



Proceedings of a Roundtable on Statelessness:  
Statelessness in the World and in the Canadian Context

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\* The statements and opinions tendered by panellists and participants as summarized in this report, are those of the speaker in question, and should not be taken to necessarily reflect the opinions of UNHCR or the Rapporteur.

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## **I. INTRODUCTION:**

### **(i.) Background**

Although the exact figures are unknown, UNHCR estimates that about 12 million people are stateless in dozens of developed and developing countries around the world.

To be stateless is to be without nationality or citizenship. Stateless people lack the legal bond between individuals and states, which forms the very premise of international law and order. As a result, many face difficulties in their everyday lives, including accessing health care, education, enjoying property rights and the ability to move freely. Lacking status, stateless people are also vulnerable to arbitrary treatment and crimes such as trafficking. Their marginalization can create tensions in society and lead to instability at an international level including conflict and displacement, in extreme cases.

The 1954 *Convention relating to the Status of Stateless Persons* and the 1961 *Convention on the Reduction of Statelessness* are the key legal instruments in the protection of stateless people around the world and in the prevention and reduction of statelessness. While they are complemented by regional treaty standards and international human rights law, the two statelessness conventions are the only global conventions of their kind.

Canadian law and policy recognizes the importance of citizenship. Indeed, Canada's policy of conferring citizenship on children born in the territory as well as on many persons born abroad to Canadian parents is one of the most ideal in trying to prevent statelessness. Canada acceded to the 1961 *Convention on the Reduction of Statelessness* in 1978 but not to the 1954 *Convention relating to the Status of Stateless Persons*. UNHCR and others studying the problem of statelessness have observed the difficulty of resolving the protection gap of individuals in Canada who are not recognized as nationals by any state, and who are also not found to be in need of international protection by the competent authorities.

### **(ii.) UNHCR's Statelessness Mandate**

Through a series of resolutions beginning in 1994, the UN General Assembly conferred UNHCR with the formal mandate to prevent and reduce statelessness around the world and protect the rights of stateless people. Twenty years earlier, the Assembly asked UNHCR to provide assistance to individuals under the 1961 *Convention on the Reduction of Statelessness*.

UNHCR's Executive Committee provided guidance on how to implement this mandate in a "Conclusion on the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons" issued in 2006.<sup>1</sup> This requires the agency to work with governments, other UN agencies and civil society to address the problem of statelessness.

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<sup>1</sup> UN High Commissioner for Refugees, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) - 2006, available at: <http://www.unhcr.org/refworld/docid/453497302.html> [accessed 16 July 2012].

UNHCR's activities in the field are grouped into four categories:

1. Identification: Gather information on statelessness, its scope, causes and consequences;
2. Prevention: Address the causes of statelessness and promote accession to the 1961 *Convention on the Reduction of Statelessness*;
3. Reduction: Support legislative and procedural changes in order to enable stateless people to acquire a nationality and benefit from the resulting rights; and
4. Protection: Intervene where appropriate, to help stateless people exercise their rights and promote accession to the 1954 and 1961 UN Conventions on statelessness.

### **(iii.) The Basis for a Roundtable on Statelessness**

As a follow up to the 2011 commemorative year, which featured a number of events around the world celebrating the 50<sup>th</sup> anniversary of the 1961 *Convention on the Reduction of Statelessness*, and culminating in the Ministerial Meeting on 7-8 December 2011 in Geneva (which Canada attended), the UNHCR Representation in Canada decided to organize a roundtable to examine the issue of statelessness, building on the momentum of the previous year. The hope was that such a forum would generate attention and understanding concerning the situation of statelessness persons throughout the world and promote legislation and practices aimed at resolving the problems they face.

The event also marked the release of the second edition of "Statelessness in Canadian Context: An Updated Discussion Paper" by Andrew Brouwer.<sup>2</sup> The first edition of this paper was produced in 2003 as part of the UNHCR's accession campaign to promote the two UN Statelessness Conventions. The updated version of the paper includes commentary on the legislative amendments to the Canadian *Citizenship Act* introduced in 2009, jurisprudential developments since 2003, updated statistics relating to stateless persons within Canada, and possible implications of Bill C-31, *the Protecting Canada's Immigration System Act*, which was before Parliament at the time of the Roundtable (and which received Royal Assent on 28 June 2012).

The Roundtable aimed to outline the contemporary situation of statelessness in the world, present the most common legislative gaps and challenges, such as obstacles to the enjoyment of human rights and the lack of durable solutions, and advocate for universal accession to the two UN Statelessness Conventions. The audience included representatives of the Canadian government, academics, legal and community practitioners, and other members of civil society. By bringing together partners across sectors and with wide ranging expertise, this conference aimed to identify issues, stimulate discussion and promote solutions in Canada and around the world.

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<sup>2</sup> UN High Commissioner for Refugees, *Statelessness in the Canadian Context : An updated discussion paper*, March 2012, available at: <http://www.unhcr.org/refworld/docid/4facb7a62.html> [accessed 16 July 2012].

## **II. OPENING REMARKS BY THE UNHCR REPRESENTATIVE IN CANADA, FURIO DE ANGELIS**

Ladies and gentlemen, dear participants, good afternoon,

It is with great pleasure that I welcome you all here today on the occasion of the Panel discussion on “Statelessness in the World and in the Canadian Context” and the presentation of the Discussion Paper “Statelessness in the Canadian Context”.

I express my sincere appreciation for you having taken the time to join us. I wish to recognize the presence of senior officials of the government, as well as that of many colleagues in refugee protection, lawyers, professors, members of civil society and friends of UNHCR. A special note of thanks to the panellists: Mr. Sebastian Khon who is joining us from the Open Society Justice Initiative in New York; Mr. Andrew Brouwer, the author of the Discussion Paper and Ms. Glynis Williams, a long-time expert and practitioner in community-based programmes; all will be properly introduced by Professor James Milner to whom goes my special thanks for having accepted to be the Moderator of the Panel.

UNHCR’s advocacy objective in organizing this event is clear, and it can be simply summarized in a couple of short sentences: Nationality is a human right. Statelessness is an anomaly and a barrier to fundamental human rights. On the basis of this clear premise, UNHCR has been engaged from the very beginning of its creation, in promoting international standards to reduce and avoid statelessness and to protect stateless persons.

I wish to provide a brief resume of the role and mandate of UNHCR with regard to statelessness. Without infringing on the Panel’s presentations, I will limit my remarks to UNHCR’s specific role in the global efforts to reduce statelessness.

UNHCR participated in the drafting of the two global instruments on statelessness: the 1954 *Convention relating to the Status of Stateless Persons*, which provides guidance on the rights of stateless persons,<sup>3</sup> and the 1961 *Convention on the Reduction of Statelessness*, which sets standards on how to avoid statelessness.<sup>4</sup> In 1974, the UN General Assembly designated UNHCR as the body to which stateless persons may turn under the terms of the 1961 Convention for assistance in presenting their claims to state authorities.

In the early 90’s, with the changes in the world political order and the dissolution of several countries, statelessness issues rose to primary attention as the number of stateless persons increased dramatically, urging an effective international response. In 1995, the UNHCR’s Executive Committee requested that UNHCR, among other things, promote accession to the Statelessness Conventions and provide technical and advisory services to interested states on the

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<sup>3</sup> UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.unhcr.org/refworld/docid/3ae6b3840.html> [accessed 16 July 2012].

<sup>4</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <http://www.unhcr.org/refworld/docid/3ae6b39620.html> [accessed 16 July 2012].

preparation and the implementation of nationality legislation. The UN GA endorsed this request the following year. Subsequent EXCOM's conclusions further refined the UNHCR's mandate on statelessness and identified four specific areas of intervention: the identification, prevention and reduction of statelessness and the protection of stateless persons.

Since then, and especially in the last years UNHCR has been increasingly active: although identifying and measuring statelessness is a particularly complex activity, UNHCR has data for 65 countries; in the last 2 years, identification activities were carried out in 42 countries (most significant stateless populations existing in Estonia, Iraq, Latvia, Myanmar, Nepal, Syria, and Thailand). At the beginning of 2011, UNHCR had data of 3.5 million stateless persons around the world, while the estimate remains considerably higher, at 12 million persons worldwide. The UNHCR is committed to further improving our identification work, particularly through improved training of field staff and partners on the doctrinal framework and statistical methodologies for measuring stateless populations.

The year 2011 marked the 50<sup>th</sup> anniversary of the 1961 Convention and UNHCR took that opportunity to re-launch efforts to resolve situations of statelessness. UNHCR devoted particular attention to promoting accession to the Statelessness Conventions. As a result, the number of state parties to the 1954 and the 1961 Conventions increased from 65 and 37 respectively at the end of 2010, to 74 and 45 at today's date; this number includes as well, the most recent accessions which occurred after the updating of the Report (included in a special addendum page in it). Moreover, at the December 2011 Ministerial Conference in Geneva, marking the anniversary of the 1961 Convention, as well as the 60<sup>th</sup> anniversary of the 1951 Refugee Convention, an additional 33 states pledged to accede (or to take steps to accede) to one or both of the Statelessness Conventions and in total, 61 states and one regional body made statelessness-related pledges. There is surely a momentum in the global response to the concerns raised by statelessness situations, more countries recognize the plight endured by persons without a nationality and that it is not in their own interest to maintain such situations unresolved.

As mentioned above, UNHCR puts an emphasis on the identification of stateless persons so as to ensure that they are able to exercise their rights until they acquire a nationality. The identification of statelessness through formal determination procedures should result in the acknowledgement of an official status of "stateless persons" with issuance of related documentation. Yet, very few countries have so far established procedures for the determination of statelessness, although 10 States pledged to do so at the December Ministerial Conference, of which two (Peru and the USA) are not party to the 1954 Convention. UNHCR provides technical advice to states that wish to establish determination procedures, or also to promote legal reforms to address gaps in nationality and related legislation: UNHCR has provided this sort of technical advice in 56 States, and promoted the establishment of statelessness determination procedures in 39 States, including some which are not party to the 1954 Convention relating to the status of Stateless Persons, but based on their commitments under international human rights law. In fact, statelessness is a juridically-relevant situation, for example, in relation to protection against arbitrary detention (Article 9(1) of the ICCPR), and the right of every child to a nationality (Article 24(3) of the ICCPR and Article 7(1) of the CRC). I would therefore encourage the



Government of Canada to consider establishing formal procedures or enhancing existing mechanisms in the determination of status for stateless persons to give legal certainty to situations of statelessness that might arise in the country.

