Rights, Preliminary Observations, Visit to Colombia’s Border with Venezuela, September 28, 2015, available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2015/109A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2015/109A.asp).

269. Law no. 387 of 1997 highlights that the state is primordially responsible for the adoption of measures to prevent forced displacement, and to assist and protect those internally displaced by violence. The law sets out the rights of the IDP population both before and during displacement, and in the context of durable solutions. It creates an institutional framework to address internal displacement, “National Comprehensive Assistance System for the Displaced Population” comprised of a central coordinating council in charge of planning and advisory tasks, including relevant ministries and high-level officials, and territorial councils to support the law’s implementation at the local level; as well as for securing the necessary budget allocations. In 2004, the Constitutional Court reinforced this responsibility by stating that “from a constitutional point of view, it is imperative to appropriate the budget that is necessary for the full realization of the fundamental rights of displaced persons.” In Decree no. 173 of 1998, the Colombian government adopted the National Plan for Comprehensive Assistance to Populations Displaced by Violence, which aimed to improve implementation of Law no. 387, see also, [http://www.ohchr.org/Documents/Issues/IDPersons/Law-and-policymaking\\_Guide-2013.pdf](http://www.ohchr.org/Documents/Issues/IDPersons/Law-and-policymaking_Guide-2013.pdf). See also, M. Small, *Challenges to IDP Policy Implementation in Colombia: Executive Summary*, available at: [http://www.hhh.umn.edu/people/gfriedemann\\_sanchez/pdf/Small.pdf](http://www.hhh.umn.edu/people/gfriedemann_sanchez/pdf/Small.pdf). See more, <http://www.dps.gov.co/contenido/contenido.aspx?catID=424&conID=1217>.

270. June S. Beittel, “Colombia: Background, U.S. Relations, and Congressional Interest,” CSR Report for Congress, *Congressional Research Service* (November 28, 2012), 25, available at: <https://www.fas.org/sgp/crs/row/RL32250.pdf>.

271. See also, Roberto Carlos Vidal López, Clara Inés Atehortúa Arredondo, and Jorge Salcedo, “The Effects of Internal Displacement on Host Communities: A Case Study of Suba and Ciudad Bolívar Localities in Bogotá, Colombia,” Brookings Institution-London School of Economics Project



on Internal Displacement, October 2011, available at: <http://www.brookings.edu/~media/research/files/reports/2011/10/host-communities-columbia-idp/host-communities-colombia-english.pdf>.

272. See also, Leonir María Chairello, ed., *Public Policies on Migration and Civil Society in Latin America* (Scalabrini International Migration Network, 2013), chapter 3.

273. Consejo Nacional de Política Económica y Social, Departamento Nacional de Planeación, CONPES 3603, available at: <https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=conpes%20pol%C3%ADtica%20migratoria%20canciller%C3%ADa>.

274. Beatriz Eugenia Sánchez Mojica, “El enfoque de derechos en las políticas migratorias: El caso colombiano,” in *Derechos Humanos y Políticas Públicas*, Manual Red de Derechos Humanos y Educación Superior, Universitat Pompeu Fabra, Universidad de los Andes, 257–308.

275. Signed on November 22, 1969, and ratified on May 28, 1973, available at: [http://www.oas.org/dil/esp/tratados\\_B32\\_Convencion\\_Americana\\_sobre\\_Derechos\\_Humanos\\_firmas.htm](http://www.oas.org/dil/esp/tratados_B32_Convencion_Americana_sobre_Derechos_Humanos_firmas.htm).

276. Signed January 26, 1990, and ratified January 28, 1991.

277. Several Latin American constitutions, including Colombia’s, have a set of norms termed the “Constitutional block” (*bloque de constitucionalidad*), which developed from French constitutional theory. This theory is based on the idea that a national constitution incorporates [rules that appear in international treaties the state has signed and that national case law has the power to interpret such treaties. See also, Rodrigo Uprimny Yepes. “El Bloque de Constitucionalidad en Colombia. Un Análisis Jurisprudencial y un Ensayo de sistematización doctrinal,” in “Compilación de Jurisprudencia y Doctrina Nacional e Internacional,” vol. 1, Oficina del Alto Comisionado de las Naciones Unidas para Colombia junio de 2000, available at: [http://redescuelasca.com/sitio/repo/DJS-Bloque\\_Constitucionalidad\(Uprimny\).pdf](http://redescuelasca.com/sitio/repo/DJS-Bloque_Constitucionalidad(Uprimny).pdf).

