Statelessness of Children born to Venezuelan Parents in Colombia: Lawmaking without Convincing Policies *

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Abstract

This article examines the Colombian legislation against statelessness issued due to the humanitarian emergency in Venezuela in recent years. There have been three waves of Venezuelan migration: the first, in 2005; the second, in 2017; and the last wave, from 2017 to the present day. For this analysis, it was used a qualitative socio-legal method adopting a descriptive approach. The paper affirms that, despite the efforts of Colombian entities to regulate the statelessness of minors born to Venezuelan parents, these regulations contain legal vacua due to a lack of communication between the different State bodies. Such void causes legal contradictions and legal uncertainty in the national system, and, subsequently, violates in a direct manner the fundamental rights of children born to Venezuelan migrants in Colombia.

Keywords
Statelessness; nationality; international agreement; State; legislation; migration; childhood

Apatridia en menores de padres venezolanos en Colombia: leyes sin políticas contundentes

Resumen

En el presente artículo se analiza la legislación colombiana contra la apatridia expedida a raíz de la migración ocasionada por la emergencia humanitaria en Venezuela durante los últimos años. La migración venezolana se puede dividir en tres oleadas, la primera en el año de 2005, la segunda en el año de 2010 y la última desde el año de 2017 hasta la actualidad. Para la realización del presente artículo, se utilizó el método cualitativo de carácter sociojurídico con un enfoque descriptivo. Finalmente, se concluye que, a pesar del esfuerzo de las entidades colombianas por regular la apatridia de los menores hijos de padres venezolanos, dicha legislación presenta vacíos normativos por la falta de comunicación de los diferentes órganos del Estado. Dichos vacíos crean contradicciones, generan inseguridad jurídica en el ordenamiento nacional y, ulteriormente, violentan de manera directa los derechos fundamentales de los menores hijos de migrantes venezolanos nacidos en Colombia.

Palabras clave
Apatridia; nacionalidad; convenios internacionales; Estado; legislación; migración; infancia

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Apatridia entre menores de pais venezuelanos na Colômbia: leis sem políticas fortes

Resumo

Palavras-chave
Apatridia; nacionalidade; convenções internacionais; Estado; legislação; migração; infância

Este artigo analisa a legislação colombiana contra a apatridia emitida como resultado da migração causada pela emergência humanitária na Venezuela nos últimos anos. A migração venezuelana pode ser dividida em três ondas, a primeira em 2005, a segunda em 2010 e a última de 2017 até o presente. Para este artigo, usamos um método sociojurídico qualitativo com uma abordagem descritiva. Por fim, conclui-se que, apesar dos esforços das entidades colombianas para regulamentar a apatridia de menores nascidos de pais venezuelanos, essa legislação apresenta lacunas regulatórias devido à falta de comunicação entre os diferentes órgãos do Estado. Essas lacunas criam contradições, geram insegurança jurídica no sistema jurídico nacional e, consequentemente, violam diretamente os direitos fundamentais das crianças nascidas na Colômbia de migrantes venezuelanos.

1. Introduction

Since the middle of the last century, the Colombian-Venezuelan border has become the busiest in all of South America as a result of the decision of Colombians to migrate to Venezuelan soil, when the oil bonanza began to demand foreign labor. As a result, more than one million Colombians were able to fully integrate into Venezuelan society and Colombia became an emitting country of migration (Robayo, 2013). However, the migration of Venezuelans to Colombia was not so frequent until the second decade of the 21st century, when, according to Robayo, "the arrival of millions of Venezuelans to Colombian territory ceased to be a strange novelty and became a serious socioeconomic phenomenon" (2013, p. 1).

Regarding the migration of Venezuelans to Colombia, Robayo (2013) suggests that it can be divided into three waves. The first, in 2005, was caused by the massive dismissal of 18,000 employees of the state-owned company Petróleos de Venezuela S.A. (PDVSA), who found refuge in Colombia due to the reforms of the government of the then president Álvaro Uribe. These reforms adopted favorable conditions for national and foreign investors, such as the creation of the National Hydrocarbons Agency (ANH).

The second "stage" began in 2010 with the arrival of Venezuelan businessmen belonging to the country's wealthier classes, who were escaping the expropriation policy of Hugo Chávez's government and the inflation that, at the time, did not fall below twenty percent due to the frequent devaluation of the bolivar. Those entrepreneurs found an opportunity to create a company in a country with which they shared the same language, the same customs, and, mainly, the same form of consumption of their country of origin (Robayo, 2013).

Finally, the third and current wave of Venezuelan migration began in the year of 2017, when many Venezuelans decided to "flee the worst economic crisis in the country's history, suffering the highest inflation in the world and with problems of shortages of food, medicines, and basic products" (BBC, 2018, para. 6). Despite the policies that the government of Nicolás Maduro implemented to reduce the crisis, such as the creation of a new currency, "millions of Venezuelans had no alternative but to emigrate, affecting a large part of countries in the region such as Colombia, Peru, Ecuador, Chile and Brazil" (BBC, 2018, para. 11).

In this regard, in an interview with the BBC, Eric L. Olson, who at the time was the deputy director of the Wilson think tank's Latin America Program, described Venezuelan migration as "the largest in the last 50 years" (BBC, 2018, para. 13), and is characterized by "people being desperate to leave Venezuela mainly because of the economic collapse, hyperinflation; people are hungry, they have no jobs and they are forced to migrate in search of basic necessities" (BBC, 2018, para. 19).

In March 2022, the National Administrative Department of Statistics (DANE) published the Vital Statistics Report (EEVV) on births in Colombia, which indicated that every hour in Colombia eight children are born whose mother is of Venezuelan

origin (DANE, 2022). These children are born with the risk of being stateless since to acquire Colombian nationality "some requirements must be met, such as that one of the parents is Colombian, or, if the parents are foreigners, that they have legal domicile in the country at the time of the child's birth" (Alto Comisionado de las Naciones Unidas para los Refugiados [ACNUR], 2019, párr. 3). In addition, the situation is made more complex by the fact that "many families would have several problems in obtaining the required documentation and the registration of minors in Venezuelan consulates in Colombia because these services are not operating as a result of poor diplomatic relations that the two countries currently have" (ACNUR, 2019, para. 7).

