



Statelessness in the Canadian Context

An updated discussion paper

Revised March
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Executive Summary

This updated version of a 2003 report on statelessness in Canada, was published following the December 2011 Ministerial Meeting in Geneva convened by UNHCR in commemoration of the 60th anniversary of the 1951 Refugee Convention, as well as the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. The Meeting was attended by 155 countries, including 72 Ministerial level delegations, and represented the largest meeting ever dedicated to the protection of refugees and stateless persons.

The Ministerial Meeting was part of a major push by UNHCR to combat statelessness - a problem affecting as many as 12 million people worldwide. The Meeting's main goal was to bring about strengthened support for the bedrock principles by which the international community has for more than half a century dealt with refugees, other displaced, and stateless people. The Meeting generated two main outcomes: action-oriented commitments by states to address particular displacement and statelessness issues, in the form of pledges, and a forward-looking Ministerial Communiqué adopted by all participating states. As a result of advocacy efforts during 2011, seven countries acceded to one or both of the statelessness conventions and another 25 countries pledged their future accession during the Ministerial meeting.¹

Article 15 of the *Universal Declaration of Human Rights* provides: “Everyone has the right to a nationality.” Sometimes called “the right to have rights,” nationality or citizenship is the fundamental criterion differentiating “insiders” who may benefit from the protection of the state and actively participate in governance, from “outsiders” who remain vulnerable and largely impotent in relation to the state and society.

Canadian law and policy generally recognizes the importance of citizenship. Indeed, Canada’s policy of conferring citizenship on children born in the territory as well as on many of those born abroad to Canadian parents is among the most liberal in the world. However, UNHCR and partner organizations have long encountered difficulties in resolving the situation of individuals in Canada who are not recognized as nationals by any state under the operation of its laws, but who are also not found to be in need of international protection by the competent Canadian bodies.

¹ For the list of countries party to the statelessness conventions, see below at pages 22-24.

In Canada, as elsewhere, there are two contexts in which statelessness may arise: one is in the context of migration, including both those who are stateless when they arrive in Canada and those who become stateless after entry, for example because of the collapse of their state; the other is those who are stateless *in situ*, who consider themselves to be “in their own country” but who are not recognized as citizens by Canada.

This report examines the current state of Canadian law, policy and practice with respect to statelessness, in the context of international law in this area. After discussing the impact of statelessness and the national and international legal frameworks, the paper moves on to analyze specific aspects of Canadian policy with respect to both the avoidance of statelessness and the protection of those who are already stateless. The report identifies changes, both positive and negative, that have been made since the first edition of the report was issued in 2003, while observing that in general the situation of statelessness has remained static. It urges Canada to reconsider its decision not to accede to the 1954 *Convention relating to the Status of Stateless Persons*, and sets out detailed recommendations for reform, including by way of complementary protection measures such as the humanitarian and compassionate program.

Note from the author re Bill C-31: the *Protecting Canada's Immigration System Act*

Shortly before this paper was to go to press, the Government of Canada tabled in the House of Commons Bill C-31, the *Protecting Canada's Immigration System Act*. If passed and implemented, the Bill will radically alter Canada's refugee protection landscape, making it far more difficult for refugees to obtain protection and security in Canada, and giving the Minister unprecedented power to arbitrarily impose punitive detention and family separation measures on whole groups and classes of refugees. In my opinion (which may or may not be shared by UNHCR), several of the core provisions of Bill C-31 violate binding norms of international human rights and refugee law as well as Canada's Charter of Rights and Freedoms. Notwithstanding these grave concerns about the prospective impact of Bill C-31 on refugees and immigrants and their families – and thus on stateless persons to the extent that they are part of these larger populations – the bill has not yet been adopted by the legislature and in any event does not *directly* address the situation of stateless persons. Therefore, the changes proposed in Bill C-31 are commented on only briefly, in those sections where there might be a direct impact on stateless persons *per se*.

- Andrew Brouwer
Toronto, March 20, 2012



Introduction

Citizenship has been called “the right to have rights.”² Providing the basic link between an individual and the state, citizenship or nationality³ differentiates “insiders” who may benefit from the protection of the state and actively participate in governance, from “outsiders” who remain vulnerable and largely impotent in relation to the state and society.⁴ Those who have no nationality are known as “stateless persons.”

The 1954 *Convention relating to the Status of Stateless Persons* defines “stateless person” as “a person who is not considered as a national by any State under the operation of its law.” This definition of statelessness is now recognized as part of customary international law.⁵

There are two contexts in which statelessness may arise in Canada: one is in the context of migration, including both those who are stateless when they arrive in Canada and those who become stateless after entry, for example because of the break-up of their state; the other is those who are stateless *in situ*, who consider themselves to be “in their own country” but who are not recognized as citizens by Canada.⁶

The following case studies illustrate the contexts in which statelessness in Canada may arise. They are based on reported decisions by the Federal Court and/or the Immigration and Refugee Board. Names and some details have been altered.

² *Trop v. Dulles*, 356 U.S. 86 (1958) (USSC) at 102.

³ The terms citizenship and nationality are used interchangeably in this paper.

⁴ C.A. Batchelor, “Stateless Persons: Some Gaps in International Protection,” 7 *IJRL* 2 (1995), at 235.

⁵ See: UNHCR, *Expert Meeting - The Concept of Stateless Persons under International Law (Summary Conclusions)*, May 2010, p. 2. Note that in addition to those covered by this definition of *de jure* statelessness, there are others who, though formally recognized as citizens under the domestic law of their country, nevertheless do not enjoy *effective* nationality. These persons are often referred to as *de facto* stateless.

⁶ *Supra* n. 5.

1.) Statelessness in the context of migration

A.

Leila's Story: Those who were stateless prior to coming to Canada

Leila, a stateless person of Palestinian origin, was born in a refugee camp in Lebanon and lived there her whole life before immigrating to Canada. In her claim for refugee status, the IRB acknowledged that Leila lived with discrimination and insecurity all her life, owing to her lack of status in Lebanon. She was prohibited from working in her chosen profession, was paid less than a Lebanese national for the same work, had no right to property ownership, had been subject to army raids, and had no right of return if she left Lebanon. Despite this, the Board was unable to extend protection, finding that Leila did not fit the definition of a Convention Refugee or a person in need of protection. The Board did however, acknowledge Leila's difficult situation stating that she lived without hope and was circumscribed by her lack of status in Lebanon, and it expressed hope that the Minister would provide extraordinary relief (as such a remedy was unavailable to the Board itself).

Mikhail and Eva's Story:**Those who become stateless *sur place*, after leaving a country of nationality**

Mikhail and Eva were citizens of the former USSR, having been born and raised in the territory that is now the Russian Federation. After the break up of the former USSR, Mikhail and Eva, who were living in the United States at that time, needed to take affirmative steps to obtain citizenship in the Russian Federation within a specified time period. They never took those steps. After some mix up and administrative delays with their green card applications, Mikhail and Eva were ordered deported from the US. They sought voluntary removal to Russia, however, Russia refused to acknowledge them as citizens. In 2006, after being imprisoned in the US for 2 years and fearing further indefinite detention, Mikhail and Eva came to Canada and declared refugee status. Their claim was denied as the Board did not find a well-founded fear of persecution. In its decision, the Board noted that Mikhail and Eva had lived in in fear of deportation and imprisonment for 15 years and that it had taken an incredible toll on the family which was well-educated and once thriving business people. The Board suggested that the Minister make a discretionary consideration under section 25 of the Act.

B.

2.) Statelessness *in situ*

Timothy’s Case: Those who consider themselves to be “in their own country” but are not recognized as citizens of Canada

Timothy’s parents ran a farm in southern Manitoba, near the Canada-US border and he was delivered in 1947 at the nearest hospital, in North Dakota. Timothy lived his whole life believing that he was Canadian, however after being convicted of various drug and smuggling offences, a deportation order was issued seeking to remove him to the US. Under s.3(1)(e) of the pre-2008 *Citizenship Act* which applied to Timothy, Timothy did not automatically qualify for Canadian citizenship since his birth was not registered within two years. By the time his case disputing citizenship was heard, the *Citizenship Act* had been amended and the judge chose to interpret the old provisions in light of the amended legislative clarification which was due to take effect shortly. Namely, the amendment under s. 3(1)(g) provided that a person is a Canadian citizen if he or she was born outside Canada before February 15, 1977 to a parent who was a Canadian citizen, without outlining a registration timeline. With this interpretation, Timothy was entitled to Canadian citizenship and thus, could not be deported.

Canadian law and policy generally recognize the importance of citizenship. Indeed, Canada’s policy of conferring citizenship on children born in the territory as well as on those born abroad to Canadian parents is among the most liberal in the world. However, individuals in Canada who have no nationality *and* are not recognized as refugees or protected persons, remain very vulnerable.

Universal norms of international law generally prohibit discrimination based on nationality or statelessness. As the former UN Special Rapporteur on the rights of non-citizens has observed, “[t]he architecture of international human rights is built on the premise that all persons, by virtue of their essential humanity, enjoy certain rights.”⁷⁷ The *Convention on the Elimination of All Forms of Racial Discrimination* (CERD), to which Canada is a party, prohibits all forms of racial discrimination, including on the basis of national or ethnic origin, and obliges States parties “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.”⁷⁸

⁷⁷ UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *Prevention of Discrimination: The rights of non-citizens – Final report of the Special Rapporteur, Mr. David Weissbrodt*, May 26, 2003, E/CN.4/Sub.2/2003/23, para. 6.

⁷⁸ *Convention on the Elimination of All Forms of Racial Discrimination* (CERD), arts. 1, 2, 5

This discussion paper has been prepared in the context of UNHCR's efforts to address problems of statelessness around the world. It is estimated that some 12 million people are stateless worldwide. The Secretary General of the United Nations has identified the resolution of statelessness as a "foundational and integral part of UN efforts to strengthen the rule of law."⁹

The identification, prevention and reduction of statelessness and protection of stateless persons, are part of UNHCR's mandate.¹⁰ There are close connections between statelessness and forced displacement, since displacement can be both a cause and a consequence of statelessness, and statelessness can be an obstacle to the resolution of refugee problems.¹¹ In 2001, UNHCR's Executive Committee¹² noted the global dimension of statelessness, and welcomed UNHCR's efforts to broaden its activities to reduce this phenomenon. In 2006, the Executive Committee urged to work with governments, other UN and international as well as relevant regional and non-governmental organizations, "to strengthen its efforts in this domain by pursuing targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons."¹³ UNHCR provides technical support and advice to states on issues related to statelessness, and encourages accession to the 1954 *Convention relating to the Status of Stateless Persons* and to the 1961 *Convention on the Reduction of Statelessness*.

The purpose of this paper is to assess the extent to which problems of statelessness arise in Canadian law and practice, to identify any significant changes that have occurred since the publication of the original version of this report in 2003, and to propose workable solutions. UNHCR and partner organizations have long encountered difficulties in resolving the situation of individuals in Canada who are not recognized as nationals by any state under the operation of its laws, but who are also not found to be in need of international protection by the competent Canadian bodies. In addition, UNHCR has an interest in the approach taken to applications for protection filed by stateless persons, and in seeking to ensure that Canadian legislation pertaining to citizenship contains necessary safeguards to avoid rendering persons stateless.

⁹ *Supra* n. 5 at 2. See also UN Secretary-General (UNSG), Guidance Note of the Secretary General: The United Nations and Statelessness, June 2011.

¹⁰ See United Nations General Assembly (UNGA) Resolution 3274 (XXIX) of 10 Dec. 1974, UN Doc. 3274(XXIX); UNGA Res. 31/36 of 30 Nov. 1976, UN Doc. A/RES/31/36; UNGA Res. 51/75 of 12 Dec. 1996, UN Doc. A/RES/51/75; UNGA Res. 56/137 of 19 Dec. 2001, UN Doc. A/RES/56/137; UNHCR Executive Committee Conclusion No. 78 (XLVI) 1995, UN Doc. A/AC.96/860. See also Guidance Note of the Secretary General: The United Nations and Statelessness, June 2011, *supra* n. 5.

¹¹ UNHCR, *The State of the World's Refugees: A Humanitarian Agenda*, (Oxford: Oxford University Press, 1997), at 244.

¹² UNHCR Executive Committee Conclusion No. 90 (LII) 2001, UN Doc. A/AC.96/959, para. 22 (o)-(s).

¹³ UNHCR Executive Committee Conclusion No. 106 (LVII) - 2006, UN Doc. A/AC.96/1035, para. (a).

Since the first edition of this report was published in 2003, minor changes in the Canadian system have resulted in slightly improved data collection, and the amendments to the *Citizenship Act* that were ultimately adopted in 2008 were for the most part improvements upon the proposals set out in Bill C-18, which in 2003 was still before Parliament for consideration. While the 2008 amendments addressed a gap in Canadian citizenship legislation which involved the apparently unintended denial of citizenship to certain categories of persons known as “Lost Canadians,” they also imposed, for the first time in Canadian law, a limit on the ability of parents to pass on Canadian citizenship to their children. Neither the *Balanced Refugee Reform Act* adopted in 2010 nor Bill C-31, the *Protecting Canada’s Immigration System Act*, tabled in Parliament in February 16, 2012, which include major reforms to Canada’s refugee protection system, included provisions to address statelessness.

Also since 2003, renewed advocacy on the part of the UNHCR and its Executive Committee, the United Nations General Assembly and the Organization of American States, *inter alia*, has contributed to a greater awareness of the phenomenon and to concrete actions on the part of states to tackle statelessness and to become party to the international conventions on statelessness.

2011 was a year of commemorations for UNHCR, celebrating the 60th anniversary of the 1951 *Convention relating to the Status of Refugees* and the 50th anniversary of the 1961 *Convention on the Reduction of Statelessness*. As the final commemorative event, on 7-8 December 2011, UNHCR organized a Ministerial Conference in Geneva to enable states to make concrete pledges to address specific forced displacement and/or statelessness issues, as well as broader, forward-looking recommendations. The Meeting brought together more than 800 registered participants from 155 countries, including 72 delegations at the ministerial level. The majority of the participating states made concrete pledges to improve the protection of refugees and/or stateless persons. In addition, ministers adopted a Ministerial Communiqué - a short, non-binding, political statement capturing the main contemporary challenges relating to statelessness and refugee protection. The meeting was also a treaty event, giving states the opportunity to formalize their accession to the refugee and statelessness conventions and/or remove any reservations to these instruments. On this occasion, two states acceded to the 1961 Convention, raising the total number of states parties to 42. In addition, two states used the occasion to accede to the 1954 Convention, raising the number of states parties to that Convention to 71.¹⁴ Additional countries pledged their future accession to the international statelessness instruments and announced a variety of other commitments related to statelessness, aimed at its prevention and reduction, the identification of stateless persons, civil registration, documentation, and awareness-raising.¹⁵ After having been a neglected issue on the global human rights agenda for decades, the 2011 commemoration efforts have made an important contribution to put statelessness firmly on the map across the globe.

¹⁴ For the list of countries party to the statelessness conventions, see below pages 22-24. It also bears noting that these statements reflect the number of state parties at the time of writing, and does not include any state parties who may accede thereafter as a result of pledges at the Ministerial Conference.

¹⁵ At the December 2011 Ministerial Conference, the following countries pledged accession to the 1954 Convention : Benin, Bulgaria, Central African Republic, Côte d’Ivoire, Georgia, Guinea-Bissau, Honduras, Haiti, Moldova, Mozambique, Paraguay, Peru, Portugal, Sierra Leone, South Africa, South Sudan, Togo, and Turkey. Further, countries who pledged accession to the 1961 Convention at the time of writing were: Argentina, Belgium, Benin, Bulgaria, Burundi, Central African Republic, Côte d’Ivoire, Guinea, Guinea-Bissau, Honduras, Haiti, Luxembourg, Moldova, Mozambique, Paraguay, Peru, Philippines, Portugal, Sierra Leone, South Africa, South Sudan, Spain, Togo, and Turkey. It bears noting that pledges continue to be accepted until the end of January 2012.

It is hoped that this updated report, published in the aftermath of the December 2011 Ministerial Meetings in Geneva, will shed some light on these complex questions and will encourage Canada to take practical steps to avoid and resolve situations of statelessness. It is also hoped that this paper will encourage Canada to reconsider the possibility of acceding to the 1954 *Convention relating to the Status of Stateless Persons*.

Impact of statelessness

Statelessness has dramatic and debilitating effects on a person's life. U.S. Supreme Court Chief Justice Earl Warren described the situation of the stateless person this way:

His very existence is at the sufferance of the country in which he happens to find himself. While any one country may accord him some rights and, presumably, as long as he remained in this country, he would enjoy the limited rights of an alien, no country need do so, because he is stateless.¹⁶

He concluded that to be stateless is to lack “the right to have rights.”¹⁷

Statelessness has dire consequences for everyday life. Since nationality is key to the protection of rights, stateless persons frequently have no recognized and protected right to own property, to employment, health care, education or mobility. They are often unable to register the birth of their children or to marry and found a family. In many jurisdictions, they do not enjoy legal protection.¹⁸ Though these are all considered to be “universal” human rights, the reality is that without a connection to a state, the rights are unenforceable and thus largely meaningless. Moreover, as discussed below, detention, sometimes indefinite, of those who cannot prove their nationality and who have no legal claim to remain in a state, is increasingly common around the world.¹⁹

In Canada, as elsewhere, stateless persons who do not have authorization to stay in the country live in a condition of legal limbo.²⁰ Some stateless persons are refugees and, once recognized as such, enjoy the full set of rights which attach to refugee status. However, non-refugee stateless persons are in an extremely precarious situation. These are persons who are not recognized as nationals by any country but also do not have a well-founded fear of persecution in any country on one of the grounds enumerated in the 1951 *Convention relating to the Status of Refugees*. Whether they were stateless before arrival or lost their nationality while in Canada as a result, for example, of the dissolution of their country of citizenship, it is this group of individuals, albeit small, who face the greatest problems in Canada and elsewhere. They are vulnerable and marginalized.

¹⁶ *Supra* n.2 at 101-2.

¹⁷ *Ibid.*, at 102.

¹⁸ Division of International Protection, UNHCR, “What would life be like if you had no nationality?” (Geneva: UNHCR, March 1999), at 3.

¹⁹ *Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, to the UN Commission on Human Rights, 59th Session* (Advance Edited Version), UN Doc. E/CN.4/2003/8520 (December 2002).

²⁰ See “Refugees and Stateless Persons in Limbo,” *Refuge*, vol. 22, no. 2 (2005)

Ivan's story: living in legal limbo

Ivan²¹ was born and grew up in Russia during Soviet rule. Just before the break-up of the USSR, at the age of 20, he emigrated legally to the United States, through the US Refugee Program. At that time, persons resettled under this program were required by Moscow to renounce their USSR citizenship, in exchange for exit permission. Ivan did so. After a year in the US he became a permanent resident, but his residency status was later revoked when he was convicted on a forgery charge. The US authorities tried to deport him to Russia, but the authorities refused to admit him, arguing that he was not a Russian citizen. He crossed the border into Canada without authorization, and was detained for illegal entry. The US would not readmit him. He remained in jail for more than two years, while the Canadian authorities tried unsuccessfully to send him to Russia. He was finally released from detention when it was evident that there was no reasonable prospect of his removal. He approached UNHCR for help to return voluntarily to Russia. Despite consistent efforts by UNHCR, the Russian authorities have not agreed to readmit him. Ivan has now spent more than three years without legal status in Canada. In the eight years since the publication of the original version of this report, there has been no change in the case and Ivan remains in Canada in a state of limbo.

Among the most painful aspects of life in legal limbo is indefinite family separation. Without status in Canada as a permanent resident or a citizen, stateless persons are ineligible to bring their children and spouses to Canada. Nor can they leave Canada, whether to relocate permanently or to visit their families. Unlike immigrants, who can leave at any time to visit or reunite with their families, stateless persons have no standing right to enter another country. If they do manage to leave Canada, they have no right to return.

²¹ Case on file at UNHCR Ottawa. In this and in all subsequent case studies, the individuals' names have been changed to protect their privacy.