278. In 2013, in reaction to a negative decision on a territorial dispute it had with Nicaragua, Colombia denounced the treaty by which it had previously accepted the jurisdiction of the International Court of Justice. It no longer accedes to treaties that give the International Court of Justice jurisdiction over disputes. See also, <http://www.cancilleria.gov.co/especiales/haya/boletines.html>.

279. The Constitution of Colombia, Article 241.10, requires an automatic constitutional review by the Constitutional Court as a condition for treaty ratification.

280. *Sentencia C-622/13*, Colombia Corte Constitucional, September 10, 2013, available at: <http://www.corteconstitucional.gov.co/RELATORIA/2013/C-622-13.htm>, Section 2.1. (Author’s translation)

281. *Sentencia C-622/13*, Colombia Corte Constitucional, September 10, 2013, available at: <http://www.corteconstitucional.gov.co/RELATORIA/2013/C-622-13.htm>, Section 2.1.

282. *Sentencia C-622/13*, Colombia Corte Constitucional, September 10, 2013, available at: <http://www.corteconstitucional.gov.co/RELATORIA/2013/C-622-13.htm>, Section 2.1.

283. Nota de la Misión Permanente de Colombia remitiendo Proyecto de resolución, “Prevención y reducción de la apatridia y protección de las personas apátridas en las Américas” CP/CG-1840/10 (Remitido a la CAJP), <http://www.oas.org/es/council/COMGRAL/topics/otrosdocs.asp>.

284. [http://www.oas.org/es/sla/ddi/docs/AG-RES\\_2826\\_XLIV-O-14.pdf](http://www.oas.org/es/sla/ddi/docs/AG-RES_2826_XLIV-O-14.pdf).

285. *Sentencia C-622/13*, Colombia: Corte Constitucional, September 10, 2013, available at: <http://www.corteconstitucional.gov.co/RELATORIA/2013/C-622-13.htm> (Author’s translation).



286. Constitution of the Republic of Colombia, Title 3, chapter 1, <http://www.constitucioncolombia.com/titulo-3/capitulo-1>.
287. Ley 43 de 1993, February 1, 1993, available at: [https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/ley\\_0043\\_1993.htm](https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/ley_0043_1993.htm).
288. Acto Legislativo 1/2002, available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=4574>.
289. Text in Spanish: “*El domicilio consiste en la residencia acompañada, real o presuntivamente, del ánimo de permanecer en ella.*”
290. Consejo de Estado, Decision No. 1653, June 30, 2005, available at: <http://www.refworld.org/pdfid/532bf85d4.pdf>.
291. See more on the Civil Registry Office of Colombia at: <http://www.registraduria.gov.co/-Quienes-somos-.html>.
292. The National Civil Registry is an autonomous organ, but its competences are limited to collecting, storing, and certifying the information related to vital statistics and identity of citizens and persons born in the Colombian territory. However, the competent authority for all nationality matters is the Ministry of Foreign Affairs. Accordingly, the National Civil Registry must follow the interpretation of the Ministry of Affairs in relation to which documents serve as proof of domicile in the Colombian territory for the purposes of recording and certifying information of nationality in birth certificates.
293. Ministerio de Relaciones Exteriores de Colombia concepto número S-GNC 15-016796, February 24, 2015.
294. <http://www.cancilleria.gov.co/juridicainternacional/nacionalidad>.
295. Article 3 of Law 43 of 1993 modified by Law 962 of 2005, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17004>.
296. Article 2, subsection 3 of Law 43 of 1993 states: “Domicile is the residence in Colombia accompanied by the intention to remain in the country in accordance with the relevant provisions of the Civil Code.” Article 80 of the Civil Code, enacted in 1887, establishes the presumption of the intention to reside in the following terms: “The intention to reside and settle is presumed by the fact of opening a store, pharmacy, factory, workshop, inn, school or another durable establishment, to administer in person; by the fact to accept in said place a fixed employment of the type that is regularly conferred for a long time; and by other analogous circumstances.” Text in Spanish: “*El domicilio consiste en la residencia acompañada, real o presuntivamente, del ánimo de permanecer en ella.*”
297. <http://www.refworld.org/pdfid/53070ec74.pdf>.
298. Local and municipal governments assist the Ministry of Foreign Affairs in administering exams on Spanish proficiency and on the constitution, history, and geography of Colombia.
299. For more on the Chilean nationality legal framework, see Olivier W. Vonk, *Nationality Law In the Western Hemisphere: A Study On Grounds for Acquisition and Loss of Citizenship In the Americas and the Caribbean* (Martinus Nijhoff, 2014), 160–63, and European Union Democracy Observatory on Citizenship Country profile for Colombia: <http://www.opensocietyfoundations.org/projects/statelessness>.

