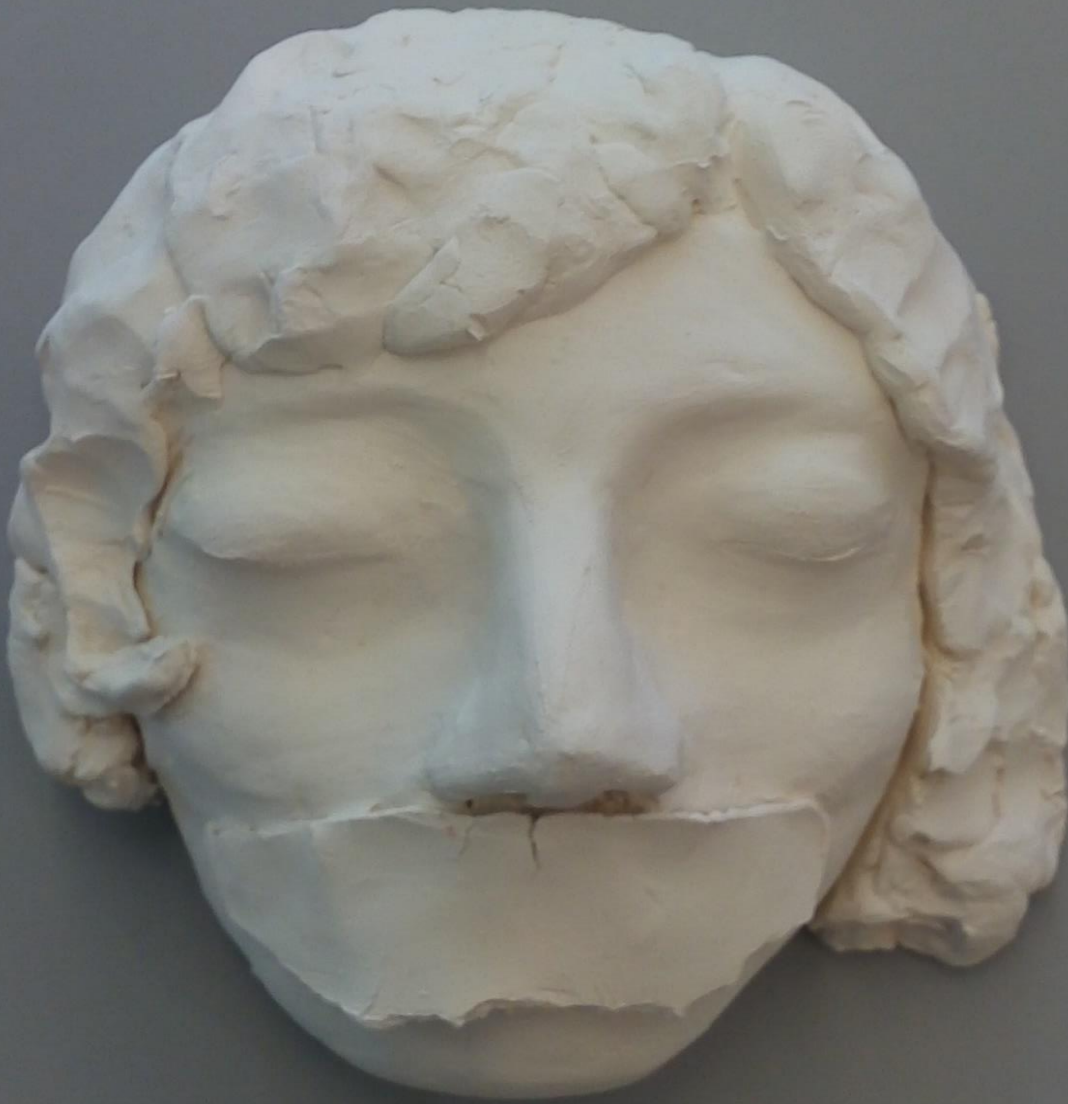


Statelessness in Canada

A study on the situation of stateless persons
in Canada

*“Statelessness is like a body of water:
water has no place to call home and I
don’t have a place to call home.”*

[Richard]



UNHCR Canada

September, 2019

Consultant: Jocelyn Kane

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Executive Summary

The objectives of this report are to identify the profiles of the different categories of stateless people in Canada, to examine the mechanisms available to them to obtain status in Canada and to provide a better understanding of the impact on the enjoyment of human rights of being a stateless person in Canada. Despite limitations in arriving at an estimate of the total number of stateless persons in Canada,¹ the testimonies of stateless individuals provide a clear sense of their daily obstacles and their various attempts to acquire permanent resident status. This study is the first such exercise in Canada,² and it follows similar profiling exercises that have taken place in other countries since the unveiling in 2014 of UNHCR’s global campaign to end statelessness.

This study demonstrates that statelessness can occur both inside and outside of the context of migration. Government statistics provide a rough sketch of stateless persons in Canada in the contexts of permanent residency, temporary residency, asylum seekers and refugees, and non-status migrants. However, this data is incomplete and stateless persons in Canada are not easily identified because the majority of data collected is self-reported, i.e. through the census. Also, data sets from different immigration streams are not connected making it difficult to know exactly how many stateless people remain in Canada. While it is known that some Indigenous persons and second generation children born abroad are also rendered stateless where they are unable to establish their place of birth, there is no specific data available for these groups.

Because Canada does not have a specific procedure or legal framework for the determination of statelessness, it is difficult to identify stateless persons and to ensure the enjoyment of their basic human rights. The fact that Canadian law lumps stateless persons in the catch-all category of “foreign nationals” further contributes to challenges in ensuring adequate protections for stateless persons. Testimonies of stateless persons in Canada reveals challenges for stateless persons in establishing their identity and lack of nationality. It also reveals stateless persons at times being stuck in limbo, where they cannot be removed to another country, and at the same time face significant difficulties in obtaining status in Canada, and in having their basic rights met, such as access to employment and healthcare.

There are a number of legal mechanisms through which stateless persons can become Canadian permanent residents or citizens, the primary one being an application for permanent residence on humanitarian and compassionate (H&C) grounds. However, there are a number of challenges for stateless persons in accessing this mechanism, including lengthy processing times, high costs³ and limited free legal representation. In 2017, Parliament amended the *Citizenship Act* to list statelessness as a stand-alone ground on which the Minister of Citizenship and Immigration can make a discretionary grant of citizenship. These changes have increased opportunities for

¹ The reason for not being able to produce an estimate of the number of stateless people in Canada is the government does not capture these numbers in a specific process that identifies stateless people in its territory.

² UNHCR has produced two reports on statelessness in Canada: Brouwer, A. *Statelessness in the Canadian Context: An Updated Discussion Paper* (2012), which analysed Canadian citizenship and immigration legislation as it pertained to avoiding statelessness, determining statelessness, naturalisation and immigration processes, and the detention and removal of stateless persons; and Erauw, G. *Compatibility of the 1954 convention Relating to the status of stateless persons With Canada’s legal framework and its International human rights obligations* (2015), which investigated the compatibility of Canada’s legal framework with the 1954 *Convention on the Status of Stateless Persons*.

³ See: <https://www.cleo.on.ca/en/publications/hcref/what-are-some-other-differences-between-hc-application-and-refugee-claim-for-hc-processing-fees>.

stateless persons in Canada, who already had access to the H&C mechanism, to obtain legal status for the enjoyment of rights.

Children born outside of Canada to a Canadian citizen themselves born outside of Canada (“second generation born abroad”) have the right to obtain citizenship upon application, but only upon meeting certain conditions, including a Canadian residency requirement of 1,095 days over four years. During this period, children are often denied basic human rights, including the right to health, and in some provinces, the right to education.

While little information is available on stateless Indigenous persons in Canada, it is known that some Indigenous persons are stateless because their births are not registered and they are unable to prove the country in which they were born (affecting mainly Indigenous communities straddling the border between Canada and the United States).

This study demonstrates the important impacts of statelessness on the enjoyment of human rights in Canada. A stateless person’s ability to access many basic services and conditions necessary for the realization of their human rights in Canada is contingent upon their residency status. Stateless persons have various rights and degrees of access to public services depending on their status as permanent or temporary residents, as well as refugees or rejected refugee claimants. Interviews with stateless persons in Canada reveal that due to their lack of status, they experience significant limitations to their economic, social and cultural rights, including their right to work, their right to the highest attainable standard of health, their right to adequate housing, and their right to education.