Ladies and gentlemen,

Partnership around the theme of statelessness has grown tremendously in the last few years, in recognition of the fundamental rule that “protection of human rights is a matter of partnership”. The June 2011 Guidance Note on Statelessness, issued by UN SG Ban Ki-Moon, is indicative of the growing level of engagement of the UN system as a whole.<sup>5</sup> The Note is part of your documentation in the personal folder. The Note sets out seven principles to guide UN action to address statelessness and it makes clear that addressing statelessness is a “fundamental and integral part” of the UN efforts to strengthen the rule of law. While UNHCR is the UN Agency mandated to work with governments on issues of statelessness, cooperation and contribution from other UN Agencies, regional organizations and civil society will remain of vital importance, and you can see the extent of this UN collaborative effort on the last page of the Note. Regional Organizations as well, such as the Council of Europe, the Inter-America Commission and Court of HR, and other similar bodies in other regions have all been increasingly involved in addressing statelessness. My own personal experience of cooperation with the Organization for Security and Cooperation in Europe (OSCE) on the issue of the returning of Crimea Tatar to Ukraine from Central Asia – where their ancestors were deported in the 1940’s – was, for me, significant of the international partnerships that can be formed on statelessness issues.

I wish to say a few words on the Discussion Paper, in advance of the full presentation that will be made by its author Andrew Brouwer. It is an effort to raise awareness about statelessness and also to re-launch the discussion on the relevance of being party to the UN Statelessness Conventions. Important legislative amendments were introduced in Canada since the publication of the first Discussion Paper in 2003 and we felt that the 2011 campaign would be a perfect opportunity to revisit the Paper. It is now presented in the aftermath of the success of that global campaign and of its December Ministerial Conference. I hope you will find it informative and stimulating for further reading and involvement on statelessness issues.

In conclusion, UNHCR is firmly at the center of global efforts to promote government actions for the reduction and the prevention of statelessness and for the protection of stateless persons. It is important that statelessness is not seen as an intractable political issue. It must be recognized as a problem with real, devastating and lasting impacts on the lives of men, women and children without a state. Statelessness requires urgent and effective resolution.

UNHCR will continue to advocate for the largest possible accession of states to the UN Statelessness Conventions and reinforce, in this way, the authority of the international legal regime regulating statelessness. In this respect, I wish to appeal to the government of Canada to

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<sup>5</sup> UNHCR, “Guidance Note of the Secretary General: The United Nations and Statelessness,” June 2011, available at: <http://www.unrol.org/files/FINAL%20Guidance%20Note%20of%20the%20Secretary-General%20on%20the%20United%20Nations%20and%20Statelessness.pdf> [accessed 16 July 2012].

accede the 1954 *Convention relating to the Status of Stateless Persons* at its earliest convenience so as to fully embrace the global efforts to combat statelessness and to provide guidance and role modeling in the world on this particular aspect of human rights protection.

My hope is that our gathering today will help build understanding and draw attention to the challenges associated with Statelessness and the millions of persons affected worldwide. I am grateful that in addition to our expert panel, in attendance are a large number of distinguished persons in relation to human rights, refugees, citizenship and migration. With so much wisdom in the room, I hope that we will also benefit from the ideas and insights of all of the participants today in order to move us closer to resolution of this important issue.

I thank you for your attention and I wish you a good and fruitful session.

*Furio De Angelis*  
*UNHCR Representative*  
*Ottawa, Canada*  
*14 June 2012*

### **III. UNHCR VIDEO ON STATELESSNESS: “STATE OF LIMBO”**

The Roundtable included a viewing of the 26 minute cut of “State of Limbo,” a video produced in conjunction with the UNHCR which aims to offer insight into the plight of stateless persons all over the world. The video includes statements by the High Commissioner, Mr. Antonio Gueterres, academics, lawyers and stateless individuals with Russian, Nubian (Kenyan), and Kyrgyz backgrounds. The film provides an account of the many obstacles which stateless individuals face in their everyday lives, including the inability to procure basic services commensurate with other nationals, the inability to move freely, threat of and actual detention and removal, the loss of or appropriation of property, and overwhelming difficulties in navigating legal systems.

The movie was well received by attendees and stimulated discussion in advance of the panel presentations during the networking break.

### **IV. PANEL PRESENTATIONS**

#### **(i.) Presentation of the Panel by Conference Moderator, James Milner, Associate Professor, Department of Political Science, Carleton University, Ottawa**

The panel presentations were preceded by an introduction to the issues and panellists, by Professor James Milner of Carleton University who acted as a moderator.

Professor James Milner noted that in his first year undergraduate course offering an introduction to global politics, one of the first things established is the link between citizens and territory.

The state has been the core unit within the international system since the 17<sup>th</sup> century. Citizenship is the link between an individual and the state and serves as a link between the individual and the international system as well.

He reflected that statelessness has been emerging as an issue in the global refugee regime and the international community for some time. This has especially been the case since the end of the Cold War, with changes in the international system, changing relations between states, and changes in notions of membership, and claims of citizenship. Since then, there has been a raising awareness of the importance of the issue. Professor Milner cited his own experiences of this in working on protracted refugee situations. He reflected: how has statelessness been an issue which has not been given the prominence or visibility that it can or should have, in the practice and study of the global refugee regime?

The moderator noted his own learning experience on issues of statelessness over the past few months: following deliberations in Geneva last December and reading the updated report of Andrew Brouwer. He expressed hope that along with the other participants, the Roundtable would provide an opportunity to further his knowledge on the issue of statelessness.

Panellists were introduced in the order of presentation.

Sebastian Köhn, the program officer for equality and citizenship at the Open Society Justice Initiative based in New York, focuses his work on statelessness, the right to nationality, and discrimination. He has a Master's degree in Conflict, Security, and Development from King's College in London, a Bachelor's Degree in International Relations and History from the London School of Economics, and as noted in his profile, his areas of interest include children's right to nationality, and an applied global perspective on the issue of statelessness.

Andrew Brouwer, is both the author of the original report, and the updated version. He is a lawyer with the Refugee Law Office of Legal Aid Ontario in Toronto, and has practiced in all levels of refugee law. He has appeared at all divisions of the IRB, the Federal Court, brought cases to the UN Human Rights Committee, the UN Committee Against Torture, and the Inter-American Commission on Human Rights. Mr. Brouwer has also worked very closely and actively with a range of NGO community groups both in Canada and abroad, including: the Canadian Council for Refugees, the Maytree Foundation, the Southern Ontario Sanctuary Network, and the Refugee Lawyer's Association of Ontario. His connection to UNHCR goes back to 2002 when he served as an intern in UNHCR's office in Geneva.

Finally, Glynis Williams has been the Executive Director of Action Réfugiés de Montréal since 1994 when the organization was founded. Action Réfugiés de Montréal is highly involved in the sponsorship of refugees, having sponsored more than 750 refugees from 16 countries through Canada's resettlement program. Ms. Williams engages in weekly visits to the CBSA holding center in Laval, Quebec, and has international experience, having served as an ICMC deployee with UNHCR for almost 5 months in Damascus Syria. Her professional foundation is in nursing and theology and she is an ordained Minister in the Presbyterian Church in Canada.

The moderator foreshadowed a particular question of interest for him: having seen the significant leadership role that Canada has played on the issue of protracted refugee situations for the past decade,<sup>6</sup> what are the opportunities for global leadership on this issue in highlighting not only the significance of it but the practicalities in working towards a solution?

**(ii.) “Statelessness: Global Challenges and Opportunities” by Sebastian Köhn, Program Officer, Equality and Citizenship, Open Society Justice Initiative, New York<sup>7</sup>**

Sebastian Köhn began by outlining the main point he wished to relay: there are massive challenges around the world related to statelessness and they are often very particular to local or regional contexts, however, there are certain measures which generally speaking, can be very effective in addressing the problem as well. These include: protections against statelessness in the law, a rigorous identification and protection mechanism, and campaigns to improve civil registration and in particular, birth registration around the world.

Before launching into case studies to illustrate the possible issues and responses to statelessness, Mr. Köhn outlined the theoretical framework underpinning statelessness.

a.) Theoretical Framework

To understand statelessness, one needs to begin by looking at citizenship. Citizenship denotes the link between an individual and a state. Statelessness on the other hand, is the opposite; it is the absence of any recognized link between an individual and a state. It is a legal anomaly which has left millions of people without nationality anywhere. Article 1 of the *Convention on Certain Questions relating to the Conflict of Nationality Laws* from 1930 spells out the dominant norm on citizenship, one which still applies. It states: “it is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.”<sup>8</sup> The latter part of this article is crucial; namely, that citizenship law and policy are restricted by international law, including human rights law.

The Justice Initiative has found that instances of statelessness are often linked to non-compliance with the international prohibition on discrimination, whether on the basis of ethnicity, gender,

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<sup>6</sup> Namely, Canadian leadership in negotiating the Ex-Com Conclusion on Protracted Refugee Situations in 2009, and bringing this often very delicate but overlooked issue onto the international agenda.

<sup>7</sup> Mr. Köhn prefaced his presentation with some background on the organization he works for and his role there. The Open Society Foundation is a grant making foundation in civil and political rights. The Justice Initiative focuses on a range of human rights issues and Mr. Köhn’s particular area of expertise is the right to nationality and statelessness. He has worked on issues of statelessness around the world for 5 years, examining places such as Kenya, Kuwait, Muratania, Europe, and the United States. He expressed the intent to draw from these experiences in his presentation.

<sup>8</sup> League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, 13 April 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, at article 1, available at: <http://www.unhcr.org/refworld/docid/3ae6b3b00.html> [accessed 13 July 2012].

religion, or, in some cases, other statuses or characteristics. Other restrictions on state sovereignty in this area include judicial safeguards, such as due process and access to court.