Of the above, the following legal problem arises: How is the right to legal personality guaranteed in favor of the children of foreigners, minors, who irregularly entered Colombian territory?

To provide an answer to the problem, the following specific objectives were determined:

- Analyze the characteristics of children's rights and their protection as immigrants.
- Describe the requirements to obtain legal status for minors in Colombia.
- Analyze the current situation of children who entered the country irregularly.

To address the problem, the qualitative method of socio-legal character with a descriptive approach was used. Under this line of action, the proposed solution to the problem posed will be developed in three parts. In the first, the different international and national instruments that enshrine the rights of children and their evolution throughout history are presented. The second part shows the different ways of acquiring legal personality in Colombia. In the third, the Colombian regulations against statelessness will be analyzed. Finally, some conclusions are offered.

2. Children's rights at the international and national level

To talk about the rights of minors and their due protection, it is necessary to reflect in parallel on the evolution of human rights. For Gómez Urrutia (2009), since the Second World War, an international regime for the protection of human rights has been established in a general manner, in such a way that mechanisms have been established to protect human dignity against the authoritarian or arbitrary acts or actions of the States.

Consequently, "since the last century, the international community has adopted protection measures for the most vulnerable, those who are at a disadvantage in society, such as children, immigrants and their families, among others" (Gómez Urrutia, 2009, p. 14). From this context, we will analyze, at the international level, the evolution of the protection systems for minors in the universal conventional system of children's rights and, at the national level, we will study how this protection has been applied in Colombian legislation.

Universal treaty system of children's rights

Historically, children have been considered as people in need of special care, but this has changed over time thanks to the different international declarations and conventions that have made children active subjects and "holder[s] of the fundamental rights that every human person has" (Gómez Urrutia, 2009, p. 16).

This development in terms of children's rights has been developing since the initiative of the extinct League of Nations, up to the current United Nations Organization, mainly from the Geneva Declaration on the Rights of the Child of 1924, the Declaration of the Rights of the Child of 1959 and, finally, the Convention on the Rights of the Child of 1989. These instruments make it possible to visualize the evolution of minors in terms of their treatment and relationship with their rights, "going from a person with rights to a person entitled to rights" (Gómez Urrutia, 2009, p. 17).

The 1924 Geneva Declaration on the Rights of the Child was the first text to recognize the existence of specific rights for children and the obligation of adults towards them. This declaration consists of only five articles, and in its preamble, the League of Nations states the following:

> By the present Declaration of the Rights of the Child, the men and women of all nations, recognizing that humanity must give to the child the best that it can give, thus affirm their duties, ruling out any discrimination on grounds of race, nationality, or belief.

However, despite recognizing the existence of certain rights for children, the Declaration was not binding because it was not a diplomatic instrument, but rather a political commitment. States were therefore under no obligation to ensure the rights outlined in those provisions. Nevertheless, the content of the Declaration was fundamental in the creation of its predecessors, since it became an inescapable point of reference in the consecration of children as rights holders (Bofill and Cots, 1999).

In 1948, the recently created General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights, considered a fundamental reference for the defense of human rights. Implicitly, the Declaration refers to children if it is considered that this convention is generic for people and their rights at every stage of life. In particular, Articles 25 and 26 of this instrument refer to children as such (Tiana, 2008).

Given the relevance of the Convention on Human Rights and the interest aroused by the lack of legal protection for children, the General Assembly promoted a catalog of basic principles for children (Gómez Urrutia, 2009). Thus was born the Declaration of the Rights of the Child, which adopted ten principles developed from the rights recognized for children in the Universal Declaration of 1948 (Tiana, 2008). Consequently, this new declaration became "an imperative pact for the States that signed and ratified it, giving rise to responsibilities through control measures and sanctions for infringement of its contents" (Gómez Urrutia, 2009, p. 17). However, for those States that did not sign or ratify it, its application was not mandatory (Tiana, 2008).

Thirty years later, on November 20, 1989, the United Nations General Assembly approved the United Nations Convention on the Rights of the Child, whose main purpose was to give legal force to the rights of the child, that is, to oblige the States parties to respect the commitments acquired through the Convention, demanding international responsibility from the States that did not respect such commitments (Gómez Urrutia, 2009).

The Convention sets forth the following rights and duties based on the following categories:

- Civil and political rights: enshrined in articles 6 to 22: Right to life and survival; right to a name, nationality and to know one's parents; right to identity; right not to be separated from parents; right to enter and leave a country; right to freedom of expression, right to freedom of thought, conscience and religion; right of association and assembly; right to non-interference in their private life, family and correspondence, honor and reputation; right to access to information; right to upbringing and development by their parents; right to protection from all forms of physical or mental harm or abuse; right to special protection by the State in cases of abandonment or neglect; right to adoption; and, right to refugee status. (Organización de las Naciones Unidas [ONU], 1989).
- Economic, social and cultural rights: enshrined in articles 23 to 31: right to health care; right to the highest attainable standard of health and medical care; right to nutrition, social security, a standard of living adequate for physical, mental, spiritual, moral and social development; right to education at all levels and prospects; right to the environment; rights of children of ethnic, religious and linguistic minorities; right to rest and leisure; and rights related to work. (ONU, 1989).

Based on the above, it can be concluded that the purpose of the Convention is to adapt the Human Rights adopted in 1948 to the particular circumstance of the best interests of the child and to enshrine the obligation of parents to give due direction and guidance to their children. In addition, they ensure the welfare of minors within their territories.