In addition, stateless persons sometimes see their right to liberty seriously limited when they are subject to immigration enforcement detention for being unable to prove their identity and thus considered uncooperative, or where the Canada Border Services Agency determines the detention necessary for the purposes of removal. Some stateless persons have been subject to lengthy and even indefinite detention.⁴ Stateless persons’ liberty is also limited by their inability to leave Canada for lack of identity and travel documents.

Based on these findings, the report calls for the establishment of mechanisms to identify who is stateless in Canada and facilitate their access to naturalization. The report makes five specific recommendations to address legislative and policy gaps to reduce stateless in Canada, to ensure that the rights of stateless persons are fully protected, and to prevent further stateless situations.

RECOMMENDATIONS FOR THE GOVERNMENT OF CANADA:

- Refine data collection to better capture the number of stateless people in Canada in particular disaggregated in immigration categories and those in detention.
- Take additional measures to make the humanitarian and compassionate (H&C) mechanism more systematically accessible, predictable and affordable to stateless people in Canada by lowering or waiving administrative fees automatically, by ensuring free legal aid and by

⁴ It must be recognized however, that Canada’s immigration detention scheme includes a process of ongoing review that allows the detainee the opportunity to challenge their continued detention.

reducing processing times. Simplified procedures for stateless persons to access permanent residence status will ensure respect for their basic rights, including family reunification.

- Simplify citizenship procedures for stateless persons in Canada by limiting requirements and make a broader use of the Ministerial grant of citizenship under the Citizenship Act.
- Amend existing legislation to prevent new cases of statelessness, specifically in relation to “second generation born abroad” limitation and to ensure that any future citizenship legislation contains safeguards against rendering a person stateless.
- Encourage and work with provincial governments to contribute to the wellbeing of stateless persons by ensuring their prompt and full access to social services, including with respect to facilitating access to higher education and work.
- End the detention of stateless persons, especially of those facing removal and at risk of indefinite detention, by making use of the various alternatives to detention recently adopted under Canada’s National Immigration Detention Framework.

List of Abbreviations

1954 Convention	1954 Convention relating to the Status of Stateless Persons
1961 Convention	1961 Convention on the Reduction of Statelessness
2011 Survey	Statistics Canada 2011 National Household Survey
2016 Survey	Statistics Canada 2016 National Household Survey
CBSA	Canada Border Services Agency
Charter	<i>Canadian Charter of Rights and Freedoms</i>
IRB	Immigration and Refugee Board of Canada
Indigenous person	First Nations, Inuit, Métis, Treaty Indians, and non-status Indians
IRCC	Immigration, Refugees and Citizenship Canada (formerly Citizenship and Immigration Canada, CIC)
Non-status	Persons in Canada without any recognized immigration/refugee status
H&C	Humanitarian and Compassionate grounds
IRPA	<i>Immigration and Refugee Protection Act</i>
<i>Jus sanguinis</i>	The ‘right of descent’, referring to citizenship by descent
<i>Jus soli</i>	The ‘right of the soil’, referring to birthright citizenship
PRRA	Pre Removal Risk Assessment
Refugee Convention	1951 Convention relating to the Status of Refugees and its 1967 Protocol
RPD	Refugee Protection Division
RAD	Refugee Appeal Division
StatsCan	Statistics Canada
UNHCR	United Nations High Commissioner for Refugees

1. Introduction

November 2014 marked the 60th anniversary of the 1954 *Convention Relating to the Status of Stateless Persons* and the unveiling of UNHCR's global IBELONG campaign to end statelessness by 2024. Since 2014, several countries have made efforts to address statelessness through enacting domestic legislation and policy, including acceding to one or both of the statelessness Conventions,⁵ implementing statelessness determination procedures, and committing to awareness raising campaigns and programming to end statelessness. In light of this recent push, several country mapping exercises have taken place, mostly in Europe. This study is the first attempt to learn about the different stateless profiles in Canada.⁶

Canada has ratified the 1961 *Convention on the Reduction of Statelessness*, but not the 1954 *Convention relating to the Status of Stateless Persons* making it challenging to identify and count the number of stateless persons in Canada in view of the absence of a specific mechanism to determine who is stateless.

The Canadian legal framework as it pertains to stateless persons is lacking in several ways. There is no definition of a stateless person in Canadian law, nor mechanisms in place to identify stateless persons or policies and legislation that are specifically designed to facilitate naturalization of stateless persons. In addition, there are significant gaps with respect to our knowledge of the issue and the impact of being stateless in Canada on the enjoyment of basic human rights due to the lack of data and visibility of this population. Therefore, the objective of this report is twofold: first, to understand the different profiles of stateless persons in Canada, and the impacts their status has on the enjoyment of their human rights; and second, to explore remedies currently available to stateless persons and to identify gaps.

The report is an important step towards understanding the usefulness of the legal avenues accessible to stateless persons looking for permanent status in Canada. The testimonies of stateless persons in Canada attest to the complications in accessing immigration procedures due to their length and cost and due to the socio-economic and health challenges faced by stateless persons throughout the years, some living in limbo with no resolution to their situation.

This report used four main research methods to obtain information to understand the profiles of stateless people and the consequences of not having status in Canada: a qualitative analysis of immigration cases heard before Canadian courts where stateless people were affected; a review of the limited government statistics concerning statelessness that are available; a review of media reports on statelessness; and a series of semi-structured interviews with stateless persons.

The first section of this report provides an overview of the definitions and scope of statelessness. The second section draws from government statistics, legal research and interviews to present

⁵ 1961 *Convention on the Reduction of Statelessness* and the 1954 *Convention Relating to the Status of Stateless Persons*.

⁶ UNHCR has produced two reports on statelessness in Canada: Brouwer, A. *Statelessness in the Canadian Context: An Updated Discussion Paper* (2012), which analysed Canadian citizenship and immigration legislation as it pertained to avoiding statelessness, determining statelessness, naturalisation and immigration processes, and the detention and removal of stateless persons; and Erauw, G. *Compatibility of the 1954 convention Relating to the status of stateless persons With Canada's legal framework and its International human rights obligations* (2015), which investigated the compatibility of Canada's legal framework with the 1954 *Convention on the Status of Stateless Persons*.

profiles of stateless persons. In the third section, the impacts of statelessness through interviews with stateless persons is analysed by a key cluster of human rights: employment, welfare, education, identity, right to liberty, access to healthcare and mental health. The last section contains a conclusion and key recommendations. The methodology used to undertake this research is provided in Annex I.

1.1 Definitions and Scope

International law provides that a person is deemed stateless if no state considers him or her to be a citizen under the “operation of its law”.⁷ This is manifested in two ways: *de jure* statelessness, when no state law recognizes the person as a citizen, and *de facto* statelessness, when the person is, in theory, entitled to citizenship but is not recognized as such under the application of state law. Statelessness is a matter of great concern because nationality is a cornerstone principle/requirement for accessing most political and judicial processes and for claiming economic, social, and cultural rights.

Statelessness affects an estimated 10 million people worldwide, and “although stateless people may sometimes also be refugees, the two categories are distinct”.⁸ Statelessness can occur in several ways, though there are four major reasons behind it:

- (1) State secession can render individuals stateless if they are unable to acquire citizenship under a new country’s legislation or administrative procedures.⁹
- (2) Gendered nationality laws can render women and their children stateless if a woman’s nationality is linked to that of her husband or citizenship is conferred along patrilineal lines.¹⁰
- (3) Discrimination can result in the arbitrary deprivation of citizenship in instances where the state either withholds or withdraws citizenship on grounds of ethnicity or religious affiliation.¹¹
- (4) Technical causes of statelessness include an individual renouncing their citizenship, a state revoking the citizenship, or when nationality cannot be acquired due to a failure to register the birth of a child.

Those who arrive in Canada as stateless persons may have been rendered as such for one of one of these reasons. Statelessness has dire consequences and prevents persons from enjoying their human rights. For example, they are unable to find gainful employment, access health care, obtain identity documents, enjoy freedom of movement and they face barriers to meaningful political participation. As explained below in section 2, a number of stateless persons who

⁷ United Nations High Commissioner for Refugees. *Convention relating to the Status of Stateless Persons*. (1954).

⁸ United Nations High Commissioner for Refugees. *Stateless People*. (2013).