300. According to the Ministry of Foreign Affairs' reply to a freedom of information request, May 14, 2015.

301. In Spanish, the original text reads: *Parágrafo 3°. De conformidad con lo señalado en el artículo 20 del Pacto de San José de Costa Rica, en la Convención de los Derechos del Niño y en el artículo 93 de la Constitución Política, los hijos de extranjeros nacidos en territorio colombiano a los cuales ningún Estado les reconozca la nacionalidad, serán colombianos y no se les exigirá prueba de domicilio, y a fin de acreditar que ningún otro Estado les reconoce la nacionalidad se requerirá declaración de la Misión Diplomática o consular del estado de la nacionalidad de los padres.* Law 43 of 1993, available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=286>.

302. Article 28 of Law 43 of 1993 restricts the following public offices as exclusive to Colombian nationals by birth: president or vice president of the Republic, senator, judge of the Constitutional Court, judge of the Supreme Court, judge of the Supreme Council of the Judiciary, attorney general, member of the National Electoral Council, national registrar, general comptroller, head of the Public Ministry, Minister of Foreign Affairs, Minister of National Defense, member of any of the Armed Forces as officers, and director of intelligence and security.

303. About \$104 USD. Figure according to the Ministry of Foreign Affairs website.

304. The monthly minimum wage for Colombia for the year of 2015 was 644,350 CP. Accordingly the processing fee is over 56% of this figure. The law does not cover undocumented migrants and many earn less than the minimum wage, so this fee could easily be an insurmountable obstacle for such parents.

305. Ministry of Foreign Affairs of Colombia, Reply number S-GCIAC-15-088363 to Freedom of Information Request No 2015/1053992. Dated September 11, 2015.

306. The total number of granted naturalizations in 2014 was 146. The Ministry of Foreign Affairs was unable to provide the statistics on naturalization disaggregated according to grounds under which applicants based the petition to naturalize. Ministry of Foreign Affairs of Colombia. Ministry of Foreign Affairs of Colombia. Reply dated April 29, 2015, to the freedom of information request filed on April 9, 2015.

307. A total of 17,953 (9,401 male and 8,552 female) were reported by the Office of the Civil Registry to the freedom of information request filed May 1, 2015, accounting for births of children in the Colombian territory to foreign father and mother since 1993, when the nationality law was enacted. Ibid.

308. The mechanisms available to review administrative decisions are established in Article 74 of Law 1431 of 2011, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=41249>.

309. The administrative jurisdiction is competent to entertain claims and disputes arising out of or related to acts, contracts, omissions, and operations subject to administrative law, where public entities or private parties performing administrative functions are involved. The Administrative Jurisdiction is comprised of the Council of State, the supreme tribunal for administrative matters, administrative judicial district courts, and administrative judges. See also, Law 1437 of 2001.

310. See also, website of the National Civil Registrar: [http://www.registraduria.gov.co/Informacion/preg\\_frec.htm](http://www.registraduria.gov.co/Informacion/preg_frec.htm).

311. See also, <http://www.registraduria.gov.co/-Registro-de-Nacimiento-.html>.

312. See more about the procedure and offices for registration: <https://www.sivirtual.gov.co/memoficha-tramite/-/tramite/T13>.

313. The Superintendence of Notary and Registration Service is a financially and administratively autonomous entity ascribed to the Ministry of Justice in charge of monitoring, inspecting, and controlling the delivery of public notary and registration services.

314. Superintendent of Notary and Registry Services, Instrucción Administrativa 07 de 1997, “*La nacionalidad Colombiana por nacimiento, frente al registro como medio probatorio del estado civil: el testimonio como elemento de convicción. Requisitos*,” March 13, 1997, available at: [https://www.minjusticia.gov.co/portals/0/MJD/docs/instruccion\\_superregistro\\_0007\\_1997.htm](https://www.minjusticia.gov.co/portals/0/MJD/docs/instruccion_superregistro_0007_1997.htm).