As demonstrated by the case of Ivan set out above, non-refugee stateless persons in Canada who cannot acquire a legal status are subject to removal from the country, and may be detained pending removal. However, because removal is often impossible, what should be short-term detention in preparation for removal may become long-term or even indefinite, as Canadian officials try to convince another country to accept a non-national. The issue of lengthy detention, particularly for administrative reasons is a key concern for UNHCR, which could be avoided if alternative protection mechanisms for this group were to be put in place.

Like anyone who has no legal status in Canada, non-status stateless persons are ineligible for public assistance and subsidized medical care. They also face significant barriers to education. While youth are in principle entitled to attend primary and secondary school regardless of their status in Canada, post-secondary students require a student visa, which they are unlikely to be able to acquire if they have no status in Canada. Even if successful they will be charged much higher tuition fees than citizens or permanent residents. Public student loans are restricted to Canadian citizens, permanent residents, and recognized refugees.

Non-status stateless persons also face difficulties obtaining work authorization and finding accommodation. As a result, they may feel they have little choice but to accept substandard conditions of work and housing.



Citizenship and Statelessness: The Issues

Nationality is often the prerequisite for the enjoyment of other rights, including such basic ones as the right to remain in one's country and to re-enter from abroad, and, in democratic countries, the right to vote and to participate fully in public affairs. As well, nationality is the basis on which a state extends protection to individuals in other states, through the mechanism of consular assistance. Importantly, nationality is also the main way for individuals to invoke their universal human rights, as the international human rights system is premised on state responsibility for the rights of nationals, with a more limited set of rights for "aliens."

The definition of a "statelessness person"

The definition of a statelessness person is set forth in Article 1(1) of the 1954 *Convention relating to the Status of Stateless Persons* as follows: "the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law." That is, no state recognizes a stateless person as its own national. This may be because the person's former state has collapsed or changed into a new state, or the person may have been stripped of nationality. In other cases a person might be stateless because she or he has never had a nationality.

In order to ensure that everyone may be an “insider” somewhere, and hence enjoy the full protection of a state and of international law, the 1948 *Universal Declaration of Human Rights* (UDHR) provides:

Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality.²²

But though the right to a nationality is clearly a fundamentally important one, it has little meaning unless the next question is addressed: to which nationality does an individual have a right? Rephrased, the question is how to determine which state has the obligation to accord its nationality to a particular individual. International law provides that the granting of citizenship falls within the sovereign authority of states. While this does not leave states free to grant or withhold citizenship arbitrarily,²³ it does provide room for a variety of approaches to granting citizenship.

The two most common approaches to determining whether to grant citizenship to an individual are based on an assessment of the person’s link to the state by either blood or soil. Under *jus sanguinis*, or “right of blood,” citizenship is granted on the basis of descent to children born to nationals of the state. Under *jus soli*, or “right of the soil,” citizenship is granted to children on the basis of their place of birth. Both systems are in use around the world, in varying forms.

At the conceptual level, it would appear that either approach, if adopted universally and without discrimination, could meet the goal of Article 15 of the UDHR. Every child is born to a parent, so a universal system of *jus sanguinis* should ensure a nationality to every child – as long as every parent has a nationality in the first place. Alternatively, a universal system of *jus soli* should ensure that every child acquires a nationality, since every child is born in the territory of one state or another – provided every state is willing to provide an effective nationality to every person born on its territory.

In reality, however, the existence of two different approaches, and countless variations on each, works against realization of the universal right to a nationality. The most commonly cited example is of a child born in state A to parents who are nationals of state B, where state A grants nationality by descent (*jus sanguinis*) and state B grants nationality by place of birth (*jus soli*). In such a case the child is left stateless.

²² 1948 UDHR, Art. 15.

²³ “It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.” *Convention on Certain Questions relating to the Conflict of Nationality Laws*, (Hague Convention), 179 LNTS 89, Art. 1.

Indeed, the two principles are also applied in different ways by different states, reflecting various cultures and biases. For instance, *jus sanguinis* citizenship is often restricted to children of fathers who are nationals of a state and excludes matrilineal citizenship.²⁴ As well, it often includes provisions for severing the chain of nationality where the link to the state is considered to be too weak. *Jus soli* likewise may take a variety of forms, including restrictions relating to minimum residence in the state. Some states, including Canada, grant citizenship on both grounds.

Conflicts of laws are not the only causes of statelessness. A major contemporary cause is state succession, such as that which resulted from the break-up of the Soviet Union and of Yugoslavia. Laws relating to marriage and the registration of births also give rise to statelessness, whether in the context of state succession or in normal circumstances. Other causes include administrative practices, automatic loss of citizenship through the loss of an effective link to the state, and, in exceptional cases, renunciation of citizenship without the prior acquisition of another nationality.²⁵

Melita's story: protected as a refugee

Melita was born in Bosnia-Herzegovina in 1952, when it was part of the Socialist Federal Republic of Yugoslavia. Her father, an officer in the Yugoslav army, was an ethnic Serb. Her mother was of Serbian-Jewish background. In 1972 she moved to Croatia, where she lived until war broke out there in 1991. Because of the conflict she moved briefly to Montenegro, before leaving for Canada, where she applied for refugee status in 1992. The Immigration and Refugee Board found that she was not a citizen of the newly independent Croatia, nor automatically entitled to the citizenship of the newly proclaimed Federal Republic of Yugoslavia, and hence was stateless. The Board also found that she had a well-founded fear of persecution in her country of former habitual residence (Croatia) on grounds of her ethnicity and membership in a particular social group (families of former Yugoslav Army officers). She was recognized as a Convention refugee and as such, was able to apply for permanent residence in Canada and subsequently for Canadian citizenship, thereby resolving her situation of unclear citizenship and possible statelessness.²⁶

²⁴ Division of International Protection, UNHCR, *Information and Accession Package: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness*, Geneva: UNHCR, June 1996; Rev. Jan. 1999, at 10.

²⁵ Ibid.

²⁶ CRDD No. 197, T93-06867, T93-06868, T93-06869 (1993).

States have also used the grant or removal of citizenship as a political tool. As long ago as A.D. 212 the Roman emperor Caracalla, seeking to prop up a faltering empire and to expand his tax revenue base, passed the *Constitutio Antoniniana*, granting Roman citizenship to “all aliens throughout the world.”²⁷ On the other side of the equation is mass denationalization, used most infamously by the Nazi regime in 1930s Germany to strip Jews and some others of their German citizenship.²⁸ As well, at the end of the war, mass denationalization of ethnic Germans was undertaken in Czechoslovakia, Poland and Hungary.²⁹

²⁷ R. Debray, “Nous sommes tous Américains,” *Harper’s Magazine*, May 2003, at 13; P.N. Stearns et al., eds., *Encyclopedia of World History: Ancient, Medieval, and Modern*, 6th ed., (Boston: Houghton Mifflin Company, 2001), at II. E. 4. b.

²⁸ The Law of July 14, 1933, concerning Cancellation of Naturalisations and Deprivation of Nationality (RGBl vol. I, p. 480, cited in Weis, *infra* n. 29 at 119) revoked the citizenship of Jews, Trotskyites and others. Stripped of legal status and subjected to the Nazi racial laws, those who were not interned or murdered by the Reich fled Germany to seek protection in other countries. Hannah Arendt cites a 1938 SS newspaper, *Schwartzes Korps*, as stating explicitly that “if the world was not yet convinced that the Jews were the scum of the earth, it soon would be when unidentified beggars, without a nationality, without money, and without passports crossed their frontiers.” (H. Arendt, *The Origins of Totalitarianism* (1951) quoted in Refugee Law: Cases and Materials, Part I Chapter 1, excerpted in A. Macklin and S. Aiken, *Canadian Immigration and Refugee Law*, Vol II (course materials), University of Toronto Faculty of Law, Winter 2003, at 512.) Eight years later another law was passed stripping Jews residing abroad of their German nationality as well. (11th Ordinance by virtue of the Reich Citizenship Law of November 25, 1941 (RGBl. Vol. I, p. 722) concerning Denationalisation of Jews living abroad, cited in Weis, *infra* n. 29 at 119).

²⁹ P. Weis, *Nationality and Statelessness in International Law*, 2nd rev. ed., (Aalpen aan den Rijn: Sijthoff & Noordhoff International Publishers BV, 1979) at 120.



The International Legal Regime

It was in response to the horrors of the Second World War and the failure of the international community to respond appropriately to the flow of stateless persons and refugees, that the international community decided to draft multilateral conventions on the matter. In 1947, the UN Commission on Human Rights urged “that early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any Government, in particular pending the acquisition of nationality, as regards their legal and social protection and their nationality.”³⁰ At the time, refugees and stateless persons were generally regarded as a single group, defined as being outside of their place of origin and lacking the protection of any state.³¹

Studies were conducted and committees and working groups convened to look into the issue and develop instruments to protect stateless persons. Yet the work quickly zeroed in on refugees, leaving non-refugee stateless persons on the sidelines:

In view of the urgency of the refugee problem and the responsibility of the United Nations in this field, the Committee decided to address itself first to the problem of refugees, whether stateless or not, and to leave to later stages of its deliberations the problems of stateless persons who are not refugees.³²

Thus in 1951 the *Convention relating to the Status of Refugees* was adopted on its own, and the planned Protocol relating to the Status of Stateless Persons, which was intended to accompany it, was deferred for further study. While the 1951 Refugee Convention applies to some stateless persons, its application is limited to those who are also refugees. Article 1 A (2) provides that the Convention applies to a person who:

³⁰ UN Doc E/600, (1947), at 46, quoted in Batchelor, *supra* n. 4 at 241.

³¹ *Ibid.*, at 240.

³² *Report of the Ad Hoc Committee on Statelessness and Related Problems*, UN Doc. E/1618 and Corr. 1, 17 Feb. 1950, 120, quoted in Batchelor, *supra* n. 4 at 243.

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (emphasis added)

Only those stateless persons who are outside of their country of habitual residence *and* who have a well-founded fear of persecution on one of the enumerated grounds are protected under the 1951 Refugee Convention. That Convention has been very widely ratified, the number currently standing at 145 ratifications. Canada acceded to the Refugee Convention in 1969.³³

*The 1954 Convention relating to the Status of Stateless Persons*³⁴

The planned Protocol relating to the Status of Stateless Persons was replaced by a Convention which was adopted three years later. The 1954 *Convention relating to the Status of Stateless Persons*, which has 71 parties and has *not* been ratified by Canada, applies to “a person who is not considered as a national by any State by the operation of its law.”³⁵ This definition reflects an ongoing controversy among the drafters about the difference between, and protection required by stateless persons covered by the Convention, sometimes referred to as *de jure* stateless persons and those who are *de facto* stateless, the latter group who was described at the time of drafting the 1954 Convention as comprising persons who, “without having been deprived of their nationality no longer enjoy the protection and assistance of their national authorities.”³⁶ It was widely assumed at the time that most *de facto* stateless persons were refugees, in which case they were already protected under the 1951 Refugee Convention. In addition, it was feared that including *de facto* stateless persons might provide a loophole for those seeking a new nationality for the sake of convenience, by allowing them to renounce their nationality and then put themselves under the wider definition of statelessness. For these reasons primarily, the 1954 Convention was limited in direct application to those who are stateless.³⁷ However, a recommendation included in the Final Act of the Conference encourages states to extend their protection to *de facto* stateless persons. The Final Act:

Recommends that each Contracting State, when it recognizes as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to that person the treatment which the Convention accords to stateless persons.³⁸

³³ United Nations Treaty Website, <http://untreaty.un.org>.

³⁴ See Main Provisions of the 1954 *Convention relating to the Status of Stateless Persons*, attached as Appendix B.

³⁵ 1954 Convention, Art. 1(1). This definition is now a part of customary international law. See: UN High Commissioner for Refugees, *Expert Meeting - The Concept of Stateless Persons under International Law (Summary Conclusions)*, *supra* n. 5.

³⁶ *A Study of Statelessness*, UN Doc. E/1112 (1 Feb. 1949); E/1112/Add.1 (19 May 1949).

³⁷ Batchelor, *supra* n. 54 at 248.

³⁸ *Final Act of the United Nations Conference on the Status of Stateless Persons*, item 3.

A contemporary review of *de facto* statelessness confirmed that the key element of this concept pertained to the provision of protection by a State to its nationals abroad, proposing an operational definition of the concept as follows:

De facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality.³⁹

The 1954 Convention seeks to regulate and improve the legal status of stateless persons, and to ensure non-discriminatory protection of their fundamental rights and freedoms by the state in which they reside. Many of its provisions are identical to those of the 1951 Refugee Convention, which seeks to protect the rights of refugees. These include, *inter alia*, the core non-discrimination obligation,⁴⁰ provisions on religious freedom,⁴¹ juridical status,⁴² employment,⁴³ welfare,⁴⁴ freedom of movement,⁴⁵ issuance of travel and identity documents,⁴⁶ and an obligation to “facilitate assimilation and naturalisation.”⁴⁷ In addition, the 1954 Convention prohibits expulsion of stateless persons “save on grounds of national security or public order.”⁴⁸

While the 1954 Convention encourages the naturalization of stateless persons, it does not *require* a state to grant its nationality to a stateless person. The 1954 Convention seeks to ensure a legal status and minimum level of protection for stateless persons wherever they may be, but leaves to the 1961 Convention the question of which nationality an individual should have. As pointed out in UNHCR’s *Information and Accession Package* for the 1954 Convention, “[t]he improvement of the rights and status of stateless persons under the provisions of this Convention do not [...] diminish the necessity of acquiring a nationality nor do they alter the fact that the individual is stateless.”⁴⁹

The 1954 Convention has been called an “orphan convention” because it does not provide for a supervisory body. Had it remained a Protocol to the 1951 Refugee Convention, stateless persons would have had the benefit of Article 35 of the Refugee Convention, which established a supervisory role for UNHCR. However, subsequently, UNHCR Executive Committee has requested that the Office “provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions.”⁵⁰

³⁹ *Summary Conclusions of the Expert Meeting on the Concept of Stateless Persons under International Law* (UNHCR 2010).

⁴⁰ 1954 Convention, Art. 3.

⁴¹ *Ibid.*, Art. 4.

⁴² *Ibid.*, Arts. 12-16.

⁴³ *Ibid.*, Arts. 17-19.

⁴⁴ *Ibid.*, Arts. 20-24.

⁴⁵ *Ibid.*, Art. 26.

⁴⁶ *Ibid.*, Arts. 27-28.

⁴⁷ *Ibid.*, Art. 32.

⁴⁸ *Ibid.*, Art. 31(1).

⁴⁹ *Supra* n. 18 at 38.

⁵⁰ Para (x), *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) - 2006

*71 States Parties to the 1954 Convention relating to the Status of Stateless Persons*⁵¹

Albania	Liberia
Algeria	Libyan Arab Jamahiriya
Antigua and Barbuda	Liechtenstein*
Argentina	Lithuania
Armenia	Luxembourg
Australia	Malawi*
Austria*	Mexico
Azerbaijan	Montenegro*
Barbados	Netherlands
Belgium	Nigeria**
Belize*	Norway
Benin**	Panama**
Bolivia	Philippines**
Bosnia and Herzegovina	Republic of Korea
Botswana	Romania*
Brazil	Rwanda*
Chad	Senegal*
China	Serbia
Costa Rica	Slovakia
Croatia	Slovenia
Czech Republic*	Spain
Denmark	St. Vincent and the Grenadines
Ecuador	Swaziland
Fiji	Sweden
Finland	Switzerland
France	The former Yugoslav Republic of Macedonia
Germany	Trinidad and Tobago
Greece	Tunisia
Guatemala	Turkmenistan**
Guinea	Uganda
Hungary	United Kingdom of Great Britain and Northern Ireland
Ireland	Uruguay*
Israel	Zambia
Italy	Zimbabwe
Kiribati	<i>*Acceded/ratified since 2003</i>
Latvia	<i>** Acceded in 2011 Commemoration Year</i>
Lesotho	<i>Colombia, El Salvador, Holy See, Honduras signed only, pending ratification</i>

⁵¹ United Nations Treaty Website
http://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~3&chapter=5&Temp=mtdsg2&lang=en

*The 1961 Convention on the Reduction of Statelessness*⁵²

In 1961, a further instrument was adopted on the subject of statelessness. The 1961 *Convention on the Reduction of Statelessness* aims at reducing *future* statelessness by setting international standards for national laws on the acquisition and loss of nationality. The Convention provides “for the acquisition of nationality by those who would otherwise be stateless *and who have an appropriate link with the State through birth on the territory or through descent from nationals*, and for the retention of nationality for those who will be made stateless should they inadvertently lose the State’s nationality.”⁵³ (emphasis added)

The Convention thus accepts both the *jus sanguinis* and *jus soli* approaches to citizenship. It includes detailed provisions on the grant of nationality,⁵⁴ loss and renunciation of nationality,⁵⁵ deprivation of nationality⁵⁶ and transfer of territory.⁵⁷ It provides for an international agency to assist stateless persons,⁵⁸ and like other international conventions, for the submission, rarely resorted to, of interstate disputes regarding its interpretation or application to the International Court of Justice.⁵⁹ The Final Act of the Conference, like that of the 1954 Convention, recommends that *de facto* stateless persons be treated as far as possible like the *de jure* stateless persons, so that they too may acquire effective nationality.⁶⁰

There are, however, cases of statelessness which are not necessarily eliminated under the terms of the 1961 Convention, and where additional measures could prove useful. Article 11 of the final text of the 1961 Convention provides for the establishment of “a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.” This function has been delegated to UNHCR.⁶¹ However, the original version of the article also called for an independent tribunal that would be competent to decide any disputes between parties and to hear complaints presented by the agency on behalf of stateless individuals.⁶² States rejected the tribunal proposal by a vote of 21 to 2 with 3 abstentions.⁶³

Though the 1961 Convention has been ratified by just 42 states (including Canada in 1978),⁶⁴ it has had a wide reach, with its terms incorporated into the laws of many states, including non-parties to the Convention as well as parties.⁶⁵

⁵² See Main Provisions of the 1961 *Convention on the Reduction of Statelessness*, attached as Appendix B.

⁵³ *Supra* n. 24 at 40.

⁵⁴ 1961 Convention, Arts. 1-4.

⁵⁵ *Ibid.*, Arts. 5-7.

⁵⁶ *Ibid.*, Arts. 8-9.

⁵⁷ *Ibid.*, Art. 10.

⁵⁸ *Ibid.*, Art. 11.

⁵⁹ *Ibid.*, Art. 14.

⁶⁰ *Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness*, Resolution I.

⁶¹ UNGA Resolution 3274 (XXIX) of 10 Dec. 1974.

⁶² Batchelor, *supra* n. 4 at 252.

⁶³ *Id.* at 254.

⁶⁴ United Nations Treaty Website, <http://untreaty.un.org>.

⁶⁵ UNHCR, *supra* n. 24 at 32.

<i>42 States Parties to the 1961 Convention on the Reduction of Statelessness⁶⁶</i>	
Albania	Lesotho*
Armenia	Liberia*
Australia	Libyan Arab Jamahiriya
Austria	Liechtenstein*
Azerbaijan	Netherlands
Benin**	New Zealand*
Bolivia	Niger
Bosnia and Herzegovina	Nigeria**
Brazil*	Norway
Canada	Panama**
Chad	Romania*
Costa Rica	Rwanda*
Croatia**	Senegal*
Czech Republic	Serbia**
Denmark	Slovakia
Finland*	Swaziland
Germany	Sweden
Guatemala	Tunisia
Hungary*	United Kingdom of Great Britain and Northern Ireland
Ireland	Uruguay
Kiribati	<i>*Acceded/ratified since 2003</i>
Latvia	<i>** Acceded in 2011 Commemoration Year</i>
	<i>Dominican Republic, France and Israel signed only, pending ratification</i>

The continuing regulatory gap: de facto stateless who are not refugees

Yet as noted, there are people for whom formal status as a national does not result in effective state protection. A contemporary example are Cuban nationals who have overstayed the validity of their exit permits and are therefore denied re-entry to Cuba.