⁹ Van Waas, L. *Nationality Matters: Statelessness under International Law* (Portland; Antwerp: Intersentia, 2008); Weissbrodt, D. S. *The Human Rights of Non-citizens* (Oxford; New York: Oxford University Press, 2008).

¹⁰ Weissbrodt, D. S. *The Human Rights of Non-citizens* (Oxford; New York: Oxford University Press, 2008).

¹¹ Blitz B. K. & M. Lynch. *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality* (Cheltenham; Northampton: Edward Elgar, 2011).

arrived in Canada between 2012-2017, the period this study covers, and have lived there since are unable to fully enjoy basic human rights and become Canadian citizens.

1.2 Legislation & Policy

Despite not being a party to the 1954 *Convention Relating to the Status of Stateless Persons*, Canada is a party to human rights treaties that have provisions related to statelessness and nationality including the *International Covenant on Civil and Political Rights* (ICCPR, 1976), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1976), the *Convention on the Elimination of All Forms of Racial Discrimination* (CERD, 1970), the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1981), the *Convention on the Rights of the Child* (CRC, 1991) and the *Convention on the Rights of Persons with Disabilities* (CRPD, 2010). In line with the right to a nationality, both the ICCPR and CRC contain provisions that oblige Canada to ensure the timely registration of every child within their jurisdiction immediately after birth.

Canada grants citizenship based on both *jus soli* and first generation *jus sanguinis* bases.¹² In general, all children born in Canada, as well as those born abroad to Canadian-born parents, are Canadian citizens. An exception exists with respect to children born in Canada to diplomatic officials and staff of foreign countries, including the United Nations or similar international agencies, who have diplomatic status.¹³ All other children born in Canada are entitled to Canadian citizenship, regardless of their parents' legal status or nationality.

Legislative changes in 2009 allowed Canadian citizenship for those persons who had lost their Canadian citizenship before 1947 which meant no losses of citizenship as it used to happen. However, the law also restricted the automatic granting of Canadian citizenship for children born abroad to Canadian parents. Only the first generation was granted citizenship which meant that those born abroad in the second or subsequent generations cannot become citizens automatically.¹⁴

Canada does not have a specific procedure or legal framework for the determination of statelessness, making it difficult to identify and ensure the enjoyment of basic human rights by stateless persons on its territory. The key mechanisms through which stateless persons seek to obtain legal status in Canada are application for permanent residence on humanitarian and compassionate grounds¹⁵ and application for a discretionary grant of citizenship to the Minister of Immigration, Refugees and Citizenship (IRCC).¹⁶

Stateless persons who have a fear of persecution have access to the refugee determination system. If their claim is accepted, they become refugees¹⁷ or protected persons under Canadian

¹² Section 3(1). Citizenship Act, R.S.C., 1985, c. C-29.

¹³ Section 3(2). Citizenship Act, R.S.C., 1985, c. C-29.

¹⁴ For further information see: <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-citizenship/act-changes/rules-2009-2015.html>.

¹⁵ Pursuant to section 25(1) of the *Immigration and Refugee Protection Act* (IRPA).

¹⁶ Pursuant to section 5(4) of the *Citizenship Act*.

¹⁷ Section 96 of the IRPA confers protection to persons who fulfill the refugee definition and section 97 of IRPA confers protection to persons who are in need of protection because they face a risk of torture, or a risk to their life, or a risk of cruel and unusual treatment or punishment.

law and are able to apply for permanent residency and eventually for citizenship. The Immigration and Refugee Board (IRB) has indicated that it tests for statelessness or the absence of citizenship documents by examining the relevant laws and practices of the countries of concern. When a person's nationality cannot be clearly established, decision-makers consult paragraph 89 of the *UNHCR Guidelines on Procedures and Criteria for Determining Refugee Status*, which provides:¹⁸

“Where, therefore, an applicant alleges fear of persecution in relation to the country of his nationality, it should be established that he does in fact possess the nationality of that country. There may, however, be uncertainty as to whether a person has a nationality. He may not know himself, or he may wrongly claim to have a particular nationality or to be stateless. Where his nationality cannot be clearly established, his refugee status should be determined in a similar manner to that of a stateless person, i.e. instead of the country of his nationality, the country of his former habitual residence will have to be taken into account.”

Canada's *Immigration and Refugee Protection Act* (IRPA) defines a foreign national as “a person who is not a Canadian citizen or a permanent resident, and includes a stateless person.”¹⁹ However, neither the IRPA, the *Immigration and Refugee Protection Regulations* (IRPR), nor the *Citizenship Act* and its *Regulations* define the concept of statelessness.²⁰ The inclusion of stateless persons in the general category of ‘foreign national’ problematically categorises groups of persons who do not have any nationality with those who have the nationality of a foreign country.

Under Section 5(4) of the *Citizenship Act*, the Minister of Immigration, Refugees and Citizenship (IRCC) has the discretion to grant citizenship to a person to alleviate cases of statelessness or special and unusual hardship.²¹ In legislation adopted in June 2017, statelessness was specifically added as a stand-alone ground that can be considered for a discretionary grant of citizenship.²² In a recent decision²³, the Court affirmed that applicants facing “special and unusual hardship” can request an exemption from application and processing. This case is important as it will also pave the way for stateless persons who make a humanitarian and compassionate application to request this exemption.

Also in 2017, IRCC published a definition of statelessness and added to its guidelines on humanitarian and compassionate (H&C) applications information for establishing proof of statelessness, including what documentation and correspondence serves as evidence.²⁴ IRCC defines a stateless person as “a person who is not considered to be a national of any state under

¹⁸ Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UNHCR, 1992.

¹⁹ Section 2. Immigration and Refugee Protection Act, S.C. 2001, c. 27.

²⁰ Erauw, G. *Compatibility of the 1954 convention Relating to the status of stateless persons With Canada's legal framework and its International human rights obligations*. (2015), 8.

²¹ Section 5(4). Citizenship Act, R.S.C., 1985, c. C-29.

²² Government of Canada. *Bill C-6 Receives Royal Assent*. (19 June 2017).

²³ Tammie Lynn Mayes and Justice for Children and Youth v. The Minister of Citizenship and Immigration, Docket T-797-18. For further information see:

http://www.nlstoronto.org/uploads/4/4/3/9/4439251/mayes_and_jfey_re_minister_citizenship_order_re_fee_waiver_1.pdf

²⁴ Government of Canada. *Humanitarian and Compassionate Assessment: Statelessness*. (11 July 2017).

the operation of its law. To be stateless is to be without nationality or citizenship.”²⁵ Furthermore, IRCC has included a definition of *de jure* and *de facto* stateless persons:

Stateless persons include the *de jure* stateless and the *de facto* stateless. *De jure* statelessness refers to a person who is not considered a national by any state under the operation of its law. That is, no state recognizes the person as its own national. *De facto* statelessness refers to a person with an ineffective nationality or who cannot establish their nationality. In such cases, a person still holds a nationality, but they do not receive any of the benefits generally associated with nationality.²⁶

Section 5(5) of the *Citizenship Act* creates an additional safeguard against statelessness for the children of Canadian citizens born abroad. This section of the *Act* makes it mandatory for the Minister to grant citizenship upon application to a child born abroad to a Canadian parent who was themselves born abroad, subject to a number of conditions (discussed further below in the section on “second generation born abroad”).

2. Profiles of Stateless Persons in Canada

Stateless persons²⁷ in Canada are made up of a complex and diverse group of people including Indigenous persons, asylum-seekers, permanent and temporary residents, people without any immigration status and second-generation children born abroad. These people may reside in Canada on valid visas or whilst an investigation into their citizenship and/or immigration claims is conducted, they may be detained temporarily while awaiting either resolution of their immigration issues or removal, or, they may be detained indefinitely whilst authorities deliberate on courses of action while trying to effect removal orders.

In the 2016 Census, the Canadian government reported that there were 3,790 stateless persons²⁸ in Canada: 3,400 are considered as permanent residents and 390 non-permanent residents.²⁹ This figure should be used cautiously because, firstly, it is self-reported which renders it subject to human error, and secondly, this figure is based on household data (rather than individual data) which excludes, for example, visiting stateless persons, or those residing in shelters, detention centres³⁰ and hotels. Further, recent statistics show that there are only a few stateless persons who entered Canada as permanent residents and who were granted different permits between 2017 and 2018.³¹

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ A “stateless person” is a person who is not considered as a national by any State under the operation of its law, Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons.

