IN THE COURT OF APPEAL (CIVIL DIVISION) **C5/2016/3473/A**
ON APPEAL FROM THE UPPER TRIBUNAL (IAC)
BETWEEN

AS (GUINEA)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

SUBMISSIONS OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Introduction

1. The Office of the United Nations High Commissioner for Refugees ("UNHCR") has been entrusted by the UN General Assembly with a global mandate for the identification, prevention and reduction of statelessness, and for the international protection of stateless persons.[1] UNHCR is designated as the body responsible for examining the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness ("1961 Convention") and assisting such persons in presenting their claims to the appropriate national authorities.[2]

2. This is the first case in which the Court of Appeal will determine the burden and standard of proof applicable to the determination of whether a person qualifies for the status of a stateless person, as defined in the 1954 Convention Relating to the Status of Stateless Persons ("1954 Convention"), to which the UK is a party.[3] Previous cases have addressed the standard of proof in relation to establishing whether a person is unable to return to his or her country of origin. However, (a) that is a different question from whether a person qualifies for the internationally defined status of a stateless person, and (b) those cases were determined before UNHCR promulgated its guidance on the 1954 Convention.

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[1] UN General Assembly resolutions 3274 (XXIV), 31/36, A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI) – 1995, Prevention and Reduction of Statelessness and the Protection of Stateless Persons.
[2] Article 11, 1961 Convention and UN GA Resolutions 3274 (XXIV) and 31/ 36.
[3] The UK is also a party to the 1961 Convention on the Reduction of Statelessness.

3. The Supreme Court has acknowledged UNHCR's *"unique and unrivalled expertise"* in the field of refugee law (*EM (Eritrea) v SSHD* [2014] AC 1321 §72). As the United Nations organ mandated to protect stateless persons, UNHCR is also well placed to address the Court on the burden and standard of proof that should be applied in determining statelessness. UNHCR is grateful for the opportunity to intervene by way of written submissions, which will only deal with the legal issues at stake and not the facts and the merits of the underlying case.

Background to the 1954 Convention

4. The 1954 Convention was originally conceived as a draft protocol to the 1951 Convention Relating to the Status of Refugees ("the Refugee Convention"), but was later transformed into a self-standing treaty.[4] The object and purpose of the 1954 Convention is *"to assure stateless persons the widest possible exercise of [their] fundamental rights and freedoms"*, and in that regard, *"to regulate and improve the status of stateless persons by an international agreement"* (Preamble). UNHCR considers that *"Stateless people are amongst the most vulnerable in the world"* because they do not have access to the basic rights associated with citizenship of a nation state.[5] The Office of the United Nations Secretary-General[6] recognises that *"the phenomenon of statelessness itself violates the universal human right to a nationality"*,[7] explains that discrimination (e.g. against racial/ethnic groups, religious/linguistic minorities and women) is both a common root cause and a consequence of statelessness, and emphasises that *"stateless persons have protection needs distinct from those of other non-citizens"*, as

> *"[s]tatelessness results in widespread denial of human rights… stateless persons cannot enjoy full equality with citizens in any country… Statelessness often leads to limits on access to birth registration, identity documents, education, health care, legal employment, property ownership, political participation and freedom of movement. Women are at heightened risk of statelessness, rendering them particularly susceptible to a range of abuse. Stateless children also suffer acute vulnerabilities…*
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> *… [s]tateless persons are also uniquely vulnerable to prolonged detention"*[8] and *"are often subject to abuse, discriminatory treatment… and risk falling victims to crimes like trafficking"*.

[4] *Convention relating to the Status of Stateless Persons. Its History and Interpretation*, 1997: A commentary by Nehemiah Robinson, Institute of Jewish Affairs, World Jewish Congress, 1955. Reprinted by the Division of International Protection of the United Nations High Commissioner for Refugees (pp 3-4).
[5] Foreword to the UNHCR Handbook on Protection of Stateless Persons Under the 1954 Convention (2014).
[6] Guidance Note of the Secretary-General, *The United Nations and Statelessness*, June 2011, p 2, 6, 7 & 12.
[7] The right to a nationality is recognised in the 1948 Universal Declaration of Human Rights, art 15; Convention on the Rights of the Child, art 7; Convention on the Elimination of all Forms of Discrimination Against Women, art 9; Convention on the Elimination of All Forms of Racial Discrimination, art 5; Convention on the Rights of Persons with Disabilities, art 18; International Covenant on Civil and Political Rights, art. 24(3).
[8] In *Kim v Russia* (App 44260/13, 2014) the ECtHR recognised the vulnerability of a detained stateless person *"left to languish for months and years… without any authority taking an active interest in his fate and well-being"* (§54).