This demonstrates that in some circumstances the legal status of “national” does not necessarily carry with it the usual attributes of nationality, specifically state protection. The matter is as relevant to the determination of whether someone is stateless as it is to sorting out which nationality of several is an individual’s “true” one. In both scenarios, the answer lies not in the label but in the actual experience of the person.⁶⁷

⁶⁶ United Nations Treaty Website:
http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en

⁶⁷ See Batchelor, *supra* n.

Several commentators have highlighted the gaps left by formalistic approaches to statelessness. In 1952 Manley Hudson, the International Law Commission's Special Rapporteur on nationality and statelessness, warned that "purely formal solutions... might reduce the number of stateless persons, but not the number of unprotected persons. They might lead to a shifting from statelessness *de jure* to statelessness *de facto*."⁶⁸ Paul Weis has argued that the terms *de jure* stateless person and *de facto* stateless person are misleading and inaccurate, and proposed using instead the terms "*de jure* unprotected person" and "*de facto* unprotected person," the latter including refugees, a proposal which would emphasize protection rather than formal legal status.⁶⁹ UNHCR's Carol Batchelor has also highlighted the need to fill "the gap left between a simple conflicts of law issue and an unprotected person who does not fit categorically into any of the definitions."⁷⁰

Mahmoud's story: nowhere to go

Mahmoud was born in the late 1920s in what was then the British Mandate of Palestine. After the war of 1948 he relocated to Lebanon where he lived until 1951. Then he moved to Syria, where he lived and worked until 1957. In Syria he married a Palestinian refugee woman and they had a child. In 1958 they relocated to Qatar where he had obtained employment. In 1981 his employment in Qatar terminated and the family relocated to the United Arab Emirates, where Mahmoud had found employment and where they remained until 1995, when they came to Canada and made a refugee claim. The Immigration and Refugee Board (IRB) assessed their claim only against the United Arab Emirates, their last country of permanent residence, and found them not to have a well-founded fear of being persecuted there, although they could not be readmitted to the UAE as their previous status there (and in the other countries where they had lived) had been dependent on the head of family's employment. The applicants were therefore determined not to be Convention refugees, although the IRB panel declared that it was "not without sympathy" for the claimants, calling them "persons who have literally nowhere to go, legally."⁷¹

⁶⁸ M. Hudson, *Report on Nationality, including Statelessness*, ILC 4th Sess. UN Doc A/CN.4/50, 21 Feb 1952, at 49, quoted in Batchelor, *supra* n. 4 at 234.

⁶⁹ Weis, *supra* n. 29 at 164.

⁷⁰ Batchelor, *supra* n. 4 at 258.

⁷¹ CRDD No. 318, U95-03043, U95-03045, U95-03450, (1996).

International Human Rights Instruments

Numerous international human rights instruments have been developed in the years since the adoption of the refugee and statelessness conventions. These are universal instruments which guarantee the rights of all persons, irrespective of their status. Unlike the 1948 UDHR,⁷² these treaties are directly binding on states parties. The 1966 *International Covenant on Civil and Political Rights* (ICCPR) and the 1966 *International Covenant on Economic, Social and Cultural Right* (ICESCR), to which Canada acceded in 1976, give legal expression to the general commitments of the UDHR. Other treaties such as the 1965 *Convention on the Elimination of All Forms of Racial Discrimination* (CERD), to which Canada acceded in 1970, the 1979 *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), to which Canada acceded in 1981, and the 1989 *Convention on the Rights of the Child* (CRC), to which Canada acceded in 1991, have combined to articulate more fully the universal rights which states parties are obliged to respect.

The basic principle of non-discrimination lies at the heart of all of these treaties. As the former UN Sub-Commission's Special Rapporteur on the rights of non-citizens has observed, "[t]he architecture of international human rights is built on the premise that all persons, by virtue of their essential humanity, enjoy certain rights."⁷³ While there may be situations in which states may legitimately treat non-citizens differently from citizens, for example with respect to the right to participate in elections, to vote and to stand for election, these are exceptional cases and must be proportional and directed to a legitimate aim. As the Committee on the Elimination of Racial Discrimination has commented in its General Recommendation 30⁷⁴ on discrimination against non-citizens:

[D]ifferential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.⁷⁵

The 1966 ICESCR prohibits any distinction between citizens and non-citizens with respect to economic, social and cultural rights. With respect to civil and political rights under the 1966 ICCPR, the only permissible distinction in times of domestic stability relates to political participation rights and certain rights of entry and residence. As the Human Rights Committee observed in its General Comment 15⁷⁶ on the position of aliens:

[T]he rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness [...]The general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.⁷⁷

⁷² It should be acknowledged that, though not formally binding as a Declaration of the General Assembly and not requiring ratification by individual member states, it is often observed that the 1948 UDHR has nevertheless evolved into customary international law.

⁷³ *Supra* n. 7 at 6. .

⁷⁴ Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against Non-citizens (Sixty-fourth session, 2004), U.N. Doc. CERD/C/64/Misc.11/rev.3 (2004).

⁷⁵ *Ibid.*, at 4.

⁷⁶ *General Comment 15 of the Human Rights Committee* (11/04/86), UN Doc. A/41/40 (1986) Annex VI (pp. 117-119).

⁷⁷ *Ibid.*, at 1. It is worth noting, however, that Art. 15 of the UDHR is not incorporated in the ICCPR. As a result, while the Covenant articulates a broad range of civil and political rights that apply to stateless persons, it does not address the underlying problem of statelessness itself.

Differential treatment *among* non-citizens may, in some circumstances, be permissible at international law, according to the Special Rapporteur. Article 1(3) of the 1965 CERD provides: “Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.” In order to assess the legitimacy of such provisions, the criteria for differential treatment must be assessed in light of the objects and purposes of the Convention. As the Committee on the Elimination of Racial Discrimination has observed in its General Recommendation 14, “[i]n seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.”⁷⁸ This probably encompasses by analogy discrimination against persons because they are stateless.

Citizenship or immigration status may be used as a ground for differential treatment only in limited areas. For example, the 1966 ICCPR distinguishes between persons who are lawfully within the territory of a state and those who are not, with respect to freedom of movement and the right to choose one’s place of residence,⁷⁹ and the right to certain procedural protections in expulsion proceedings.⁸⁰

International human rights law also provides norms for the acquisition of citizenship by children. Article 24 of the ICCPR provides that “[e]very child has the right to acquire a nationality.” Article 7 of the 1989 *Convention on the Rights of the Child* requires that a child born to both citizen and non-citizen parents in the territory of a state party to the Convention “shall be registered immediately after birth and shall have the right from birth to a name, [and] the right to acquire a nationality [...] States parties shall ensure the implementation of these rights in accordance with their national instruments in this field, in particular where the child would otherwise be stateless.” However, Article 7 does not stipulate which state has the obligation to confer nationality in these circumstances. For the provision to have meaning, there must be a default position for the conferral of nationality or citizenship where there would otherwise be a vacuum, for example where the parents are nationals of a state that confers citizenship on the basis of *jus soli* but the child is born in a state that follows *jus sanguinis*. A recent expert meeting convened by UNHCR on Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children concluded:

It follows from CRC Articles 3 (principle of the best interests of the child) and 7 that a child may not be left stateless for an extended period of time. The obligations imposed on States by the CRC are not only directed to the country of birth of a child, but to all countries with which a child has a link, e.g. by parentage. In the context of State succession, predecessor and successor States may also have obligations.⁸¹

⁷⁸ Committee on the Elimination of Racial Discrimination, *General Recommendation 14*, “Definition of Discrimination”, UN Doc. A/48/18, September 15, 1993, at 2.

⁷⁹ 1966 ICCPR, Art. 12.

⁸⁰ *Ibid.*, Art. 13.

⁸¹ *Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children*, para. 5 (UNHCR 2011).

With regard to naturalization, the core principle of non-discrimination has direct relevance, and applies to discrimination in both purpose and effect. International human rights bodies investigating citizenship legislation in newly independent states have shown growing concern about citizenship laws that result in statelessness.⁸² The UN Human Rights Committee observed in 1995 that stringent criteria in Estonian citizenship law prevented a “significantly large segment of the population” from enjoying Estonian citizenship, and that “permanent residents who are non-citizens are [...] deprived of a number of rights under the Covenant.”⁸³ Similarly with regard to Latvian citizenship legislation the Committee observed that the law “contains criteria of exclusion which give room to discrimination under Articles 2 and 26 of the Covenant,”⁸⁴ and called on that government to “take all necessary measures to guarantee that the citizenship and naturalization legislation facilitate the full integration of all permanent residents of Latvia, with a view to ensuring compliance with the rights guaranteed under the Covenant.”⁸⁵

In its 2005 judgement in the case of *Dilcia Yean and Violeta Bosico v. Dominican Republic*, the Inter-American Court of Human Rights recognized the growing influence of international human rights on the discretion of States to grant or withhold nationality:

The determination of who has a right to be a national continues to fall within a State’s domestic jurisdiction. However, its discretionary authority in this regard is gradually being restricted with the evolution of international law, in order to ensure a better protection of the individual in the face of arbitrary acts of States. Thus, at the current stage of the development of international human rights law, this authority of the States is limited, on the one hand, by their obligation to provide individuals with the equal and effective protection of the law and, on the other hand, by their obligation to prevent, avoid and reduce statelessness.⁸⁶

Affirming the human right to nationality as the gateway to the equal enjoyment of all rights as civic members of a state, the Court broke new ground by unequivocally upholding the international prohibition on racial discrimination in access to nationality.⁸⁷

In *Andrejeva v. Latvia*,⁸⁸ the European Court of Human Rights examined a discrimination claim brought by a stateless resident of Latvia who had received a lower pension than was paid to Latvian citizens because she lacked Latvian citizenship. The petitioner, Natalija Andrejeva, had arrived in Latvia as a child and lived there all her adult life and had only become stateless as a result of the dissolution of the USSR. The Court upheld her complaint, finding that she was unfairly disadvantaged as a “permanently resident non-citizen” of Latvia, in circumstances where Latvia was “the only State with which she has any stable legal ties and thus the only State which,

⁸² *Ibid.*, at 44-46.

⁸³ UN Human Rights Committee, *Comments on Estonia*, UN Doc. CCPR/C/79/Add.59 (1995) at 12 - 13, quoted in *Progress report on the rights of non-citizens*, *supra* n. 73 at 45.

⁸⁴ UN Human Rights Committee, *Comments on Latvia*, UN Doc. CCPR/C/79/Add.53 (1995) at 17, quoted in *Progress report on the rights of non-citizens*, *supra* n. 73 at 45, Articles 2 and 26 of the ICCPR are the non-discrimination provisions.

⁸⁵ *Progress report on the rights of non-citizens*, *supra* n. 73 at 27.

⁸⁶ *Yean and Bosico Children v. Dominican Republic*, Judgment of September 8, 2005, Inter-Am Ct. H.R., (Ser. C) No. 130 (2005), at para 140

⁸⁷ For a helpful summary of the judgement, see: <http://www.agriculturalmissions.org/DRInterAmerCtSummary.pdf>

⁸⁸ *Andrejeva v. Latvia* (Application no. 55707/00)

objectively, can assume responsibility for her in terms of social security.”⁸⁹ The Court relied on the principle it established thirteen years earlier in *Gaygusuz v. Austria*⁹⁰ for the principle that “very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention.”⁹¹

Despite the above cases, it should be noted that there are very few reported cases on statelessness issues in either the Canadian courts or in the UN Human Rights Committee.

International law also provides for a right to return to one’s country. Article 13(2) of the UDHR provides that “[e]veryone has the right to leave any country, including his own, *and to return to his country*” (emphasis added). Article 9 prohibits arbitrary exile. Similarly, Article 12(4) of the ICCPR states that: “No one shall be arbitrarily deprived of the right to enter his own country.” The UN Human Rights Committee has observed that any deprivation of this core right must be “reasonable,” and that “there are few, if any, circumstances in which deprivation of the right to enter one’s own country could be reasonable.”⁹²

The right to enter one’s country is not necessarily limited to those who have formal status as nationals. When the ICCPR was being drafted, the first suggested language was “the country of which he is a national”. However, several states objected that the right to return was governed not by nationality but by the notion of a permanent home.⁹³ In *Stewart v. Canada*, the Human Rights Committee went further. The Committee found that the right to enter one’s own country “embraces, at the very least, an individual who, because of his special ties to or claims in relation to a given country cannot there be considered to be a mere alien.”⁹⁴ This would be the case, for instance, of persons stripped of their nationality in violation of international law, or who became stateless as a result of state succession or transfer of territory. The Human Rights Committee has suggested that the right to enter one’s “own country” extends also to other categories of long-term residents, particularly stateless people arbitrarily deprived of the right to acquire the nationality of the country of such residence.⁹⁵ The Committee reaffirmed this view in its 1999 General Comment on Freedom of Movement.⁹⁶ More recently in *Warsame v. Canada*, the Human Rights Committee determined that “[t]he words ‘his own country’ invite consideration of such matters as long standing residence, close personal and family ties and intentions to remain, as well as to the absence of such ties elsewhere.”⁹⁷ In that case, the Committee determined:

⁸⁹ *Andrejeva v. Latvia* (Application no. 55707/00), para 88

⁹⁰ *Gaygusuz v. Austria* (Application no. 17371/90)

⁹¹ *Gaygusuz v. Austria* (Application no. 17371/90), para 42

⁹² UN Human Rights Committee, *General Comment 27 (1999): Freedom of Movement*, UN Doc. A/55/40, Vol. 1 (2000), Annex VI A (p. 128-132) at para 21.

⁹³ This discussion is cited in: Amnesty International, “Bhutan: Nationality, Expulsion, Statelessness and the Right to Return,” Amnesty International Index ASA 14/001/2000 (2000), at 21.

⁹⁴ *Stewart v. Canada* (Communication No. 538/1993), Views of the Human Rights Committee, Nov. 1, 1996, UN Doc. A/52/40 (Vol II.), Annex VI, Section G (pp. 47-69) at 12.4.

⁹⁵ *Ibid.*

⁹⁶ *Supra*, n.92 at 20.

⁹⁷ *Warsame v. Canada* (Communication No. 1959/2010), Views of the Human Rights Committee, Jul. 21, 2011, UN Doc. CCPR/C/102/D/1959/2010 at 8.4.

In the present case, the author arrived in Canada when he was four years old, his nuclear family lives in Canada, he has no ties to Somalia and has never lived there and has difficulties speaking the language. The Committee observes that it is not disputed that the author has lived almost all his conscious life in Canada, that he received his entire education in Canada and that before coming to Canada he lived in Saudi Arabia and not in Somalia. It also notes the author's claim that he does not have any proof of Somali citizenship. In the particular circumstances of the case, the Committee considers that the author has established that Canada was his own country within the meaning of article 12, paragraph 4, of the Covenant, in the light of the strong ties connecting him to Canada, the presence of his family in Canada, the language he speaks, the duration of his stay in the country and the lack of any other ties than at best formal nationality with Somalia.⁹⁸

It is worth noting that, in addition to the violation of the human rights of the person in question, it also infringes on the sovereignty of other states if a state expels or refuses to admit its own nationals.

The 1954 *Convention relating to the Status of Stateless Persons* defines "stateless person" as "a person who is not considered as a national by any State under the operation of its law." This definition of statelessness is now recognized as part of customary international law,⁹⁹ and has also been adopted into domestic law by some states prior to or without acceding to the Convention itself (eg. Honduras¹⁰⁰ and Panama.¹⁰¹)

Artur's story

Artur was born in the mid-1960s in Baku in what was then the USSR and is now the capital of independent Azerbaijan. In the early 1990s he arrived in Canada as a seaman on board a cargo vessel, holding a seaman's passport issued by the former USSR. He applied for refugee status but was found not to have a well-founded fear of persecution in any country. The Canadian authorities tried to remove him to Azerbaijan, but the authorities there refused to recognize him as their citizen, noting that his parents were of Armenian origin. His father was deceased; his mother had moved to Armenia. However, the Armenian authorities refused to recognize Artur as an Armenian citizen. The Russian authorities were contacted as his expired USSR seaman's passport had been issued in Moscow, but the Russian Federation also declined to readmit him. Artur was therefore left in legal limbo in Canada.¹⁰² As of late 2009, there had been no change in the Artur's circumstances and he has remained in Canada in a legal limbo.

⁹⁸ *Warsame v. Canada* (Communication No. 1959/2010), Views of the Human Rights Committee, Jul. 21, 2011, UN Doc. CCPR/C/102/D/1959/2010 at 8.5.

⁹⁹ *Supra* n. 5 at 2.

¹⁰⁰ Decreto N° 208 - Ley de Migración y Extranjería (2004)

¹⁰¹ Decreto Ejecutivo N° 23 de 10 de febrero de 1998

¹⁰² Case on file at UNHCR Ottawa.



Statelessness in Canadian Law and Practice

As noted, Canada is a party to the 1961 *Convention on the Reduction of Statelessness* but has so far declined to accede to the 1954 *Convention relating to the Status of Stateless Persons*. Canada has articulated its position based on the following reasons: Canada believes that the Refugee Convention to a large extent duplicates the 1954 Statelessness Convention and thus there is no need to accede to both; Canadian law

contains all necessary safeguards to cover adequately the situation of stateless persons; and Canada has concerns that ratification and subsequent inclusion in Canadian legislation of specific provisions governing the status of stateless persons would encourage stateless persons to come to Canada from other countries (the “pull-factor”), and would encourage persons already in Canada to renounce their citizenship.

Canada's reasons for non-accession to the 1954 Convention

Canada has provided three reasons for not acceding to the 1954 Convention.

- 1. The 1951 Refugee Convention largely duplicates the 1954 Statelessness Convention:* As is explained above, only a subgroup of stateless persons, who can establish that in addition to being stateless they also have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group, enjoy protection under the 1951 Convention. Most stateless persons are not protected by the 1951 Refugee Convention.
- 2. Canadian law contains all the necessary safeguards to cover adequately the situation of stateless persons:* As this paper explains under the heading "Protecting the stateless," currently there are protection gaps in Canadian immigration law and policy that leave stateless persons unprotected. These gaps can be effectively addressed by slight amendments to the immigration legislation and policy to ensure protection for stateless people. This paper sets out a number of specific proposals designed to that end.
- 3. Accession to the Convention would be a 'pull-factor' for stateless persons and would encourage those inside Canada to renounce their citizenship in order to remain in Canada.* Of the 74 states that responded to UNHCR's 2003 questionnaire on statelessness, it appears that only Canada cited this as a concern.¹⁰³ Examination of the population statistics of States which are parties to the 1954 Convention and which have determination procedures show that the number of applications tends to remain relatively stable over time and also that the number of individuals seeking protection as stateless persons is very small compared to the number of asylum seekers.¹⁰⁴

¹⁰³ UNHCR, Final Report Concerning the Questionnaire on Statelessness Pursuant to the Agenda for Protection, March 2004, para 104.

¹⁰⁴ Based on comparative review by UNHCR of population statistics of France, Hungary, Italy and Spain 2006-2010. Annual statistics are available at www.unhcr.org/statistics.

Despite the fact that Canada has acceded only to the 1961 *Convention on the Reduction of Statelessness*, and not to the 1954 *Convention relating to the Status of Stateless Persons*, the division of labour between the two conventions provides a convenient structure for the analysis of Canadian law and practice with respect to statelessness.

Accordingly, the next section of this report will examine: (1) legal provisions to avoid statelessness (the subject matter of the 1961 Convention), including rules for the acquisition of citizenship at birth, and loss of citizenship and (2) legal protection for those who are already stateless (the subject matter of the 1954 Convention), including refugee protection, access to permanent resident status, and naturalization. A third section will address issues relating specifically to the treatment of stateless persons, including the provision of travel documents, detention and removal.

Avoiding statelessness

The Citizenship Act

As a party to the 1961 *Convention on the Reduction of Statelessness*, Canada is obliged to ensure that its citizenship laws and policies reflect the provisions of the Convention so that those who might otherwise be stateless may be granted citizenship. Canada's *Citizenship Act*,¹⁰⁵ for the most part, appears to conform to these Convention obligations.