²⁸ Statistics Canada defines statelessness as a person who does not have citizenship. See: *Dictionary, Census of Population, 2016: Citizenship*. (18 September 2017).

²⁹ The census did not capture the various possible statuses or absences of status of this group.

³⁰ For example, between 2012 and September, 2017, there were 145 stateless persons in detention.

³¹ 1831 stateless persons were admitted as permanent residents between 2017 and 2018. There were also 1514 stateless permits provided with work, study and temporary resident permits.

2.1 Permanent Residents

In Canada, a permanent resident is “someone who has been given permanent resident status by immigrating to Canada, but is not a Canadian citizen”.³² Permanent residents can enter Canada through economic streams (selected on the basis of potential economic establishment in Canada) and non-economic streams (selected on the basis of family reunification, social and humanitarian objectives).³³ Mostly, stateless persons make applications for permanent residency under the non-economic stream. In 2017, Canada admitted a total of 286,485 permanent residents under the different categories of economic and non-economic streams. Between 2016 and 2017, there were 1,735 admissions of stateless persons as permanent residents, mostly from the non-economic classes: protected persons, H&C applications and family class. Immigration streams through which stateless persons most often obtain legal status in Canada are explored below.

2.1.1 Economic Stream

Stateless persons can enter Canada through an economic class application, for example, investors program, skilled workers program, provincial nominee, or Canadian experience class.

The number of applications made by stateless persons under this stream is small when compared to the overall number of stateless individuals in Canada. In 2017, only 20 stateless persons made applications under the federal skilled worker program (FSWP), with 16 being accepted. Under the Provincial/territorial nominees, 29 individuals submitted applications in 2017, and 21 were accepted. Under the Canadian Experience Class, only eight applications were submitted, and 5 were accepted.³⁴

The overall number of stateless individuals who were granted permanent residency under the FSWP decreased from 74 individuals in 2012, and 136 individuals in 2013, to only 16 by July 2017. While it is difficult to ascertain the reasons behind this decrease, it is possible that requirements for acceptance into economic streams may be too challenging to meet for stateless persons given their lack of access to employment opportunities, education, and health care services in their countries of origin.

Abdel and Halifa’s story demonstrates the multilayered complexities of statelessness. Being Palestinian, Abdel’s family is denied citizenship rights in Lebanon, and despite his children being born in Lebanon, they are not entitled to Lebanese citizenship because

³² Government of Canada website: <https://www.canada.ca/en/immigration-refugees-citizenship/services/new-immigrants/pr-card/understand-pr-status.html>.

³³ *Ibid*: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence.html>.

³⁴ IRCC statistics provided to UNHCR: *Canada-Admissions of Permanent Residents with Stateless as Country of Citizenship by Immigration Category, 2012-2017*.

Lebanon's nationality law prevents Halifa, who is Lebanese, from conferring citizenship to her children.

“In Lebanon it was too difficult to get services especially health and education services”.
[Halifa]

Abdel was accepted into Canada's skilled worker program as a software engineer. He, his wife and his children were granted permanent residency, have access to provincial health care, and their children are automatically entitled to Canadian education. They are also entitled to Canadian travel documents and have a pathway to Canadian citizenship providing they fulfil the relevant residency requirements.

Despite the rights that Abdel and his family have been granted, because Abdel lacks Canadian experience in his field Abdel and Halifa are struggling financially. In order to enhance their candidacy for employment both Abdel and Halifa have enrolled in post-secondary programs.

“Since I arrived here I have applied for around two thousand companies. Three or four companies replied back... Most of the companies are working for the government, so they need the security clearance. Another point, they need Canadian experience sometimes they need you to be bilingual, to speak English and French at the same time. Canadian experience... sometimes they look at your degree that is issued in Canada or from outside Canada. I don't know exactly, there is a mix. There is a mix of these things... most of [the companies] ask for this qualification, security clearance, bilingual, having degree from Canada, Canadian experience, all these mix together”. [Abdel]

2.1.2 Non-Economic Stream

Stateless people may enter Canada through non-economic streams, such as being granted refugee or protected person status, being an asylum seeker, or by becoming a temporary resident. Some stateless people may fear persecution in their previous countries of residence and apply for refugee status in Canada. These individuals may apply for refugee status from within Canada. On the other hand, stateless refugees who are resettled to Canada are granted permanent residency.

a. Recognized Refugees and Protected Persons

Stateless persons in Canada who have obtained refugee or protected person status have the right to work and access health care, obtain a travel document,³⁵ and apply for permanent residency. Those who are awaiting refugee status determination also have the right to access work and health care, but must wait until they are granted refugee status before they can apply for permanent residency status, and cannot obtain a travel document until this time.

³⁵ Government of Canada. *Types of Passports and Travel Documents*. (14 July 2017).

Between January 2012 to June 2018, 1,482 refugee claims of stateless persons were made to the Immigration and Refugee Board which represents about 1% of the overall number of refugee claims made during this period of time.³⁶

Born in Gaza, Razam was issued a temporary passport from Jordan where he attended university. He was granted conditional residency in Qatar because of his father's work history there and visited Qatar annually in order to retain his residency. After graduating from university, Razam began working in Qatar but when visiting relatives in Canada he learned that he had lost his job in Qatar and his work permit would automatically expire without the option to renew it. Facing deportation to Gaza, Razam applied for asylum in Canada and was granted a work permit and access to health care. His asylum claim was rejected by the Refugee Protection Division (RPD), as was his subsequent appeal to the Refugee Appeal Division (RAD). He then applied for judicial review of the RAD decision which was granted. Following his successful judicial review, Razam was granted refugee status based on his fear of persecution in Gaza because of political affiliation, though this process lasted more than two years and involved two appeals and a judicial review.

"I have been negatively impacted by rejection of RPD and RAD. I am not that guy who wants to lose time. I have good degree, engineering in Jordan. After I get first rejection, my lawyer told me it [could take] long months and years. I said what can I do? I can't study here to pursue my career in Canada. I cannot have any rights. It may take long years while I am out of profession". [Razam]

b. Resettled Refugees

Resettlement to a third country is a durable solution for refugees who are relocated from an asylum country to a third country. Those resettled to Canada have permanent residency status upon arrival which confers them legal protection and all rights associated with this status.³⁷

Between 2012 and 2017, there were 1,800 stateless individuals granted permanent residency in Canada from the resettled refugee category. This represents approximately 41% of the total number of permanent residency applications granted to stateless individuals during this time. Of the 41%, 81% were Privately Sponsored Refugees, 18% were Government Assisted Refugees, and only 0.2% were accepted within the Blended Sponsorship program. There has been a steady increase in the number of permanent residency applications granted to Privately Sponsored Refugees – from 7% of the total of applications granted in 2012 to 52% in 2017.

³⁶ According to the Immigration and Refugee Board's Refugee Claims Statistics, 151,860 refugee applications were referred to the IRB between 2013 and September 2018. Data was not available for 2012, because the system was overhauled on December 15, 2012. <https://irb-cisr.gc.ca/en/statistics/protection/Pages/RPDStat.aspx>.

³⁷ <http://www.unhcr.org/resettlement.html>.

2.2 Non-Permanent Residents

According to the definition provided by Statistics Canada, non-permanent residents are nationals from other countries who are allowed to study or work in Canada, as well as asylum seekers and their family members.³⁸

2.2.1 Temporary Residents

Stateless persons can enter Canada temporarily through visitor, student or work permits. Temporary residents may remain in Canada for the period during which their permit is valid and may apply for a work and/or study permit extension. Persons who are granted temporary resident status in Canada, including stateless persons, may not have access to provincial or territorial health care or Canadian travel documents. Access to certain services, including health care, are provincially and territorially regulated, resulting in unequal access for stateless persons across the country. If relevant residency and language requirements are fulfilled, however, these stateless migrants may apply for permanent residency³⁹ and ultimately citizenship in Canada.⁴⁰

Between 2012 and July, 2017, a total of 6,716 stateless persons were issued temporary resident status in Canada. This includes student permits, work permits, visitor's visas, and their extensions. In the same timeframe, 825 of them became permanent residents.⁴¹ Similar to permanent resident applications, requirements for work and study permits may be challenging to meet for stateless persons.