5. The heightened risk of stateless persons to human rights violations has been identified in a number of mapping studies conducted by UNHCR. UNHCR's UK study revealed that unrecognised stateless and 'unreturnable' persons "*face the risk of a number of human rights challenges that are directly linked to their lack of immigration status. These range from destitution and street homelessness to immigration detention*".[9]

6. The Supreme Court in *SSHD v Al-Jedda* [2014] AC 253 recognised *"the evil of statelessness"*, quoting the description by Warren CJ in *Perez v Brownell* (1958) 356 US 44, §64 of the right to nationality as *"man's basic right, for it is nothing less than the right to have rights"*, and noting that fifty years later, *"worldwide legal disabilities with terrible practical consequences still flow from lack of nationality"* (*per* Lord Wilson at §12). The Respondent's own guidance also recognises that *"[p]ossession of nationality is considered essential for full participation in society and a prerequisite for the enjoyment of the full range of human rights"* and that stateless people *"are potentially vulnerable to serious discrimination"* including the denial of the right to own land, vote, obtain identity documents, access to education, health services or employment.[10]

7. The 1954 Convention addresses the special vulnerability of stateless persons by granting them a core set of civil, economic, social and cultural rights.[11] Whilst 89 countries are parties to the 1954 Convention, it has not been as widely implemented as the Refugee Convention by the parties thereto. To date, fewer than 25 countries have established dedicated statelessness determination procedures. In 2011, the UN Secretary-General expressed the need for *"the issuance of authoritative guidance on interpretation of key international standards"* by relevant treaty bodies, to *"ensure full implementation"* of the 1954 and 1961 Conventions.[12] In 2012, following expert consultations, UNHCR produced a series of Guidelines which were *"intended to provide interpretive legal guidance for governments… and the judiciary… in addressing statelessness"*. These were subsequently developed into the UNHCR Handbook on Protection of Stateless Persons (2014), which gives guidance, *inter alia*, on the appropriate burden and standard of proof to be applied in statelessness determination under the 1954 Convention (see §89-93).

8. Prior to 2013, the UK did not have a formal statelessness determination procedure. In April 2013, the Immigration Rules were amended, enabling stateless persons to apply for recognition

[9] UNHCR, Mapping Statelessness in the United Kingdom, 22 November 2011, p 148 §6.
[10] Home Office, *'Statelessness and applications for leave to remain'* guidance, 16 February 2016, §1.2.
[11] Many provisions were taken literally from the Refugee Convention, reflecting the Conventions' shared drafting history. However, where a stateless person is also a refugee, the wider provisions of the Refugee Convention apply.
[12] Guidance Note of the Secretary-General, *The United Nations and Statelessness*, June 2011, p 4.

of their status and a grant of leave to remain.[13] A grant of leave confers some of the protections stateless persons are entitled to under the 1954 Convention (e.g. the right to work and access public funds).

Ground 1: the appropriate burden and standard of proof in statelessness determinations

The 1954 Convention and UNHCR Handbook

9. Article 1(1) of the 1954 Convention defines a stateless person as *"a person who is not considered as a national by any State under the operation of its law"*.[14] The 1954 Convention (like the Refugee Convention) is silent on how States are to determine whether an individual is stateless. It does, however, cast an implicit procedural obligation on States to identify stateless persons within their jurisdiction because, unless stateless persons are identified, the rights conferred by the 1954 Convention would be rendered nugatory (Handbook: §8, 10).

10. The UNHCR Handbook provides guidance on the creation of determination procedures, and the identification of stateless persons. UNHCR advises State parties that (a) they should apply a shared burden of proof, and (b) they should adopt the same standard of proof as that applied in refugee cases, such that statelessness must be established *"to a reasonable degree"*. This is for two reasons: first, because of the fundamental importance of the substantive rights conferred on stateless persons by the 1954 Convention and the serious consequences of incorrectly rejecting an application for stateless status; second, in recognition of the practical difficulties inherent in proving statelessness. These are the same reasons as those behind the standard and burden of proof in refugee cases.[15] There is no policy basis for setting the bar to protection under the 1954 Convention higher than that under the Refugee Convention.