315. The *acción de tutela*, or *acción de amparo* in other Latin American countries, is an individual constitutional writ of protection. In Colombia, Article 86 of the Constitution provides for this legal action in the following terms: “Every individual may claim legal protection before the judge, at any time or place, through a preferential and summary proceeding, for himself/herself or by whoever acts in his/her name, the immediate protection of his/her fundamental constitutional rights when the individual fears the latter may be jeopardized or threatened by the action or omission of any public authority. The protection will consist of an order so that whoever solicits such protection may receive it by a judge enjoining others to act or refrain from acting. The order, which will have to be implemented immediately, may be challenged before the competent judge, and in any case the latter may send it to the Constitutional Court for possible revision. This action will be followed only when the affected party does not have access to other means of judicial defense, except when the former is used as a temporary device to avoid irreversible harm. In no case can more than ten (10) days elapse between the request for protection and its resolution. The law will establish the cases in which the order of protection should apply to individuals entrusted with providing a public service or whose conduct may seriously and directly affect the collective interest or in respect of whom the applicant may find himself/herself in a state of subordination or vulnerability.” Translation by Marcia W. Coward, Peter B. Heller, Anna I. Vellve Torras, and the Max Planck Institute. Prepared for distribution on [constituteproject.org](http://constituteproject.org).

316. Articles 44 and 50 of Decree 1260 of 2007 and Article 1 Decree 999 of 1988.

317. Article 96.1(a) of the Constitution reads, “either of the parents was domiciled in the Republic at the time of birth.”

318. Legal interpretation concept number S-GNC 15-016796, given by the Coordinator of the Internal Group on Nationality of the Ministry of Foreign Affairs and petitioned by Civil Registry, February 24, 2015.

319. Office of the Colombian Civil Registry, Administrative order No. 059, March 26, 2015, available at: <http://www.registraduria.gov.co/Direccion-de-Registro-Civil-emite.html>.

320. UNHCR, ACNUR reconoce labor de la Registraduría Nacional y la Cancillería por sus esfuerzos en erradicar las causas de apatridia en Colombia, January 12, 2016, available at: <http://www.registraduria.gov.co/ACNUR-reconoce-labor-de-la.html>.

321. UNCHR, “Circular 059: Buena práctica del Estado Colombiano para mitigar los riesgos de apatridia,” Press release, December 29, 2015, available at: <http://www.acnur.org/t3/noticias/noticia/circular-059-buena-practica-del-estado-colombiano-para-mitigar-los-riesgos-de-apatridia/>.

322. See also, J.O. Baarøy, et al., “Data and Related Information on Children Affected by Armed Conflict,” UNICEF Pilot Project, Consolidated Report on the Missions to Angola, Colombia and Sri Lanka, 2002, UNICEF Division of Policy and Planning, Strategic Information Unit, New York, 2002, 17, available at: [http://www.unicef.org/protection/birth\\_registration\\_and\\_armed\\_conflict\(1\).pdf](http://www.unicef.org/protection/birth_registration_and_armed_conflict(1).pdf).

323. See also, [http://www.registraduria.gov.co/rev\\_electro/articulos/la\\_regis.pdf](http://www.registraduria.gov.co/rev_electro/articulos/la_regis.pdf).

324. Colombian Civil Registry: <http://www.registraduria.gov.co/Informacion/udapv.htm>.

325. Available at [https://www.unicef.org/protection/birth\\_registration\\_and\\_armed\\_conflict\(1\).pdf](https://www.unicef.org/protection/birth_registration_and_armed_conflict(1).pdf).

326. UNHCR reported through interviews and written communications in the months of October and November 2015 and January 2016 the following regions of Colombia as those in which the extraordinary measures with regards to civil registration were being implemented: Atlántico, Bogotá, D.C., Magdalena, Norte de Santander, Arauca, Cesar, Valle, Risaralda, Antioquia, Sucre y Vichada.

327. Ministry of Foreign Affairs, Acciones del Gobierno Nacional sobre atención a Colombianos en la frontera con Venezuela, Factsheet, available at: <http://www.cancilleria.gov.co/especiales/venezuela/>. For more on Colombia’s efforts to enable registration of the children of IDPs, see Registraduría Nacional del Estado Civil, UNHCR, Corporación Opción Legal, *Fortalecimiento de la Registraduría Nacional en la atención a población en riesgo o situación de desplazamiento*, Bogotá, D.C., January 2013.