Under the provisions of the current *Citizenship Act*, citizenship is granted on both *jus soli* and first generation *jus sanguinis* bases.¹⁰⁶ That is, as a general rule, all children born in Canada as well as all children born abroad to Canadian-born parents are Canadian citizens. The only exceptions to the *jus soli* rule are with respect to children born in Canada to diplomatic or consular officials and employees, and staff of UN or similar international agencies who have diplomatic status.¹⁰⁷ All other children born in Canada are entitled by law to Canadian citizenship, regardless of the legal status or nationality of their parents (including if they are stateless).¹⁰⁸

While in the past Canada recognized as a citizen any child born abroad to a Canadian citizen parent regardless of where that parent had been born, amendments introduced in April 2008 limited *jus sanguinis* citizenship to the first generation born abroad. As a result, a child born abroad to a Canadian citizen parent who herself/himself was born outside of Canada is not a Canadian citizen.¹⁰⁹ Such persons can, however, apply for Canadian citizenship if they would otherwise be stateless, are under 23 and have resided in Canada for three of the four years preceding their application.¹¹⁰ While these provisions generally accord with Canada's obligations under Articles 1 and 4 of the 1961 Convention, this rule still creates a risk that children of Canadian nationals born

¹⁰⁵ *Citizenship Act*, R.S.C., 1985, c. C-29.

¹⁰⁶ *Supra* n. 105, s. 3(1).

¹⁰⁷ *Ibid.*, s. 3(2).

¹⁰⁸ Note, however, that this may soon change. According to media reports in February and March 2012, Citizenship and Immigration Canada is considering changes to current *jus soli* rules to exclude the children of persons who lack legal status in Canada. ("Tory crackdown on 'birth tourists' will eliminate Canadian passport babies," *National Post*, March 5, 2012 (<http://news.nationalpost.com/2012/03/05/passport-babies-canada/>, accessed March 19, 2012); "'Birth tourism' may change citizenship rules," CBC News, March 5, 2012 (<http://www.cbc.ca/news/canada/story/2012/03/02/birth-immigration-citizenship.html>, accessed March 19, 2012).

¹⁰⁹ *Ibid.*, s.3(3).

¹¹⁰ *Ibid.*, s. 5(5).

abroad would remain stateless for some years during their childhood, which raises concerns on account of developments in international human rights law. A recent expert meeting on the 1961 Convention convened by UNHCR indicated the following:

“The right of every child to acquire a nationality, as set out in CRC Article 7 and the principle of the best interest of the child contained in CRC Article 3, create a strong presumption that Contracting States should provide for automatic acquisition of their nationality at birth to an otherwise stateless child born abroad to one of its nationals. In cases where Contracting States require an application procedure, international human rights law, in particular the CRC, obliges States to accept such applications as soon as possible after birth”.¹¹¹

Further, the Act provides that adopted children may become Canadian citizens without having first to obtain permanent resident status.¹¹²

In compliance with Article 2 of the 1961 Convention, the Act also provides that foundlings under the age of seven are deemed to have been born in Canada, and thus to be Canadian citizens, unless within seven years of being found it is demonstrated that the person was not born in Canada.¹¹³ However, the Act does not provide for retention of Canadian citizenship where it is proved that a foundling was born outside Canada within the stated period, even where revocation would result in statelessness.

In addition, the Act provides the Governor in Council with discretionary power to grant citizenship *inter alia* “to alleviate cases of special and unusual hardship.”¹¹⁴

Under the *Citizenship Act*, Canadian citizenship can be lost in two ways: renunciation or revocation. Renunciation requires a formal application showing, *inter alia*, that the person is already or will become a citizen of another country upon renunciation of Canadian citizenship.¹¹⁵ This approach is consistent with the 1961 Convention.¹¹⁶ Revocation requires fraud, misrepresentation or knowing concealment of material circumstances,¹¹⁷ and may be referred to the Federal Court for final determination.¹¹⁸ Such a decision by the Court is not subject to appeal. The provisions for revocation do not include any consideration of potential statelessness as a result, which is distressing from the perspective of the need to avoid statelessness; however, they appear to be within the range of exceptions allowed by the 1961 Convention.¹¹⁹

This short overview of Canadian legislation on citizenship at birth, and loss of citizenship, is illustrative of Canada’s general compliance with obligations under the 1961 Convention. However, there is a gap: the so-called “Lost Canadians.”

¹¹¹ Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children, para.37(UNHCR 2011).

¹¹² *Ibid.*, s. 5.1.

¹¹³ *Ibid.*, s. 4(1).

¹¹⁴ *Ibid.*, s. 5(4).

¹¹⁵ *Ibid.*, s. 9.

¹¹⁶ Article 7(1) of the Convention.

¹¹⁷ *Ibid.*, s.10(1). Note that s. 10(2) establishes a presumption that anyone who acquired permanent resident status by fraud, misrepresentation or knowingly concealing material circumstances also acquired citizenship by such means, where citizenship was granted on the basis of the prior acquisition of permanent resident status.

¹¹⁸ *Ibid.*, s. 18.

¹¹⁹ i.e. 1961 Convention, Arts. 7, 8(2)(b) and 8(4).

“Lost Canadians”

“Lost Canadians,” are people who think of themselves as Canadians and who wish to participate in Canadian society, but either ceased to be citizens, or never were Canadian citizens in the first place, as a result of gaps in the law or arcane legal provisions. In many cases, “lost Canadians” were not aware that they were not Canadian citizens until they applied for a certificate of Canadian citizenship or other documentation.

In 2007, the Minister of Citizenship and Immigration indicated that there were about 450 known cases of “lost Canadians”; however, according to a 2007 CBC investigative report, the number might have been as high as 200,000.¹²⁰

Prior to amendments adopted in 2009, there were at least four distinct legal groups of “lost Canadians.”

1. People naturalized to Canada who subsequently lived outside the country for more than 10 years prior to 1967;
2. People born abroad to a Canadian parent before the current *Citizenship Act* came into effect on 15 February 1977;
3. People who lost their citizenship between 1 January 1947 and 14 February 1977 because they or their parent acquired the nationality or citizenship of another country; and
4. Second- and subsequent generation Canadians born abroad since the current *Citizenship Act* came into effect on 15 February 1977.

¹²⁰ CBC.ca, In Depth: Lost Canadians, CBC Investigation, March 2007 (<http://www.cbc.ca/news/background/lostcanadians/>. Accessed Dec 11, 2011)

“Lost Canadians” *cont’d*

On 17 April 2009, Bill C-37, an Act to amend the *Citizenship Act*, S.C. 2008, c. 14, came into force. The amendments addressed the “lost Canadians” problem by conferring Canadian citizenship on two groups of lost Canadians:

- (a) those who lost Canadian citizenship for any reason other than renunciation; revocation for fraud, misrepresentation or concealment of material circumstances; or in the case of a second- or later generation Canadian born abroad since 15 February 1977, failure to take steps to retain Canadian citizenship by the age of 28; and
- (b) those born abroad before 15 February 1977 to a Canadian parent but who never became Canadian citizens.¹²¹

While the government of Canada asserts that these amendments rectified most administrative errors that made “lost Canadians” stateless, it has not addressed all “lost Canadians” situations. Further, the amended bill created the possibility of new statelessness cases by limiting citizenship by descent to the first generation born or adopted outside Canada to a Canadian parent. As a result of this limitation, it is possible that children born on or after 17 April 2009 to a second generation Canadian parent may be stateless.

Two subsequent bills have been introduced to further close the gaps for “lost Canadians,” though to date neither has received final Parliamentary approval.

¹²¹ Penny Becklumb, Law and Government Division, Library of Parliament, Legislative Summary: Bill C-37: An Act to amend the *Citizenship Act*, LS-591E, 9 January 2008, Revised 23 September 2008.

Moreover, where there is room for discretion in the application of the law, there may be inconsistent or less-than-complete compliance. While these factors have little impact on conferral of citizenship at birth, they can play a role in cases of revocation, as well as in naturalization proceedings, where decision makers have considerable discretion.

Recommendations:

- i. *Principle: The general principle of avoiding statelessness should be added to the interpretation section of the Citizenship Act (s. 2).*
- ii. *Foundlings (Citizenship Act s.4(1)): An exception should be made allowing foundlings proved to have been born outside of Canada to retain Canadian citizenship if revocation would result in statelessness.*
- iii. *Special cases: The relief of statelessness should be identified in s.5(4) of the Citizenship Act or in regulations as a specific situation justifying the exercise of discretion under this provision.*
- iv. *Revocation: An exception should be provided for those who would be rendered stateless as a result of revocation, allowing for discretion to impose alternative sanctions for fraud, misrepresentation or knowing concealment of material circumstances, where revocation would impose excessive hardship and the person has significant ties to Canada.*

Protecting the stateless

Canada's legislation makes no specific provision for the protection of non-refugee stateless persons. Indeed, the general legislative attitude to statelessness is encapsulated in subsection 2(1) of the *Immigration and Refugee Protection Act*, which explicitly rejects the distinction between aliens who are nationals of another state, and those who are stateless: "‘foreign national’ means a person who is not a Canadian citizen or a permanent resident, *and includes a stateless person*" (emphasis added). The unique situation and vulnerability of stateless persons – the fact that they are not nationals of any state and thus have no access to consular protection and are generally unable to return to another country – is not acknowledged.

In-Canada programs

Though Canada is not party to the 1954 *Convention relating to the Status of Stateless Persons*, the human rights of stateless persons in Canada, like those of asylum-seekers and other non-citizens, are protected under the Charter of Rights and Freedoms, as well as under the international human rights instruments to which Canada is party. However, unless they have legal status in Canada, stateless persons remain vulnerable to detention and (attempted) removal to any country which might admit them, but where they would not necessarily enjoy effective protection. Non-refugee stateless persons, like other non-citizens without legal status in Canada, are easily exploited by landlords and employers.

The legal limbo in which non-status stateless persons live is detrimental not only for the individuals themselves, but also for the communities in which they live. Unable to leave and lacking access to social services and legal authorization to work, such persons may have little choice but to resort to work in the untaxed informal economy; their stateless children will be unable to pursue higher education or training; and they will be unable to fully integrate into their communities and Canadian society.

To receive protection in Canada, stateless persons must acquire legal status. There are three kinds of status which may be available to a stateless person: recognition as a Convention refugee or person in need of protection (“refugee protection”), either through the in-Canada refugee status determination procedure, the Pre-Removal Risk Assessment, or via overseas resettlement; conferral of permanent resident status, either in Canada or from abroad; and naturalization. Permanent residence is in most cases a prerequisite for naturalization.

It is difficult to know how many stateless persons are currently in Canada, or how many arrive each year. While CIC collects statistics on protection claims by stateless persons at airports and borders and in-land, as shall be discussed below the data are incomplete and do not correlate to data collected by the Immigration and Refugee Board.

Refugee protection

In Canada, the main way that statelessness may be resolved is via a process that begins with refugee protection. Stateless persons who are recognized as refugees may apply for permanent residence and, eventually, for Canadian citizenship. However, not all stateless persons are refugees, nor are all refugees stateless persons.

Canada’s *Immigration and Refugee Protection Act* (IRPA)¹²² imports the 1951 Convention definition of a refugee, which encompasses those refugees who are stateless. Statelessness alone, however, is not enough to bring a person under the refugee definition; to gain protection as a refugee, a stateless person must show a well-founded fear of persecution in his or her country of former habitual residence, on one of the grounds enumerated in the 1951 Convention.¹²³

¹²² S.C. 2001, c.27.

¹²³ *Thabet v. Canada (MCI)*, [1998] 4 FC 21; [1998] FCJ No. 629, at 16.

The literature and domestic jurisprudence on refugee determination in cases of stateless persons reveal some controversy about how to ascertain which state or states are relevant to a stateless person's claim for refugee protection. The 1951 Convention definition requires simply that a stateless claimant be unable or, because of fear of persecution on an enumerated ground, unwilling to return to "the country of his former habitual residence."¹²⁴ Difficulty arises, though, when a stateless person has lived in more than one country.

In *Canada (AG) v. Ward*,¹²⁵ the Supreme Court ruled, *inter alia*, that "In considering the claim of a refugee who enjoys nationality in more than one country, the [Immigration and Refugee] Board must investigate whether the claimant is unable or unwilling to avail him- or herself of the protection of each and every country of nationality."¹²⁶ The Court was operating on the presumption that states in general are able to protect their nationals,¹²⁷ and that "citizenship carries with it certain basic consequences...[including] the right to gain entry to the country at any time."¹²⁸

There are important differences, however, between the situation of dual nationals addressed in *Ward* and that of stateless persons, who have no nationality and hence neither state protection nor a right of return to any country. The 1951 Convention recognizes this distinction by differentiating between a national of a country, who must show her/his inability or unwillingness to "avail himself of the protection of that country," and a stateless person, who is presumed not to have access to state protection and instead must show inability or unwillingness simply to "return" to the country of former habitual residence. What, then, of a stateless person with more than one country of former habitual residence?

UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status* affirms that while a stateless asylum-seeker may have more than one country of former habitual residence, and may have a fear of persecution in relation to more than one of them, the refugee definition does not require that s/he satisfies the criteria in relation to all of them.¹²⁹ The Handbook goes on to explain: "Once a stateless person has been determined a refugee in relation to 'the country of former habitual residence,' any further change of country of habitual residence will not affect his refugee status."¹³⁰ Unfortunately, the Handbook does not provide guidance on how to determine which of several countries of former habitual residence is relevant for refugee determination.

¹²⁴ 1951 Convention, Art. 1A(2); IRPA s. 96.

¹²⁵ *Canada (AG) v. Ward*, [1993] 2 SCR 689

¹²⁶ *Ibid.*, at 751.

¹²⁷ *Ibid.*, at 754.

¹²⁸ *Ibid.*

¹²⁹ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, (Geneva: UNHCR), January 1992, at 104.

¹³⁰ *Ibid.*, at 105.

In academic circles, there are two main competing views on this subject. Professor Atle Grahl-Madsen maintains that the first country of former habitual residence from which the stateless person had to flee is generally the only one relevant for the determination of the claim.¹³¹ In contrast, Professor James Hathaway proposes to treat stateless asylum-seekers with multiple countries of former habitual residence analogously with asylum-seekers with multiple nationalities. In his view, a stateless person's refugee claim should be assessed against *every* country of former habitual residence to which she or he may be "formally returned."¹³²

Canadian courts and tribunals have been inconsistent on this issue, sometimes following Hathaway, sometimes Grahl-Madsen, and sometimes forging their own paths.¹³³ However, in 1998 the Federal Court of Appeal sought to bring some clarity to the question by reviewing the main strands of thought and setting out a coherent approach.

¹³¹ A. Grahl-Madsen, *The Status of Refugees in International Law*, (Leyden: AW Sijthoff, 1966), vol. 1 at 162. Using this approach, the claimant need not have a right of return to that country, nor need she or he demonstrate a fear of persecution in any subsequent or prior countries of habitual residence: "The country from which a stateless person had to flee in the first instance, remains the 'country of his former habitual residence' throughout his life as a refugee, irrespective of any subsequent changes of factual residence." Grahl-Madsen's approach, which is focused on the country of original persecution, precludes consideration of a claim of persecution in any other or subsequent country of residence. This appears to be consistent with the provisions of the UNHCR Handbook. However, Grahl-Madsen also ignores the question of protection in other states. As Linden JA of the Federal Court of Appeal pointed out in *Thabet v. Canada (MCI)*, [1998] 4 F.C. 21 (C.A.), the decision in *Ward* requires Canadian courts to consider not just the fear of persecution, but also the availability of a safe alternative. [at 21]

¹³² J. Hathaway, *The Law of Refugee Status*, (Toronto: Butterworths, 1991), at 62. Following Hathaway's logic, countries of former habitual residence to which the claimant cannot be formally returned are irrelevant because the claimant cannot be said to have a forward-looking fear of return to a place to which he or she cannot be returned. If a person has no right to return to any country, he or she would not be eligible for refugee status at all, since in Hathaway's approach the core issue is non-refoulement, and refoulement in this scenario would be impossible. [G. Stobo, "Treatment of Stateless Refugee Claimants at CRDD" (memo to the Chair of the IRB by the Director of Legal Services), March 11, 1992, at 4.] As observed by Linden JA in *Thabet*, Hathaway's approach is attractive because it "encourages a degree of symmetry between the concepts of nationality and habitual residence." [at 22] However, the proposition is only valid if both concepts confer equal rights and equal protection; that is, if habitual residence and the possibility of return to a country is equivalent to nationality and a right of return. As has been discussed above, this is not necessarily so. The fact that a person will be allowed to enter a country does not guarantee that she or he will have protection there, nor that she or he will not be sent onward to a country where she or he faces persecution. It should also be reiterated that the 1951 Convention definition of refugee explicitly distinguishes between stateless asylum-seekers and those who are nationals of a country, in that the former, by virtue of their status, are not required to demonstrate the State's inability to protect them. Hathaway's approach fails to maintain this distinction. In a memo on the treatment of stateless refugee claimants at the IRB's Convention Refugee Determination Division (now the Refugee Protection Division) [cited above], the IRB's Legal Services department weighed the two approaches, settling on Grahl-Madsen's as the one "most in keeping with the language of the Convention refugee definition, the principles and spirit of refugee determination and Canada's humanitarian tradition." [at 8] The memo, however, did not resolve the issue for the CRDD's independent decision makers, who continued to use both Hathaway's and Grahl-Madsen's approaches, nor for the Court.

¹³³ For example, in *Thabet v. Canada (MCI)*, [1996] 1 FC 685, the Federal Court's Trial Division found that only the last country of habitual residence prior to entry to Canada is determinative in the adjudication of a stateless person's refugee claim. The trial judge rejected Hathaway's "all countries of former habitual residence" approach, arguing that it was incompatible with the refugee definition in the 1951 Convention and in Canadian immigration legislation, which use the singular "country" of habitual residence for stateless persons and the plural "countries" for those with multiple nationalities, thereby demonstrating an intent to treat stateless persons differently from those with nationalities. However, the Court of Appeal rejected the Trial Division's "last country of habitual residence" approach. Linden JA found that the Trial Division's approach risks allowing *refoulement*. A stateless asylum-seeker may have fled the first country and resided in another where s/he suffered no persecution but had no durable solution or risked *refoulement*. If the person's claim in Canada were adjudicated only by reference to the "last" country of habitual residence, it would be bound to fail and could result in *refoulement* to the first country (provided removal / readmission is effected). Even if the person were removed to the second country, where s/he did not face persecution but had no durable solution, s/he could be returned from that second country to the first country where s/he did face persecution. [at 20] This would implicate both Canada and the second country in "chain *refoulement*." A fourth approach, adopted by the Federal Court in *Maarouf v. Canada*, [1994] 1 FC 723 (TD) (1993), 72 F.T.R. 6; 23 Imm. L.R. (2d) 163 (T.D.) and *Martchenko et al v. Canada* (1995), 104 FTR 59 (FCTD), allows a claimant to make an asylum claim in respect of *any country of former habitual residence*. This is perhaps closest to Grahl-Madsen's approach, except that it does not limit "country of former habitual residence" to the country where the claimant first feared persecution. In *Thabet*, Linden JA criticized this approach for failing to take account of the availability of protection in other countries of former habitual residence. As he observed, the refugee definition requires not just that a claimant have a well-founded fear of persecution, but also that s/he be unable or unwilling to return: "If the claimant has available a place of former habitual residence which will offer safety from persecution, then he or she must return to that country."

The current Canadian test: Any Country of Former Habitual Residence Plus the “Ward Factor”

In *Thabet v. Canada*,¹³⁴ the Federal Court of Appeal found that the approach that best accords with the principles in *Ward* is a version of Grahl-Madsen’s approach, such that a stateless claimant with multiple countries of former habitual residence need only show a fear of persecution in one of them, whether that is the first, the last, or another. However, the Court went on to require that the claimant demonstrate an inability or unwillingness to return to any of the countries in which she formerly resided:

[W]here a claimant has been resident in more than one country it is not necessary to prove that there was persecution at the hands of all those countries. But it is necessary to demonstrate that one country was guilty of persecution, and that the claimant is unable or unwilling to return to any of the states where he or she formerly habitually resided.¹³⁵

Linden JA said that the requirement to show on the balance of probabilities an unwillingness or inability to return to all countries of former habitual residence is implicitly required by *Ward*. He explains: “While the obligation to receive refugees and offer safe haven is proudly and happily accepted by Canada, there is no obligation to a person if an alternate and viable haven is available elsewhere.”¹³⁶ *Thabet* remains the leading decision on this issue.