Farah is of Palestinian descent, and was born in Kuwait. After the Gulf War broke out in 1990, her family moved to Jordan. Since her father was granted a Jordanian citizenship, Farah was also granted Jordanian citizenship, and she and her family lived in Syria on a Jordanian citizenship and passport for 23 years.

In 1988, Jordan relinquished its claim to the territory of the West Bank to the Palestine Liberation Organization, and consequently began revoking the Jordanian citizenship of millions of Palestinians.⁴² In 2005, Farah's Jordanian citizenship was revoked and replaced with a temporary travel document, on which she continued living in Syria, however, now as a stateless person. Because of this, Farah was required to obtain a residency permit in Syria, which she had to renew annually. When the Syrian war broke out, her family was forced to leave Syria. Her family fled to Germany, and then Turkey. While residing in Turkey, Farah applied for a Canadian student visa and was accepted within the year. Upon arrival to Canada, she enrolled in an English language program. Because of Farah's temporary status, she is not entitled to health care or Canadian travel documents.

³⁸ Statistics Canada. *Dictionary, Census of Population, 2016: Figure 5.1 Immigrants, non-immigrants and non-permanent residents, by place of birth and generation status*. (3 January 2019).

³⁹ Section 10.1. Immigration and Refugee Protection Act, S.C. 2001, c. 27.

⁴⁰ Section 5(1). Citizenship Act, R.S.C., 1985, c. C-29.

⁴¹ This statistic may be an overestimate, as these numbers may include more than one type of permit issued over a given period of time for one person.

⁴² Human Rights Watch. *Stateless Again: Palestinian-Origin Jordanians Deprived of their Nationality*. (2010), 10.

“[The idea of belonging, the idea of a home] ... it’s as important as those rights [health care], to feel that you’re normal, you’re like all people, you can have a citizenship, you can have your rights now and you can say that you belong to here now. No one can just come and kick you out whenever they want. [Because] after I was kicked out from Kuwait, Jordan, Syria, I feel like ... I am not safe.” [Farah]

2.2.2 Stateless Asylum-Seekers

Asylum-seekers are individuals from another country who have made an asylum application and are awaiting a decision.⁴³ Once the individual is deemed to be eligible to make a claim, their application is submitted to the Immigration and Refugee Board of Canada (IRB), an independent administrative tribunal that makes refugee and immigration decisions, for a hearing.

While they await their hearing, asylum-seekers may have access to social assistance, education, health services, emergency housing, and legal aid.⁴⁴ In most cases, asylum-seekers are eligible to apply for a work permit, after they have undergone a medical examination. It is possible for them to apply for student authorization to attend post-secondary school while awaiting a decision, and children are automatically eligible to attend school. Asylum-seekers are not eligible for federal settlement services until their asylum claim has resulted in a positive decision. Those who abandon or withdraw their claims, or who are found to be ineligible to make a claim, do not have access to health care. Those whose application has been rejected may still be eligible for social assistance, depending on the province in which their claim was made.

In view of a lack of statelessness determination process in Canada, many stateless persons attempt to resolve their status by making a refugee claim in Canada. They must show a fear of persecution in their country of former habitual residence. While they await their decision, stateless asylum-seekers have access to the same rights as well as provincial and federal services as all asylum-seekers. In 2017, 31,547 individuals submitted an asylum claim, with 292 of them being stateless persons.

2.3 Non-Status Stateless Persons

There are also stateless individuals in Canada without any immigration status. This group comprises individuals whose applications for status are being processed, those whose applications for status have been rejected and they have not yet, or are unable to, file an application or appeal, and those who have not applied for status and who reside in Canada *in limbo*.

⁴³ <http://www.unhcr.org/asylum-seekers.html>.

⁴⁴ See footnote 33.

2.3.1 Applications in Process

Stateless persons have other avenues through which their status can be regularised from within Canada, including an application for permanent residency on humanitarian and compassionate grounds (H&C), a pre-removal risk application (PRRA) (before being removed from Canada), or an application to the Minister for discretionary grant of citizenship. Depending on the type of application, stateless persons may be entitled to some of the rights associated with residency. For example, detained stateless persons or those who have submitted a PRRA are eligible for health care.⁴⁵

Between 2016 and 2017, 12 PRRA applications were submitted by stateless persons. Only three were approved during this timeframe and the remaining are pending as of July, 2018. In the same time period, 128 permanent resident applications on H&C grounds were made by stateless persons out of which 54 applications were still pending as of July 2018.

Since 2015, there have been three applications requesting a discretionary grant of citizenship based on statelessness under the special and unusual hardship grounds. One of them was submitted after the 2017 amendment to the *Citizenship Act*.⁴⁶ The first two applications were rejected and the last one is pending.⁴⁷

Processing times for the below types of applications vary. For example, H&C decisions can take around 18-24 months to process, but sometimes longer depending on the case. For citizenship applications, it takes up to a year.⁴⁸ This is troublesome for stateless people who have limited employment opportunities due to their lack of permanent status in Canada, especially as H&C applications appear to be the most effective remedy for stateless people to obtain permanent status.

Richard arrived in Canada from abroad when he was an adolescent. His parents were unable to take care of him so they asked a family member to take care of him in Canada.

“No, it [the adoption] was not registered or anything. All I know is that... what I was told, what I remember is that my birth parents could not look after any one of us, because I think my father was an alcoholic [...], so they ended up giving each of our godparents one kid each to look after. There are five of us and we all were separated at different ages.” [Richard]

That living situation was challenging, so he left school before finishing. Richard never possessed identity documents and as a teenager he was given a fraudulent identity document. He used this as his own for several years as it was a way to establish himself

⁴⁵ See: <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-within-canada/health-care/interim-federal-health-program/eligibility.html>

⁴⁶ See Annex I of this report, page 38, for further information on this process.

⁴⁷ Figures provided by IRCC.

⁴⁸ <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html>.

in Canada. Twenty years later Richard was charged with identity fraud and investigated and detained by the CBSA.

“I said that I had been using this [identity document] for over twenty something years, and had no problem. And I said something is wrong [I do not have a legal identity]. They didn’t care. They [CBSA] just said “no, you’re not that person”. [Richard]

Richard was detained for three years while the CBSA attempted to remove him. He was deemed irremovable and ordered released by court order. Since his release he has reported monthly to CBSA, but he has no status in Canada. He has since submitted an application for residency based on humanitarian and compassionate grounds, however, while he awaits this decision he is not afforded access to health care and must apply for a work permit.

a. Humanitarian and Compassionate Applications

Stateless persons in Canada can make an application for permanent residency on humanitarian and compassionate (H&C) grounds. These decisions are discretionary, and while statelessness is one factor for consideration (among many others, including establishment in Canada, family ties, best interests of children, admissibility issues including criminality), statelessness is not determinative of the decision.⁴⁹

H&C applications are a two-step process. The first stage assesses whether there are humanitarian and compassionate reasons to allow an exemption from certain legislative requirements. The second stage involves processing the permanent residence application.

Statistics available for the years 2012 – mid-2017 demonstrate high acceptance rates of permanent resident applications of stateless persons on H&C grounds. Of 398 H&C applications considered for stateless persons in 2015, 381 were approved (97%). In 2016, 289 of 329 applications with approved (92%), while from January-July 2017, 47 out of 65 applications were approved (80%).

There are some issues for stateless persons who make H&C applications. First, as mentioned above, it is a discretionary process that examines applicants’ circumstances to justify an exemption from a requirement from the law. It is a discretionary decision that does not mandate a particular result for stateless persons. H&C applications involve a balancing of all of the facts and circumstances of a case, including establishment or lack thereof, and criminality. Second, applicants greatly benefit from legal representation, since it can be complicated and challenging for individuals to complete the application, obtain the supporting documentation, and make the submissions to advocate for permanent residence. However, provincial legal aid provides inconsistent coverage for lawyers’ fees for these applications. Third, the application fee of CAD 550 represents a barrier for many stateless persons who may have limited access to employment

⁴⁹ Jurisprudence ((*Kanhasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817) dictates that officers reviewing H&C applications must consider and weigh all relevant facts and factors of the case.

and education opportunities. Additionally, some stateless persons have temporary resident status (i.e., work and study permits) and have to renew their permits periodically, and there are additional costs for each of these applications. Finally, processing times are long (currently between 22 and 36 months). H&C applicants do not, as a general rule, have permission to remain in Canada, or have access to work permits or health care, until they receive approval in principle (first stage approval). Some applicants face removal proceedings while their H&C applications are pending and must make applications to the Court to stop deportation. Depending on the facts of the individual case, some persons (including some stateless persons) are able to receive health care and work permits while their application is in process.

b. PRRA Applications

Stateless people can also make a pre-removal risk assessment (PRRA) application if their refugee claim has been denied or if they are deemed ineligible to have their refugee claim considered by the IRB.⁵⁰ This assessment is to ensure that the applicant would not be returned to a country where they would risk persecution or be in danger of torture or a risk to life, or of cruel and unusual treatment or punishment. However, only evidence that was not previously available at the time that a refugee claim was heard by the IRB is considered. If approved, PRRA applicants become “protected persons” who are eligible to apply for permanent residency.