328. UNHCR’s protection officer in Colombia stated: “After the work we have been doing in the crisis of the border of Venezuela in the Guajira, we believe there are many children in a situation of ‘nationality to be confirmed’ but have no numbers to measure the scope of the problem. It is very new and in the past we had not dealt with cases like these.” Interviews held during the month of September 2015. The Global Protection Cluster of UNHCR and partner organizations refer to this term in a document of October 2015 in which they set the objectives and common terminology for tending to mixed migration flows in the Colombia Venezuela border. Defining the concept as: “cases in which upon a first study, it is unknown whether the person has a nationality or is stateless. Often times people do not have proof of their nationality and have links with more than one state based on place of birth, nationality of their parent, marriage or usual place residence” ( Author’s translation); See page 6: [http://www.globalprotectioncluster.org/\\_assets/files/field\\_protection\\_clusters/Colombia/files/cluster-de-proteccion-colombia-personas-movilidad-2015-10.pdf](http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Colombia/files/cluster-de-proteccion-colombia-personas-movilidad-2015-10.pdf); Likewise, UNHCR uses the term in its website: <http://www.acnur.org/t3/noticias/noticia/acnur-y-migracion-colombia-por-las-personas-con-necesidad-de-proteccion-internacional/>.

329. Consejo de Estado, Sala de Consulta y Servicio Civil, Consulta N1653 de 2005, Consejero ponente: Enrique Jose Arboleda Perdomo, Bogotá, D.C., treinta (30) de junio de dos mil cinco (2005). Radicación número: 1653, Section 2.4, available at: <http://www.refworld.org/pdfid/532bf85d4.pdf>.

330. Consejo de Estado, Sala de Consulta y Servicio Civil, Consulta N1653 de 2005, Disposition 1.

331. Constitution of Colombia, Title VIII, Section IV: The Constitutional Jurisdiction. See also, César Rodríguez, Mauricio García-Villegas, and Rodrigo Uprimny, “Justice and Society in Colombia: A Sociolegal Analysis of Colombian Courts,” in Lawrence M. Friedman and Rogelio Pérez-Perdomo, *Legal Culture in the Age of Globalization: Latin America and Latin Europe* (2003), 174.