The realization that statelessness is an international problem primarily arose after the Second World War. In the context of a major refugee crisis, the world was faced with millions of stateless Jews, Poles, Ukrainians, ethnic Germans and others who were expelled from their countries or fled for safety. There was a recognition in the late 1940's, that these issues had to be dealt with at an international level and states used the newly created United Nations for this purpose. When the *Refugee Convention* was drafted, the framers anticipated the eventual inclusion of a Protocol on statelessness. However, the 1954 *Convention relating to the Status of Stateless Persons* was eventually adopted as a separate instrument. Subsequently, the 1961 *Convention on the Reduction of Statelessness* was adopted. In 1974, UNHCR officially assumed the international mandate to assist stateless persons. Since then, UNHCR's mandate has developed significantly, with a milestone in 2006 when an EXCOM Conclusion gave UNHCR a fuller mandate to identify, prevent and reduce statelessness, as well as to protect stateless persons.

Mr. Köhn took the opportunity to touch on the definition of a “stateless person,” taken from the *Convention relating to the Status of Stateless Persons*. The definition reads: “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.”<sup>9</sup> The International Law Commission has recognized this definition as part of customary international law. Although there is some debate on whether or not this is the case, it is the most widely used definition of a stateless person. Mr. Köhn noted that the definition has been a topic of international discussion for some time, and that UNHCR recently published guidelines on the interpretation of the definition.<sup>10</sup>

Deconstructing the components of the definition offers insight into the core causes of statelessness. The wording “not considered a national by any state,” suggests that statelessness is not only an issue of being a non-national everywhere, but that it is ultimately about the viewpoint of the state with respect to the status of an individual or a group of people. The “state” is a crucial element as well, as the definition implies that only states can have nationals. Thus, in cases where a nation's statehood is in question, one could encounter situations of statelessness. The wording “under the operation of its law” has been widely acknowledged to include both written laws and the manner of said laws' implementation (that is, law and practice). In assessing the latter, one should consider in particular the views and actions of authorities competent to take decisions in nationality matters. In some cases, when the views of the state are

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<sup>9</sup> UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, at article 1, available at: <http://www.unhcr.org/refworld/docid/3ae6b3840.html> [accessed 13 July 2012].

<sup>10</sup> UNHCR, *Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, 20 February 2012, HCR/GS/12/01, available at: <http://www.unhcr.org/refworld/docid/4f4371b82.html> [accessed 13 July 2012]. See also: UN High Commissioner for Refugees, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, 5 April 2012, HCR/GS/12/02, available at: <http://www.unhcr.org/refworld/docid/4f7dafb52.html> [accessed 13 July 2012].

unclear, one may need to resort to *prima facie* evidence of its view to establish a presumption of statelessness.

One important thing to note in examining the prevalence of statelessness around the world is the lack of adequate data. Few governments keep rigorous statistics and most statistics are, at best, estimates. This is a real problem. In order to devise effective policy to deal with the problem of statelessness, one needs to establish who these people are, how many there are, and where they are.

Why is statelessness a concern? From an individual standpoint, it limits people's access to services and enjoyment of rights. From a family perspective, statelessness is often passed on from parent to child, and it frequently affects the right to privacy and family life. Within communities, statelessness can lead to social tensions, and is frequently associated with poverty and economic underdevelopment. Of note is the impact that statelessness has on international relations and security. Statelessness can lead to forced displacement which may affect relations between states, and in some cases, may lead to civil unrest or war (as in the case of Côte d'Ivoire). To take a recent example, over the last month and in particular the last week, the situation in the Rakhine state of Burma has gotten much worse and a core part of the problem is the large population of stateless persons of Rohingya origin. Tensions with the local population have flared and this is in part, because of government policies of exclusion.

## b.) Case Studies

Three case studies were examined to illustrate the problems with statelessness: the Dominican Republic, Kenya and Kuwait.

### 1.) *Statelessness in the Dominican Republic: The Case of Dominicans of Haitian Descent*

The problem in the Dominican Republic lies with stateless people of Haitian descent who have been the target of state sponsored marginalization for many years. It is necessary to distinguish between Haitian migrants or refugees, and Dominicans of Haitian descent, the latter having been recognized as Dominican citizens at some point, with a clear right to nationality under Dominican law. The practice of discrimination in the Dominican Republic, particularly with respect to the denial and revocation of nationality, is in clear violation of numerous international norms, and arguably the country's own constitution.

These practices started 20 years ago with denying parents the right to register their children at birth if they were migrants.<sup>11</sup> This led to a notable decision by the Inter-American Court of Human Rights in 2005: the *Yean and Bosico* case.<sup>12</sup> In it, the court found that the Dominican

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<sup>11</sup> Research shows that there is a clear link between birth registration and statelessness, such that stateless adults who are surveyed are often not registered at birth.

<sup>12</sup> *Case of the Yean and Bosico Children v. The Dominican Republic*, Inter-American Court of Human Rights (IACrtHR), 8 September 2005, available at: <http://www.unhcr.org/refworld/docid/44e497d94.html> [accessed 14 July 2012].

Republic had violated the rights of two young girls to nationality and related rights. Rather than complying with the court's decision however, the Dominican government moved to restrict access to nationality even further. It denied citizens the right to copies of their own birth certificates and other documents under the premise that their nationality had been granted by mistake or through fraudulent means. The denial of these sorts of documents has prevented many people from attending school (including university), from obtaining health insurance, from registering children, from voting, from finding jobs, and from travelling both within and outside the country. Further, the Dominican Republic amended its constitution in 2010, to severely restrict access to *jus soli* citizenship.<sup>13</sup>

These later policies are being challenged in a more recent case: *Bueno v. Dominican Republic*.<sup>14</sup> The applicant, Emildo Bueno, is a victim of the denationalization process carried out by the government since 2007. He was born in the Dominican Republic and lived there most of his life. He holds a Dominican national ID card and a Dominican passport. Yet when he applied for a copy of his birth certificate (which was needed for a travel visa), the government refused to provide the documentation. Thus, at age 32, he found that he could no longer access the documents to prove he was Dominican – the only nationality he has ever had. The case was filed in June 2010 and is still pending.

A member of the audience took the opportunity to pose some questions arising out of the case of Emildo Bueno, asking how the government knows that Mr. Bueno is of Haitian origin and what motivations it had for such policies? Mr. Köhn responded that racism is very pervasive in the Dominican Republic. The presumption of Haitian heritage is based on very basic things such as one's surname or skin colour.

Before moving on to the next case study, Mr. Köhn expressed his desire to focus on challenges and opportunities, with some reflections on what the solution is in the Dominican Republic. He opined that this is a case where law reform is desperately needed. The main problem is contained in the law and recent changes to the law. He further noted that this is a case where much could be done employing diplomatic pressure, stating his belief that the Dominican Republic would respond if they thought that the eyes of the world were on them.

## 2.) *Statelessness in Kenya: The Case of Nubians*

Since independence, Kenya has struggled with statelessness among certain ethnic minorities. Like many other post-colonial societies, a debate about who “belongs” is at the core of this problem. Kenyan law provides a definition of citizenship which is neutral on its face, but perceptions of “Kenyaness” and as a result, implementation of the law, varies considerably. Some of the affected populations include Nubians, Kenyan Somalis, and Coastal Arabs.

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<sup>13</sup> *Jus soli* citizenship grants nationality on the basis of birth within the territory. It was noted that in so far as denying nationality to Dominicans of Haitian descent, this amendment goes against the *Yean and Bosico* case.

<sup>14</sup> <http://www.soros.org/litigation/bueno-v-dominican-republic>

Discrimination manifests itself in an arbitrary vetting system for proof of nationality which some ethnic groups are subject to, in order to secure national ID cards and passports. The process involves a panel of government officials and in some cases, community elders, who are tasked with determining if someone is Kenyan or not. Some of the documents that people are asked to produce include parents' title deeds and grandparents' birth certificates. These documents have no bearing in law on entitlement to nationality.

Mr. Köhn's presentation of statelessness in Kenya focused on the case of the Nubians. Recent research shows that "only" about 15-20 percent of Nubian adults are stateless today. However, owing to the vetting process, most face systematic discrimination in accessing nationality. In the 2011 case of *Nubian Children v. Kenya*, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) found that Kenya had violated the right of Nubian children to a nationality.<sup>15</sup> Implementation of the decision has been slow.

Discrimination has led to a complex web of interactions in relation to proof of nationality. Research has also shown that bribes and fraudulent documents are common as a result. Although fraudulent documents may assist in accessing rights and services in some ways, this is not always the case. The government has discussed bringing in a new generation of ID cards which will put many people at risk of not obtaining services.

In turning to potential solutions to this problem, Mr. Köhn highlighted a pilot project which is currently being undertaken under a larger project on "legal empowerment." The program involves assistance in acquiring documentation through access to paralegals. Unlike the Dominican Republic, the law is not the main problem in Kenya but practices and the resulting difficulties that individuals face in navigating bureaucracy. Often, the vetting process is successful because individuals are not aware of the law and the hope is that through a legal assistance program, this can be addressed.

### 3.) *Statelessness in Kuwait: The Case of the Bidoon*

"Bidoon" refers to a diverse group of people who at the time of independence were not given Kuwaiti nationality. When the British ended the protectorate in 1961, one third of the population were considered to be *bidoon jinsiya* – or "without nationality" in Arabic. Current estimates of the Bidoon population range from 93,000 to 180,000, or roughly ten percent of the Kuwaiti citizenry. Although the problem exists all over the Arabian Gulf, the regional number affected are not known (but are estimated to be a few hundred thousand, at least). The vast majority of Bidoon in Kuwait lack even the most basic civil rights including the right to register births and deaths. Citing his visits to other affected regions, Mr. Köhn noted that it was striking to see stateless populations living in outer-city slums in one of the richest countries in the world.

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<sup>15</sup> The case was brought forward by the Justice Initiative on behalf of children in Kenya. See *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) v. the Government of Kenya*, Decision No 002/Com/002/2009, African Committee of Experts on the Rights and Welfare of the Child (ACERWC), 22 March 2011, available at: <http://www.unhcr.org/refworld/docid/4f5f04492.html> [accessed 18 July 2012].