11. As to the practical difficulties of proving statelessness, the definition in Article 1(1) requires proof of a negative (i.e. that a person is *not* considered a national). Proving a negative presents significant evidentiary and practical challenges. It will usually require the authorities of a State or several States to reject a claim that the person in question is one of its nationals. UNHCR recognises that contact with foreign authorities to request both specific information pertaining to the individual, or general guidance, is fundamental to statelessness determination, and that *"[i]n many cases, States will only respond to such enquiries when initiated by officials of another*

[13] This *"was doubtless stimulated at least in part by the joint UNHCR – Asylum Aid report published in November 2011"* (*R (Semeda) v SSHD (statelessness; Pham* [2015] UKSC 19 applied) IJR UKUT 000658 (IAC) §15).
[14] A finding that an individual satisfies the test in Article 1(1) is declaratory, rather than constitutive, in nature, akin to recognition that a person is a refugee (UNHCR Handbook, §16; Respondent's Statelessness guidance, §4.1).
[15] See UNHCR Handbook and Guidelines on Procedures and criteria from Determining Refugee Status, §42.

State".[16] The UNHCR Handbook advises that *"the burden of proof is in principle shared, in that both the applicant and the examiner must cooperate to obtain evidence and to establish the facts. The procedure is a collaborative one… the applicant has a duty to be truthful, provide as full an account of his or her position as possible, and to submit all evidence reasonably available. Similarly, the determination authority is required to obtain and present all relevant evidence reasonably available to it, enabling an objective determination of the applicant's status"* (§89).

12. The UNHCR Handbook further advises that *"applicants for statelessness status are often unable to substantiate the claim with much, if any, documentary evidence. Statelessness determination authorities need to take this into account, where appropriate giving sympathetic consideration to testimonial explanations regarding the absence of certain kinds of evidence"* (§90). The standard of proof *"must take into consideration the difficulties inherent in proving statelessness, particularly in light of the consequences of incorrectly rejecting an application. Requiring a high standard of proof of statelessness would undermine the object and purpose of the 1954 Convention."* States are advised to adopt "*the same standard of proof as that required in refugee status determination, namely, a finding of statelessness would be warranted where it is established to a 'reasonable degree' that an individual is not considered as a national by any State under the operation of its law"* (§91).

<u>*UNHCR's submissions*</u>

13. <u>Firstly</u>, it is submitted that, as an international treaty, the 1954 Convention must have one *"autonomous and international meaning"*, as disparate interpretations would frustrate the intention to provide a uniformity of approach to the problem of statelessness (see *R v SSHD, ex parte Adan* [2001] 2 AC 477 [516-7] and [528] in the context of interpreting the Refugee Convention). It is respectfully submitted that, in light of UNHCR's mandate to address the problem of statelessness, its responsibility to provide interpretive legal guidance for statelessness determination by signatory States to ensure full implementation of the 1954 Convention[17], and its experience of the serious consequences affecting stateless persons worldwide, the Court should take into account UNHCR's guidance on the correct burden and standard of proof to be applied in determining statelessness.[18]

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[16] UNHCR Good Practices Paper, 'Establishing statelessness determination procedures to protect stateless persons' (11 July 2016) p 6. Such enquiries are important because the subjective position of the other State is *"critical"* in determining whether an individual is its national (UNHCR Handbook §99; Respondent's guidance §4.3.6, §4.6.3).
[17] UNHCR's Executive Committee has given UNHCR this responsibility in a number of ExCom Conclusions (see para (t) of ExCom Conclusion No. 106 (LVII) – 2006 and para (c) of ExCom Conclusion No. 78 (XLVI) – 1995).
[18] In *Pham v SSHD* [2015] 1 WLR 1591 the guidance in UNHCR's Handbook on the interpretation of Article 1(1) of the 1954 Convention was taken into account.