PRRA applicants may have a portion of their medical care costs covered by the Interim Federal Health program.⁵¹ To work, PRRA applicants may continue working on the visa that they may have obtained while awaiting a decision on their refugee claim. If they had not applied for a work visa while still an asylum-seeker, PRRA applicants may apply for a work visa while awaiting a decision.

The PRRA application does not have fees associated with it. However, this application only becomes available once a person becomes “removal ready”, meaning that it is not always available to stateless person who may be in limbo, i.e., refused protection and permanent resident status. It must also be noted that the PRRA rejection rate is high for those who previously had a refugee claim rejected by the IRB. Overall, the PRRA is not an efficient or appropriate mechanism for identifying stateless people and granting them permanent resident status in Canada based on the particular vulnerabilities that they face because of their statelessness.

c. Citizenship Applications

Under section 5(4) of the *Citizenship Act*, stateless people can apply for a discretionary grant of citizenship based on their statelessness status.⁵² In June 2017, the *Citizenship Act* was amended to explicitly list statelessness as a basis for a discretionary grant of citizenship. Between June 2015 and 2017, IRCC received three applications for a discretionary grant of citizenship based on statelessness. As of 2017, none of these applications had been granted; two had been refused, and one application was pending a decision. In response to our request for statistics, the

⁵⁰ <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/removal-risk-assessment/applications-intake.html>.

⁵¹ <https://www.canada.ca/en/immigration-refugees-citizenship/services/application-forms-guides/guide-5523-applying-removal-risk-assessment.html#5523E5>.

⁵² *Citizenship Act*, R.S.C., 1985, c. C-29, s. 5.(4).

government explained that these applications were rejected because applicants were not able to establish their special and unusual hardship or that they were stateless.

However, prior to the 2017 amendment, stateless persons could already apply to the Minister on the basis of “special and unusual hardship”. Between 2010 and January 2017, out of a total of 384 people who received discretionary grants of citizenship, 326 persons were so-called “Lost Canadians”, meaning persons that either lost or never obtained Canadian citizenship due to rules in previous versions of the *Citizenship Act*.⁵³ While the majority of these “Lost Canadians” were citizens of another country, it is known that an uncertain number of “Lost Canadians” were in fact stateless. The Government has indicated that there is no evidence of a significant number of outstanding “Lost Canadians”, and that any others may have a strong case for a discretionary grant of citizenship. Of note, the requirements for obtaining citizenship through a discretionary grant are significantly less onerous than for regular grants of citizenship under section 5(1) of the *Citizenship Act*.

Stateless children of Canadian citizens may also be able to obtain citizenship under either section 5(2) or section 5(5) of the *Citizenship Act*. Section 5(2) obliges the Minister to grant citizenship to any minor child of a Canadian citizen who is a permanent resident of Canada. Section 5(5) obliges the Minister to grant citizenship to stateless persons less than 23 years of age who were born outside Canada to a Canadian citizen and who have been physically present in Canada for a specified period of time prior to application (for more on this particular type of citizenship grant, see below in the section of this report on “Second Generation Born Abroad”).

2.3.2 Rejected Applications

If an individual’s application for status has been rejected, he or she may file for appeal or for judicial review. Whether a failed refugee claimant can access the rights to study, work and health care is dependent upon whether they have appealed their decision, requested a judicial review or residency on humanitarian and compassionate grounds, or not pursued the matter.

Stateless persons who are not lawful residents of Canada are vulnerable to discrimination and have difficulties fully enjoying their human rights. They are ineligible to remain in Canada and cannot enter any other country; their human right to freedom of movement is therefore severely restricted. They are also ineligible to bring their children and spouses to Canada. Moreover, they cannot, except in specific circumstances, access health care or education. Many have difficulties in obtaining legal and legitimate employment, and as a result, are often forced to live in sub-standard housing. As they reside in Canada without status, they also face risk of detention. For example, between 2012 and 2017, 145 stateless people were detained on immigration-related grounds according to statistics shared by CBSA.

Information on their current whereabouts is unavailable. However, recent statistics published by CBSA reveal that the large majority of immigration-related detainees in the 2017-2018 fiscal year were detained (a) either because they were considered unlikely to appear “for an examination, an admissibility hearing, removal from Canada or a proceeding that could lead to

⁵³ Immigration, Refugees and Citizenship Canada. *Memorandum to the Minister: Lost Canadians*. (15 February 2017)

their removal”⁵⁴, (b) or they could not prove their identity. Stateless people would most likely be detained on either of these two grounds. Such detentions can be lengthy given the circumstances, unless they benefit from alternatives to detention. Long-term detention can in particular occur if the persons are considered to be uncooperative with the authorities in obtaining identity or travel documents to satisfy concerns of flight risk or to assist with their deportation; inability to get foreign governments’ cooperation in issuing travel documents; when they are considered a danger to the public due to their criminal background; or, because alternatives to detention are not considered a viable alternative.

Detained stateless people who do not have a criminal background should be immediately identified for an alternative to detention under the government’s National Immigration Detention Framework that seeks, among other objectives, to release low-risk individuals into an ATD under specific terms and conditions and reporting requirements.

a. Failed Asylum-Seekers

Failed asylum-seekers receive health care under the Interim Federal Health Program until they leave Canada. They can also work (with a work permit) during the period of their appeal. Normally, persons subject to removal orders cannot work or study; however, there is an exception for persons whose removal order cannot be enforced (for example, if they cannot get travel documents or there is no country that will admit them). Stateless persons who are under a removal order may therefore be able to study or continue working.

Noor and her husband are of Palestinian descent and were born in a Palestinian refugee camp in Lebanon. They are not entitled to the Lebanese nationality, nor do they enjoy the right to study or work. After having lived for a period of time in the United Arab Emirates, Noor and her family travelled to Canada via the U.S. where Noor applied for refugee status. Her request was denied and, because of the manner in which she entered Canada, fell into a category that does not have access to an appeal before the RAD. She was therefore ordered to leave Canada. Noor has since filed a judicial review against the refugee decision, but the review is in abeyance pending the outcome of another case, which challenges the RAD bar for persons like Noor. While they await this decision, Noor and her husband are without health care and her husband’s two applications for a work permit have been denied, forcing her husband to work for low pay in informal jobs.

“This [refugee status] ID I have is expired... I was sick a week ago and the doctor would not accept [me]. This is dangerous... I feel stressed... it’s hard to stay like this. Thinking about this is hard. Just waiting and waiting”. [Noor]

b. Failed Permanent Residence Applications Based on H&C Grounds

Failed H&C applications can be reviewed at the Federal Court of Canada. Applicants have 15 days to make this request. Evidence not submitted in the original application will not be

⁵⁴ Canada Border Services Agency. Annual Detention Statistics – 2012-2018. (25 October 2018)

considered. Judges will only be able to confirm the officer’s decision or order another officer to make a new decision. If applicants have new evidence, they can re-apply, but each application has a cost. Unless the H&C application is approved, applicants can be removed from Canada.

Alejandro was born in Spain during the Franco regime and fled to Latin America with his parents as a baby. He migrated to the U.S. as a youth and, because he did not have any identity documents, assumed a fraudulent identity and lived and worked there for several years. Alejandro was investigated by the U.S. authorities and detained. He was ordered to be removed from the U.S., which prompted him to travel to Canada where he submitted a claim for asylum. There he was granted a work permit and access to health care. While the Refugee Protection Division confirmed he was stateless, they found that he was not a refugee. Both his work permit and study permit were revoked when his refugee claim was rejected. He then applied for residency based on H&C grounds, but his application was also denied. He subsequently sought a judicial review of that decision which was granted. The Federal Court has returned his H&C application for redetermination on two separate occasions. During this process, Alejandro has not been able to secure work because potential employers have refused to hire him as he does not have legal status in Canada. Alejandro has been granted temporary access to health care, however, and residency in community housing.