There are many problems related to statelessness which are specific to Kuwait. Kuwait does not permit female nationals to confer nationality to their children, thus creating cycle of statelessness. There is an element of religious discrimination and sectarian political considerations as well. Not all, but many Bidoon are Shia Muslims. In the case of Kuwait, the resources to resolve the issue are available. It is simply that the country has chosen not to.

Over the past year, Kuwait has encountered unprecedented Bidoon protests for citizenship, with large scale demonstrations occurring since February 2011. As a result, the government has promised access to 11 basic rights, such as civil registration and access to education. It has also promised a path to naturalization for some Bidoon persons (estimated at roughly 34,000 people). In spite of this, people are still being arrested and detained and many Bidoon are still unable to register their children, marriages, and deaths. Most are still told that they do not belong. Mr. Köhn opined that thus far, the government's response seemed to be mostly talk with little action.

Kuwait offers an interesting case of grassroots action and advocacy as a way of raising awareness. The use of social media to raise awareness has been striking in Kuwait. Platforms such as Facebook and Twitter have allowed people around the world to follow events as they unfold and express their support. This in turn, has been instrumental in maintaining momentum. English language websites also provide information on the plight of the Bidoon to an international audience.

### c.) Conclusion

To conclude, Mr. Köhn presented a case for more civil society action on this issue. The Justice Initiative has recently been involved in the development of the European Network on Statelessness which focuses on the Council of Europe area and strives to pursue capacity building activities and law reform initiatives in the region.

Given the success of grassroots movements for raising awareness (in such places as Kuwait), Mr. Köhn suggested that similar initiatives could be replicated in other countries or regions. There has been a growing interest on the issue of statelessness over the last few years. By bringing civil society together to better coordinate advocacy, Mr. Köhn suggested that movement could be made on the issues.

### **(iii.) “Statelessness in the Canadian Context” by Andrew Brouwer, Lawyer and Author of the Updated Discussion Paper, Toronto**

Andrew Brouwer outlined that his presentation would focus on specific policy issues and opportunities within the Canadian system, noting that the presentation would be divided along the same lines as his paper (which follows the division of the two statelessness Conventions). First, how does (or doesn't) Canada avoid creating situations of statelessness? Second, how are stateless people treated by the Canadian immigration and refugee system, and in what ways might the system be reformed to provide better protection for stateless people?

a.) Avoiding Statelessness

Mr. Brouwer outlined situations where someone could become stateless through the operation of Canadian law.

He started by tendering that that not only is Canada a party to the 1961 *Convention on the Reduction of Statelessness*, but that for the most part Canadian citizenship law and policy do conform to the requirements of the Convention, and that they are generally quite liberal. Canadian Citizenship is granted on both *jus soli* and *jus sanguinis* grounds. The only exception to the *jus soli* rule is to children born to diplomatic or consular officials and employees or staff of the UN. Everyone else born in Canada, under current law, is a Canadian national.

While in the past Canada recognized the children of Canadian citizens born outside of Canada as Canadian citizens, amendments to Canadian citizenship law in 2008 limited *jus sanguinis* so that citizenship can no longer be passed beyond the first generation born abroad. As a result, under the current rules, a child born to a Canadian citizen parent who was himself or herself born outside of Canada will not be a Canadian citizen. There is a provision in the Act that allows those persons to still acquire Canadian citizenship if the alternative would be statelessness. However, the child will only acquire Canadian citizenship if the proper steps are taken to make an application, and the requirements met.<sup>16</sup> Further, the child would be stateless during this period and up to the point when their application for citizenship is accepted.

In addition to this, s.5(4) of the *Citizenship Act* provides some discretion to the Minister to grant citizenship in order to alleviate cases of special and unusual hardship. This is important to note as it might be used to enable stateless people to attain Canadian citizenship where other options are simply unavailable.

Under the *Citizenship Act*, there are two ways that Canadian citizenship can be lost: renunciation (which is voluntary) and revocation (which is not). Of these, it bears noting that the provisions for revocation do not include considerations of possible statelessness which might result when someone is stripped of their Canadian citizenship. Thus someone could be rendered stateless if they do not possess citizenship in another country.

One particular group that has received some publicity over the last few years is that of the Lost Canadians. These are people who think of themselves and have always thought of themselves as Canadian citizens, but who discover (often later in life) that they are not Canadian citizens. It was in part to address this issue that changes to the *Citizenship Act* were made in 2009. It is an open question on how many Lost Canadians there are in Canada. The Minister of Citizenship and Immigration estimates the number at around 450, while a CBC investigative report puts the figure at over 200,000.

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<sup>16</sup> The applicant must be under the age of 23 and have resided in Canada for 3 of the 4 years preceding their application.

It is generally accepted that the changes made in 2009 address the main cases of Lost Canadians. While Mr. Brouwer acknowledged that many Lost Canadians likely got Canadian citizenship as a result of the changes, he noted that gaps remain. One group in particular are those individuals who were born outside of Canada or were naturalized inside of Canada prior to the coming-into-effect of Canada's first citizenship law on 1 January 1947.<sup>17</sup> As a result, if an individual was born outside Canada to parents who fell within this legislative gap, he or she would not have access to Canadian citizenship even they had lived in Canada virtually all their life. Mr. Brouwer noted that there is currently a case before the Federal Court on exactly this issue, but it remains unresolved.<sup>18</sup>

Minister Kenney has stated that Lost Canadians who did not have their situation resolved in the 2009 amendments can have their cases resolved under s.5(4) of the *Citizenship Act*, which provides a discretionary remedy in cases of unusual or special hardship. Mr. Brouwer noted that it remains to be seen whether and how this provision will work. He noted that one of the issues with statelessness (both globally and within Canada), is tracking the development of such cases.

Mr. Brouwer noted that despite the generally positive views of Canadian citizenship law, two recent developments give cause for concern. First, is a trial balloon on restrictions to *jus soli* citizenship issued in early 2012. Minister Kenney stated to reporters that his government was considering changes to the *Citizenship Act* so that the children of illegal immigrants would not be afforded Canadian Citizenship upon birth on Canadian soil. This would be a dramatic reversal of established Canadian practice and could foreseeably include the children of, for example, persons who recently arrived in Canada and have yet to file a refugee claim; persons whose claims have failed and are awaiting removal; and/or stateless individuals lacking status in Canada who cannot be removed. At this stage, the amendment is only a proposal tendered through the media. If passed however, it could have massive implications for the creation of statelessness in Canada.

Second, is Bill C-425, a Private Member's Bill, which was tabled a few weeks ago. Noting that such Bills do not often get passed, Mr. Brouwer outlined that the Bill provides for the deemed renunciation of Canadian citizenship where a person engages in an "act of war" against the Canadian Armed Forces, if said person is a citizen or legal resident of another country. It is an area of concern because it could apply to a person who has legal residence but not citizenship in another country, thus creating situations of potential statelessness. As mentioned in the previous presentation, this would be in breach of international norms.

#### b.) Protecting the Stateless

Mr. Brouwer then endeavoured to outline how Canada does or could better protect the stateless persons within its territory.

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<sup>17</sup> Prior to 1 January 1947, Canadians were British subjects, not Canadian Citizens.

<sup>18</sup> *Jacqueline Scott v. HMQ et al*, Court File T-431-12 (Federal Court).

He noted unlike the 1961 *Convention on the Reduction of Statelessness*, Canada is not a party to the 1954 *Convention relating to the Status of Stateless Persons*. While accession to the Convention is not a prerequisite for addressing the problem of statelessness, there is important value in taking concerted international action on an issue that is so trans-national in scope.

Canada's stated reasons for not acceding to the 1954 Convention shed light on why there has not been much progress in how Canada provides protection to stateless people. The country has provided 3 reasons for not having acceded thus far. First, the *Refugee Convention* largely duplicates the 1954 Statelessness Convention and Canada is already a party to the *Refugee Convention*. Mr. Brouwer stated in no uncertain terms that this premise is, in his opinion, manifestly wrong. Only a subgroup of stateless persons can establish that they have a well-founded fear of persecution on a Convention ground, and that they lack state protection. Although there are some individuals who are both stateless and refugees, most stateless persons do not come within the refugee definition.

Second, according to the Canadian government, Canadian law contains all the necessary safeguards to cover adequately the situation of stateless persons. As outlined in the updated paper *Statelessness in Canadian Context*, there are gaps in Canadian law and policy which leave stateless people without access to protection. Many of these gaps can be effectively filled through minor legislative and policy changes. At present however, the gaps persist and stateless people are falling through the cracks. (For example, they are subject to indefinite detention and/or removal to countries to which they have no connection.)

Third, Canada has suggested that acceding to the 1954 Statelessness Convention would create a pull factor for stateless individuals, and would encourage those inside Canada to renounce their citizenship in order to gain protection. This is a unique Canadian concern. Of the 74 countries that responded to UNHCR's 2003 questionnaire on statelessness, it appears that only Canada cited this as a reason for non-accession. Further, research by the UNHCR indicates that among state parties generally, there is little change from year to year in the number of individuals seeking protection owing to statelessness, and that the proportion of stateless claims remains very low

How does Canada deal with refugee claims by stateless people? In general terms, the *Refugee Convention* allows stateless people to make a refugee claim if they can establish that they have a well-founded fear of persecution in their country of former habitual residence on one of the stated grounds. A problem arises when a stateless person has resided in multiple countries. The Court of Appeal addressed this issue in the 1998 case of *Thabet*.<sup>19</sup> In it, they rejected the argument that stateless persons need to show risk in every country in which they have previously resided. Rather, they only need to show a risk of persecution in one country of former habitual residence. However, the court went on to say that they also need to show an unwillingness or inability to return to any of the countries of former residence. This leaves open the question of how to show unwillingness to return. In cases of refugee protection, one's unwillingness to return needs to be based on a well-founded fear of persecution on one of the convention grounds. This approach was explicitly rejected by the Court of Appeal in *Thabet*. Mr. Brouwer opined

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<sup>19</sup> *Thabet v. Canada (MCI)*, [1998] 4 F.C. 21 (C.A.).

that the question of how to determine one's unwillingness to return is still an open question in the case law.