14. The House of Lords and Supreme Court have, on a number of occasions, recognised the assistance that can be derived from UNHCR guidance.[19] UNHCR was acknowledged to play a *"critical role in the application of the [Refugee] Convention"*, and the UNHCR Refugee Handbook was found to have *"high persuasive authority"* in *R v SSHD, ex parte Adan* [2001] 2 AC 477 [520] (*per* Lord Steyn). Lord Clyde noted in *Horvath v SSHD* [2001] 1 AC 489 [515], that the Refugee Handbook has "*the weight of accumulated practice behind it*". It has been accepted as a valid source of interpretation under Article 31(3)(b) of the 1969 Vienna Convention on the Law of Treaties ("VCLT"), in reflecting "*subsequent practice in the application of the treaty*".[20] It has similarly been recognised that UNHCR Guidelines and ExCom Conclusions *"should be accorded considerable weight"*.[21] In *R v SSHD ex parte Robinson* [1998] QB 929 Lord Woolf observed at [938] that *"[t]here is no international court charged with the interpretation and implementation of the [Refugee] Convention, and for this reason the Handbook... is particularly helpful as a guide to what is the international understanding of the Convention obligations, as worked out in practice."* The purpose of UNHCR's Handbook on Protection of Stateless Persons is identical to that of its Refugee Handbook, and thus, UNHCR respectfully submits, it should similarly be treated as *"high persuasive authority"* and afforded *"considerable weight"*.

15. Secondly, the 1954 Convention must be interpreted in light of its human rights and humanitarian objectives (Article 31(1) VCLT). The object and purpose of the treaty is to secure the protection of vulnerable persons, whose lack of nationality (itself a human rights violation; see footnote 6 above) gives rise to a risk of discriminatory treatment and abuse. In *R v SSHD, ex parte Sivakumaran* [1988] AC 958 [994] Lord Keith held that standard of proof in refugee cases was *"a reasonable degree of likelihood"* of persecution; reference was made to Lord Diplock's remarks in *R v Governor of Pentonville Prison, Ex p Fernandez* [1971] 1 WLR 987 [994] (an extradition case) as to the relevance of *"the relative gravity of the consequences of the court's expectation being falsified"* in adopting a lower standard of proof than the ordinary civil standard. The purpose of the 1954 Convention is to afford protection to a particularly vulnerable group. As set out at §4-6 above, stateless persons have distinct protection needs, and are susceptible to a range of abuse as a result of the denial of their essential human rights. As well

[19] Similarly, the Supreme Court has, in respect of other international conventions, described guidance issued by the monitoring bodies as *"authoritative"*: see *SG v SSWP* [2015] 1 WLR 1449 §105; *Mathieson v SSWP* [2015] 1 WLR 3250 §39; *R (Williamson) v Secretary of State for Education* [2005] 2 AC 246 §86 (Guidance of the UN Committee on the Rights of the Child, on the UN Convention on the Rights of the Child).
[20] *Pushpanathan v Canada (Minister of Citizenship and Immigration)* [1998] 1 SCR 982 §54.
[21] *R v Uxbridge Magistrates Court, ex p Adimi* [2001] QB 667 [678]; *R v Asfaw* [2008] 1 AC 1061 §13; *Al-Sirri v SSHD* [2013] 1 AC 745 §36; *Rahaman v Minister of Citizenship and Immigration*, 2002 ACWSJ Lexis 1026. Further endorsements were made in *K and Fornah* [2007] 1 AC 412 §15, and *Januzi v SSHD* [2006] 2 AC 426 §20.

as often being denied access to education, healthcare, and legal employment, stateless persons face discrimination, restrictions on freedom of movement, and are vulnerable to arbitrary and prolonged detention and trafficking. The rationale for the adoption of a lower standard of proof in refugee, humanitarian protection and human rights cases (i.e. *"reasonable degree of likelihood"*; *"real risk"*) also applies to stateless persons, because of the serious detrimental impact of statelessness and grave consequences of an application being incorrectly rejected.

16. Thirdly, the 1954 Convention assumes a binary position between (a) persons who are nationals of a nation state and (b) persons who are stateless.[22] It does not contemplate an undistributed category of persons who are neither nationals of a nation state nor recognised as stateless. This would leave such individuals in limbo, deprived of protection from any nation state. The threshold to establishing statelessness should therefore be calibrated to minimise the prospects of a person being left in such limbo.

17. Fourthly, while it is not disputed that an applicant must make reasonable endeavours to obtain supporting evidence,[23] State parties generally have far greater means to establish a *positive* (i.e. that a person is a national of another state). Providing that the individual is cooperative, it is well within the powers of States to establish whether a State with whom the individual has a relevant link,[24] accepts that he or she is one of its nationals. By contrast, as set out at §11-12 above, it may be impossible for a stateless person to prove a negative. Accordingly, the Court may consider that the *"reasonable degree"* threshold strikes a fair balance between the respective positions of the individual and the State.