Children's rights under Colombian legislation

Article 44 of the Colombian Constitution establishes the fundamental rights of minors; it states that children shall enjoy the other rights enshrined in the Constitution, laws, and international treaties:

> The following are fundamental rights of children: life, physical integrity, health and social security, balanced nutrition, their name, and nationality, to have a family and not be separated from it, care and love, education and culture,

> recreation and free expression of their opinion. They shall be protected against all forms of abandonment, physical or moral violence, kidnapping, sale, sexual abuse, labor or economic exploitation, and hazardous work. They shall also enjoy the other rights enshrined in the Constitution, laws, and international treaties ratified by Colombia.
>
> The family, society, and the State should assist and protect children to guarantee their harmonious and integral development and the full exercise of their rights. Any person may demand from the competent authority their compliance and the punishment of violators. The rights of children prevail over the rights of others.
>
> The rights of children prevail over the rights of others.

The above constitutional precept evidences "the obligation to protect the family in the recognition of protection and guarantee of the rights of children and adolescents" (Cely, 2015, p. 46). With the enactment of Law 12 of 1991, through which the Convention on the Rights of the Child is adopted and approved, together with the Political Constitution of 1991, "the Colombian State accepts the provisions of the convention, and is obliged to promote and structure political, social and cultural changes in favor of minors" (Cely, 2015, p. 46).

In other words, the Political Charter and the Convention established the following principles in favor of children:

> 1. The recognition of children as subjects of rights, 2. The guarantee (respect, protection, and fulfillment) of their rights, 3. The prevention and timely attention of any situation of risk to their fulfillment, under a proactive and not reactive approach, 4. The restoration of their human dignity in situations of threat or violation of their rights (First Things First, para. 7).

Based on the above, in 2006, the Congress of the Republic issued Ley 1098, also known as the Code of Childhood and Adolescence, which establishes that minors are subjects of rights within Colombian legislation and society (Cely, 2015). This Code, precisely, states its purpose as follows:

> To guarantee children and adolescents their full and harmonious development so that they grow up in the bosom of the family and the community, in an environment of happiness, love, and understanding. The recognition of equality and human dignity shall prevail, without any discrimination whatsoever (Ley 1098, 2006, art. 1).

Moreover, the Code seeks "the exercise, enjoyment, guarantee, protection, and restoration of the rights of minors based on the principles of best interests, prevalence of rights, comprehensive protection and co-responsibility" (Cely, 2015, p. 46). Finally, the second chapter of the Code establishes the rights and freedoms of children and adolescents, prerogatives that complement those established in the Constitutional Charter and the 1989 Convention:

> apply to all children and adolescents who are in the national territory, regardless of whether they are nationals or foreigners, to nationals who are outside the country, and to children who are dual nationals, when one of those nationalities is Colombian. (2015, p. 46)

From the foregoing, it can be concluded that, within the Colombian regulatory system, children have rights defined not only by the Constitution or laws of the Republic but also by international treaties ratified by Colombia. As a result, children and adolescents within the national territory become true subjects of rights, without discrimination based on their nationality. In other words, all minors within the national territory are entitled to the recognition, protection, and guarantee of the rights established in the Constitution, the Convention, and the Childhood and Adolescence Code.

3. Legal personality in Colombia

Based on the legal evolution described above, Colombia has defined itself as a State that tends to guarantee, to the greatest extent possible, human dignity without any type of distinction, which is why it must make the principle of cooperation effective, establishing goals focused on the entire administrative system to progress in the eradication of statelessness and maintain a rigid protection status for all those who do not have a nationality.

Therefore, the first step is to establish a definition of statelessness. The Real Academia Española (RAE) defines it as follows. Said of a person: "Who lacks nationality" (2022). For his part, the doctrinaire Remiro indicates: "A stateless person is not considered a national by any State. The stateless person is the absolute foreigner" (2010, p. 461), and adds:

> Lacking nationality, he is deprived of the rights and benefits inherent in the status of a national of a State; he has only those that are recognized to all persons, regardless of nationality, and, if applicable, those outlined in the Convention relating to the Status of Stateless Persons (Nueva York, 1954), in the States that are parties. (2010, p. 458).

Under that perspective, Remiro offers some cases about how a person can fall into statelessness. First, when "a child is born in a country governed by jus sanguinis, while his parents are nationals of another country whose nationality is acquired strictly by application of jus soli, such child will be stateless" (2010, p. 458). Second, when "the person who marries a foreigner if his State imposes the loss of nationality by this fact and the State of the spouse does not provide for the acquisition of nationality by marriage" (p. 458).

On the other hand, the 1954 Convention relating to the Status of Stateless Persons defines statelessness as follows: "For the present Convention, the term "stateless person" shall mean any person who is not considered by any State as its national according to its legislation [italics added]" (ONU, 1954, art. 1). This definition, although complete and correct, still needs to be studied to understand the dimensions of each word therein. Remiro defines nationality as "a link that describes the membership of an individual (and, by extension, of a legal person) to a State" (2010, p. 458). Similarly, Arjona states that "nationality has two meanings: one political and rather of a social nature, and the other of a juridical nature" (1954, p. 13).

The same author states that "from a social-political point of view, nationality implies a bond of union between the individual and the State" (1954, p. 13), and, from a legal point of view, "nationality is a status of the individual, which confers rights and imposes obligations" (1954, p. 13). Finally, the French jurist Niboyet states that nationality must "always be considered from the purely political point of view of the connection of individuals with a given state" (1960, p. 77).

For this reason, and under the discretion of each sovereign state, nationality implies a legal-political link of an individual with a State, which will allow him/her to enjoy certain rights, however, to do so, he/she must comply with certain requirements or have certain attributes. In short, statelessness can be defined as the situation of a person who does not meet the requirements or conditions imposed by the legislation of a given country to acquire its nationality and, as a result, cannot establish a legal-political relationship with the State, and is, therefore, unable to acquire rights or incur obligations.

Application of the best interest of the child is a major tool in favor of this population.