A further issue relates to the determination of which country to employ in assessing a fear of persecution when a claimant has habitually resided in more than one country. In the 2003 case of *Kadoura*, the Federal Court upheld a decision of the IRB to refuse consideration of the applicant's claim against Lebanon.<sup>20</sup> As the applicant had lived most of his life in the United Arab Emirates (UAE), the Board Member felt that it (and not Lebanon) qualified as the country of former habitual residence. This was in spite of the fact that evidence before the court indicated that the claimant would be returned to Lebanon and not the UAE, if the claim for protection failed. In essence, the decision means that a stateless person with a well-founded fear of persecution could be sent back to the country in which such fear arose, without Canadian authorities ever having assessed the basis of that fear. This is obviously a serious problem. It is in breach of the *Refugee Convention*, the *Convention Against Torture (CAT)*, and basic norms of non-refoulement.

A participant from the audience with the IRB endeavoured to note that part of the issue is the legislation. The Board applies legislation in the same way that the court provides direction on legislation. The provision says "country of habitual residence". It does not say the country in which one alleges persecution.

Mr. Brouwer agreed that there is certainly a problem in the legislation. He noted that his paper provides some proposals for legislative changes to the Act itself; namely, explicitly including protection for stateless persons as a ground for granting protection at the IRB. In addition to this however, he endeavoured to note that individual Board Members applying the Refugee Convention, the Charter and IRPA, have the requisite scope to look at the risk of refusal. Namely, what will happen to the individual if their claim is refused? Ultimately, this is likely something that the Federal Court, the Court of Appeal and the Supreme Court will have to deal with. One area that might help would be increased discussion within the IRB itself and the development of guidelines on how to deal specifically with claims by stateless individuals.

The IRB participant added that CBSA is responsible for arranging returns, and that remedies are also available in the courts if someone wants to contest their return. Mechanisms are available. The Board does not decide whether the person can stay in the country. The Board decides whether a person is in need of protection. Mr. Brouwer noted the importance of hearings at the IRB to determine protection needs, in comparison to other such mechanisms, to which the Board suggested the important role that H&Cs play in the process as well.

This led Mr. Brouwer into his next point of discussion: H&Cs. He started by noting that H&Cs will no longer be available to refused claimants when Bill C-31 takes effect (expected in two weeks), and therefore is not a viable remedy for such individuals. However, for those who are eligible, s.25 of IRPA does permit the Minister to look at a broad range of circumstances in granting status, on the basis of hardship. UNHCR, the Canadian Council for Refugees and other

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<sup>20</sup> *Kadoura v. Canada (MCI)*, 2003 FC 1057.

groups have been lobbying CIC for some time to highlight statelessness as an explicit ground for landing someone in Canada. Although this is not a complete solution, were this to happen it would certainly help.

Mr. Brouwer then provided an overview of detention as it related to stateless people in Canada. Aliens who fail to acquire legal status are obliged to leave Canada. If a person fails to depart voluntarily, he or she will be subject to a removal order. The problem for stateless individuals is that they have nowhere to go. When a stateless person is detained for removal, detention becomes very quickly indefinite and prolonged (which are in clear breach of ss. 7 and 9 of the *Charter* and international legal norms). It was acknowledged that stateless people can be extremely difficult to remove. However, it was argued that the ongoing, indefinite detention of a stateless people was not an appropriate mechanism to employ while solutions were being sought for their removal.

From research undertaken by Mr. Brouwer, removal policy does not provide for a consideration of the status of the deportee in the country to which they are being sent. While nationals are typically easily returned to their country of nationality (since states generally accept nationals back onto their territory), the situation is more complicated for stateless persons. Regulations provide that a deportee will be removed to either: a.) the country from which they came to Canada; b.) the country in which they last permanently resided; c.) the country in which they are a national or citizen, d.) the country of their birth, or e.) if none of those countries is willing to authorize that person for entry, the Minister is directed to deport them to *any* country that will accept them. Thus, stateless persons can be effectively removed to a country to which they had no prior links. This problem can be easily remedied since the given provision is a policy and not law.

Mr. Brouwer emphasized the importance of data collection as outlined in the previous panellists' presentation. Data on stateless people is very much needed, but sorely lacking. There have been previous demonstrations of interest on the part of various government agencies working with UNHCR in Canada, to undertake data collection and reporting on statelessness. The collection of such information is not nearly where it needs to be, however.

The key to addressing these issues of statelessness in the Canadian Context is increased collaboration. The various actors and agencies implicated in the system need to sit down together with UNHCR to discuss how joint action might resolve issues of statelessness. It is critical to first get a firm grasp of what the problem is and the extent of it, in order to best determine appropriate solutions which can be worked on together.

**(iv.) “The Perspective of a Community Practitioner on Statelessness” by Glynis Williams, Executive Director, Action Réfugiés Montréal, Montreal**

Glynis Williams offered some reflections from her work with stateless people. She noted that most of her illustrations arose from Action Réfugiés' two main programs: overseas resettlement

under the private sponsorship program, and from visiting detained asylum seekers and other vulnerable people in the CBSA Immigration Holding Centre in Laval, Quebec.

She outlined that she has come to think of stateless persons as legal orphans: bereft of a country that acknowledges them as citizens and which feels no obligation to protect them or resolve their lack of nationality. She analogized the role of national governments as that of parents, stating that the country which gives one life, is responsible for care in all things essential to life when one is powerless to obtain that oneself. She noted that although nationality may not be as fundamental to life as water, food, and health care, absent nationality, the things that give one dignity and make them feel human, are often unavailable.

Her presentation centred around 4 case studies which illustrated the frustrating circumstances which stateless people often find themselves in.

a.) The Case of Sergei

In 1994, Sergei arrived in Canada with a Russian Seaman's passport. He was born in the former USSR, now the Ukraine, and had moved to Estonia as a child. He lodged a refugee claim in Canada based on persecution as a perceived Russian in Estonia, and a minority Jew in both Ukraine and Estonia.<sup>21</sup> While the IRB found Sergei to be stateless in 1995, they did not grant him refugee status. A claim for judicial review in the Federal Court was denied.

Sergei was deported unaccompanied to Russia where he was refused entry and returned to Canada. He was detained upon return for three months in Laval, and had gone on a hunger strike, losing 20 lbs. This is when Ms. Williams first met him.

Sergei was eventually released on a cash bond but grew frustrated with his situation. Having legally worked in Canada for years before his attempted removal, Sergei was distressed that he was refused a work permit and forced onto welfare. He felt like a parental failure for being unable to financially assist his daughter. Various attempts to regularize his status were unsuccessful.

After almost 7 months, Sergei could not stand his limbo status any longer, and decided to try and return to Estonia where his 13 year old daughter and ex-wife still lived. Upon arrival in Estonia, Sergei was detained for 4 months. Action Réfugiés maintained contact with Sergei and managed to get an NGO to visit him, eventually securing his release.

Attempts to regularize his status failed. Estonian authorities refused to consider Sergei's request for a Resident Permit. As a result, he had no right to work and no possibility of ever becoming an Estonian citizen. Prior attempts to secure Russian and Ukrainian residency at their consulates in Ottawa and New York were also unsuccessful, being refused immediately. All this, was documented in his Canadian file.

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<sup>21</sup> A Jewish friend of his had been killed in Estonia and Sergei was beaten up.

Ms. Williams reflected on questions that Sergei once asked her: “Why did Immigration send me to Russia? Why do they keep me in detention when I have never committed any crime, have never avoided contact with immigration, and always followed their directives without fail? Why not let me work and pay taxes as I had done before and support myself instead of paying \$180 a day to keep me in detention?” She lamented that then, as now, there are no good answers to these questions. A request for Ministerial intervention and the granting of a Minister’s Permit stated that “[h]is case was given every legally required consideration... once an individual has exhausted all legal recourse, it is expected that there will be compliance with the law.”

For Ms. Williams, Sergei’s case was painful to witness. She felt that he was an upstanding human being. He was simply a legal orphan for whom Russia, Estonia, the Ukraine and Canada, felt no responsibility to assist in finding a durable solution for his orphanhood.

#### b.) The Case of Yuri

Like Sergei, Yuri also came from the former USSR. The difference is that after 20 years in Canada, Yuri continues to live in limbo. In 1997 at the age of 19 he arrived alone in Montreal. An only child, his father had been killed in Tajikistan and his Mother urged him to leave without her. They lost contact quickly. In Montreal, Ms. Williams outlined that Yuri fell in with a wrong crowd, resulting in criminal convictions. He was urged to plead guilty at the advice of a lawyer, since he could not pay the fines. That decision has cost him dearly. His refugee claim was denied, and he cannot be considered for a humanitarian application until a pardon is granted (which cannot happen for another 18 months).

Ms. Williams met Yuri in 1997 when he was held in detention for 4 months while Canada attempted to remove him to Russia. The attempt was unsuccessful. UNHCR’s legal officer in Montreal, Denise Otis, did an extensive evaluation and determined that he was stateless. In the 15 years that she has known him, Yuri has suffered acute anxiety attacks and on occasion, clinical depression.

Ms. Williams noted that there is good news in Yuri’s case. Since 2007, Yuri has held a full-time job as a restaurant delivery person. He has a work permit and a driver’s license -- the only documents he possesses that allow him to feel rooted anywhere.

She expressed concern that with recent changes to the interim federal health program, the pharmacological services and psychological support that keeps Yuri stable will disappear. Pardon requirements may also change. At the age of 39, Yuri is still a legal orphan.

Sergei and Yuri were offered as examples of the reality of detention that faces many stateless people. Without a clearly established nationality, many are faced with the deprivation of liberty. Most troubling for Ms. Williams was the indefinite nature of the detention: it could be weeks, months or even years. Detention prior to removal is supposed to be of short duration. However, this was not the case for Sergei or Yuri, who were detained for 3-4 months in Canada. Ms. Williams noted that Sergei’s 4 month detention in Estonia could have been even longer had there



not been an intervention. Further, in the Canadian detention centre, there are few diversions or activities (unlike prisons), and this provides ample opportunities to worry about what lies ahead.

c.) The case of Yara

Yara was born in Syria, to a Palestinian father displaced from Gaza in 1953, and a Syrian mother. Women are unable to pass on citizenship to their children and Yara is stateless. Her father was granted the right to work by virtue of marriage to a Syrian, and he is a physician. Yara and her siblings have only a temporary “document de sejour” requiring annual renewal. As a result, they have no right to work, to study, or to own property.