On living in community housing, Alejandro states if he did not have social housing “*the only alternative I would have is to die on the street*”.
[Alejandro]

c. Failed Pre-removal Risk Assessment (PRRA) Applications

Rejected PRRA applicants may apply for a reconsideration of their case or to the Federal Court for a review of the decision. Historically, there has been a low acceptance rate (between two and three per cent)⁵⁵, especially since many applicants are failed asylum-seekers. There is no automatic stay of removal after a failed refugee claim. An application to stay the removal must be made to the Federal Court. Between 2016 and August 2017, 12 PRRA applications were submitted by stateless individuals out of which nine were rejected.

2.4 “In Limbo” Facing Removal

Stateless persons without any legal residency status in Canada in the removals process may be subject to lengthy detention, as they are often unable to prove their identity or obtain travel documents that would allow for their removal.⁵⁶ In these cases, detention can be “prolonged and potentially indefinite”.⁵⁷ The case of Paul Rooney illustrates this clearly.⁵⁸ Mr. Rooney did not

⁵⁵ <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/evaluations/removal-risk-assessment-program/prra.html#toc1-2-3>.

⁵⁶ Brouwer, A. *Statelessness in the Canadian Context: An Updated Discussion Paper*. (2012), 57.

⁵⁷ *Ibid*, p. 54.

⁵⁸ *Canada (Minister of Public Safety and Emergency Preparedness) v. Rooney*, 2016 FC 1097.

remember much about his childhood. He stated that he was possibly born in 1963 in England where he was later adopted and brought to Canada. His adoptive parents told him he had been born in Toronto and that his biological parents were from the Caribbean. He did not remain in contact with his adoptive parents. He was later detained for lack of identity documents. He remained in detention for almost three years until he was released by a Board Member who found that his continued detention could become indefinite. Upon release, Mr. Rooney was ordered to report every month to CBSA.

When stateless persons in this situation are released from detention, they are typically required to report regularly to CBSA authorities in their jurisdiction, amongst other conditions, and are thus restricted from traveling within Canada. However, if they advise of an address change in advance, they may receive permission to report to a different CBSA office.

According to statistics provided by the Canadian government, 167 stateless persons were removed from Canada to different countries, including the U. S., Vietnam, Lebanon, Kuwait and Kosovo (top five removal destinations) between 2012 and September 2017.

Boris' story in many ways represents the journey stateless people encounter. Boris was born in the U.S.S.R. When the Soviet Union dissolved, he was living in the U.S. and was not aware that there was a time limit imposed on former U.S.S.R. citizens to claim Russian citizenship. Boris missed the deadline and discovered he was stateless. Once he realized that he did not possess any identity documents, he was forced to purchase fraudulent documents, which is how he entered Canada.

“I left Soviet Union. That was 1991. And since then it’s like okay, I’m a free man. That’s it! I don’t need anything else but to get the status and live here and somehow that was the mentality, once you in States you free, don’t really need anything except driver’s license. So basically that’s how I lived until 2000 but once the Soviet Union collapsed, which basically was between 1993 to 1998, the former citizens of Soviet Union, they had a window of opportunity, I think about two years, to claim their citizenship with Russia or with the countries they considered to be suitable. And I didn’t tell them no, I just recently find out about that so I did not claim my citizenship and that pretty was much it”. [Boris]

In 2009, after three years of residing in Canada without legal status Boris went to the Canadian immigration authorities and requested assistance in regularizing his status. He wanted to apply for a work permit, but he was not permitted to do so, and was encouraged to file a refugee claim. Without the assistance of a lawyer, Boris submitted a claim for refugee status which was denied in 2011. He did not file a request for H&C residency as he was not aware of this option.

“But unfortunately, it’s only one choice we [non-resident stateless persons] have.[...] Going for refugee [status]. [...] I didn’t want to be claiming for refugee. I [would like to] be given some kind of choices [to apply for a work permit].” [Boris]

After his refugee claim was rejected, he lived without any status until he was arrested by CBSA in 2012 and detained until 2016. In 2017, it was determined that his removal order was unenforceable, and he was ordered released from detention. Since that time, Boris reports on a monthly basis to the CBSA and does not have status of any kind in Canada, though after his release he was granted access to health care.

2.5 Second Generation Born Abroad

In 2009, Canada's *Citizenship Act* was amended so that *jus sanguinis* citizenship (citizenship by descent, or blood) was restricted to the first generation born abroad, except where the first generation born abroad becomes a naturalized Canadian. As a result, a child born outside of Canada to a Canadian citizen parent who was also born outside of Canada is not a Canadian citizen unless their parent is a naturalized Canadian.⁵⁹ Individuals born outside of Canada after the coming into force of the amendment, on or after 17 April 2009, can make a citizenship application directly to the IRCC Minister if certain criteria are met.⁶⁰ Under section 5(2) of the *Citizenship Act*, the Minister shall grant citizenship to the minor child of a Canadian citizen if the parent applies on the child's behalf and if the child is a permanent resident of Canada. Pursuant to section 5(5) of the *Act*, the Minister shall also grant citizenship to a stateless person born abroad to a Canadian citizen if the applicant is less than 23 years of age and has resided in Canada for a minimum of 1,095 days during the four years before the date of application, and has not been convicted of specified offences.

This creates a risk that children of Canadian nationals born abroad will remain stateless for some years during their childhood, if the law of the country where they are born does not grant them citizenship (*jus solis*). The provisions in section 5(5) of the *Citizenship Act* also exclude second generation children born abroad prior to the 2009 amendment from applying for citizenship. As a party to the 1961 *Convention on the Reduction of Statelessness*, Canada is obliged to ensure that its citizenship laws and policies reflect the provisions of the Convention, so that those who might otherwise be stateless may be granted citizenship.

An expert meeting on the 1961 Convention convened by UNHCR concluded as follows:

The right of every child to acquire a nationality, as set out in Convention on the Rights of the Child's (CRC) Article 7 and the principle of the best interest of the child contained in CRC Article 3, create a strong presumption that States party to the CRC should provide for automatic acquisition of their nationality at birth to an otherwise stateless child born abroad to one of its nationals. In cases where States require an

⁵⁹ Section 3(3). *Citizenship Act*, R.S.C., 1985, c. C-29.

⁶⁰ There are two applications through which a second generation child born abroad can obtain citizenship. Under s. 5(2) of the *Citizenship Act*, the Minister shall grant citizenship, upon application, to a minor child of a Canadian citizen who is a permanent resident of Canada. Under s. 5(5) of the *Act*, the Minister shall grant citizenship, upon application, to a person who has a birth parent who was a citizen at the time of the birth, is less than 23 years of age, have been physically present in Canada for at least 1,095 days during the four years immediately before the date of application, have always been stateless, and have not been convicted of specific criminal offenses.

application procedure, international human rights law, in particular the CRC, obliges States to accept such applications as soon as possible after birth.⁶¹

Despite its apparent consistency with Article 4 of the 1961 Convention, the current Canadian practice concerning a second generation child's right to nationality is thus inconsistent with its broader obligations under international human rights law. An amendment to the legislation would ensure that children born from Canadian citizens are not rendered stateless in line with obligations under the CCPR/CRC and the 1961 Statelessness Convention.

Despite its apparent consistency with Article 4 of the 1961 Convention, the current Canadian practice concerning a second generation child's right to nationality is thus of questionable consistency with its broader obligations under international human rights law. An amendment to the legislation would ensure that children born from Canadian citizens are not rendered stateless in line with obligations under the CCPR/CRC and the 1961 Statelessness Convention.

2.6 Indigenous Populations

Indigenous persons born in Canada are automatically entitled to Canadian citizenship through the principle of *jus soli*, as are all other persons born in Canada. Indigenous persons whose births are registered in Canada can obtain a birth certificate, status card and Canadian passport in their respective province or territory.

Difficulties arise for unregistered Indigenous persons when the location of their birth is unknown, or when they are unable to prove their birth in Canada. Many communities among North America's Indigenous population live on both sides of the Canada – U.S. border. When births are not registered on either side of the border, the individual is at risk of statelessness. There are provisions in place in Canada that enable Indigenous persons whose births have not been registered to apply for delayed birth certificates and later for status cards or passports.