332. Corte Constitucional de Colombia, *Sentencia T-965 de 2008*, Magistrado Ponente Jaime Araújo, December 7, 2008, available at: <http://www.corteconstitucional.gov.co/relatoria/2008/T-965-08.htm>.
333. Corte Constitucional de Colombia, *Sentencia T-1060 de 2010*, Magistrado Ponente Gabriel Eduardo Mendoza, December 16, 2010, available at: <http://www.corteconstitucional.gov.co/RELATORIA/2010/T-1060-10.htm>.
334. Corte Constitucional de Colombia, *Sentencia T-1060 de 2010*, Section 4.1.
335. *Ibid.*, Section 5.
336. *Ibid.*
337. Corte Constitucional, *Sentencia T-075, feb. 20/2015*, Magistrado Ponente. Gabriel Eduardo Mendoza, <http://www.corteconstitucional.gov.co/relatoria/2015/t-075-15.htm>.
338. Corte Constitucional, *Sentencia T-075, feb. 20/2015*, Section 1.
339. See also, Human Rights Everywhere, “Marco legal para los derechos de los pueblos indígenas en Colombia,” 2008, available at: [http://cms.onic.org.co/wp-content/uploads/downloads/2012/03/cartilla\\_derechos pueblos.pdf](http://cms.onic.org.co/wp-content/uploads/downloads/2012/03/cartilla_derechos pueblos.pdf).
340. Committee of the Rights of the Child, Concluding Observations by the Committee to the Second Periodic Report of Colombia, 42nd session, CRC/C/COL/CO/3, June 8, 2006, paras 6 and 48, available at: <http://www.refworld.org/pdfid/45377ee30.pdf>.
341. See also, Nelly Hostein, “El pueblo wayuu de la Guajira colombo-venezolana: un panorama de su cultura,” *Cuadernos de Antropología*, no. 20 (2010), Universidad de Costa Rica, available at: <http://revistas.ucr.ac.cr/index.php/antropologia/article/viewFile/2006/1973>.
342. Eduardo Giraldo, *La frontera invisible del territorio Wayúu*, in *Revista Traspasando Fronteras*, no. 1, Universidad Icesi, 2011, 53–64, available at: [http://www.icesi.edu.co/revistas/index.php/transpasando\\_fronteras/article/view/1291](http://www.icesi.edu.co/revistas/index.php/transpasando_fronteras/article/view/1291). See also, OXFAM and Aebcia Presidencial para la Cooperación Internacional de Colombia, “Mapeo de la situación de los medios de vida y la seguridad alimentaria de familias vulnerables en la Alta Guajira,” December 2014, available at: [https://www.humanitarianresponse.info/en/system/files/documents/files/diagnostico\\_seguridad\\_alimentaria\\_alta\\_guajira\\_2015\\_oxfam2.pdf](https://www.humanitarianresponse.info/en/system/files/documents/files/diagnostico_seguridad_alimentaria_alta_guajira_2015_oxfam2.pdf).
343. Sandra Guerrero, “Las fronteras no existen para la Gran Nación Wayuu,” *El Heraldo*, 6 Septiembre 2015, <http://www.elheraldo.co/nacional/las-fronteras-no-existen-para-la-gran-nacion-wayuu-215788>.
344. Article 96 Constitution of Colombia and Arts 37 of the Constitution of Venezuela. See also, UNHCR, “Situación Colombia Indígenas,” 2012, 4, available at: [http://www.acnur.org/t3/fileadmin/Documentos/RefugiadosAmericas/Colombia/2012/Situacion\\_Colombia\\_-\\_Pueblos\\_indigenas\\_2012.pdf?view=1](http://www.acnur.org/t3/fileadmin/Documentos/RefugiadosAmericas/Colombia/2012/Situacion_Colombia_-_Pueblos_indigenas_2012.pdf?view=1); Luis, Ferrer, “La doble nacionalidad en el ordenamiento constitucional venezolano,” *Revista de la Facultad de Ciencias Jurídicas y Políticas, Universidad de Carabobo*, no. 5 (2009): 197–213, available at: <http://servicio.bc.uc.edu.ve/derecho/revista/5-2009/5-6.pdf>.
345. Several accounts of issues crossing the border and of administrative barriers and bureaucracy issues with obtaining documents of identity appear in the interviews presented in Giraldo, Eduardo. “La frontera invisible del territorio Wayúu,” *Revista Traspasando Fronteras* no. 1, Universidad Icesi, (2012): 58–62. See also, Tania Patiño, “Los Wayuu un pueblo sin fronteras en medio de dos

naciones El caso de Paraguachón la frontera colombo—venezolana en la Guajira,” 2005, available at: <http://base.d-p-h.info/en/fiches/dph/fiche-dph-7124.html>.

346. Sandra Guerrero, “Las fronteras no existen para la Gran Nación Wayuu,” *El Heraldo*, 6 Septiembre 2015, <http://www.elheraldo.co/nacional/las-fronteras-no-existen-para-la-gran-nacion-wayuu-215788>.

347. César Paredes, “Crónica de unos colombianos que sacaron cédula por primera vez,” *Revista Semana* (September 22, 2008), available at: <http://www.semana.com/on-line/articulo/cronica-unos-colombianos-sacaron-cedula-primer-vez/954533>.

348. Carolyn McCarthy, “Silent Darien: The Gap in the World’s Longest Road,” August 14, 2014, available at: <http://www.bbc.com/news/magazine-28756378>; Sasha Pfeiffer, “Stories from the Dangerous Darién Gap,” August 3, 2016, available at: <http://www.bbc.com/news/magazine-28756378>; <http://www.wbur.org/onpoint/2016/08/03/darien-gap-migrants-cuba>.

349. See also, “Drugs, Migrants and Rebels: Life along Darién’s Gap: Rugged Border Region between Panama and Colombia Has No Formal Crossings, Bringing an Array of Security Challenges,” May 17, 2015, available at: <http://www.aljazeera.com/indepth/features/2015/04/drugs-migrants-rebels-life-darin-gap-150427100815767.html>.