The international treaties signed by Colombia, doctrine, and history itself, allow us to deduce that the subject that most requires special protection at the global level, due to its limited capacity in contrast to the global functioning, is the minor. It is therefore necessary to begin this analysis of the rights of migrant minors from what could be described as the cornerstone of the protection of children, namely, the best interests of the child. In this regard, La Corte suprema de Justicia has stated the following:

> Although its concept is indeterminate (best interests of the child), it can be stated that it refers to ensuring the exercise and protection of the fundamental rights of minors and enabling the greatest satisfaction of all aspects of their lives, aimed at the development of their personality. This principle is identified with the satisfaction of their rights, as persons and subjects of these, thus identifying best interests with the rights of children and adolescents (Corte Suprema de Justicia, 7150-2012, 2013).

On the other hand, the Colombian Constitutional Court contributed to the enshrinement of the rights of minors by establishing the characteristics of the best interests of the child:

> (1) Real, since it is related to the particular needs of the minor and his special physical and psychological aptitudes; (2) independent of the arbitrary criterion of others and, therefore, its existence and protection do not depend on the will or whim of the parents, inasmuch as they are legally autonomous interests; (3) a relational concept, since the guarantee of their protection is predicated on the existence of conflicting interests whose weighing

> exercise must be guided by the protection of the rights of the minor; (4) the guarantee of a supreme legal interest consisting of the integral and healthy development of the personality of the minor. (Corte Costitucional, Decision T-408, 1995).

As the concept has been developed, the best interests of the child should be the focus of attention in the policies of countries that have ratified conventions that develop this principle. This is stated in Article 19 of the American Convention on Human Rights, which establishes that: "Every child [italics added] has the right to the measures of protection required by his or her status as a minor on the part of his or her family, society and the State"

It should be noted that the Convention does not refer to any particular type of child, nor does it impose conditions for them to be beneficiaries of this provision, so that, in the words of Acuña:

> The best interests of the child impose an obligation on how judges and authorities must make decisions, being not only a guide but a duty at the time of deciding, to ensure the satisfaction of their rights (2019, p. 8).

As can be seen, the best interest of the child presupposes one of the greatest challenges for a State, which is why it is expected of every organization, public servant, and even of every citizen, that they should strive towards progress and awareness of the current situation in the continent, to generate a culture of child protection aimed at a stable physical and mental development of children.

Acquisition of nationality in Colombia

To understand the legal problems presented by the massive arrival of Venezuelan migrants and the birth of many children in Colombian territory, it is necessary to mention the process of acquiring nationality in Colombia, starting with the Political Constitution. Article 96 of the Political Charter establishes who are Colombian nationals:

They are Colombian nationals:

1. By birth:

a) Those born in Colombia, with one of two conditions: that the father or mother have been Colombian nationals or nationals or that, being children of foreigners, one of their parents was domiciled in the Republic at the time of birth and;

b) The children of a Colombian father or mother who were born in a foreign land and later domiciled in Colombian territory or registered in a consular office of the Republic.

2. By adoption:

a) Foreigners who request and obtain a letter of naturalization, by the law, which shall establish the cases in which Colombian nationality is lost by adoption;

b) Latin Americans and Caribbean citizens by birth domiciled in Colombia, who with the authorization of the Government and following the law, and the principle of reciprocity, request to be registered as Colombians before the municipality where they are established, and;

c) Members of indigenous peoples who share border territories, with the application of the principle of reciprocity according to public treaties.

No Colombian by birth may be deprived of his nationality. The quality of Colombian nationals is not lost by the fact of acquiring another nationality. Nationals by adoption shall not be obliged to renounce their nationality of origin or adoption.

Those who have renounced Colombian nationality may recover it following the law.

Following the constitutional narrative, Law 43 of 1993 provides more specific provisions for the acquisition of nationality by adoption. In article 5, third paragraph, the Law establishes that the children of foreigners born in Colombian territory to whom no state recognizes nationality may acquire nationality by adoption, however, it is also required to prove that their country of origin did not grant them nationality. Similarly, the third paragraph of the same article introduces a rule that emanates from the Convention on the Rights of the Child, which provides that those who are born in Colombia and have foreign parents will be recognized Colombian nationality; however, it also requires proof that no other State recognizes their nationality. This situation dilutes the possibility of protection for minors who could not be registered in Venezuela.

Regarding the acquisition of nationality in favor of children with parents domiciled in Colombian territory, Hoyos and Ruíz mention:

> In an imminent situation of risk of statelessness of minors, the requirement of a specific visa to prove the domicile of foreign parents to obtain the nationality of their children violates the right of the latter to nationality and legal personality and does not respond to the obligation of the State to grant nationality to children. (2022, p. 8-9).

With these provisions analyzed, it is feasible to affirm that, even when the State recognizes the best interest of the minor, the formalities and formalisms acquire an even more important role than the protection of the rights of minor children at risk of statelessness. For this reason, an in-depth analysis is necessary to better recognize the rights of children located in Colombia in an agile and efficient manner.

Rights violated by the complexity of acquiring nationality

In this regard, it is necessary to emphasize that legislative omission and the lack of government policy are the sources that violate the rights of migrant minors since the lack of protection of parental rights has a direct impact on the development of minors. As expressed by Cañarte, Cantos, and Espinoza, "Migration legislation should avoid criminalizing or penalizing irregular migration, since it harms migrant children and adolescents" (2022, p. 10).

Well, the non-recognition of nationality in Colombia, either by the inefficiency of the procedures or by the state's refusal to recognize the legal personality of a minor, presupposes the violation of the right to legal personality, defined by the Constitutional Court as the "fundamental right that gives human beings, and some legal entities, the possibility of individualizing themselves as subjects of rights and obligations and allows them to make use of the so-called -attributes of personality-" (Judgment T-092, 2015). The disregard of that fundamental guarantee to any person entails the impossibility of exercising vital acts and obtaining the recognition of rights and several attributes that any human being has, even more so any minor, attributes such as name, domicile, patrimony, marital status, identity, etc. Now, it should be clarified that, although many persons without nationality have a name, have capacities like any other, or have a domicile, it is also true that the Court considers that having any identity document represents an "indispensable instrument" that allows exercising and legitimately putting into practice the attributes mentioned above.