The question remains how to show unwillingness to return, since the Convention definition requires that the unwillingness to return be tied to the fear of persecution. If this is accepted, the Court of Appeal’s approach in fact comes much closer to Hathaway’s proposal and poses an extremely high threshold for stateless persons who have lived in several countries.

The Court of Appeal does not offer any guidance on the level of protection required in order to designate a country of former habitual residence sufficiently safe. From Linden JA’s decision, it seems that any alternate haven is adequate, so long as it is “viable.” No consideration of the effectiveness of state protection nor of its stability is provided for, nor is there an indication of whether viability means simply unlikelihood of *refoulement* or something more robust, equivalent perhaps to the level of protection that the person would receive in Canada were he or she permitted to remain.

¹³⁴ *Thabet v. Canada (MCI)*, [1998] 4 F.C. 21 (C.A.).

¹³⁵ *Ibid.*, at 27.

¹³⁶ *Ibid.*, at 28.

Underlying this problem is the Court's attempt to draw a parallel between asylum-seekers with multiple nationalities (as in *Ward*) and those with multiple countries of former habitual residence. The requirement in *Ward* that a claimant demonstrate the lack of protection in all countries of nationality makes sense, because it is based on the reasonable but rebuttable presumption that states protect their nationals. However, in extending the *Ward* approach to stateless persons, the Court also extends the presumption of effective protection. Yet statelessness by nature involves a *lack* of state protection. The presumption is in fact reversed: where nationals may be presumed to have state protection, stateless persons should be presumed not to have state protection.

There has also been some controversy regarding the criteria for establishing that a country where a stateless person previously resided qualifies as a country of former habitual residence. In *Tsering v. MCI*,¹³⁷ the Federal Court reviewed a decision by a port of entry officer determining that a stateless person seeking to make a refugee claim at a Canada-US port of entry was ineligible under the Safe Third Country Agreement notwithstanding the general exception for stateless persons habitually residing in the US. The officer had found the claimant not to be "habitually resident" in the US because she had never obtained a drivers license, opened a bank account or attempted to obtain legal status there, and had moved frequently. The reviewing judge, O'Reilly J, surveyed some of the Canadian jurisprudence on the issue:

[11] The meaning of "former habitual residence" was discussed in *Maarouf v. Minister of Employment and Immigration*, [1993] F.C.J. No. 1329 (FCTD) (QL). There, Justice Cullen described "former habitual residence" as being "broadly comparable" to the relationship between a citizen and his or her country of nationality. The term "implies a situation where a stateless person was admitted to a given country with a view to a continuing residence of some duration, without necessitating a minimum period of residence" (at para. 38). Justice Cullen concluded that the Immigration and Refugee Board had erred when it found the claimant was not a former habitual resident of Lebanon. The claimant had lived in Lebanon for five years as a child and spent a few months there as a teenager.

[12] Admittedly, the context in which the term "habitual residence" was used was somewhat different in *Maarouf* than the case before me. That case dealt with the definition of a Convention refugee in what is now s. 96 of IRPA. Similarly, Justice Luc Martineau considered the meaning of "habitual residence" in relation to sections 96 and 97 in *Kadoura v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1057 (CanLII), 2003 FC 1057, [2003] F.C.J. No. 1328 (F.C.) (QL). Justice Martineau applied the reasoning in *Maarouf* and found that the refugee claimant could not be considered a former habitual resident of Lebanon as he had never actually lived there (although his parents had).

¹³⁷ *Tsering v. Canada (MCI)*, 2008 FC 799.

[13] While these decisions involved considerations not relevant here (such as the claimant's right of return and the presence or absence of persecution), both of them included a discussion of "habitual residence" that I believe can be applied to this case. In essence, to be considered a "former habitual resident", a claimant must show that he or she had "established a significant period of *de facto* residence in the country in question" (*Maarouf*, above, at para. 44). Given that the same term is used in s. 96 and s. 101(1)(e) of IRPA, it should be given the same meaning.¹³⁸

In the result, Justice O'Reilly quashed the officer's decision, finding that the grounds identified by the officer were not a sufficient basis upon which to find the claimant was not a former habitual resident of the USA.

The length of time required to establish "former habitual residence" was the subject of judicial consideration in a pair of cases brought by Palestinians. *Marchoud v. MCI*¹³⁹ concerned a stateless Palestinian who was born in Lebanon and lived there until the age of four. He then lived for one year in Yemen before moving to the United Arab Emirates (UAE) where he lived until the age of 23. Following that, he was a university student in North Carolina, USA for 3 years. The Refugee Protection Division determined that only the UAE could be considered a country of habitual residence, so any persecution he faced in Lebanon was not material for the *Thabet* test. Justice Tremblay-Lamer found the RPD's approach to be consistent with the decision in *Thabet v. MCI* and upheld the decision.

Similarly in *Kadoura v. MCI*,¹⁴⁰ Justice Martineau found no error in the RPD's refusal to consider Lebanon as a country of former habitual residence because the claimant had spent most of his life in the UAE, despite evidence indicating that Lebanon was the only country to which the claimant could be returned. As a result, evidence regarding the persecution he would face in Lebanon did not need to be considered. The Court declined to certify as questions of general importance for appeal the following, which were proposed by the applicants:

1. In the case of a refugee claim by a stateless person, must a country in which the applicant has a right to re-entry and where he has a right of residence be considered a country of habitual residence, even if the applicant has not established a *de facto* residence there for a significant period of time?
2. Where a stateless refugee claimant is not given protection from the country where he has established a *de facto* residence but where otherwise he would not have the right to return, must the Refugee Protection Division make a determination on the risks of persecution of the stateless person with respect to the country where he has a right of residence and to which he will be removed by the Canadian authorities?¹⁴¹

¹³⁸ Ibid at 11-13.

¹³⁹ *Marchoud v. Canada (MCI)*, 2004 FC 1471.

¹⁴⁰ *Kadoura v. Canada (MCI)*, 2003 FC 1057.

¹⁴¹ Ibid. at 18.

Unfortunately, the result is that there remains a disconnect between the country of reference for the determination of a refugee claim by a stateless person, and the country to which the stateless person will actually be removed, which could very well lead to the *refoulement* of a stateless person, in breach of Canada's obligations under international law. As the Court of Appeal warned clearly in *Thabet v. MCI*:¹⁴²

Where the claimant has fled from persecution in a first country and settled in a second country where he or she is not persecuted, if the person's claim is judged only with reference to that second country then the claim will surely fail, with the result that he or she may be returned to the first country. This is not in keeping with the spirit or intent of international refugee law, and could create a situation where Canada is in contravention of Article 33 of the Convention.¹⁴³

Consolidated grounds

The *Immigration and Refugee Protection Act* also introduced the availability of protection based on the provisions of the 1984 *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, to which Canada acceded in 1987. The Act provides protection to:

[A] person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the *Convention Against Torture*; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.¹⁴⁴

Status as a "person in need of protection" is available to stateless persons as it is to any other "foreign national."

It can be argued that statelessness *de jure* (via denationalization, for example), as well as *de facto* in some circumstances (where the impact is demonstrably severe), could and should be recognized as "cruel and unusual treatment or punishment" under s. 97(1), considering the effect of statelessness on a person's ability to enjoy fundamental human rights. However, there is no reported case law to date indicating that this has been considered.

¹⁴² *Supra* n. 134.

¹⁴³ *Ibid.* at 20.

¹⁴⁴ IRPA, s. 97

Pre-Removal Risk Assessment (PRRA)

Section 112 provides a last-chance process for acquiring Protected Person status in Canada. The Pre-Removal Risk Assessment (PRRA) is available to rejected refugee claimants and persons deemed ineligible to make a refugee claim who are subject to a removal order which is in force.¹⁴⁵ The grounds for protection under the PRRA are similar to those considered by the Board during refugee determination, though applicants who have already had a protection hearing before the IRB may only submit new evidence. The PRRA procedure is generally done in writing,¹⁴⁶ though there are provisions for an oral hearing where credibility is at issue.¹⁴⁷

At time of writing, responsibility for PRRA decision-making lies with PRRA officers in the Department of Citizenship and Immigration.¹⁴⁸ The manual for PRRA officers contains what appears to be a serious misstatement of Canadian law regardless the assessment of refugee claims by stateless persons. The manual cites *Thabet v. MCI* (discussed *supra*) for the following guidance:

Where the applicant is stateless, the country of reference is that of former habitual residence as determined by evidence of a significant period of *de facto* residence. If there is more than one country, the applicant must be at risk as defined in A96 or A97 in *each* country of habitual residence. In addition, the applicant must be unable or unwilling to return to any of the countries of former habitual residence. If the applicant can return to any country of former habitual residence and be safe from persecution or threat enumerated in A97, the applicant is not a Convention refugee or a person in need of protection.¹⁴⁹

This statement of the applicable law appears to be directly at odds with its purported source, *Thabet v. MCI*, in which the Court of Appeal explicitly rejected the notion that a stateless person must demonstrate she or his is at risk in every country of former habitual residence, but must be at risk in at least one and unable to return to any.¹⁵⁰

Persons seeking status under the PRRA must submit their application within 15 days of receiving notification that they are eligible to apply. However, this notification is only provided to eligible persons once they become “removal ready;”¹⁵¹ i.e. once a country of removal has been identified and has agreed to accept the individual, and travel documents are in hand. It is thus unavailable for stateless persons as long as they remain in limbo – refused protection and permanent residence in Canada, but unable to be removed.

¹⁴⁵ IRPA ss. 112(1). Note, however, that s. 15(1.7) of the *Balanced Refugee Reform Act* of 2010, which is not yet in force, will prohibit those whose claim for refugee protection have been rejected from applying for a PRRA (or for a temporary resident permit) if less than 12 months have passed since their claim was rejected.

¹⁴⁶ IRPA ss.113(a)

¹⁴⁷ IRPA ss. 113(b)

¹⁴⁸ Note, however, that changes introduced in the *Balanced Refugee Reform Act* of 2010, which at time of writing is for the most part not yet in force, transfers responsibility for PRRA decision making to the RPD.

¹⁴⁹ Citizenship and Immigration Canada, Immigration Manual, Chapter PP3: Pre-removal Risk Assessment, s. 10.10.

¹⁵⁰ *Supra* n. 134 at 27.

¹⁵¹ IRPA s. 112(1); *Immigration and Refugee Protection Regulations*, 2002 (IRPR), SOR/2002-227, Part 8, Div 1, s. 160(1) & 160(3)(a).

Recommendations:

- v. *IRPA s. 95(1) should be amended to include in the grounds for conferral of Protected Person status those “stateless persons” who are unable to return to and enjoy effective protection in their countries of former habitual residence. An additional section should be added in this Division of the Act to provide a legal definition of stateless person, which should include both the definition of de jure statelessness as set out in Art. 1(1) of the 1954 Convention and a definition of de facto statelessness based on lack of effective protection in any country of former habitual residence to which the person is able to return.*
- vi. *Alternatively, IRPA s. 97(1)(b) should be amended to include de facto and de jure statelessness as constituting “cruel and unusual treatment” where the stateless person lacks effective protection in any country of former habitual residence.*
- vii. *In the further alternative:*
 - *Refugee Protection Division members and PRRA Officers should be provided with interpretative guidance with respect to “country of former habitual residence,” indicating that this refers to any one country for the purpose of assessing fear of persecution. To make this approach meaningful the onus to demonstrate that a stateless person has effective protection in another country of former habitual residence should lie with the Minister.*
 - *The guidance contained in Chapter PP3 of the Manual regarding the assessment of PRRA applications by stateless persons should be corrected to conform with the judgment of the Federal Court of Appeal in Thabet v. MCI.*
 - *Refugee Protection Division members and PRRA Officers should be provided with interpretative guidance for s.97(1) explaining that the return of a statelessness person to a country where they would not enjoy effective protection constitutes cruel and unusual treatment for the purposes of IRPA.*
- viii. *An exception to normal practice with respect to PRRA applications should be made for stateless persons, allowing “early” applications in cases where the person is not likely to become “removal ready” in the foreseeable future.*

Permanent residence

As a rule, applications for permanent residence must be submitted and approved prior to arrival in Canada. Permanent residence must be acquired in order to apply for citizenship. An exception to the general rule that applications must be submitted from abroad is made for Protected Persons. Stateless persons who have been recognized as Protected Persons may apply for permanent residence from within Canada, provided they are able to provide satisfactory proof of their identity, which may be a particular challenge for stateless persons, and pay the requisite fees.¹⁵²

Persons who are in Canada and seek to remain, including rejected refugee claimants who are stateless, may apply for permanent resident status in Canada on humanitarian or compassionate (H&C) grounds.¹⁵³ Subsection 25(1) of IRPA provides:

25. (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

...

(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.

¹⁵² Note that s. 18-20 of Bill C-31 provide that a refugee whose need for protection is determined to have ceased will automatically lose their permanent resident status as well and be subject to prompt removal. There appears to be no appeal, no exception for stateless persons, and no provision for consideration of humanitarian and compassionate circumstances that might support allowing a “cessated” refugee to remain in Canada notwithstanding the improvement in conditions in her or his country of origin or former habitual residence.

¹⁵³ Note, however, that s.13(1) of Bill C-31 prohibits the Minister from considering an H&C application if the applicant has a claim pending before the RPD and/or less than 12 months have passed since the applicant’s claim was refused, withdrawn or abandoned. Moreover, those who the Minister designates as “irregular arrivals” under s. 10 of the Bill face a five year prohibition on requesting humanitarian and compassionate consideration. These prohibitions will arbitrarily deprive stateless persons of the only statutory remedy available to them under the current Act.

Immigration officers exercising delegated authority under s.25(1) are instructed to consider approving H&C applications that fit within the following open-ended list of categories:¹⁵⁴

- establishment in Canada;
- ties to Canada;
- the best interests of any children affected by their application;
- factors in their country of origin (this includes but is not limited to: medical inadequacies, discrimination that does not amount to persecution, harassment or other hardships that are not described in A96 and A97);
- health considerations;
- family violence considerations;
- consequences of the separation of relatives;
- inability to leave Canada has led to establishment; and/or
- any other relevant factor they wish to have considered not related to A96 and A97.¹⁵⁵

Statelessness is not one of the enumerated categories, though it is of course not ruled out as a consideration, since the list is open-ended. CIC has responded positively to UNHCR's requests to identify statelessness as a recognized factor for consideration in H&C applications list of enumerated factors, but to date have still not introduced the requested amendment. CIC officials have given assurances that even if not identified as a factor in the manual, statelessness is taken into account by its officers; however, it should be noted that the Federal Court has determined that similar assurances given to a stateless applicant for H&C consideration do not create a legitimate expectation that statelessness will be a sufficient basis for granting an H&C application.¹⁵⁶

As a result, stateless applicants must meet the normal requirements for being granted H&C consideration, including the "establishment" factor.¹⁵⁷ This requirement could pose a significant obstacle for stateless persons, however, since the reality of life in Canada as a stateless person makes it difficult to achieve social and economic "establishment". This is particularly so where a stateless applicant has been detained, making it impossible to maintain employment. Nonetheless, the provision for H&C exemption for former citizens could in principle be a route to eventual reacquisition of citizenship by former citizens who became stateless following their loss of Canadian citizenship by virtue of revocation or failure to register.

¹⁵⁴ The principle in H&C decision-making is discretion, so an officer may grant permanent resident status also for reasons not included on the list.

¹⁵⁵ Citizenship and Immigration Canada, *Immigration Manual: Inland Processing*, Chapter IP 5: Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds, at 5.11.

¹⁵⁶ *El Doukhi v. Canada* (MCI), [2006] F.C.J. No. 1843.

¹⁵⁷ Factors to consider when assessing establishment include: "Does the applicant have a history of stable employment? Is there a pattern of sound financial management? Has the applicant integrated into the community through involvement in community organizations, voluntary services or other activities? Has the applicant undertaken any professional, linguistic or other study that show integration into Canadian society? Do the applicant and family members have a good civil record in Canada (e.g., no interventions by police or other authorities for child or spouse abuse, criminal charges)?" (IP5, *supra* n.136 at 11.5.)

A second category of exemptions exists under s. 25 for “public policy”:

25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by public policy considerations.

This provision has to date only been used for in-Canada common-law partner or spousal sponsorship applications for permanent residence. However, there is nothing to prevent the Minister from establishing a public policy category to allow for the conferral of permanent resident status on stateless persons.

Recommendation:

- ix. *In the absence of a more comprehensive solution through amendment to s. 95 and the recognition of statelessness as a ground for protected person status, the Minister should use the authority of ss. 25.2(1) to establish “protection of stateless persons” as a public policy category for permanent resident status in cases processed both in Canada and overseas, where such stateless persons otherwise lack effective protection. Alternatively, at a very minimum, Immigration Manual Chapter IP5, s. 5.11, should be amended to include statelessness as a persuasive factor in processing H&C applications generally, as well as with respect to applications of former citizens. Establishment requirements should be explicitly minimized or waived, in view of the special hardships faced by stateless persons.*

Naturalization

The Citizenship Act

As observed earlier, the current *Citizenship Act* makes no explicit provision for the conferral of citizenship on stateless persons, apart from stateless children of Canadian citizen parents born abroad. Stateless persons may, however, apply for citizenship once they have been granted permanent resident status (usually after being recognized as protected persons) and have met the minimum residency requirement.

The *Citizenship Act* contains an exception paralleling s. 25(1) of IRPA: under s. 5(3) the Minister may grant citizenship to a person who does not fulfil the language and knowledge-of-Canada requirements;¹⁵⁸ and s. 5(4) allows the Minister to waive any citizenship requirements in the interest of alleviating “cases of special and unusual hardship.” Statelessness has been considered as a factor under both of these provisions.

¹⁵⁸ *Citizenship Act*, ss. (1)(d) and (e).

In *Re Daifallah*¹⁵⁹ the Federal Court focused on a rejected citizenship applicant's exceptional personal circumstances as grounds for compassionate consideration under s. 5(3), explicitly noting that she had been stateless for over 40 years. In *Goudimenko v. Canada (MCI)*¹⁶⁰ the citizenship judge took into account an applicant's statelessness under s. 5(4), but still denied the application. The court upheld the decision:

The citizenship judge considered the appellant's evidence relative to his being 'stateless' and the travel constraints associated with such status or lack thereof. The judge concluded that, in her opinion, it was a matter of inconvenience [rather than hardship] for Mr. Goudimenko. The citizenship judge considered whether or not to recommend an exercise of discretion and declined to so recommend.¹⁶¹

These cases suggest that while statelessness may be a consideration, it will likely be necessary to meet a high threshold of duration and hardship to qualify an applicant for exceptional measures.

Recommendation:

- x. *Citizenship Act s. 5(4) should be amended to include statelessness as an example of a case of "special and unusual hardship" warranting the discretionary granting of citizenship to a person who may not fulfil all of the usual criteria.*¹⁶²

¹⁵⁹ *Daifallah (Re)* (F.C.T.D.), [1992] F.C.J. No. 441.

¹⁶⁰ *Goudimenko v. Canada (MCI)*, [2002] F.C.J. No. 581.

¹⁶¹ *Ibid.*, at 22.

¹⁶² This would be consistent with Executive Committee Conclusion No. 106 (LVII) on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, 6 October 2006, in which the Executive Committee "(u) Encourages States which are not yet Parties to the 1954 *Convention relating to the Status of Stateless Persons* [...] to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation."