18. Fifthly, the practice of other states in the application of the 1954 Convention is relevant to its interpretation and should be taken into account (Article 31(3)(b) VCLT). In *Adan* at [524] Lord Hutton took the acceptance of UNHCR's refugee guidance by *"many"* signatory States as *"good evidence of what has come to be international practice within art 31(3)(b)"*.

19. France, Georgia, Hungary, Italy, Latvia, Kosovo, Mexico, Moldova, the Philippines, Spain and Turkey are countries with established statelessness determination procedures. In those States, the burden of proof is shared (either in law or in practice); both the applicant and the authorities

[22] A finding that an individual satisfies the test in Article 1(1) is declaratory, rather than constitutive, in nature (akin to recognition that a person is a refugee): UNHCR Handbook, §16; Respondent's Statelessness guidance, §4.1.
[23] An applicant must *"provide as full an account… as possible"* and *"submit all evidence reasonably available"*; where he *"does not cooperate in establishing the facts, [e.g.] by deliberately withholding information"*, he *"may fail to establish to a reasonable degree that he … is stateless"*. However, *"Such cases need… to be distinguished from instances where an applicant is unable, as opposed to unwilling, to produce supporting evidence and/or testimony about his… personal history"* (Handbook, §89, 93). The Respondent's 2016 Statelessness guidance contains similar advice (§4.2).
[24] UNHCR Handbook advises that *"The lack of nationality does not need to be established in relation to every State in the world. Consideration is only necessary of those States with which an individual has a relevant link…"* (§92).

are required to make efforts to establish whether the individual is stateless.[25] Additionally, many countries with established statelessness determination procedures apply a lower standard of proof, consistent with the human rights and humanitarian objectives of the 1954 Convention and UNHCR's guidance, although inevitably the standards are expressed in somewhat different terms. The Court is respectfully referred to UNHCR's Table on the Standard of Proof applied in other States that are party to the 1954 Convention **(annexed)**.

20. Sixthly, UNHCR submits that the cases referred to by the Upper Tribunal, in which the balance of probabilities standard was held to apply, addressed a person's inability to return to a particular country, rather than his or her qualification for protection as a stateless person according to an international definition of statelessness, which is a different issue.

21. Specifically, in relation to the Court of Appeal's decision in *MA (Ethiopia)* [2009] EWCA Civ 289 (on which subsequent decisions rely):

    (i) The case addressed the inability to return without reference to the 1954 Convention, before the UK had implemented its statelessness determination procedure and prior to the promulgation of UNHCR's guidance. The standard of proof was not determined within the context of the UK's international treaty obligations.

    (ii) The Court found that the balance of probabilities standard applied because there was no risk of harm to the applicant in contacting her embassy to establish her nationality (§51, §78-9). That reasoning is unobjectionable as far as it goes, in that there is generally no risk of harm to a putative stateless person contacting an embassy. But it does not address the serious adverse consequences for an individual if an application is incorrectly rejected, or the practical difficulties that an individual may face in establishing statelessness.

    (iii) Stanley Burnton LJ referred to *"stateless persons"* who may be entitled to work, access benefits, own property, and be issued with a travel document enabling freedom of movement between countries (§63). It is respectfully submitted that whilst this might describe the circumstances of persons whose *status* as stateless has been recognised under the 1954 Convention (resulting in an entitlement to work etc.), the situation of persons without recognised stateless status is often wholly different (see §4-6 above).

22. Seventhly, in respect of the burden of proof, UNHCR draws the Court's attention to the Respondent's 2016 Statelessness Guidance, which mandates that *"where the available information is lacking or inconclusive, the caseworker must assist the applicant by…*

[25] UNHCR 2016 Good Practices Paper, pp 6, 16-18.

undertaking relevant research and, if necessary, making enquiries with the relevant authorities and organisations" (§4.2; emphasis added). At least in practice, therefore, the Respondent's guidance envisages a shared burden. Moreover, in *Semeda*, the President of the Upper Tribunal quashed the Respondent's statelessness decision on account of her failure to make enquiries, finding that her policy obligation was underscored by the well-established *Tameside* [26] duty of enquiry.