For its part, the Convention on the Rights of the Child, specifically in Article 7, expressly mentions that children have the right to a name and that States shall ensure that right in their national legislation, and shall abolish any legislation that prevents the acquisition of a nationality (ONU, 1989, art. 7). Similarly, Article 3 refers to the aforementioned best interests of the child, concerning which Navarro and Lozano consider: "the principle of the best interests of the child shall be applied (...) This norm requires that, in any decision to be taken by an authority about the child, the best interests of the child shall be a primary consideration" (2021, p. 27).

At the same time, the Constitutional Court, in several of its rulings, warns of the prevalence of minors in terms of the fulfillment of their rights. See, for example, sentence T-514 of 1998, which states:

> The constitutional concept of the best interests of the child consists of recognizing a specific legal characterization of the child based on his or her prevailing interests, and of treating him or her in a way that is equivalent to that prevalence, that specially protects him or her, that protects him or her from abuses and arbitrariness, and that guarantees "the normal and healthy development" of the child from the physical, psychological, intellectual and moral points of view and the correct evolution of his or her personality.

Following this reasoning, it cannot be ignored that the right to health has been particularly one of the main problems in the protection of migrants in an irregular situation in Colombia because, given the controversial and reluctant failures in terms of coverage, it is very complex to provide an efficient service and allocate resources that focus on the proper provision of the service. On this issue, Amaya, Moreno, and Pelacani point out that:

> Migrants in an irregular situation have seen their right to health care restricted. These migrants, due to their very irregular situation and not having an identification document recognized by the Colombian State, cannot affiliate with an EPS. (2019, p. 36)

In response, at least from the legal point of view, Article 50 of the Political Charter offers due protection to minors, since it imposes on all healthcare providers that receive contributions from the State the duty to provide free care to this population, with special emphasis on newborns.

The right to education is not considered only as an end, but as a means by which, primarily, minors should benefit. According to Palacio:

> Ensuring access to education not only provides access to a healthy environment at that stage of youth but is also one of the main vehicles for projecting a better future and getting out of the precarious situations in which the child may find himself or herself (2015, p. 52).

By way of illustration, it is useful to observe the problems in countries such as Chile, where, in some places, the fundamental right to education of migrant minors is protected; however, Grau, Díaz and Muñoz (2021) highlight, based on studies by different authors, that educational institutions that receive a certain number of migrant students, for geographic and cultural reasons, are prone to suffer some discrimination, and are called "migrant schools". This leads to the conclusion that the simple fact that migrant minors are guaranteed entry to an educational institution does not mean that their rights are safe from risks.

In contrast with other territories, Colombia is notoriously backward due to various factors that have made it difficult for the State to meet this need; bureaucracy and corruption in remote areas are the main causes of this deficiency. This is expressed by Restrepo, Cotrina and Daza (2020), who also argue that "[o]ne of the main characteristics of social rights is the enormous budgetary outlay involved in the implementation of interventionist and positive measures in favor of people's equality" (2020, p. 166).

4. Colombian regulations against statelessness

As previously mentioned, the Venezuelan migratory crisis has fallen mainly on Colombian territory and has generated circumstances in which the human rights of minors have been affected, mainly in the procedures at the time of registering the births of minors in Venezuela. Registration is an extremely complex process due to the costs of moving from one country to another and, in addition, it is a very slow process due to the convoluted bureaucracy (Rodríguez, Ávila and De Los Santos, 2020).

In addition to the above, Venezuelan parents do not comply with the domicile requirements demanded by law for their children to acquire Colombian nationality (Rodríguez et al., 2020). Precisely because of this, the State, as the main guardian of the rights of minors at risk of statelessness, must guarantee the proper development of this population. In response to this mandate, the State has issued certain regulatory provisions that will be studied below, paying attention to their benefits, but also to the gaps and possible future problems that may arise from their wording and scope.

Resolution 8470 of 2019

Faced with the situation of statelessness that children of Venezuelan parents may face, the Colombian State adopted the measure of granting nationality by birth to Venezuelan children born after August 19, 2015, regardless of whether their parents are Venezuelans in a regular or irregular migratory situation. This measure came about when it was found that, within the procedure for acquiring Venezuelan nationality, there were obstacles that put minors at risk of statelessness (Rodríguez et al., 2020).

Subsequently, Resolution 8470 of 2019 was issued, which undoubtedly, has been conducive to the respect of international agreements ratified by Colombia. In effect, the Resolution is the tool with which institutions such as the National Civil Registry can materialize the rights of minors who are children of Venezuelan migrants since it allows minors to have valid documents to prove their Colombian nationality.

Despite demonstrating a real fight against statelessness, this resolution suffers in any case from serious flaws and loopholes that could directly violate the development of minors. As timely highlighted by Pérez (2021), the Resolution gives protection to minors regarding their fundamental rights, e.g. health, education, access to the administration of justice, etc., however, the State does not take into account that this subject of rights depends on a family and that the protection for adults and Venezuelan nationals is very limited since government policy has not focused on protecting the right to a family, but rather on issuing administrative acts aimed at regulating and recognizing the right to work. In particular, reference should be made to Decree 117 of January 28, 2021, which facilitates access to a labor contract to a Venezuelan citizen of legal age.

Knowing this gap, it is incumbent upon the State to take precautions so that a minor -now with Colombian nationality- is not separated from his or her Venezuelan family, since such a situation would not only generate serious and imminent damage to the minor's development but would also expose Colombia to sanctions by international organizations.

Finally, it is worth highlighting the State's management by extending, with Resolution 8617 of 2021, the validity of Resolution 8470 of 2019, demonstrating that Colombia tries to comply, as far as possible, with the assumption of the best interests of the children. The omission of this act would trigger several violations to those born in Colombian territory, violating (in addition to the rights already mentioned) the right to equality and the return to the state of statelessness of many newborns born in national territory.