Yara came to Canada under the skilled worker program. Ms. Williams noted that she speaks excellent French, has a BSc. and is clearly very talented. She was fortunate to get a coveted teaching job at UNRWA in Damascus: the only employment option for Palestinians. As a result, it appears that she was therefore qualified for acceptance as a skilled worker in Canada.

Yara came to the attention of Ms. Williams when she sought the assistance of Action Réfugiés to sponsor her siblings. Neither of her siblings, aged 20 and 30, are able to find employment; UNRWA jobs are simply not available. The family live in Aleppo, a site of fierce fighting, and Yara lives in fear of what might happen. Ms. Williams noted that even if a private sponsorship were submitted, the Canadian Embassy in Damascus is closed indefinitely for security reasons. Despite the obstacles, Yara has been extremely appreciative of Action Réfugiés’ willingness to consider a sponsorship, and the efforts they have made to inform themselves and inquire about her family’s safety.

Yara is now employed in a cafeteria and speaks eloquently about being a Permanent Resident in Canada.

d.) The Case of Sponsored Bhutanese Children

The last illustration is recent and comes from a settlement agency in Quebec who works with stateless Bhutanese people formerly living in Nepal. These individuals were resettled to Canada over a number of years as Government Assisted Refugees, and the first arrivals are now applying for Canadian citizenship. Minor children of these families are being refused on the basis that they have no birth certificates. UNHCR officials in Nepal report that it is impossible to assist in obtaining birth certificates for Bhutanese children born in Nepali refugee camps. Registration of personal events and the issuance of certificates is simply not implemented in the Nepali refugee context. Thus far, UNHCR's advocacy efforts with the government of Nepal have been unsuccessful.

Ms. Williams noted the irony of the situation: these young children went through the lengthy overseas procedures to assess their eligibility and admissibility for resettlement in Canada without requiring a birth certificate. Now, they are unable to naturalize and achieve the goal of such efforts, without birth certificates. With no right to citizenship, their permanent resident cards expire after five years and renewal of PR cards requires a primary identity document

(usually a valid passport or travel document), which these children also do not have. Ms. Williams emphasized that the situation must be resolved or Canada will be doing exactly what it hoped to resolve for these children, namely, avoiding a situation of statelessness.

d.) Conclusion

Ms. Williams concluded by outlining some of the difficulties of dealing with issues of statelessness from a practitioner's perspective. She noted that it is easy to think that statelessness in Canada is not a huge problem. This is because statelessness is not immediately obvious to practitioners, nor even to the person themselves, until they start to live it. Practitioners are not finely attuned to detecting stateless persons and doing so can take time. Without a proper understanding of the issue, it is difficult to address it.

Action Réfugiés has encountered its own difficulties in addressing statelessness. It is the only NGO with access to the Immigration Holding Centre in Quebec. Often, there is not enough time during their weekly visits to determine if persons are of concern. The CBSA does not provide a list of asylum seekers for reasons of confidentiality, so it is often through chance that such persons are encountered in the common areas. Although detainees know of Action Réfugiés' visits, they don't often know who Action Réfugiés is, and it can be difficult to earn trust and elicit information from detainees. Further, Action Réfugiés tends not to prioritize those who are detained prior to removal (until a detainee has been there for longer than normal), and that is most often where stateless people find themselves.<sup>22</sup>

Ms. Williams opined that there was no adequate mechanism to address the problem of statelessness in Canada. The refugee claims process works for only a small number of people. H&Cs are not always successful. Moreover, with excessive timelines and the costs associated with such procedures, a state of limbo is often perpetuated and prolonged family separation can be difficult to deal with. She reflected that if the IRB had been mandated to evaluate and address statelessness, something which the IRB seemed willing to undertake 10 years ago (provided that adequate resources were given), the situation may have been different for Sergei and Yuri.

In reviewing old files for this presentation, Ms. Williams noted that her sense of impotence and anger was re-awakened. She suggested that the reality of belonging nowhere and having no rights to participate in the affairs of a country are unimaginable for many, who enjoy these rights without even thinking. In her opinion, the lack of solutions suggests that stateless persons are seen as a problem rather than as capable and willing potential citizens of Canada. As with refugees, Ms. Williams noted that it was important for stateless persons to feel like someone believes in them. She urged participants to aim for a solution to the plight of stateless persons in Canada.

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<sup>22</sup> Priority is given to finding asylum seekers, so that legal information can be relayed and they can assist with finding legal counsel.

## **V. QUESTION & ANSWER SESSION**

The moderator extended an invitation for participants to ask questions or make comments, recalling that personal attributions would not be noted for the purpose of the written report.

The questions and comments outlined below have been divided into topics initiated by an individual speaker or organization, and maintain the chronological flow of how the discussions ensued following the panel presentation. An attempt has been made to maintain the language and wording used in the deliberations however the text is a summary of the discussions.

### **(i.) Comment on the Interactions of the IRB with Stateless Individuals: The Granting of Protection & the Review of Detention**

The Immigration and Refugee Board (IRB) noted that the cases discussed at the Roundtable were as concerning to the Board as they are to the other participants in attendance. The Board cited one case to illustrate how the Board looks for ways to try and find protection for people who really need it. Namely, one Board Member granted refugee status to a student in Canada from Kuwait, whose father was stateless and had lost the right to work, thus leaving the family with no right to live in Kuwait. The granting of protection was done against legal advice that statelessness was not a ground for persecution. The Member felt strongly that the Kuwaiti government had an obligation to provide the claimant with “the right to have rights.” Even if this obligation fell short of citizenship, the claimant had nowhere else to go, and it was felt that Kuwait should have taken him back. The case was not judicially reviewed and the decision stood. This was noted as one case illustrating the “refugee oriented” nature of IRB’s work, when encountering claims for protection from stateless individuals (and others).

The Board Member also took the opportunity to note that the *Charter* does not allow for indefinite detention. While the CBSA makes the decision to detain, the IRB reviews the basis for detention in regular intervals under the current law. To justify detention, the Minister must make reasonable efforts to establish identity, determine whether the person is a flight risk, a security risk, etc.

It was emphasized that Members of the Immigration Division (ID) take their responsibilities for reviewing detention on a regular basis, extremely seriously. So seriously in fact, that the Federal Court has found that they sometimes prematurely decide that there is no prospect of being released and that the case amounts to indefinite detention. The Federal Court has outlined that where a decision is different from the last detention review, the ID is obliged to specifically indicate why the decision is different from the last review. ID Members do order release subject to conditions (such as a bond, reporting requirements, etc.), and this is done because of the Minister’s obligation to prove that the given detainee cannot be released outright or be released with suitable conditions.

## **(ii.) Comment on the Quality of Training at the IRB & the Responsibility of Ex-Colonial Powers to Stateless Populations**

A person who previously served on the IRB for 10 years and who now volunteers with stateless people overseas, offered some insights from her experiences. She noted that the training which IRB Board Members get is world class. She still uses her training from the IRB (including that on stateless persons), and noted that colleagues she currently works with from other jurisdictions, do not have comparable training. The IRB's training enables Board Members to work effectively all over the world and the participant suggested that Canada should examine how this resource could be used elsewhere after a Member's term is up (whether in employment or volunteering opportunities).

With respect to stateless person, she noted the importance of recognizing the responsibility of those who colonized the given country, noting Kenya and Madagascar as examples where the British and French overlooked the conferral of citizenship on certain populations. In the contemporary context, one has to wrestle with how to use or change present legislation to allow for the conferral of citizenship when individuals, their parents and grandparents do not have birth records or other documents to show their connection to a country. She cited a personal example where she works with a local government on the issue of stateless populations. The government re-directed her back to the ex-colonial power, and she is currently waiting for a response from the ex-colonial power after making inquiries.

## **(iii.) Question on Best Practices from Historical & Contemporary Cases**

The moderator took the opportunity to pose some questions stemming from the previous comments. He noted that with respect to the issue of colonial responsibility, the roundtable was on the cusp of the 40<sup>th</sup> anniversary of the experience of the Ugandan Asians, an important historical example of mass statelessness, where international engagement (from the British and Canada) was used to address a massive refugee and statelessness problem.

The moderator asked Mr. Köhn whether it was possible to extrapolate general best practices from historical and contemporary cases which point towards areas for engagement, especially when it comes to the role that external actors (like Canada or UNHCR) can play?

Mr. Köhn highlighted four different types of best practices in response.

First, was the example of Bangladesh which has had a historical problem since the war in the 1970's with a large population of stateless Biharis. The Supreme Court decided that this population en mass, are in fact Bangladeshi citizens and not stateless.<sup>23</sup> This was noted as an interesting case of mass resolution of a statelessness problem. The challenge that remains in Bangladesh is access to documents to prove this newly acquired nationality. In spite of this however, there was at least a significant movement in the courts to allow access to nationality.

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<sup>23</sup> *Md. Sadaqat Khan (Fakku) and Others v. Chief Election Commissioner, Bangladesh Election Commission*, Writ Petition No. 10129 of 2007, Bangladesh: Supreme Court, 18 May 2008, available at: <http://www.unhcr.org/refworld/docid/4a7c0c352.html> [accessed 13 July 2012].

Second, Mr. Köhn noted that although it remains an issue, there have been many improvements around the world with respect to gender discrimination. The world has gone from a situation where many (if not most) countries discriminated against women in their right to pass on nationality to their children, to a situation where UNHCR reports that only 25 countries still discriminate in such a manner. Mr. Köhn outlined that although he thinks that this is a conservative estimate, there are still relatively few on a global scale. For example, almost all of North Africa and also Kenya has removed gender discrimination from their nationality laws over the past 10 years. He stressed that the removal of such gender discriminating policies was an important way of preventing statelessness from happening at birth.