Overseas programs

Refugee resettlement

Canada also provides refugee protection via resettlement from abroad. The *Immigration and Refugee Protection Regulations* set out two classes of persons who may be resettled to Canada: Convention Refugees Abroad and Humanitarian-Protected Persons Abroad.¹⁶³ The first category is self-explanatory; the second is limited to the Country of Asylum Class.¹⁶⁴ Members of the country of asylum class must be “outside all of their countries of nationality and habitual residence;¹⁶⁵ and [...] have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.”¹⁶⁶ Stateless persons may be included in these groups, as they are for in-Canada refugee processing. Canada should, however, broaden its resettlement program to include non-refugee stateless persons. In line with the *General Conclusion on International Protection No. 95 (LIV)*, resettlement may be considered for non-refugee stateless persons where the individual: does not have in the current or a former state of habitual residence a secure, lawful residence status which brings with it a minimum standard of treatment equivalent to that set out in the 1954 *Convention relating to the Status of Stateless Persons*; has no reasonable prospect of acquiring such a residence status or nationality; and has acute protection needs which cannot be addressed inside the country of current or former habitual residence.¹⁶⁷

Recommendation

- xi. Immigration and Refugee Protection Regulations, Part 8, Division 1, and Immigration Manual Chapter OP5 should be amended to include de jure and de facto statelessness as a ground for resettlement to Canada, where the stateless person lacks effective protection and access to a durable solution within a reasonable time.*

¹⁶³ IRPR, s.138ff.

¹⁶⁴ Previously the Humanitarian-Protected Persons Abroad also included the Source Country Class but this was repealed on 6 October 2011. See: <http://www.cic.gc.ca/english/resources/manuals/bulletins/2011/ob347.asp>

¹⁶⁵ One might question the criterion of being outside of one’s country of former habitual residence in this context, as at some point the country of asylum itself might be considered to have become a place of habitual residence, inadvertently disqualifying the stateless applicant from the class. The Immigration Manual seems to indicate that the requirement is simply that the applicant be outside of any country of former habitual residence *where he or she faced persecution*, but this is not entirely clear. (cf. Citizenship and Immigration Canada, *Immigration Manual: Overseas Processing*, Chapter OP 5: Overseas Selection and Processing of Convention Refugees Abroad Class and Members of the Humanitarian Protected Persons Abroad Class.)

¹⁶⁶ IRPR, s. 147.

¹⁶⁷ For further information about resettlement of non-refugee stateless persons, see the UNHCR Resettlement Handbook, sections 1.2.3 and 7.2.2 available at <http://www.unhcr.org/4a2ccf4c6.html>

Immigration

Prospective immigrants may apply for Canadian permanent resident status from abroad as members of the family class, skilled worker class or business class, or under a provincial selection program. There are no special provisions for stateless persons seeking status in Canada as permanent residents; stateless persons may apply for permanent residence like any other foreign national, subject to the same criteria.

With respect to overseas applications, officers are instructed to consider the hardship that would result from a refusal of the application, including factors such as close family members in Canada; strong cultural and/or emotional ties to Canada; and close family, friends and support in another country.¹⁶⁸ Statelessness is not identified as relevant factor in the open-ended list.

Those who are accepted by Canada as immigrants may apply for Canadian citizenship after a residency period.

Recommendation:

- xii. *With respect to overseas applications, Immigration Manual Chapter OP4, s. 8 should be amended to include statelessness as a persuasive factor for the exercise of the officer's discretion in assessing hardship.*

Travel Documents

The Canadian Passport Office issues two types of travel documents to non-Canadians: the Protected Person Travel Document and the Certificate of Identity.

Article 28 of the 1951 Refugee Convention, to which Canada is party, requires Canada to provide travel documents to all recognized refugees.¹⁶⁹ In conformity with this requirement, protected persons in Canada currently are eligible to apply for a Protected Person Travel Document, which is normally valid for all countries *except* the individual's country of origin, as long as they are in possession of the protected person status document provided for in the *Immigration and Refugee Protection Act*.¹⁷⁰ Stateless persons who have qualified as protected persons, like other protected persons, benefit from this provision. However, stateless persons who do not meet the requirements for protected person status are not eligible for the Protected Person Travel Document. (It is worth noting that Article 28 of the 1954 Convention contains a provision paralleling Article 28 of the 1951 Convention, requiring states parties to provide travel documents to stateless persons.)

¹⁶⁸ Citizenship and Immigration Canada, *Immigration Manual: Overseas Processing, Chapter OP4: Processing of Applications under s. 25 of IRPA*, at 8.3.

¹⁶⁹ 1951 Convention, Art. 28.

¹⁷⁰ Section 31(1) of the *IRPA* provides: "A permanent resident and a protected person shall be provided with a document indicating their status." Note that under s. 16 of Bill C-31 recognized refugees who have been unilaterally "designated" by the Minister would not be eligible for a travel document unless and until they have been granted permanent resident status or a temporary resident permit. "Designated" refugees, however, will be ineligible to apply for permanent residence until five years after the decision granting refugee protection.

A second type of travel document, the Certificate of Identity, is issued to non-citizens by Canada's Passport Office. A Certificate of Identity is an extraordinary travel document issued under the authority of the Minister of Foreign Affairs and International Trade. It is valid only for the specific countries to which the applicant has indicated a need to travel. It is not normally made valid for travel to the country of origin or nationality. The Certificate of Identity has an initial validity of one year, renewable to a maximum of three years. The website of the Passport Office specifies that it is issued to "permanent residents of Canada who are not yet Canadian citizens, and who, although not considered to have refugee status in Canada, are otherwise stateless or unable, for a valid reason, to obtain a national passport or travel document from any source."¹⁷¹ Thus a stateless person without permanent resident status in Canada would not normally be able to obtain a Certificate of Identity. As in the case of the Refugee Travel Document, the bearer of the Certificate of Identity must secure the necessary visas for entry to other countries.

Best practice among states, however, suggests that this restriction on access to travel documents by stateless persons need not be maintained: both Peru and Colombia, for example, issue travel documents to stateless persons.¹⁷²

Detention and Removal

Aliens who have failed to acquire legal status are obliged to leave Canada.¹⁷³ However, statelessness – in particular *de jure* statelessness – and the resulting lack of a right of entry to any country, often makes departure difficult or impossible. If a person fails to depart voluntarily, he or she will become subject to removal, and may be detained until removal takes place.¹⁷⁴

Statistics provided by the Canada Border Services Agency (CBSA) indicate that CBSA removed 352 reportedly stateless individuals between 2003 and 2010.¹⁷⁵ In 2003, at the time of the first drafting of this report, CIC had advised that it was unable to provide detailed statistics with respect to the countries to which stateless persons had been removed between 1997 and 2002. In response to a request in 2011, CBSA was able to provide statistics to UNHCR with a breakdown of the gender, age, and country of destination of removed stateless persons.

¹⁷¹ See <http://www.ppt.gc.ca/pptc/documents.aspx?lang=eng#td>

¹⁷² Colombia (Decreto 607 de 05/04/2002, por el cual se dictan disposiciones para la expedición de documentos de viaje) and Peru (Decreto Legislativo N° 703 Promulgan la Ley de Extranjería (5 de noviembre de 1991)) provide for travel documents to stateless persons in the absence of accession to the Convention. Domestic laws related to immigration and to documentation of foreigners contemplate the issuance of travel documents to stateless persons, even though these countries are not parties to the statelessness conventions.

¹⁷³ See IRPA s. 49.

¹⁷⁴ IRPA s. 55.

¹⁷⁵ Statistics provided to UNHCR by CBSA Operational Monitoring and Reporting. See Appendix F.

Notwithstanding this improvement in data collection and reporting ability, there remains a gap between Canadian removals policy which does not appear to take into consideration the likely status of a stateless person in the receiving country. No mention is made in the Act, Regulations, or Immigration Manual of the need for special procedures or considerations for stateless persons in the context of removal. Indeed, the Regulations stipulate that deportees will be returned to (a) the country from which they came to Canada; (b) the country in which they last permanently resided; (c) the country of which they are a national or citizen; or (d) the country for their birth.¹⁷⁶ If none of those countries is willing to authorize the person's entry, the Minister is directed to deport the person to any country that will admit her or him.¹⁷⁷

The failure to seek durable solutions to individuals' statelessness is a fundamental concern. The removal of stateless persons to countries where they cannot achieve a secure status may relegate them to ongoing legal limbo, and to situations in which their social and economic rights, as well as their civil and political rights, may be violated. Unilateral selection of destination countries by the Minister further permits deportation to a country to which the stateless person has no connection whatsoever. While removal of a stateless person may address immediate enforcement issues for the removing state, it may also leave unresolved problems both for the individual and the receiving country.

In many cases a stateless person is not able to secure legal entry to any country, let alone to a country of former habitual residence where he or she will enjoy effective protection. From this perspective, the claim that Canada has been able to remove over 352 stateless persons in eight years calls for careful scrutiny.¹⁷⁸

Sometimes, difficulty in securing entry to another country for a stateless person means that what should be short-term pre-deportation detention becomes prolonged and potentially indefinite.¹⁷⁹ When this occurs, the detention itself becomes vulnerable to challenge under both domestic and international human rights law. Section 7 of the Canadian Charter of Rights and Freedoms guarantees the fundamental right of everyone to "life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Section 9 adds the specific provision that "[e]veryone has the right not to be arbitrarily detained or imprisoned."

¹⁷⁶ IRPR s. 241(1)

¹⁷⁷ IRPR s. 241(2)

¹⁷⁸ See section on data collection, *infra*.

¹⁷⁹ Inter Church Committee for Refuges, *Towards Detention & Deportation Procedures Which Are More Just, Equal, Expeditious & Open* (Brief to the Standing Committee on Citizenship and Immigration), March 18, 1998; C. Gauvreau and G. Williams, "Detention in Canada: Are We On the Slippery Slope?", 20 *Refuge* 3.

Similar guarantees are to be found in international and regional human rights instruments to which Canada is a party. Article 3 of the *Universal Declaration of Human Rights* states: “Everyone has the right to life, liberty and security of person.” Article 1 of the *American Declaration on the Rights and Duties of Man* similarly declares: “Every human being has the right to life, liberty and the security of his person.” And Article 9(1) of the *International Covenant on Civil and Political Rights* provides: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” International law limits detention to what is “reasonable and necessary in a democratic society.”¹⁸⁰

UNHCR’s Detention Guidelines¹⁸¹ provide as follows:

Being stateless and therefore not having a country to which automatic claim might be made for the issue of a travel document should not lead to indefinite detention. Statelessness cannot be a bar to release. The detaining authorities should make every effort to resolve such cases in a timely manner, including through practical steps to identify and confirm the individual’s nationality status in order to determine which State they may be returned to, or through negotiations with the country of habitual residence to arrange for their readmission.¹⁸²

Under s. 57 of IRPA, the Immigration Division of the Immigration and Refugee Board must review the reasons for continued detention within 48 hours after the beginning of detention. The reasons must be reviewed again after seven days, and every 30 days thereafter.¹⁸³ The Immigration Division is required under the Act to order release of immigration detainees unless it is satisfied, taking into account the prescribed factors enumerated above, that:

(a) they are a danger to the public;

(b) they are unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2);

¹⁸⁰ G. Goodwin-Gill, *The Refugee in International Law*, 2nd edition, Oxford: Clarendon, 1996, at 247-8.

¹⁸¹ UNHCR, *Revised Guidelines On Applicable Criteria And Standards Relating To The Detention Of Asylum Seekers* (Geneva: UNHCR, February 1999).

¹⁸² *Ibid.*, Guideline 9.

¹⁸³ IRPA s. 57 (1), (2). Note that under s. 23-25 of Bill C-31, those designated by the Minister as “irregular arrivals” under s. 10 of the bill are subject to a mandatory minimum term of imprisonment of one year (unless accepted as refugees earlier), with no review of the reasons for detention permitted during that year. The first detention review is to take place after twelve months, and every six months thereafter. This provision has been the subject of widespread criticism by lawyers and academics for its apparent unconstitutionality.

(c) the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security or for violating human or international rights;¹⁸⁴ or

(d) the Minister is of the opinion that the identity of the foreign national has not been, but may be, established and they have not reasonably cooperated with the Minister by providing relevant information for the purpose of establishing their identity or the Minister is making reasonable efforts to establish their identity.”¹⁸⁵

Upon ordering the release of a detainee, the Immigration Division may impose “any conditions that it considers necessary,” including the payment of a cash bond.¹⁸⁶

While prolonged immigration detention is not ruled out by IRPA, the Federal Court has ruled that people may not be held indefinitely. In *Sahin v. Canada (MCI)*,¹⁸⁷ Rothstein J set out a four-part test for determining whether continued detention is permissible:

1. Reasons for detention: There is a stronger case for continued and long detention if the person presents a danger to the public.
2. Expected length of detention: If the person has already been detained for a long time, and/or if the length of future detention cannot be assessed, this factor favours release.
3. Who is responsible for any delay? Unexplained delay or unexplained lack of diligence weighs against the offending party, whether that be the officer or the detainee.
4. Alternatives to detention: The availability of effective and appropriate alternatives, such as release, bail bond, or periodic reporting, weighs in favour of release.¹⁸⁸

However, in *Kidane v. Canada (MCI)*,¹⁸⁹ a subsequent decision of the Federal Court (Trial Division), Jerome ACJ found that the *Sahin* test did not necessarily rule out prolonged detention. In that case, the Court said the fact that the Minister considered the detainee to pose a danger to the public, combined with the complainant’s own responsibility for delays and his failure to co-operate, justified ongoing detention, although he had been in detention for two years and there was no immediate prospect for of removal because CIC was having difficulty finding a country to which to send him.¹⁹⁰

¹⁸⁴ S. 26(1) of Bill C-31 would broaden the grounds for detention by adding “serious criminality, criminality or organized criminality.”

¹⁸⁵ IRPA s. 58(1). S. 26(1) of Bill C-31 would add the following ground for continued detention: “(e) the Minister is of the opinion that the identity of the foreign national who is a designated foreign national and who was 16 years of age or older on the day of the arrival that is the subject of the designation in question has not been established.” This amendment appears to leave the door open for indefinite detention.

¹⁸⁶ IRPA s. 58(3).

¹⁸⁷ *Sahin v. Canada (MCI)*, [1995] 1 F.C. 214.

¹⁸⁸ *Ibid.*, at 30.

¹⁸⁹ *Kidane v. Canada (MCI)*, [1997] F.C.J. No. 990 at 8. See also *M.C.I. v. Liu*, 2008 FC 1297; *Panahi-Dargahllou v. M.C.I.*, 2009 FC 1114, and *Charkaoui v. Canada (MCI)*, [2007] 1 SCR 350.

¹⁹⁰ *Ibid.*, at 8.

The IRB's *Guidelines on Detention*¹⁹¹ provide further guidance on the detention of non-citizens. Noting that “[t]he detention of a person under IRPA is not for the purpose of punishment, but rather a concern that the person is a danger to the public, will not appear for examination, an admissibility hearing or removal, or concerns over security and identity,” and is “an exceptional measure.” The Guidelines emphasize that decisions about detention must balance the public interest against the individual right to liberty.¹⁹²

Pre-removal detention is not the only context in which stateless persons are particularly vulnerable. IRPA also provides immigration officers with wide discretion to detain non-citizens for lack of satisfactory proof of identity.¹⁹³ Stateless persons, who frequently lack proof of identity in the form of a passport, travel document or national identity card, are thus at particular risk of detention. The Regulations elaborate the factors that immigration officers must take into consideration in assessing whether an individual is “a foreign national whose identity has not been established,”¹⁹⁴ as does the Immigration Manual,¹⁹⁵ however, neither document cites statelessness as a relevant factor for consideration.

Recommendations:

- xiii. *Detention of stateless persons should always be avoided except where, and for as long as, it is demonstrably necessary and justifiable.*
- xiv. *Immigration and Refugee Protection Regulations, s. 247 and Immigration Manual Chapter ENF 20 s. 5 should be amended explicitly to note the unique situation of stateless persons vis-à-vis access to identity documents as well as travel documents, so that they are not unnecessarily or unjustly detained.*
- xv. *Stateless persons should only be removed to countries of former habitual residence where they will have effective protection and a legal status.*

Data Collection on Stateless Persons¹⁹⁶

The importance of collecting and reporting accurate data regarding stateless persons can hardly be overstated. Data on statelessness is necessary to ascertain the extent of the problem and to design effective solutions. Accurate information is necessary in order to understand who the affected persons are, and how they are being treated. In the context of international responsibility-sharing, it is important for Canada to report on how many stateless persons it is resettling or protecting, and where these persons previously resided. Data collection and dissemination are also crucial tools for maintaining government accountability for the treatment of stateless persons.

¹⁹¹ Immigration and Refugee Board, *Chairperson's Guideline 2: Guideline on Detention*, Ottawa: IRB, September 21, 2010 (<http://www.irb-cisr.gc.ca/eng/brdcom/references/pol/guidir/Pages/GuideDir2.aspx>. Accessed November 28, 2011).

¹⁹² *Ibid.*, at s. 1.4.

¹⁹³ IRPA, ss. 55(2)(b).

¹⁹⁴ IRPR, s. 244(c), 247(1)

¹⁹⁵ Citizenship and Immigration Canada, *Immigration Manual: Enforcement*, Chapter ENF 20: Detention, Ottawa: CIC, 2007, s. 5.8.

¹⁹⁶ All statistics in this section provided by Citizenship and Immigration Canada except as otherwise indicated.

Despite the importance of full and accurate information, data on statelessness is notoriously difficult to obtain and often unreliable. This has long been the case both in Canada and at the international level. As discussed in the UNHCR Statistical Yearbook:¹⁹⁷

Unlike refugees, stateless persons in most countries are not registered and are rarely granted legal status and documentation. Although surveys in some countries yielded more reliable data on stateless persons, information on the global magnitude of stateless populations remained incomplete. Identifying stateless persons and the scope of the problem in any given country is a necessary precursor to addressing statelessness situations through advocacy and targeted programmes. In recognition of the problem, UNHCR's Executive Committee has encouraged the Office in gaining a better understanding of the scope of statelessness.

The Canadian Census includes “stateless” among the possible designations under “nationality”. According to the Statistics Canada Census website, in the 2006 census 1,455 persons identified themselves as “stateless” when asked to select their country of citizenship. Of these, 185 indicated that they did not have permanent resident status in Canada.¹⁹⁸

The reliability of these statistics is unclear, because the designation is self-reported and the term is undefined. Moreover, it is at least open to debate whether stateless persons are properly represented in the census sample given their particular vulnerability.

Within the Canadian immigration system, the provision of statistics on statelessness has improved in the last years. Existing gaps and inaccuracies with respect to statistics on stateless persons mirror broader challenges in data collection. Some of the specific gaps with respect to stateless persons are examined below.

Refugee determination data

Canadian refugee determination statistics clearly demonstrate some of the problems in current data collection procedures. According to recent statistics from Citizenship and Immigration Canada (CIC), 1504 stateless persons made refugee protection claims in Canada between the years 2003 and 2010, of which approximately two thirds were found or deemed eligible to be referred to the Immigration and Refugee Board (IRB) for determination.¹⁹⁹ Yet statistics provided by the IRB for the same period indicate that just 14 claims by stateless persons were referred to it in the same period.²⁰⁰ (When asked about this discrepancy, a CIC representative suggested that the discrepancy in the numbers may be attributed to the fact that the CIC numbers indicate those who had self identified as stateless and the IRB numbers reflect the actual decisions on stateless cases following a refugee status hearing. However, this explanation has not been confirmed by the IRB.)

¹⁹⁷ UNHCR Statistical Yearbook 2009.

¹⁹⁸ Statistics Canada, *Detailed Country of Citizenship (203), Single and Multiple Citizenship Responses (3), Immigrant Status (4A) and Sex (3) for the Population of Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2006 Census*.

¹⁹⁹ Statistics provided by CIC.

²⁰⁰ Statistics provided by the Immigration and Refugee Board.

The discrepancy appears to be caused by the Immigration and Refugee Board's case management system and the Personal Information Form (PIF), which asylum-seekers are required to complete and submit in order to make a claim. The PIF contains all the relevant biographical data and the narrative outlining the basis for the feared persecution, torture, or cruel and unusual treatment or punishment. The PIF requires claimants to name their country of birth along with their country or countries of present and past citizenship or of last habitual residence. Although asylum-seekers may identify themselves as stateless, the country of reference for the IRB's case management system is the country in respect of which the person is claiming protection.