Law 1997 of 2019

Using Ley 1997, the Congress of the Republic added a paragraph to article two of Ley 43 of 1993, as follows:

> PARAGRAPH. Exceptionally, the residence and intention to stay in Colombia of Venezuelan persons in a regular or irregular migratory situation, or applicants for refuge, whose sons and daughters were born in Colombian territory from January 1, 2015 and up to 2 years after the enactment of this law shall be presumed.

This legal reform seeks to typify extraordinary methods and policies to obtain nationality through ius domicili of the children of Venezuelan parents in migratory circumstances and conditions (Portilla, 2021), regardless of whether their migratory status is regular or irregular, and even when the applicants seek refuge on Colombian soil (Gómez Rodríguez, 2021).

Despite the legislator's good intentions in the creation of this reform, it has shortcomings in its application. First of all, the real effects of the content of the 1997 Law have been discussed, as well as its lack of force of law. According to Moreno, Pelacani and Amaya (2020) there is still no adaptable regulation that precisely indicates the application of the exceptional presumption within the Colombian normative system, a circumstance that hinders its timely application and constitutes "an obstacle in events where the rights of minors are at risk" (Gómez Rodríguez, 2021, p. 25).

Secondly, as observed in the paragraph, the Law establishes a time of application of two years for the presumption of permanence, a condition that conflicts with the content of the resolution analyzed above: while Resolution 8470 establishes that the measure begins on August 19, 2015, the 1997 Law establishes that its application is from January 1, 2015 (Moreno et al., 2020). As can be seen, this circumstance may lead to confusion for public officials at the time of applying such provisions (Gómez Rodríguez, 2021).

This discrepancy of the rules in the application of the parameters to avoid statelessness in the children of Venezuelan nationals may generate legal uncertainty within the Colombian legislation. At the same time, it would violate the equality of treatment in the adoption of the norm, as is the situation of children born between January 1 and August 18, 2019, a period in which the Resolution was not in force; nor was it adopted, as announced at the beginning of this section, a regulation to benefit from the presumption that brings the law (Moreno et al., 2020).

Finally, as a third measure, the Law excludes minors of another nationality and Venezuelan minors born outside the time provided by both the Law and the Resolution (Moreno et al., 2020). This exclusion ignores the fact that, currently, the migration of Venezuelans is not the only one affecting the country (El Tiempo, 2022) and that, in addition, the migration that has arrived in Colombia has a vocation of permanence and has become a permanent phenomenon within the territory (Moreno et al., 2020).

In conclusion, Law 1997 of 2019 may have had negative effects at the time of its application since its enactment was presented, unfortunately, when there was already an equally exceptional solution with limited effects in time, such as Resolution 8470 of 2019. This resolution, in the end, has a procedure that organizes the situation of Venezuelan minors in terms equal to those of the law. Likewise, it is evidenced that in its application Law 1997 of 2019 has innocuous effects, in the absence of a rule or regulation that establishes a procedure for the application of the presumption contained therein with effects in the Colombian legal system. Such a vacuum implies, in short, a violation of the rights of Venezuelan minors in the national territory.

5. Conclusions

From the study of the management, both historical and current, of the eradication of statelessness in Colombia, it is evident that the entities in charge have not demonstrated forcefulness in their actions or due interest in a vulnerable and special population. Despite the existence of legal tools, the regulatory gaps and lack of speed accentuate the danger and violation of the rights of stateless minors of Venezuelan parents, which represents a clear omission of the State in its commitment to the ratified international conventions and also implies a lack of protection of the fundamental rights of children arriving in Colombian territory.

This is evidenced, mainly, by the lack of communication between the Colombian State agencies, which issue regulations almost simultaneously and with similar content. Despite this, these are regulations whose contradictions can generate legal uncertainty and directly violate the fundamental rights of children and adolescents, protected by the Political Charter and the treaties that are part of the Colombian constitutional block.

Finally, it is notorious for the disconnection of the authorities in charge of the current situation of the country. By establishing rules only for the children of Venezuelan migrants, it is not known that this is not the only migration to the national territory, and therefore a legal vacuum is created concerning minors whose parents are of different nationalities, which results in the lack of protection and violation of their rights and guarantees.

Conflict of Interest

The authors do not have any other competing interests or potential conflicts of interest to disclose.

References

1. ACUÑA BUSTOS, Andrés Pablo. Principio del interés superior del niño: dificultades en torno a su aplicación en la legislación chilena. En: Opinión Jurídica. 2019. Vol. 18, No. 36. p. 17-35. https://doi.org/10.22395/ojum.v18n36a1
2. ALTO COMISIONADO DE LAS NACIONES UNIDAS PARA LOS REFUGIADOS. Colombia toma medidas para garantizar que los niños y las niñas hijos de padres venezolanos no se conviertan en apátridas. 6 de agosto de 2019. https://www.acnur.org/noticias/briefing/2019/8/5d4974604/colombia-toma-medidas-para-garantizar-que-los-ninos-y-las-ninas-hijos-de.html
3. AMAYA CASTRO, Juan Manuel; MORENO VELÁSQUEZ, Carolina; PELACANI, Gracy. La gestión de la migración en Colombia hoy: Propuesta de diálogo para una política pública con enfoque de derechos en educación y salud. En: Serie Informe CEM 01 – 2019. Julio 2019. https://derecho.uniandes.edu.co/sites/default/files/Informe-cem.pdf
4. ARJONA COLOMO, Miguel. Derecho internacional privado. Parte Especial. Barcelona: Casa Editorial Bosch. 1954. 619 p.
5. BBC NEWS MUNDO. Crisis de Venezuela: "El éxodo de los venezolanos es el mayor de Latinoamérica en los últimos 50 años". 24 de agosto de 2018. https://www.bbc.com/mundo/noticias-america-latina-45291398
6. BOFILL, April; COTS, Jordin. La Declaración de Ginebra: Pequeña historia de la primera Carta de los Derechos de la Infancia. Barcelona, España; Comissió de la Infància de Justícia i Pau. 1999. 15 p. https://www.savethechildren.es/sites/default/files/imce/docs/declaracion_de_ginebra_de_derechos_del_nino.pdf
7. CAÑARTE CEDEÑO, Fátima Elizabeth; CANTOS FAUBLA, Andrea Jacqueline, ESPINOZA CUSCO, Andrea Elizabeth. El interés superior del menor en niños, niñas y adolescentes migrantes en el Ecuador. En: NULLIUS. 2022. Vol. 3, No. 2. p. 97-113. https://revistas.utm.edu.ec/index.php/revistanullius/article/view/4808/4698