350. See also, Presidential Program for Human Rights, “Diagnóstico Pueblo Wounaan,” [http://historico.derechoshumanos.gov.co/Observatorio/Documents/2010/DiagnosticoIndigenas/Diagnostico\\_WOUNAAN.pdf](http://historico.derechoshumanos.gov.co/Observatorio/Documents/2010/DiagnosticoIndigenas/Diagnostico_WOUNAAN.pdf); Ministry of Interior of Colombia, “Plan de Slavguarda del Pueblo Wounaan,” available at: [http://siic.mininterior.gov.co/sites/default/files/p.s\\_wounaan\\_choco.pdf](http://siic.mininterior.gov.co/sites/default/files/p.s_wounaan_choco.pdf); UNHCR, Report on Indigenous communities in Colombia, 2001, available at: [http://www.acnur.org/t3/fileadmin/Documents/RefugiadosAmericas/Colombia/2012/Situacion\\_Colombia\\_-\\_Pueblos\\_indigenas\\_2012.pdf?view=1](http://www.acnur.org/t3/fileadmin/Documents/RefugiadosAmericas/Colombia/2012/Situacion_Colombia_-_Pueblos_indigenas_2012.pdf?view=1); International Committee of the Red Cross, “Colombia: los Embera, los Wounaan y el dilema de qué comer hoy,” December 20, 2010 available at: <https://www.icrc.org/spa/resources/documents/feature/colombia-feature-2010-12-20.htm>; Colombian Ministry of Culture, “Caracterización del pueblo Wounaan,” available at: <http://www.mincultura.gov.co/areas/poblaciones/noticias/Documents/Caracterizaci%C3%B3n%20del%20pueblo%20Wounaan.pdf>.

351. “El primer bebé que nace en albergue de migrantes en Turbo” July 21, 2016, available at: <http://www.semana.com/nacion/articulo/nace-bebe-de-cubanos-en-albergue-de-migrantes-en-turbo/482831>.

352. U.N. Human Rights Council, op. cit., para 15.

353. See also, UNCHR, Guidance document on measuring stateless populations, May 2011, available at: <http://www.refworld.org/docid/4f6887672.html>.

354. UN 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*, December 16, 2015, A/HRC/31/29, available at: <http://www.refworld.org/docid/56c42b514.html>.

355. The European Network against Racism defines equality data as “all types of disaggregated data used to assess the comparative situation of a specific group at risk of discrimination, to design public policies so that they can contribute to promoting equality and to assess their implementation.” See also, <http://www.enar-eu.org/Equality-data-collection-What-is>.

356. On November 2014, UNHCR launched the #IBelong Campaign to end statelessness within 10 years. The campaign includes a Global Action Plan to end statelessness: 2014–2024, available at: <http://www.refworld.org/docid/545b47d64.html>.

357. See also, <http://www.unhcr.org/en-us/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html>.

358. On September 25, 2015, the United Nations General Assembly formally adopted the 2030 Agenda for Sustainable Development comprised of a Declaration, 17 goals, 169 associated targets, and 230 indicators to be achieved by the year 2030. See also, U.N. General Assembly, Transforming our World: The 2030 Agenda for Sustainable Development, October 21, 2015, available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

359. On June 3, 2009, the Ministers of Foreign Affairs of the Americas adopted Resolution AG/RES.2438 (XXXIX-O/09) which resolves that the 1962 Resolution that excluded the Government of Cuba from its participation in the Inter-American system, ceases to have effect in the Organization of American States (OAS). The 2009 resolution states that the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.

360. As defined in the Immigration and Nationality Act of 1952 (Pub.L. 82–414, 66 Stat. 163, enacted June 27, 1952). Currently, only those born or with ties to the outlying U.S. possessions of American Samoa and Swains Island are born as non-citizen United States nationals.





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Like most countries in the Americas, Brazil, Chile, and Colombia practice *jus soli* citizenship, in which nationality is generally granted to those born in the country's territory. In theory, this is the simplest and most straightforward form of citizenship, and the most likely to prevent statelessness. But in practice, many people in Brazil, Chile, and Colombia struggle to obtain proof of citizenship and fully enjoy their citizenship rights, and some are left stateless.

*Born in the Americas* looks closely at the strengths and weaknesses of the three countries' citizenship regimes, finding a significant gap between the promise of *jus soli* citizenship and its implementation on the ground. Further, the report finds that this disparity most often affects indigenous peoples, members of ethnic minority groups, migrants, internally displaced persons, and children.

Based on a comprehensive review and analysis of the history, laws, and practices of the three countries, *Born in the Americas* makes a major contribution to the growing scholarship on citizenship laws, practices, and policies. Through case studies, analyses of case law, and detailed recommendations to improve current practices, the report argues that Brazil, Chile, and Colombia—and other countries in the region—must do more to ensure that the right to citizenship can be realized in practice for all people born in the Americas.