Third, as mandated by the 1961 Convention, states need to impose safeguards in their nationality laws to avoid situations of statelessness. Namely, where a state has *jus sanguinis* citizenship (i.e. nationality acquired through one's parents), the state is obliged to grant citizenship to children born on their territory who would otherwise be stateless. In a country like Canada or the US where *jus soli* is the norm, this tends not to be a problem. Mr. Köhn noted that there have been many discussions in the US on whether they should restrict *jus soli* citizenship to the children of those who have legal status in the US. He was advised that this is also a point of discussion in Canada. If either Canada or the US decided to impose such a law without adequate protection against statelessness, it would be a violation of the 1961 Convention.

Fourth, there are some best practices in Europe on status determination procedures for stateless persons. Hungary and Spain were cited as probably the best examples; they have dedicated statelessness status determination procedures. France, Italy, and soon Belgium have similar mechanisms as well. He noted that it was important to acknowledge that refugee status determination is not sufficient to address statelessness, because refugee protection and statelessness can be very different issues and, as pointed out earlier, many stateless people do not qualify for refugee status.

#### **(iv.) Question on the Awareness of Statelessness Issues by Practitioners & Possible Approaches to Address Gaps**

The moderator asked Ms. Williams and Mr. Brouwer how much awareness there was on the issue of statelessness within their respective networks? To what extent are practitioners able to identify an individual who is stateless? Is there a clear sense in Canadian and international networks about what tools currently exist to effect remedies?

Further, the moderator noted that in his report, Mr. Brouwer argues that there are a number of tools which currently exist, and a number of tools that need to be revisited, improved and reinforced, for addressing the issues of statelessness in Canada. He questioned how to best balance the employment of training and identification tools to use existing procedures, alongside the need to address gaps in the system?

Ms. Williams responded that there were not many people who are non-lawyers who have regular contact with refugees and who know about statelessness. She stated that one often learns as they

get engaged in particular cases. She stressed that it takes time to do this, and expressed concern that with the new timelines under Bill C-31 (especially for those from designated countries of origin), this may be difficult.<sup>24</sup> One needs to ask the right questions, often as a supposition and this can be a problem for people on the ground. Ms. Williams stated that she doesn't know how one would go about doing training when practitioners who aren't lawyers are balancing so many tasks. Further, she opined that it would be difficult for one to educate themselves to identify statelessness and address it.

Mr. Brouwer agreed. He added that many lawyers are also not familiar with the issues around statelessness and that it is a broad problem within the community. He expressed hope that one of the things that could come out of the roundtable is more education and training for those who work with newcomers in one way or another, so that they are alive to the issue of statelessness.

Mr. Brouwer reiterated that there are some available remedies for statelessness: the H&C being one example. Although access to H&C consideration is going to be much more limited given the legislative changes in Bill C-31, Mr. Brouwer was hopeful that stateless persons could still access H&Cs since it is unlikely that they would be removable during the one year period following a refugee decision.<sup>25</sup> Further to this however, he noted that there may be stronger arguments around statelessness tied to unusual and undeserved or disproportionate hardship. In support of this, there needs to be more training, more evidence gathering, and a better compilation of strong arguments around the importance of nationality and the extreme hardship that the lack of nationality provides.

Further to this, he noted that there may be a possibility for more collaboration between lawyers and NGOs, not only to identify stateless persons, but to argue that sending a stateless person back to a place where they are deprived of their nationality, amounts to cruel and unusual treatment, in the case of PRRAs or at the IRB, under s.97.

He noted that it may be fine to fit a stateless person into the refugee definition in certain cases, as noted in an example given previously.<sup>26</sup> There may, however, be other cases where it is more difficult to find a link or nexus to one of the elaborated grounds. In such situations, the treatment of stateless persons or the deprivation of basic rights itself, may qualify as cruel and unusual treatment or punishment under s.97. This, he offered, may be something that practitioners need to work together on.

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<sup>24</sup> The *Protecting Canada's Immigration System Act* has since passed into law.

<sup>25</sup> Under new the new s.25(1.2)(c) the Minister may not examine a H&C if (subject to subsection (1.21)), less than 12 months have passed since the foreign national's last claim for refugee protection was rejected, determined to be withdrawn after substantive evidence was heard or abandoned. The new subsection (1.21) provides that the one year ban from making an H&C application does not apply in respect of a foreign national who would be subjected to a risk to their life caused by the inability of their home state or country of former habitual residence to provide adequate health or medical care, or whose removal would have an adverse effect on the best interests of a child directly affected.

<sup>26</sup> As an aside, Mr. Brouwer offered that he would argue that statelessness does meet the threshold of persecution.

#### **(v.) Comment on Overcoming the Lack of Documents in the Canadian Citizenship Applications of Resettled Stateless Bhutanese Children**

An academic and founder of a locally based NGO offered a suggestion on the situation of resettled stateless Bhutanese persons who are encountering difficulties in producing the required documents for Canadian citizenship applications. She noted that s.178 of the *Immigration and Refugee Protection Regulations* allows for the substitution of an affidavit or declaration in lieu of documents when applying for Permanent Residence status. She inquired whether it would be possible to advocate for something similar with respect to the citizenship applications in question?

Mr. Brouwer agreed that this was something worth pursuing and further noted that the discretionary provision under s.5(4) of the *Citizenship Act* might also be used.<sup>27</sup>

A member of the civil society offered some thoughts from her previous work with stateless Bhutanese refugees in Nepal. One of the challenges they faced was identifying durable solutions since the Bhutanese government was refusing them access to return. She opined that there was a strong link between refugee law and statelessness law, particularly if and where there is a failure to provide refugees with a durable solution. This link, along with others should be looked at very carefully.

She was disturbed to hear about Bhutanese children not getting Canadian Citizenship, especially since the idea behind resettling them to Canada was to provide them with a durable solution. She inquired whether anyone in the room had ideas for resolving the issue, noting that must be administratively unsound decisions at play.

Ms. Williams outlined that the settlement agency has spoken to UNHCR and that the matter will be taken up in consultation with CIC.

Mr. Brouwer suggested a meeting with the Minister or someone at Citizenship and Immigration Canada might be worthwhile, in terms of exploring relief under Regulation 178 or the discretionary provision s.5(4) of the *Citizenship Act*.

#### **(vi.) Comment on the Projected Growth of Stateless Persons Worldwide & Expected Trends**

A member of Oxfam noted that participants had to start gearing up for projections that the number of stateless people will increase exponentially over the coming years. He cited communities that Oxfam works with in Africa, which evidence some potential trends within this forecasted growth. Many have only a tangential relationship with any state; the state is just not

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<sup>27</sup> The respective provision states: “in order to alleviate cases of special and unusual hardship or to reward services of an exceptional value to Canada, and notwithstanding any other provision of this Act, the Governor in Council may, in his discretion, direct the Minister to grant citizenship to any person and, where such a direction is made, the Minister shall forthwith grant citizenship to the person named in the direction.” *Citizenship Act* (R.S.C., 1985, c. C-29), s.5(4), available at: <http://laws-lois.justice.gc.ca/eng/acts/C-29/page-3.html#docCont> [accessed 13 July 2012].

an active party in their lives. Increasingly, such persons find themselves on the move owing to climate (not only because of poverty or conflict). The current average lifespan of a refugee situation is 17 years, evidencing the generational nature of some displacement. Such groups are increasingly at odds with the interests of nations since citizens are making more demands on states to create the conditions to exercise their rights as human beings.

In the rights based approach adopted by civil society where states are asked to take their obligations seriously, there is a danger that states will increasingly choose not to deal with the problem by simply saying that certain people (or groups of people) are simply not citizens. Thus, there is the prospect of a significant, dramatic, and violent escalation of this issue.

Within this context, Oxfam noted that it looks to Canada. Canadian leadership is needed to serve as an example to the world, to frame the issue and to lead the international community in a response given the growing prevalence and impact of statelessness.

### **(vii.) Question on the Desired Relationship between Statelessness & Refugee Protection**

The moderator took the opportunity to build on the issue of climate related displacement asking: in situations where a territory can no longer sustain a population (whether owing to desertification or rising water levels), is there a benefit to building around existing frameworks (as done in the case of victims of natural disasters), or is it better to divorce such situations from that of refugee protection or durable solutions for refugees? Further, what is the best way forward to conceptualize, build and operationalize the refugee definition we currently have? For example, persecution can be understood not only as acts on the part of a state which violates the rights of individuals but also, omissions on the part of a state that violate the rights of individuals (such as citizenship). Should such concepts within the refugee definition be further elaborated upon? Should the protection of stateless persons build from mechanism that currently work, broadening our understanding of what constitutes persecution, or should it deal with the issue individually? Should it be linked or separate?

Mr. Köhn responded that there is no straight forward answer but that they are for the most part, two separate issues.

He noted that there are certainly refugees who are also stateless but that the majority of stateless people are likely not refugees and have no refugee claim. The UNHCR figure of 12 million stateless persons worldwide, refers to non-refugee stateless persons.

In countries where statelessness occurs primarily in a migration (or refugee) context, such as Canada, EU or USA, it may make sense to think of the two as analogous and to have a statelessness status determination system that is linked to refugee status determination. In undertaking such a determination however, one needs to first determine whether the person is a refugee. Determining statelessness usually involves reaching out to countries of possible nationality and this would not be appropriate in the case of a refugee fearing persecution. Thus, there is a value in having a link between the two but, it is also important that they are seen as separate issues so that it is not necessary to suffer persecution or to have a nexus to one of the



grounds, in order to get statelessness status. Mr. Köhn added that in cases of state succession, statelessness is unlikely to be persecutory. This is different, however, in cases of deprivation of nationality.

Mr. Brouwer agreed with Mr. Köhn's comments. He added that we still need to recognize that in the refugee context, denationalization is persecution. There are also situations where lack of recognition as a national is persecution. He agreed that it makes sense to have the IRB have a decision making authority to separately determine if a person is stateless, as a distinct determination. This can only be done after establishing that the person is not a refugee however, since the Board would need to reach out to the state in one circumstance, but not the other.