Ground 2: the relevance of statelessness to the exercise of discretion under para 390A of the Immigration Rules

23. The Supreme Court in *Hesham Ali* [2016] 1 WLR 4799 held that the exercise of discretion involves a proportionality assessment, in which *"very compelling circumstances"* are required to outweigh the public interest in deporting foreign criminals (§37-8). The court confirmed that the broad range of factors set out in Strasbourg jurisprudence[27] *"should be taken into account"* in the proportionality assessment (§33), and further that *"all factors relevant to the specific case in question"* must be considered (§50).

24. UNHCR submits that a stateless status should be among the factors relevant to assessing the proportionality of maintaining a deportation order, such that a person's stateless status is capable of materially affecting the exercise of discretion under para 390A.[28]

25. Statelessness is a relevant factor to the proportionality of deportation because it may impact on the quality of a person's private life and respect for their human rights in the country of return. As the Respondent recognises in her Statelessness Guidance, nationality is *"a prerequisite for the enjoyment of the full range of human rights"*. The Supreme Court has held that the denial of nationality has *"an important effect on a person's social identity"*, which is *"an important component of his private life"* (§26-7).[29] If the country willing to admit the stateless person does not recognise his or her stateless status, and will not afford him or her the protections of the 1954 Convention, expulsion is likely to result in consequences of the kind set out at §4-6 above, which amount to an interference with their human rights, and with their right to respect for private life.

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[26] *Secretary of State for Education and Science v Metropolitan Borough Council of Tameside* [1977] AC 1014.
[27] *Boultif v Switzerland* (2001) 33 EHRR 50 §48; *Uner v Netherlands* (2006) 45 EHRR 14 §58; *Maslov v Austria* [2009] INLR 47 §72-5.
[28] The proportionality of expulsion should only be considered once it has been established that expulsion would not give rise to a risk of a violation of a stateless person's absolute rights (i.e. Articles 2 and 3 ECHR).
[29] *Johnson v SSHD* [2017] 4 All ER 91 (§26-7). The Supreme Court also recognised that the arbitrary denial of nationality may violate the right to respect for private life under art 8 ECHR in *Al-Jedda* at §12. In *Genovese v Malta* (2011) 58 EHRR 25 & *Kuric v Slovenia* (2013) 56 EHRR 688 the ECtHR found violations of art 14 read with art 8.

26. Statelessness is also relevant to the quality of a person's private life if a deportation order is maintained despite the impossibility of it being executed. This is because the individual would be deprived of the package of fundamental rights conferred by a stateless status, and exposed to the serious adverse consequences of being left in a state of limbo. A deportation order has the effect of invalidating any leave to remain given before the order is made and, while it is in force, leaving stateless persons without protections conferred by the 1954 Convention (e.g. the right to work).[30]

27. UNHCR further submits that there is no public interest in maintaining an inexecutable deportation order, and that this, too, is relevant to proportionality. The Court is respectfully referred to Baroness Hale's observation in *Khadir v SSHD* [2006] 1 AC 207 at §4, that *"[t]here may come a time where the prospects of the person ever being able to safely return… are so remote that it would [be] irrational to deny him the status which would enable him to make a proper contribution to the community here"*. It is submitted that Baroness Hale's observation applies *a fortiori* in circumstances where return is impossible, as a result of a person's stateless status.

28. Where a deportation order cannot be executed, UNHCR considers that it should be revoked. Whilst the authorising State may apply necessary restrictions to safeguard its interests, UNHCR submits that these should be equivalent to those imposed on 'national delinquents',[31] and that in all other respects, the protections of the 1954 Convention should apply.

Conclusion

29. For the reasons set out above, UNHCR respectfully submits that (1) the determination of whether a person is stateless under Article 1(1) of the 1954 Convention requires the application of a lower standard of proof than the balance of probabilities, and a shared burden of proof; and (2) a person's stateless status is material to the proportionality assessment conducted under the exercise of discretion in para 390A of the Immigration Rules.

CHRIS BUTTLER

AYESHA CHRISTIE

MATRIX

20 February 2018

[30] Section 5(1) of the Immigration Act 1971; see also *R (George) v SSHD* [2014] UKSC 28.

[31] UNHCR's Executive Committee conclusion on Expulsion (adopted at its 28th Session in 1997) addressed the materially identical provision in Article 32 of the Refugee Convention, and recommended that *"in cases where the implementation of an expulsion measure is impracticable, States should consider giving refugee delinquents the same treatment as a national delinquent…"*.