8. CELY REYES, Delfina del Pilar. Análisis de los niños, niñas y adolescentes como sujetos de derechos. En: Salud & Sociedad Uptc. 2015. Vol. 2, No. 1. p. 42-47. https://revistas.uptc.edu.co/index.php/salud_sociedad/article/view/3978/3430
9. DEPARTAMENTO ADMINISTRATIVO NACIONAL DE ESTADÍSTICA. Estadísticas Vitales (EEVV) Nacimientos en Colombia. En: Boletín Técnico Estadísticas Vitales (EEVV). 25 de marzo de 2022. https://www.dane.gov.co/files/investigaciones/poblacion/bt_estadisticasvitales_nacimientos_IVtrim_2021pr.pdf
10. EL TIEMPO. Este año han pasado por Colombia 116.555 migrantes irregulares rumbo a EE.UU. 12 de octubre de 2022. https://www.eltiempo.com/justicia/investigacion/migracion-irregular-este-ano-se-han-reportado-116-555-extranjeros-709122
11. GÓMEZ RODRÍGUEZ, Dolly Yurany. Riesgo de apatridia para infantes venezolanos. Análisis desde la vigencia temporal de la Ley 1997 de 2019. Trabajo de grado pregrado Derecho. Bogotá D. C.: Universidad Católica de Colombia. Facultad de Derecho, 2021. 36 p. https://repository.ucatolica.edu.co/bitstream/10983/26175/1/RIESGO%20DE%20APATRIDIA%20PARA%20INFANTES%20VENEZOLANOS%202021060 2%20DYGR%20V1.pdf
12. GÓMEZ URRUTIA, Mariana Vargas. La protección internacional de los derechos del niño y la Conferencia de la Haya de Derecho Internacional Privado. Guadalajara, México. Tips Gráficos, S.A. de C.V. 2009. 119 p. http://e-spacio.uned.es/fez/eserv/bibliuned:DptoDEMP-FDER-DIP-Mvargas40/Vargas_Marina_1999_LIBRONInOSMENORES.pdf
13. GRAU RENGIFO, Olaya; DIAZ BÓRQUEZ, Daniela; MUÑOZ REYES, Carla. Niñez migrante en Chile: metasíntesis de experiencias educativas con enfoque de derechos. En: Revista Latinoamericana de Ciencias Sociales, Niñez y Juventud. 2021. Vol. 19, No. 2. p. 1-29. https://doi.org/10.11600/rlcsnj.19.2.4228
14. HOYOS BULA, María Carolina; RUÍZ DEL RÍO, María José. Nuevos retos de Colombia con la aplicación del Estatuto Temporal de Protección para Migrantes Venezolanos. En: Archivos de Criminología, Seguridad Privada y Criminalística. 2022. Vol. 18, No. 28. p. 168-185. https://dialnet.unirioja.es/servlet/articulo?codigo=8333110
15. MORENO, Carolina; PELACANI, Gracy; AMAYA CASTRO, Juan Manuel. LA APATRIDIA EN COLOMBIA: Fragmentos dispersos de una conversación pendiente. En: Serie Informes CEM Informe No. 2-2020. Junio 2020. https://derecho.uniandes.edu.co/sites/default/files/informe-cem-2020.pdf
16. NAVARRO MANICH, José Alberto; LOZANO GARCÍA, Laura. El derecho de los "niños invisibles" a su inscripción después del nacimiento y a adquirir una nacionalidad. La obligación de evitar la apatridia infantil. En: Actualidad Jurídica Uría Menéndez. 2021. No. 57. p. 23-32. https://www.uria.com/documentos/publicaciones/7845/documento/art01.pdf?id=12770&forceDownload=true
17. NIBOYET, Jean Paulin. Principios de derecho internacional privado. México: Editorial Nacional. 1960. 802 p.
18. PALACIO LAVÍN, Antonio Riva. El Pacto Internacional de Derechos Económicos, Sociales y Culturales. México D. F., México. Comisión Nacional de los Derechos Humanos. 2015. 65 p. http://appweb.cndh.org.mx/biblioteca/archivos/pdfs/fas_CSUPDH4-1aReimpr.pdf
19. PÉREZ CALDERON, William Fernando. Riesgo de los padres venezolanos en situación migratoria irregular a ser separados de los niños nacidos en Colombia. Trabajo de grado pregrado Derecho. Bogotá D. C.: Universidad Católica de Colombia. Facultad de Derecho, 2021. 21 p. https://repository.ucatolica.edu.co/server/api/core/bitstreams/d7a6ed54-1330-448b-b844-9c1001c4e651/content
20. PORTILLA BARCO, Cristhian Eduardo. Análisis jurídico de la aplicación de la Ley 1997/19 frente al otorgamiento de la nacionalidad de los niños/as hijos de migrantes irregulares venezolanos nacidos en Cúcuta (Colombia) – período 2015 al 2019. Trabajo de grado pregrado Derecho. Cúcuta: Universidad Libre. Facultad de Derecho, Ciencias Políticas y Sociales, 2021. 98 p. https://repository.unilibre.edu.co/bitstream/handle/10901/20460/TRABAJO%20DE%20GRADO%20CRISTHIAN%20PORTILLA.pdf?sequence=3&isAllowed=y
21. PRIMERO LO PRIMERO. ABC de los derechos de los niños y niñas en Colombia. https://primeroloprimero.co/es/abc-de-los-derechos-de-los-ninos-y-ninas-en-colombia/
22. REAL ACADEMIA ESPAÑOLA. Apátrida. 2022. https://dle.rae.es/ap%C3%A1trida
23. REMIRO BROTÓNS, Antonio. Derecho Internacional. Curso General. Valencia: Tirant Lo Blanch. 2010. 877 p.
24. RESTREPO PIMIENTA, Jorge; COTRINA GULFO, Yamid Enrique; DAZA SUARÉZ, Alfredo. Obligaciones de los Estados en materia de Derechos Económicos, Sociales y Culturales en el Sistema Universal de Derechos Humanos. En: Encuentros. 2020. Vol. 18, No. 2. p. 164-173. http://ojs.uac.edu.co/index.php/encuentros/article/view/2529/2363
25. ROBAYO, María Clara. Venezolanos en Colombia, un eslabón más de una historia compartida. 2013. https://es.scribd.com/document/465773406/2ee3361e-eec6-4230-925b-3e6d91c83ab0
26. RODRÍGUEZ VÁZQUEZ, Miguel Ángel; ÁVILA HERNÁNDEZ, Flor María; DE LOS SANTOS, Isidro. Reflexiones sobre nacionalidad, apatridia y derechos de los niños. Análisis comparado entre Colombia y República Dominicana. En: Novum Jus. 2020. Vol. 14, No. 2. p. 197-231. https://novumjus.ucatolica.edu.co/article/view/3190
27. TIANA FERRER, Alejandro. Declaración de los Derechos del Niño y Convención sobre los Derechos del Niño. En: Transatlántica de Educación. 2008. Vol. 5, No. 5. p. 95-111. https://dialnet.unirioja.es/descarga/articulo/3036618.pdf