#### **(viii.) Comment on the Release of Information on Stateless Detainees by CBSA**

In response to Ms. Williams' presentation, the CBSA took the opportunity to note that the reason they do not provide the names and location of stateless detainees is likely tied to restrictions under the *Privacy Act*, such that information cannot be shared without the consent of the given individual(s).

The CBSA further noted that although they were not privy to all the background information on Yuri, who was cited in Ms. Williams' presentation, the main reason for his detention might not be tied to his statelessness, but rather, for reasons of security (in light of the fact that had a criminal history).

Ms. Williams acknowledged that she understood why names could not be released and that practitioners manage within those constraints. In the case of Yuri, she stated that while she did not want to defend him, he was a very young man when he arrived, fell in with the wrong crowd, and got bad legal advice on pleading guilty. She noted that he's now 39 years old and is still required to sign in with CBSA twice a year (although his conditions have been reduced over many years). She doesn't believe that he was detained owing to his criminal history. He had already gone through the refugee process, and during the time of his detention, there were efforts being made to remove him.

#### **(ix.) Question on Legal Strategy: Claims for Protection versus Humanitarian and Compassionate Applications**

A staff lawyer at Legal Aid Ontario asked Mr. Brouwer for his opinion on the best legal avenue for stateless individuals, in light of the fact that legislative changes will prohibit individuals from making concurrent H&C application with a refugee claim. Does it make sense to do a protection claim or does it make more sense to do a humanitarian claim right away? Although she acknowledged that statistics and approval/rejection rates were likely unavailable, she also wondered whether he might have an anecdotal sense on the success rate of stateless claimants under s.96 or s.97?

Mr. Brouwer agreed that a problem under Bill C-31 for stateless people was that it forced them to choose between an H&C or refugee claim and did not provide a guarantee against removal

pending a decision on one's H&C. As soon as a protection claim is rejected, abandoned, or withdrawn after substantive evidence is heard, the given person is vulnerable to removal. In light of this, Mr. Brouwer suggested that if a client is stateless and there is a chance of arguing cruel and unusual treatment, and/or there is a persecutory element to the story, advocates have little choice between the two applications, and must encourage the stateless person to make a refugee claim. He noted that although every case is distinct, removal can still be a threat for stateless persons. Regulations enable CBSA to send someone back to any country willing to accept them.

**(x.) Comment on the Importance of Preventing Statelessness & Addressing the Underlying Causes**

An individual from the IRB offered some comments on the best way to address statelessness. He agreed that the obstacles faced by stateless individuals in Canada can (and should) be examined. However, he noted that the underlying legal problem also has to be examined. Somewhere along the line, a person who should have had rights to nationality was denied citizenship. Persons should get citizenship based on their place of birth or lineage. The best remedy to statelessness is to try and resolve situations where nationality is denied. Although there was some uncertainty expressed on how such a task could be best achieved, it was suggested that the UN or international courts could be used to establish the importance of nationality and preventing statelessness. Absent such an approach to deal with the circumstances that give rise to statelessness, the response would be a stop gap measure.

**(xi.) Comment on the Prevention of Statelessness With Respect to those Adopted by Canadians**

The Adoption Council of Canada expressed some concerns over potential cases of statelessness in overseas adoptions. Namely, where a naturalized Canadian born overseas seeks to adopt a child from outside Canada, these children can be left stateless. This is particularly an issue where the child is from a country where citizenship is not provided based on the place of birth. Although the Adoption Council expressed understand on why the Canadian government limited citizenship by descent, it expressed hope that something would be done to ensure that children adopted from overseas are not left stateless.

Mr. Brouwer noted that there was a Private Member's Bill tabled by Olivia Chow some time ago which sought to amend the recent changes to the *Citizenship Act* so that such cases could be addressed. Since its tabling however, the House prorogued and the amendment died on the Order Paper. He agreed that this was an issue that had to be addressed through a change in the law and suggested pushing for legislative amendments.

**(xii.) Question on the Use of Other Human Rights Conventions to Address Statelessness**

An academic and member of the civil society asked about the use of other human rights treaties, specifically those relating to gender, to combat the issue of statelessness. She noted that as already mentioned, cases of statelessness sometimes arise out of national gender inequality laws.

In learning of the UNHCR's campaigns to ratify the two Conventions on Statelessness, she wondered whether and to what extent any thought was given to coupling such campaigns with the *Convention on the Nationality of Women* and the *Convention on the Nationality of Married Women*? She suggested that campaign to have states sign onto these Conventions could help alleviate the problem of statelessness.

The UNHCR Representative in Canada responded by stressing the UNHCR advocacy campaign of 2011 and the States pledges from the Ministerial Conference of December 2011. He noted that the many pledges received on that occasion to ratify one or both of the aforementioned Conventions are an evident positive result of the advocacy campaign.

He further stated that the 2011 campaign has initiated a process which UNHCR will be following very closely. Namely, it will be monitoring whether states respect their pledges and whether they will be resolving issues of statelessness through said pledges. Accession to human rights Conventions is an overall objective of the UN and there are other agencies within the system that are interested in various human rights issues related to their mandates. The UNHCR is only one element of this large system and together with sister agencies, it promotes general accessions to human rights instruments. In the case of statelessness this will be done through the implementation of pledges over the following years. This is why such pledges are important. The Representative noted that the compilation of pledges could be found on the UNHCR website and he encouraged those present to have a look at them.<sup>28</sup>

### **xiii.) Question on the Use of Resettlement to Address Statelessness**

The Moderator offered that the case of resettled Bhutanese children raises a broader question tied to recommendation 11 of the updated Bhutanese Paper, on the greater use of resettlement as a potential solution to statelessness.

He noted that Canada played a tremendous leadership role in the protracted refugee situation of the Bhutanese, but that there were significant challenges in deciding the extent to which resettlement can and should be a part of the solution for this group. As noted by Mr. Köhn, statelessness is often a part of systematic discrimination policies. In the case of the Bhutanese in Nepal, the Landchampa had an arguable claim to return based on certain readings of the citizenship law but the Nepali government said that this was not an option. This raises ethical challenges in so far as resettlement possibly contributing to systematic discrimination, ethnic cleansing, and other policies which give rise to situations of statelessness.

Should resettlement be employed as a durable solution for stateless persons, or should situations of statelessness be used strategically to encourage positive and progressive changes in the countries in question? How does one balance the need for timely solutions to cases of statelessness versus the broader project to make states accountable to those who have a claim for citizenship in their territory?

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<sup>28</sup> UNHCR, *Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons* (7-8 December 2011), available at: <http://www.unhcr.org/4ff55a319.html> [accessed 13 July 2012].

Ms. Williams noted that she is sensitive to this ethical dilemma. Those working on private sponsorships see it as a way to resolve problems for individuals but it is a small solution to a very large problem. Private sponsorships have provided solutions for small groups of persons and sponsors have had positive experiences in such efforts as well (such as the case of resettled Karen refugees from Myanmar). Resettlement offers a way to broaden support and understanding of those who need durable solutions for a variety of reasons. The reality however, is that the numbers are tiny compared to the need.

Mr. Köhn noted that in general, where stateless persons are also refugees, resettlement may be appropriate solution. For the vast majority of stateless people however, resettlement is not only a bad solution, it is not one they desire. Ultimately, the resolution to statelessness is acquisition of citizenship and resettlement in another country does not actually resolve the problem. He suggested that in such circumstances, advocates need to look at solutions locally or nationally.

He further cited the balance required between offering protection on the one hand, and the acquisition of nationality on the other. The acquisition of nationality is the only solution to statelessness. However, in certain situations stateless persons need protection for a period of time, before they can acquire the nationality of their new country. In other cases, mass acquisition of nationality for a stateless population from the country in which they have always lived, is the only appropriate solution.

Mr. Brouwer added that Canada's possible resettlement interventions offer a solution for a very small number of people, and only for certain groups. Although it can be part of a larger strategic approach, resettlement should be combined with political and other interventions to resolve the underlying issue.

The moderator added that just under 8 million people find themselves in a protracted refugee situation globally. With current resettlement opportunities alone, it would take 98 years to resolve protracted refugee situations alone through resettlement. To add the needs of 12 million stateless persons on top of this, would be challenging. He agreed that situations of statelessness are best addressed through a strategic approach.

## **VI. SUMMARY & CLOSING REMARKS**

### **i.) The Moderator's Summary**

The moderator offered a summary of the afternoon's discussions by way of outlining six important points he was taking away from the deliberations. First, was the massive scale of the issue. Second, statelessness is very much wedded to the broader pursuit of human rights and he functioning of the international system. He reflected that the scale and depth of the issue of statelessness is significant. Third, statelessness is linked yet significantly distinct from protection solutions for refugees. Although the opportunities for overlap are useful, it is important not to conflate the two issues in moving forward.

Fourth, the issue offers a wide scope for awareness building and using the current tools at our disposal. He noted that he was heartened to hear of the variety of available tools and the room for creative arguing. With greater awareness of the available tools, he felt that more can be done. Fifth, in spite of the availability of tools, there is a gap to be addressed both domestically and at an international level. The discussions emphasized the opportunity for leadership at global level and offered hope on how such leadership can move many of these issues forward.

Sixth and most important, the moderator emphasized the need for a collaborative approach. From the comments and discussions, it seems that there are already a wide range of actors engaged in a number of ways on the issue of statelessness. Cooperative partnership is needed, not only between countries, but between global civil society, practitioners, international organizations and state actors. Together, they can highlight the issue and find workable solutions for this growing challenge.

#### ii.) Closing Remarks From the Representative in Canada

The Representative echoed the moderator's insights and thanked participants, panellists, the moderator, the MC, and all others involved, for their valuable contributions in making the roundtable a success. He noted that the discussions could have carried on for much longer absent time constraints, and that this was UNHCR's reward for organizing the event.

He took care to emphasize one important concept in closing the discussions: behind all the legal gaps and the legal concepts there is always a human face. He asked that participants not forget the human faces behind the day's discussions and the 16 recommendations of Mr. Brouwer's report. He stressed UNHCR's engagements with governments and other partners and wished for Canadian leadership at international level to join global efforts to solve the problem of statelessness in the world.



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