Albert's story

Albert was born in Sierra Leone. At the time of his birth, Sierra Leone was a British colony. His parents were of Lebanese origin and did not register his birth with any Lebanese officials, either in Lebanon or in Sierra Leone. He obtained a British overseas citizen's passport based on his birth in Sierra Leone, however, this status did not give him the right to citizenship or abode in the United Kingdom. When Sierra Leone became independent in 1961, he was not entitled to Sierra Leone citizenship. In 1992, following the overthrow of the Momoh government, he fled to Canada and applied for refugee status. The Immigration and Refugee Board found that he was a stateless person who would have a well-founded fear of persecution in his country of former habitual residence, Sierra Leone.²⁰¹ In the records of CIC, Albert would be recorded as a stateless person; in those of the IRB, as a Sierra Leonean.

Another way to ascertain the number of stateless claims brought before the IRB would be through examination of reported decisions. This approach is problematic as well, however. To begin with, only written decisions may be reported, and in general the IRB's Refugee Protection Division need only provide written reasons when it renders a negative decision (only in certain circumstances are written reasons required for a positive decision). Moreover, references to statelessness in reported decisions may be incorrect, reached by assumption rather than through examination.

²⁰¹ CRDD No. 307, T95-07667, T95-07668, T95-07669, T95-07670 and T95-07671 (1996).

Of course, in the absence of a legislative basis upon which the IRB could grant protection to stateless persons on the sole ground of statelessness, it is clear that those stateless persons who were granted protection by the IRB during this period were protected because they were able to establish not just that they were stateless, but *also* that they had a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, or that they faced a substantial risk to life or risk of torture or cruel and unusual treatment or punishment under s. 97 of IRPA.

Resettlement data

There has been a significant improvement since 2003 in CIC's collection of data regarding the nationality of refugees selected by Canada overseas for resettlement. CIC's statistics for the period 2003 through 2010 now report that, of the 59,225 refugees admitted for permanent residence under Canada's government-sponsored resettlement program during those years, 210 were stateless persons. A further 126 were rejected during the same period. Similarly, of the 29,651 refugees resettled under the private sponsorship program during that 8 year period, 364 were stateless.²⁰²

As above, however, successful applicants could not rely on their statelessness as a basis for their application and were only eligible for resettlement to Canada if they came within the ambit of the Convention refugee abroad or country of asylum classes, none of which include statelessness as a basis for inclusion.

Data on Humanitarian or Compassionate (H&C) landing applications

CIC has also improved its data collection regarding stateless individuals who file applications for permanent residence on humanitarian or compassionate (H&C) grounds. According to data provided to UNHCR, CIC processed 370 H&C applications by stateless persons (in Canada and overseas) in the period 2003-2010, of which it accepted 259 and rejected 111.²⁰³ It is not reported, however, whether statelessness was a primary or even significant ground for acceptance in the positive decisions, or whether those cases were accepted on other grounds such as establishment in Canada or best interests of affected Canadian citizen children. However, given that, as indicated elsewhere in this report, statelessness was not been identified in the legislation, regulations, or immigration manual as a relevant factor to consider, much less a sufficient basis for granting status, it can be assumed that these persons were accepted on grounds *other* than their statelessness.

²⁰² General statistics from CIC, Facts and figures 2010 – Immigration overview: Permanent and temporary residents (<http://www.cic.gc.ca/english/resources/statistics/facts2010/permanent/02.asp>. Accessed December 3, 2011). Stateless case statistics provided to UNHCR by CIC.

²⁰³ Statistics provided by CIC.

Detention data

Detailed and comprehensive statistics about stateless persons held in immigration detention are difficult to obtain. In spite of the information provided by CBSA (at Annex E), it is hard to know how many stateless persons are held at any given time, how long they have been detained, what the reasons are for their detention, their age, gender, and country of former habitual residence. Yet this information is essential for monitoring purposes.

Though CBSA is receptive to requests for such data, it is said to be limited by its current data management system and inability to generate the comprehensive statistics described above. The reporting problems are compounded by the absence of co-ordination and uniform standards for the compilation of detention data generated from all regions of operation.

Currently, CBSA National Headquarters reports regularly to UNHCR and other interested agencies the total number of immigration detainees, broken down by region where they are detained. These “detention snapshots” reflect only the number of individuals detained on the day on which the report is generated. They do not provide details regarding the length of detention, basis for original detention decision, age, gender, nationality or stateless status, etc. Some regions have provided more detailed statistics, although not on a systematic basis.

In response to a specific request from UNHCR for detailed statistics regarding detention of stateless persons during the past decade, the Canada Border Services Agency (CBSA) was able to provide statistics indicating the total number of “detention days” served by stateless persons across Canada, broken down by year, region, institution, and grounds for detention (“will not appear”, “danger/will not appear”, “danger to the public”, “identity” and “examination”). These statistics indicate that between 2003 and 2010, 30,411 “detention days” were served by stateless persons in Canada, or an average of 3,801 detention days per year. Of these, about 8,818 days were on the basis of a finding that the person was unlikely to appear for an immigration proceeding or removal, and about 607 days per year were to establish identity.²⁰⁴

As helpful as these statistics may be for some purposes, they are not a substitute for details about the average length of detention of stateless persons, the stage of proceedings at which they are detained (i.e. whether on arrival while seeking to gain admission, or just prior to removal while CBSA is making travel arrangements). They shed no light on the countries of former habitual residence of the detainees, the reason for original detention, nor the circumstances in which their detention ceased (i.e. whether they were released into Canada or deported).

²⁰⁴ Statistics provided by CBSA.

Data on Removals

As indicated earlier, according to statistics provided by CIC, Canada removed 352 reportedly stateless individuals between 2003 and 2010.

Number of Stateless Persons Removed from Canada from 2003-2010

2003	2004	2005	2006	2007	2008	2009	2010	Total
64	61	37	50	48	31	32	29	352

Without further details on the circumstances of their removal, it is impossible to assess the appropriateness of the removals. Given that in most cases stateless persons have no right of entry to any country, the reported removal of 352 stateless persons gives rise to questions about the countries to which they were sent and their status there.

Recommendation:

xvi. Following the improvement in the collection of statistics since 2003, additional work should be undertaken by government agencies to improve their data management and reporting systems, with the possible support of future researchers, to ensure that comprehensive, accurate and timely data on statelessness are available. In particular, gaps in data collection still exist with respect to:

- *Refugee determination of stateless persons, including their country of former habitual residence, age, gender, and whether statelessness was a factor in the decision;*
- *Humanitarian and compassionate cases, including an assessment on whether or not statelessness was considered as a positive factor, and disaggregated data on the country of former habitual residence, age, and gender.*
- *Detention under the IRPA of stateless persons, including country of former habitual residence, age, gender, length of detention.*
- *Removals of stateless persons, including the country of former habitual residence and legal status in the country of destination.*



Conclusion

In 2011, the 1961 *Convention on the Reduction of Statelessness* marked its 60th anniversary. The event was celebrated with a Ministerial Conference organized by UNHCR in Geneva on 7-8 December 2011 and attended by 800 registered participants from 155 countries, including more than seventy delegations represented at the ministerial level. Seven new countries acceded to one or both of the two statelessness conventions during the course of the year, and several others made concrete pledges to either accede to the international instruments or to improve national legislation for the protection for stateless people.

The UN High Commissioner for Refugees, Mr. António Guterres underlined the new spirit of engagement pledged by states at the Conference by noting that “[s]tatelessness is now literally ‘on the map’ everywhere, with no region untouched by progress.”²⁰⁵ The Ministerial Communiqué of the Ministerial Conference also issued an unequivocal support for the Statelessness Conventions by recognizing that “the 1961 *Convention on the Reduction of Statelessness* and the 1954 *Convention relating to the Status of Stateless Persons* are the principal international statelessness instruments, which provide important standards for the prevention and resolution of statelessness and safeguards for protection of stateless people. We will consider becoming a party to them, where appropriate, and/or strengthening our policies that prevent and reduce statelessness.”²⁰⁶

²⁰⁵ <http://www.unhcr.org/4ecd0cde9.html>

²⁰⁶ <http://www.unhcr.org/4ee210d89.html>

In view of the international momentum gathered by the 2011 commemorations, this discussion paper on statelessness in the Canadian context is timely and hopefully provides a useful analysis of the issue. If there is one overarching conclusion to be drawn from this review of international and Canadian law and policy with respect to statelessness, it is that the stateless person remains essentially invisible, *res nullius* as Paul Weis put it.²⁰⁷ While Canada's legislation generally conforms with the norms of the 1961 Convention aimed at preventing statelessness, Canada's laws and policies read as if statelessness does not exist outside the refugee context. There is no protection or provision of status to stateless persons *solely on the basis of being stateless*, leaving a significant gap for some of the most vulnerable persons in need of a durable solution. In Canada, once a stateless person has been refused protection by the IRB or permanent residency by CIC under existing programs, the focus turns to removal, which in itself is problematic, as it does not resolve the protection need of the stateless person but in turn creates an orbit situation.

As a member of the community of nations and a country that has committed itself to upholding the *Universal Declaration of Human Rights*, Canada has recognized that every person has the right to a nationality. Where the state in which a person was born or previously resided fails to recognize that person as a citizen, it may be up to other countries to step in as surrogate. Canada's refugee program does just that for stateless persons who also meet the definition of refugee. However, there is no protection mechanism to deal with stateless persons who are not also refugees under the 1951 Convention definition, despite an absence of availability of effective protection in any other country.

In the absence of specific legislative or administrative measures to address their protection needs, such individuals may end up without a status in any country and risk being caught in a cycle of detention, futile attempts at removal and destitution. In keeping with Canada's humanitarian tradition, legislative and administrative measures should be considered to address the situation of such individuals. Accession to the 1954 *Convention relating to the Status of Stateless Persons* would ensure standards of treatment adopted by Canada were consistent with those adopted elsewhere in the world.

This paper has highlighted a number of areas in which changes could help to avoid creating statelessness and provide protection to stateless persons who are not refugees. It recommends that Canada take steps in the areas of citizenship at birth, refugee protection, resettlement, permanent resident status, naturalization, detention and removal. It also identifies concerns regarding current proposals for reform.

²⁰⁷ P. Weis, "The United Nations *Convention on the Reduction of Statelessness*, 1961" 11 ICLQ 1073 (1962), in Batchelor, *supra* n. 4 at 235.

The problem of statelessness requires more than domestic action. As Paul Weis observed, “[n]ationality, in the sense of membership of a State, presupposes the co-existence of States. Nationality is, therefore, a concept not only of municipal law but also of international law.”²⁰⁸ To date, Canada has not acceded to the 1954 *Convention relating to the Status of Stateless Persons*, apparently out of apprehension that this would serve as a “pull factor”, attracting stateless people to Canada. Yet there is no evidence that this has been the case in other industrialized countries which have ratified that instrument.

Canada’s accession to the 1954 Statelessness Convention would not only benefit individual stateless persons, it would also have important international implications. As a party to both the 1954 and 1961 Conventions, Canada would have greater authority to advocate for further ratifications and actions by other states to prevent and reduce statelessness around the world and by so doing, address a root cause of forced displacement.

²⁰⁸ Weis, *supra* n. 29 at 239.

APPENDIX A: **Summary of recommendations**

Avoiding statelessness

- i. *Principle: The general principle of avoiding statelessness should be added to the interpretation section of the Citizenship Act (s. 2).*
- ii. *Foundlings (Citizenship Act s.4(1)): An exception should be made allowing foundlings proved to have been born outside of Canada to retain Canadian citizenship if revocation would result in statelessness.*
- iii. *Special cases: The relief of statelessness should be identified in s.5(4) of the Citizenship Act or in regulations as a specific situation justifying the exercise of discretion under this provision.*
- iv. *Revocation: An exception should be provided for those who would be rendered stateless as a result of revocation, allowing for discretion to impose alternative sanctions for fraud, misrepresentation or knowing concealment of material circumstances, where revocation would impose excessive hardship and the person has significant ties to Canada.*

Protecting the stateless

- v. *IRPA s. 95(1) should be amended to include in the grounds for conferral of Protected Person status those “stateless persons” who are unable to return to and enjoy effective protection in their countries of former habitual residence. An additional section should be added in this Division of the Act to provide a legal definition of stateless person, which should include both the definition of de jure statelessness set out in Art. 1(1) of the 1954 Convention and a definition of de facto statelessness based on lack of effective protection in any country of former habitual residence to which the person is able to return.*
- vi. *Alternatively, IRPA s. 97(1)(b) should be amended to include de facto and de jure statelessness as constituting “cruel and unusual treatment” where the stateless person lacks effective protection in a country of former habitual residence.*
- vii. *In the further alternative:*
 - *Refugee Protection Division members and PRRA Officers should be provided with interpretative guidance with respect to “country of former habitual residence,” indicating that this refers to any one country for the purpose of assessing fear of persecution. To make this approach meaningful the onus to demonstrate that a stateless person has effective protection in another country of former habitual residence should lie with the Minister.*

- *The guidance contained in Chapter PP3 of the Manual regarding the assessment of PRRA applications by stateless persons should be corrected to conform with the judgment of the Federal Court of Appeal in Thabet v. MCI.*
 - *Refugee Protection Division members and PRRA Officers should be provided with interpretative guidance for s.97(1) explaining that the return of a statelessness person to a country where they would not enjoy effective protection constitutes cruel and unusual treatment for the purposes of IRPA.*
- viii. *An exception to normal practice with respect to PRRA applications should be made for stateless persons, allowing “early” applications in cases where the person is not likely to become “removal ready” in the foreseeable future.*

Permanent residence

- ix. *In the absence of a more comprehensive solution through amendment to s. 95 and the recognition of statelessness as a ground for protected person status, the Minister should use the authority of ss. 25.2(1) to establish “protection of stateless persons” as a public policy category for permanent resident status in cases processed both in Canada and overseas, where such stateless persons otherwise lack effective protection. Alternatively, at a very minimum, Immigration Manual Chapter IP5, s. 5.11, should be amended to include statelessness as a persuasive factor in processing H&C applications generally, as well as with respect to applications of former citizens. Establishment requirements should be explicitly minimized or waived, in view of the special hardships faced by stateless persons.*

Naturalization

- x. *Citizenship Act s. 5(4) should be amended to include statelessness as an example of a case of “special and unusual hardship” warranting the discretionary granting of citizenship to a person who may not fulfil all of the usual criteria.*

Overseas resettlement programs

- xi. *Immigration and Refugee Protection Regulations, Part 8, Division 1, and Immigration Manual Chapter OP5 should be amended to include de jure and de facto statelessness as a ground for resettlement to Canada, where the stateless person lacks effective protection and access to a durable solution within a reasonable time.*

Immigration

- xii. *With respect to overseas applications, Immigration Manual Chapter OP4, s. 8 should be amended to include statelessness as a persuasive factor for the exercise of the officer's discretion in assessing hardship.*

Detention and removal

- xiii. *Detention of stateless persons should always be avoided except where, and for as long as, it is demonstrably necessary and justifiable.*
- xiv. *Immigration and Refugee Protection Regulations, s. 247 and Immigration Manual Chapter ENF 20 s. 5 should be amended explicitly to note the unique situation of stateless persons vis-à-vis access to identity documents as well as travel documents, so that they are not unnecessarily or unjustly detained.*
- xv. *Stateless persons should only be removed to countries of former habitual residence where they will have effective protection and a legal status.*

Data collection and reporting

- xvi. *Following the improvement in the collection of statistics since 2003, additional work should be undertaken by government agencies to improve their data management and reporting systems, with the possible support of future researcher, to ensure that comprehensive, accurate and timely data on statelessness are available. In particular, gaps in data collection still exist with respect to:*
- *Refugee determination of stateless persons, including their country of former habitual residence, age, gender, and whether statelessness was a factor in the decision.*
 - *Humanitarian and compassionate cases including an assessment of whether or not statelessness was considered as a positive factor, and disaggregated data on the country of former habitual residence, age and gender.*
 - *Detention under the IRPA of stateless persons including country of former habitual residence, age, gender, and length of detention.*
 - *Removal of stateless persons including the country of former habitual residence and legal status in the country of destination.*

APPENDIX B:***Main Provisions of the 1954 Convention relating to the Status of Stateless Persons***

The 1954 *Convention relating to the Status of Stateless Persons* is the primary international instrument adopted to date to regulate and improve the legal status of stateless persons, and to ensure stateless persons enjoy fundamental rights and freedoms without discrimination. The Convention was adopted to cover those stateless persons who are not refugees and who are therefore not covered by the 1951 *Convention relating to the Status of Refugees*.

The 1954 Convention's provisions are not a substitute for granting nationality to those born and habitually resident in a State's territory. There are, in fact, international legal principles in the area of nationality which elaborate on this. The improvement of the rights and status of stateless persons under the provisions of this Convention do not diminish the necessity of acquiring nationality, nor do they alter the fact that the individual is stateless. ... There is no equivalent, however extensive the rights granted to a stateless person may be, to the acquisition of nationality itself.

The main provisions of the 1954 Convention can be summarised as follows:

a. Definition of a Stateless Person

Article 1 states: "For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law." This is a strictly legal definition. It does not address the quality of nationality, or the manner in which nationality is ascribed, or access to a nationality. The definition is one simply of legal fact, an operation of law by which the State's legislation defines *ex lege*, or automatically, who has nationality. There are, however, principles involved in the acquisition, bestowal, loss and renunciation of nationality which are important in the determination of who should have access to nationality even in cases where, by operation of law, they do not acquire it.

b. Persons Excluded from the 1954 Convention

The Convention does not apply to:

- i. *those who, at the time the Convention came into force, were receiving assistance from United Nations agencies with the exception of UNHCR;*
- ii. *persons who already have the rights and obligations attached to the possession of nationality in the country in which they reside. In other words, where the individual has already attained the maximum legal status possible (status equivalent to that of nationals), the accession of that State to the Convention with provisions less extensive than those already granted to stateless persons under national law, will not jeopardise those rights. The importance of nationality itself must, however, be borne in mind;*

iii. *persons with respect to whom there is serious reason for considering that:*

- *they have committed a crime against peace, a war crime, or a crime against humanity;*
- *they have committed a serious non-political crime outside the country of their residence prior to their admission to that country;*
- *they have been guilty of acts contrary to the purpose and principles of the United Nations.*

c. Eligibility

The decision as to whether a person is entitled to the benefits of this Convention is taken by each State party in accordance with its own established procedures and may be made subject to the grant of lawful residence. UNHCR is available to play an advisory role in these procedures if requested, in view of the Office's experience with issues relating to statelessness and nationality.

d. Provisions relating to the Status of Stateless Persons

The Convention contains provisions regarding the stateless person's rights and obligations pertaining to their legal status in the country of residence. These rights include access to courts, property rights and freedom to practice one's religion. Obligations include conforming to the laws and regulations of the country. The Convention further addresses a variety of matters that have an important effect on day-to-day life such as gainful employment, public education, public relief, labour legislation and social security. Contracting States are encouraged to accord stateless persons lawfully resident on their territory a standard of treatment comparable, in some instances, to that accorded to nationals of the State and, in other instances, to that accorded to nationals of a foreign country or aliens generally in the same circumstances.

e. Identity and Travel Documents

The Convention stipulates that an individual recognised as a stateless person under the terms of the Convention should be issued an identity and travel document by the Contracting State. The issuance of a travel document does not imply a grant of nationality, does not alter the status of the individual, and does not grant a right to national protection or confer a duty of protection on the authorities. The documents are, however, particularly important to stateless persons in facilitating travel to other countries for, *inter alia*, purposes of study, employment, health or immigration. In accordance with the Schedule to the Convention, each Contracting State undertakes to recognise the validity of travel documents issued by other States parties. UNHCR is ready to offer technical advice on the issuance of such documents.

f. Expulsion

Stateless persons are not to be expelled save on grounds of national security or public order. Expulsions are subject to due process of law unless there are compelling reasons of national security. The Final Act indicates that non-refoulement in relation to danger of persecution is a generally accepted principle. The drafters, therefore, did not feel it necessary to enshrine this in the articles of a Convention geared toward regulating the status of *de jure* stateless persons.

g. Naturalisation

The Contracting State shall as far as possible facilitate the assimilation and naturalisation of stateless persons. The State shall in particular make every effort to expedite naturalisation proceedings including reduction of charges and costs wherever possible.

h. Dispute Settlement

Disputes between States parties which cannot be settled by other means may be referred to the International Court of Justice at the request of a party to the dispute.

i. Reservations

In acknowledgement of special conditions prevailing in their respective States at the time of ratification or accession, the Convention allows Contracting States to make reservations to certain of the provisions. Reservations may be made with respect to any of the Convention's provisions with the exception of those which the drafters determined to be of a fundamental nature. No reservations may be made, therefore, to Articles 1 (definition/exclusion), 3 (non-discrimination), 4 (freedom of religion), 16(1) (free access to courts), and 33 to 42 (Final Clauses).

j. Final Act

The Final Act recommends that each Contracting State, when it recognises as valid the reasons for which a person has renounced the protection of the State of which he is a national, consider sympathetically the possibility of according to the person the treatment which the Convention accords to stateless persons. This recommendation was included on behalf of *de facto* stateless persons who, technically, still hold a nationality but do not receive any of the benefits generally associated with nationality, such as national protection.