Jurisprudencia y normativa

1. CHILE. CORTE SUPREMA DE JUSTICIA. Sentencia causa rol 7150-2012. (14, enero, 2013).
2. COLOMBIA. CONGRESO DE LA REPÚBLICA. Ley 1098. (8, noviembre, 2006). Por la cual se expide el Código de la Infancia y la Adolescencia. Diario Oficial. Bogotá D. C., 2006. No. 46.446. p. 1-48. https://www.icbf.gov.co/sites/default/files/codigoinfancialey1098.pdf
3. COLOMBIA. CONGRESO DE LA REPÚBLICA. Ley 1997. (16, septiembre, 2019). Por medio del cual se establece un régimen especial y excepcional para adquirir la nacionalidad colombiana por nacimiento, para hijos e hijas de venezolanos en situación de migración regular o irregular, o de solicitantes de refugio, nacidos en territorio colombiano, con el fin de prevenir la apatridia. Diario Oficial. Bogotá D. C., 2019. No. 51.078. p. 1-3. http://www.secretariasenado.gov.co/senado/basedoc/ley_1997_2019.html
4. COLOMBIA. ASAMBLEA NACIONAL CONSTITUYENTE. Constitución Política. (6. julio, 1991). Gaceta Constitucional. Bogotá D. C., 1991. No. 116. p. 1-108. https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125

5. COLOMBIA. CORTE CONSTITUCIONAL. SALA CUARTA DE REVISIÓN. Sentencia T-514/98. (21, septiembre, 1998). Bogotá D.C., 1998. p. 1-10. https://www.corteconstitucional.gov.co/relatoria/1998/T-514-98.htm
6. COLOMBIA. CORTE CONSTITUCIONAL. SALA QUINTA DE REVISIÓN. Sentencia T-092/15. (5, marzo, 2015). Bogotá D.C., 2015. p. 1-41. https://www.corteconstitucional.gov.co/relatoria/2015/t-092-15.htm
7. COLOMBIA. CORTE CONSTITUCIONAL. SALA TERCERA DE REVISIÓN. Sentencia T-408/95. (12, septiembre, 1995). Bogotá D.C., 1995. p. 1-12. https://www.corteconstitucional.gov.co/relatoria/1995/t-408-95.htm
8. COLOMBIA. REGISTRADURÍA NACIONAL DEL ESTADO CIVIL. Resolución 8470. (5, agosto. 2019). Por la cual se adopta una medida administrativa de carácter temporal y excepcional, para incluir de oficio la nota "Válido para demostrar nacionalidad" en el Registro Civil de Nacimiento de niñas y niños nacidos en Colombia, que se encuentran en riesgo de apatridia, hijos de padres venezolanos, que no cumplen con el requisito de domicilio. Bogotá, D. C.: La Registraduría, 2019. p. 1-13. https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_registraduria_8470_2019.htm
9. ORGANIZACIÓN DE LAS NACIONES UNIDAS. Convención sobre el Estatuto de los Apátridas. (28, septiembre, 1954). 1954. Nueva York. p. 1-14. https://www.acnur.org/5b43cea54.pdf
10. ORGANIZACIÓN DE LAS NACIONES UNIDAS. Convención sobre los Derechos del Niño. (20, noviembre, 1989). Nueva York. p. 1-50. https://www.un.org/es/events/childrenday/pdf/derechos.pdf
11. ORGANIZACIÓN DE LAS NACIONES UNIDAS. La Declaración Universal de Derechos Humanos. (10, diciembre, 1948). Paris. p. 1-9. https://www.un.org/es/about-us/universal-declaration-of-human-rights
12. ORGANIZACIÓN DE LOS ESTADOS AMERICANOS. Convención Americana sobre Derechos Humanos. (22, noviembre, 1969). 1969. San José. p. 1-22. https://www.oas.org/dil/esp/1969_Convenci%C3%B3n_Americana_sobre_Derechos_Humanos.pdf
13. SOCIEDAD DE NACIONES. Declaración de Ginebra. (24, septiembre, 1924). Ginebra. p. 1. https://www.ramajudicial.gov.co/documents/1545778/7429338/NNA-INT-NOR-IDI-01-1924.+Declaraci%C3%B3n+de+Ginebra+.pdf/938d86c5-fc53-47c3-9716-337d6cafa05c#:~:text=El%20ni%C3%B1o%20hambriento%20debe%20ser,socorro%20en%20caso%20de%20calamidad