SOURCE: UNHCR (Division of International Protection), *Information and Accession Package: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness*, (Geneva: UNHCR, June 1996; Rev. Jan. 1999), pp 10-13.

APPENDIX C:***Main Provisions of the 1961 Convention on the Reduction of Statelessness***

The primary international legal instrument addressing the problem of statelessness is the 1961 *Convention on the Reduction of Statelessness*. The essential purpose of the Convention is to provide for the acquisition of nationality by those who would otherwise be stateless and who have an appropriate link with the State through birth on the territory or through descent from nationals, and for the retention of nationality for those who would be made stateless should they inadvertently lose the State's nationality.

The basic provisions contained in the 1961 Convention can be summarised as follows:

a. Grant of Nationality

Nationality shall be granted to those who would otherwise be stateless, and who have an effective link with the State through either birth or descent. The fact that the person concerned will otherwise be stateless is a precondition to all modes of acquisition of nationality under the terms of the 1961 Convention, which is concerned not with nationality in general but specifically with the problem of statelessness. Nationality shall be granted:

- i. at birth, by operation of law, to a person born in the State's territory;*
- ii. by operation of law at a fixed age, to a person born in the State's territory, subject to conditions of national law;*
- iii. upon application, to a person born in the State's territory (may be made subject to one or more of the following: a fixed time-frame in which the application may be lodged, specified residency requirements, no criminal convictions of a prescribed nature, and that the person has always been stateless);*
- iv. at birth, to a legitimate child whose mother has the nationality of the State in which the child is born;*
- v. by descent, should the individual be unable to acquire nationality of the Contracting State in whose territory s/he was born due to age or residency requirements (may be made subject to one or more of the following: a fixed time-frame in which the application may be lodged, specified residency requirements, and that the person has always been stateless);*

- vi. *to foundlings found in the territory of a Contracting State;*
- vii. *at birth, by operation of law, to a person born elsewhere if the nationality of one of the parents at the time of the birth was that of the Contracting State;*
- viii. *upon application, as prescribed by national law, to a person born elsewhere if the nationality of one of the parents at the time of the birth was that of the Contracting State (may be made subject to one or more of the following: a fixed period in which the application may be lodged, specified residency requirements, no convictions of an offence against national security, and that the person has always been stateless).*

b. Loss/Renunciation of Nationality

Loss or renunciation of nationality should be conditional upon the prior possession or assurance of acquiring another nationality. An exception may be made in the case of naturalised persons who, despite notification of formalities and time-limits, reside abroad for a fixed number of years and fail to express an intention to retain nationality. In this specific context, a naturalised person refers only to a person who has acquired nationality upon an application which the Contracting State concerned, in its discretion, could have refused. Loss of nationality may take place only in accordance with law and accompanied by full procedural guarantees, such as the right to a fair hearing by a court or other independent body.

c. Deprivation of Nationality

The basic principle is that no deprivation of nationality should take place if it will result in statelessness. The following exceptions are made:

- i. *nationality obtained by misrepresentation or fraud;*
- ii. *acts inconsistent with a duty of loyalty either in violation of an express prohibition or by personal conduct seriously prejudicial to the vital interests of the State;*
- iii. *oath or formal declaration of allegiance to another State or repudiation of allegiance to the Contracting State;*
- iv. *loss of effective link by naturalised citizens who, despite notification, fail to express an intention to retain nationality (see b. above.)*

Deprivation must be in accordance with law and accompanied by full procedural guarantees, such as the right to a fair hearing. A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

d. Transfer of Territory

Treaties shall ensure that statelessness does not occur as a result of a transfer of territory. Where no treaty is signed, the State shall confer its nationality on those who would otherwise become stateless as a result of the transfer or acquisition of territory.

e. International Agency

Provision was made for the establishment, within the framework of the United Nations, of a body to which a person claiming the benefit of the Convention may apply for the examination of his/her claim and for assistance in presenting it to the appropriate authority. UNHCR has been requested, by the United Nations General Assembly, to fulfil this function.

f. Disputes

Disputes between Contracting States concerning the interpretation or application of the Convention, which have not been resolved by other means, may be submitted to the International Court of Justice at the request of anyone of the parties to the dispute.

g. Reservations

Reservation may be made, at the time of signature, ratification or accession, in respect only of Articles 11 (Agency), 14 (Referral of disputes to ICJ) or 15 (territories for which the Contracting State is responsible).

h. Final Act

Delineates definitions of words used in the Convention, as well as duties of the Contracting States. It recommends that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality.

- SOURCE: UNHCR (Division of International Protection), *Information and Accession Package: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness*, (Geneva: UNHCR, June 1996; Rev. Jan. 1999) at 13-15.

APPENDIX D: CIC Statistics on Statelessness²⁰⁹

The Number of Refugee Claims Received at all Offices by Country of Citizenship - Stateless (in Persons)

Country of Citizenship	CALENDAR YEAR									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Stateless	333	304	168	233	158	186	187	253	185	134

The Number of Refugee Claims Received at Port of Entry by Country of Citizenship - Stateless (in Persons)

Country of Citizenship	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Stateless	247	243	120	204	109	119	149	219	155	102

The Number of Refugee Claims Received at Port of Entry by Country of Citizenship - Stateless (in Persons)

Eligibility Decisions	CALENDAR YEAR									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Eligible (C11) + Eligible (Pre-C11) + Deemed (C11)	245	241	116	195	100	92	126	214	139	89
Not Eligible (C11) + Not Eligible (Pre-C11)	0	0	3	8	5	26	23	5	16	13
MISSING OR INVALID	2	2	1	1	4	1	0	0	0	0
Total Eligible Decisions	247	243	120	204	109	119	149	219	155	102

The Number of Refugee Claims Received at Port of Entry by Country of Citizenship - Stateless (in Persons)

Eligibility Decisions Year	CALENDAR YEAR									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Eligible (C11) + Eligible (Pre-C11) + Deemed (C11)	245	241	116	195	100	92	126	214	139	89
Eligible (C11)	0	107	116	158	99	91	126	213	139	89
Eligible (Pre-C11)	245	134	0	0	0	0	0	0	0	0
Deemed (C11)	0	0	0	37	1	1	0	1	0	0
Not Eligible (C11)	0	0	3	8	5	26	23	5	16	13
101 (1) (A)	0	0	0	0	0	0	0	0	0	0
101 (1) (B)	0	0	1	2	0	1	1	0	0	1
101 (1) (C) (pr claim-inelgbl)	0	0	1	0	0	0	2	0	1	0
101 (1) (C) (pr claim-abndnd)	0	0	0	3	0	2	1	0	0	0
101 (1) (C) (Pr claim-wthdrw)	0	0	0	3	0	0	0	0	1	0
101 (1) (D)	0	0	1	0	0	0	0	1	0	6
101 (1) (E)	0	0	0	0	5	23	19	4	14	6
101 (1) (F)	0	0	0	0	0	0	0	0	0	0
MISSING OR INVALID	2	2	1	1	4	1	0	0	0	0
Total Eligibility Decisions	247	243	120	204	109	119	149	219	155	102

²⁰⁹ CIC data collection systems are not designed to capture data on statelessness. Data collected includes the number of claimants who self-declare when making their claim that they have no country of citizenship (i.e. "citizenship = stateless") as well as data collected later on in the process when the claim is decided based on its merits (i.e. "country of persecution = stateless"). It is believed that the later likely reflects the more accurate number.

The Number of Refugee Claims Received at Land Border by Country of Citizenship - Stateless

2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
214	239	114	199	103	109	129	213	152	93

The Number of Applications Received for Permanent Residents - Stateless (in Persons)

	CALENDAR YEAR									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Humanitarian & Compassionate	19	56	51	64	58	55	68	30	27	22
Government-assisted Refugees	1,102	124	25	48	34	115	36	16	52	66
Privately Sponsored Refugees	630	87	104	60	50	140	32	59	219	91

Applications Processed for Permanent Residents - Stateless (in Persons)

	Passed										Failed									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Humanitarian & Compassionate (Overseas & In Canada)	0	0	5	33	30	30	40	42	54	25	0	0	5	24	11	14	25	17	4	11
Government-assisted Refugees	812	342	22	44	13	20	27	32	43	9	1560	213	11	0	1	102	10	0	0	2
Privately Sponsored Refugees	204	141	30	43	16	1	22	15	80	157	1043	152	30	45	63	130	22	22	27	22

PRRA Intake and output for Stateless persons									
	2002	2003	2004	2005	2006	2007	2008	2009	2010
Intake	24	41	48	27	35	41	8	15	22
Total Output	25	71	62	49	37	51	31	27	20
positive	0	4	4	5	3	3	3	0	0
negative	6	30	20	22	15	27	13	18	9
other	19	37	38	22	19	21	15	9	11

APPENDIX E:
Statistics from Canada Border Services Agency

Number of Days in Detention – Stateless Persons

Region	Detention Facility	Grounds for Detention	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	
Atlantic Region	Central Nova Scotia Correctional Facility	Will not appear	0	0	0	0	0	0	0	0	3	0	
	Moncton Detention Centre	Danger / Will not appear	0	0	0	43	0	0	0	0	0	0	
	Saint John Regional Correctional Centre	Will not appear	0	0	0	0	0	12	0	0	0	0	
	Atlantic Region		0	0	0	43	0	12	0	0	3	0	
Quebec Region	Centre de détention Rivières-des-Prairies, Montréal	Danger / Will not appear	0	293	24	0	4	197	42	55	67	4	
		Danger to the Public	0	0	0	0	0	25	0	0	235	179	
		Will not appear	46	2	14	0	10	80	91	19	83	0	
	Centre de prévention d'immigration Montréal Laval (CPI)	Danger / Will not appear	0	0	6	143	26	0	0	0	0	0	0
		Danger to the Public	0	0	0	0	0	0	0	0	0	3	0
		Identity	0	0	0	88	22	72	9	31	60	39	
	Detained at CBSA	Will not appear	0	1	112	2	11	14	70	11	9	56	
		Identity	0	0	0	0	0	0	0	0	1	0	0
	Prison Bordeaux, Montréal	Will not appear	0	0	1	0	1	0	0	0	0	1	0
		Danger / Will not appear	0	0	0	0	144	0	0	0	0	0	0
	Will not appear	0	0	95	19	0	0	0	0	0	0	0	
Quebec Region		46	296	252	252	218	388	212	117	458	278		
Northern Ontario	Collins Bay Institution, Kingston - ON	Will not appear	0	171	54	0	0	0	0	0	0	0	
	Joyceville Institution, Kingston - ON	Will not appear	0	3	0	0	0	0	0	0	0	0	
	Ottawa Carleton Regional Detention Ctr - ON	Danger / Will not appear	0	160	181	189	2	103	123	661	504	237	
		Danger to the Public	0	0	0	0	0	0	0	4	0	27	
		Will not appear	9	0	98	14	0	255	169	6	0	244	
Northern Ontario		9	334	333	203	2	358	292	671	504	508		
Greater Toronto Area	Celebrity Inn (IHC), Malton - ON	Examination	1	0	0	0	0	0	0	0	0	0	
		Identity	7	69	0	0	0	0	0	0	0	0	
		Will not appear	8	147	27	0	0	0	0	0	0	0	
	Central east correctional center lindsay - on	Danger / Will not appear	0	353	1248	553	719	1183	2434	803	540	495	
		Danger to the Public	0	0	0	347	410	269	177	10	0	0	
		Will not appear	0	502	106	0	206	417	197	110	186	514	
	Central North Correct.Ctr.Penetanguishene	Danger / Will not appear	11	258	0	24	4	18	29	0	48	0	
		Will not appear	0	66	7	0	0	0	0	0	0	0	
	Fenbrook Institution - ON	Will not appear	0	0	35	0	0	0	0	0	0	0	
	Immigration Holding Centre - ON	Identity	0	0	104	40	76	2	0	0	0	0	
		Will not appear	0	0	91	58	88	28	23	62	6	13	
	Maplehurst Correctional Complex	Danger / Will not appear	0	53	53	173	22	0	0	0	192	24	
Will not appear		0	16	12	0	35	0	0	5	1	0		
Maplehurst Detention Centre - ON	Danger / Will not appear	0	174	187	0	0	0	0	0	0	0		
	Will not appear	9	251	0	0	0	0	0	0	0	0		

Number of Days in Detention – Stateless Persons *cont'd*

	Millbrook Correctional Centre - ON	Danger / Will not appear	110	119	0	0	0	0	0	0	0	0	
		Will not appear	285	339	0	0	0	0	0	0	0	0	0
		MISSING OR INVALID	20	0	0	0	0	0	0	0	0	0	0
	Sudbury Jail - ON	Danger / Will not appear	0	0	0	0	0	0	0	2	0	0	0
	Thunder Bay Jail - ON	Will not appear	0	0	0	2	0	0	0	0	0	0	0
	Toronto Don Jail - ON	Danger / Will not appear	45	54	241	424	365	14	22	0	0	0	0
		Danger to the Public	14	0	0	0	0	0	0	0	0	0	0
		Will not appear	111	31	7	0	12	0	12	0	0	0	0
	Toronto East Detention Centre, Scarborough- ON	Danger / Will not appear	27	9	2	1	0	0	0	149	0	0	0
	Toronto West Detention Centre, Etobicoke - ON	Danger / Will not appear	75	103	91	329	1	341	273	163	134	395	
		Danger to the Public	0	27	0	0	54	0	0	36	0	0	
		Will not appear	41	69	265	16	265	163	188	413	191	280	
MISSING OR INVALID		16	44	0	0	0	0	0	0	0	0		
Vanier Institute, Brampton - ON	Danger / Will not appear	0	0	99	269	45	14	0	0	0	0		
	Danger to the Public	0	0	0	0	0	0	12	0	0	0		
	Will not appear	0	0	59	21	0	0	186	44	0	0		
Greater Toronto Area			780	2684	2634	2257	2302	2449	3553	1797	1298	1721	
Niagara / Fort Erie	Hamilton Wentworth Detention Centre - ON	Will not appear	4	0	0	0	0	0	9	0	0	0	
	Niagara falls enforcement holding cells	Danger / Will not appear	0	0	0	0	0	1	0	0	0	0	
		Will not appear	0	0	0	1	0	1	0	2	0	0	
	Niagara Regional Detention Ctr, Thorold - ON	Danger / Will not appear	0	0	0	0	0	55	0	0	0	0	
		Examination	0	0	5	0	0	0	0	0	0	0	
		Will not appear	4	0	0	1	11	94	7	0	0	0	
	Niagara regional police - 22 division	Will not appear	0	0	0	1	0	0	0	0	0	1	
	Waterloo Regional Detention Ctr, Cambridge - ON	Danger / Will not appear	0	0	0	0	0	1	0	0	0	0	
Niagara / Fort Erie			8	0	5	3	11	152	16	2	0	1	
Windsor St. Clair	Elgin Middlesex Detention Centre, London - ON	Danger / Will not appear	0	0	3	0	0	0	0	0	0	4	
		Will not appear	0	0	0	0	2	0	1	0	0	0	
	Sarnia Jail - ON	Danger / Will not appear	0	0	0	0	0	0	0	16	42	0	
	Windsor Jail - ON	Danger / Will not appear	0	0	0	0	0	0	76	221	0	0	
		Will not appear	0	19	0	0	1	0	0	38	0	3	
Windsor St. Clair			0	19	3	0	3	0	77	275	42	7	
Prairie Region	Headingley Correctional Centre	Danger / Will not appear	58	170	76	0	0	0	0	0	0	136	
		Will not appear	0	0	0	0	0	0	221	0	0	0	
	Milner Ridge Correctional Centre	Will not appear	0	0	0	0	0	0	8	0	0	0	
	Winnipeg Remand Centre	Danger / Will not appear	0	0	228	0	0	0	11	0	169	0	
		Danger to the Public	0	0	0	0	0	0	2	3	0	0	
		Will not appear	0	72	32	0	0	0	0	0	0	0	
RCMP Regina	Will not appear	0	0	0	0	1	0	0	0	0	0		

Number of Days in Detention – Stateless Persons *cont'd*

	Saskatoon Correctional Centre	Danger / Will not appear	5	2	0	0	0	0	0	0	1	0
	Calgary Remand Centre	Danger / Will not appear	0	0	122	0	0	0	0	91	125	4
		Will not appear	0	5	15	0	21	0	1	52	10	3
	Calgary West Remand Centre	Danger / Will not appear	0	78	595	632	282	238	188	0	0	0
		Will not appear	6	9	14	0	81	31	0	0	0	0
	Edmonton Remand Centre	Danger / Will not appear	1	141	266	0	16	0	100	0	3	11
		Danger to the Public	9	0	0	0	0	0	0	0	0	304
		Will not appear	0	151	115	21	5	15	7	14	0	3
	Prairie Region		79	628	1463	653	406	284	538	160	308	461
Pacific Region	B.C. Holding Centre - BC	Danger / Will not appear	0	0	0	0	3	3	0	4	0	0
		Examination	1	1	1	2	0	2	0	0	0	0
		Identity	0	0	10	0	0	0	0	0	0	0
		Will not appear	8	24	7	10	15	2	2	3	8	5
	Ferndale Institution, Mission	Will not appear	0	0	0	2	0	0	0	0	0	0
	Fraser Regional Correctional Centre	Danger / Will not appear	0	0	0	0	2	4	2	0	0	0
		Will not appear	0	0	0	126	21	8	47	2	182	323
	Matsqui Institution, Abbotsford	Will not appear	0	0	0	0	2	0	0	0	0	0
	New Westminster Police - BC	Will not appear	0	0	0	0	0	0	1	0	0	0
	North Fraser Pretrial Services Centre - BC	Danger / Will not appear	2	16	4	0	1	6	9	0	3	0
		Identity	0	0	17	0	0	0	0	0	0	0
		Will not appear	103	448	238	37	19	12	15	3	2	0
	Pacific Region Enforcement Centre - BC	Will not appear	0	0	0	0	0	1	0	0	0	0
	RCMP Burnaby	Danger / Will not appear	0	0	0	0	0	1	0	0	0	0
		Will not appear	0	0	0	0	0	0	0	2	0	0
	RCMP Prince Rupert	Danger / Will not appear	0	0	0	0	0	0	0	1	0	0
	RCMP Surrey	Will not appear	0	1	0	0	2	0	0	0	0	0
	Surrey Pretrial Services Centre	Will not appear	0	0	0	2	0	2	0	0	0	0
	Vancouver City Jail	Danger / Will not appear	0	0	1	0	0	2	0	0	0	0
		Identity	0	0	6	0	0	0	0	0	0	0
		Will not appear	16	49	6	6	7	3	17	4	0	0
	Victoria City Police - BC	Danger / Will not appear	0	0	0	0	0	1	0	0	0	0
		Will not appear	0	0	0	0	0	1	0	0	0	0
	Pacific Region		130	539	290	185	72	48	93	19	195	328
Total of all detention facilities			1052	4500	4980	3596	3014	3691	4781	3041	2808	3304



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