Little is known about stateless Indigenous persons in Canada. This has resulted in some indigenous persons living 'off the grid' whereby they possess no identification documents. What is needed from the Canadian, provincial and territorial governments is information. Without greater information on this subject, it is difficult to understand the extent and seriousness of statelessness among Canada's Indigenous population. This is ever more important as part of Canada's obligations under the United Nations Declaration on the Rights of Indigenous People to provide a nationality to its Indigenous population.

Dave is an Indigenous man born somewhere in North America. Dave does not know whether he was born in the U.S. or in Canada. His birth was not registered in either country, and he has never possessed identification documents. He explains why his parents chose not to register his birth or obtain and legal identity documents throughout his youth.

⁶¹ United Nations High Commissioner for Refugees. *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions")*. (2011a).

“My mother was pregnant in [the United States], and she spoke out against the corruption that she saw from the Bureau of Indian Affairs (BIA). The BIA was taking half of the rations away from the people for [itself], and she spoke out. The BIA Officer and the Sherriff came one night while my dad was away and threatened my mom and said: ‘You’re having a bastard half breed. We’re going to take that child and you’ll never see that child again.’ That’s when she packed everything, she told my dad what had happened, my dad sold everything, he caught up with my mom at the border and they crossed into Canada”. [Dave]

Dave’s parents did not explain to him whether he was born before or after his parents’ crossing into Canada, and they are now deceased preventing Dave from ever knowing.

3. Impacts of Statelessness

Legal research of Canadian jurisprudence involving statelessness followed by semi-structured interviews with stateless persons were conducted to understand the experiences of stateless persons in Canada. Particular vulnerabilities identified by the Courts and stateless persons in Canada during this research include the lack of enjoyment of certain rights, i.e., freedom of movement, a sense of instability and marginalization when not being able to secure permanent employment and having to make their way through the legal system for years attempting to find a solution to their statelessness situation and the deterioration of their mental and physical health.

3.1 Employment

Securing gainful employment is a crucial aspect of maintaining livelihood, and it is addressed specifically in Chapter Three of the 1954 *Convention Relating to the Status of Stateless Persons*.⁶² The *International Covenant on Economic, Social and Cultural Rights*, to which Canada is party, also protects the right to work and to earn a living, and obliges States party to take appropriate steps to safeguard this right.⁶³

The *Ilemori* case⁶⁴ illustrates the challenges of stateless persons to obtain work permits and the hardships faced by those without status. Due to their statelessness situation, the Ilemoris were stuck in a position of being unable to apply for work in Canada and could not return to the country of former residence. Despite the unique facts of this case, it raises concerns about the precarious situation of persons who have unsuccessfully taken all reasonable measures to obtain citizenship in other countries of connection, and continue to live in limbo in Canada.

Arriving in Canada as a permanent resident skilled worker, Abdel, a software engineer from

⁶² United Nations High Commissioner for Refugees. *Convention relating to the Status of Stateless Persons*. (1954).

⁶³ *International Covenant on Economic, Social and Cultural Rights*, Article 6.

⁶⁴ *Ilemori v. Canada (Citizenship and Immigration)*, 2018 FC 120.

Palestine, has a social insurance number and a job. He did not have any difficulty obtaining employment due to his immigration status. However, non-resident participants in this study spoke about their lack of financial stability as well as the difficulty in obtaining employment when they do not hold legal documents to work, such as a Canadian work permit and social insurance number.

“I came... here with USD 5,000. So that’s everything I had and I paid for the rent, the food, for the hospital, for the hotel many times. Then I ran out of my savings. I had to move many times, I had to take taxis, it’s very expensive here. It was very stressful... I was so panicked. What would I do when I have no money? I can’t work yet. So I was stressed all the time.” [Farah]

Stateless persons who do not hold a work permit are often forced to work for low pay in informal jobs, and are sometimes taken advantage of by their employers.

“If I had a status I would have been getting paid more for sure. One girl I was working for, when she kind of realized my situation, she immediately dropped my wage down, which I had no choice but to be okay with that because I had nowhere else to work.” [Katerina]

“[My husband] worked like two times, go paint house, work under table, the man because he knew my husband didn’t have paper, he don’t give him even one dollar. This has happened more than one time.” [Noor]

Dave has lived most of his life in Canada, however, he spoke to the precariousness of working, and the need to adapt to spontaneous, informal job opportunities. Dave must take informal jobs because he cannot prove his identity or obtain a social insurance number or work permit.

“There’s no reason for anybody to starve if they’re willing to work. There’s always work. You follow the transportation industry, the big trucks, guys coming in to Ottawa from Florida with a shipment of oranges. Grocery stores don’t unload the trucks, the drivers have to. The truck driver is tired, he just drove 24 hours to get it there, so he hires somebody for \$150 to unload the trailer. It’d take me an hour and a half, it was done, and I’d have CAD 150, and away I go.” [Dave]

For those stateless persons who are able to apply for a work permit, the application process itself can be a source of stress due to high application fees, long wait times for decisions, and rejections.

“[I do not] get work permit yet. [I] applied the first time and it was rejected—four times actually.” [Fatima]

“I was on welfare because my first work permit took months to receive. By the time I received it I started through agencies because I don’t know country and companies. Agencies were sending me for minimum wage, 11 bucks an hour, doing very hard labour.” [Razam]

Furthermore, many people interviewed for this study reported being rejected for jobs precisely because of their precarious status.

“After coming here, six months later I applied first time got work permit. I received rejection. I didn’t know why or who to ask. I asked lawyer he said it’s not my scope I cannot help you with it. Immigration office said you are facing deportation order and that’s why it’s rejected. How are they gonna give me work permit. I don’t have a place to go. Living in hell for a few weeks, waiting for them to call us where they gonna send us.” [Nirsan]

“The problem is I can’t find a good job. People look at my status and say they cannot give me job right now. I applied to a lot of apprenticeship programs. A lot of people say we cannot dedicate our future to you because your future is not fixed here.” [Rabhu]

“For three different interviews for three different jobs, they said ‘it is better to hire [someone] who has a legal status because at any moment you could be kicked out of the country.’” [Alejandro]

Those stateless persons who do not hold a work permit are forced to make decisions that are dependent upon their financial stability, and may negatively impact other areas of their lives including health care and relationships with their loved ones.

“We have a hard relationship because of [my husband not being allowed to work]. He feel bad because he don’t want to just sit at house. When problems too much and he don’t work and there is no money, there is too much problem that happen at home.” [Noor]

The impact that a stateless person’s status has on their ability to work in Canada is paramount to their ability to support themselves and their overall well-being. The financial instability that results from precarious income affects stateless persons’ stress levels and relationships, but may also force them into working informal jobs vulnerable to being taken advantage of by their employers.

3.2 Welfare

Chapter Four of the 1954 Convention outlines the welfare rights that are to be extended to stateless persons on a party state’s territory.⁶⁵ Among other rights, welfare encompasses housing, public education, and social assistance. Other international human rights instruments, including the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Rights of the Child*, similarly protect the right to adequate housing, the right to education, and the right to social security.⁶⁶

⁶⁵ United Nations High Commissioner for Refugees. *Convention relating to the Status of Stateless Persons*. (1954).

⁶⁶ *International Covenant on Economic, Social and Cultural Rights*, Articles 9, 11 and 13; *Convention on the Rights of the Child*, Articles 26, 27 and 28.

3.2.1 Housing

On June 21, 2019 Canada signed into law the *National Housing Strategy Act* recognizing the legal right to housing. Section 4 of the *Act* reads:

“It is declared to be the housing policy of the Government of Canada to recognize that the right to adequate housing is a fundamental human right affirmed in international law; and to recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities.”⁶⁷

The legislation requires that Canada implement a National Housing Strategy that would take “focus on improving housing outcomes for persons in greatest need.”⁶⁸ The legislation does not provide a mechanism through which individuals can seek out access to adequate housing. An additional challenge is that the legislation is a federal statute, and thus there is no legal requirement for provincial, territorial, Indigenous, or municipal jurisdictions to comply with it.⁶⁹

When asked about the challenges in finding housing, Dave revealed that he spent most of his life travelling across North America and never had a home as a result. He slept in bars and motels for one to three weeks at a time before moving on. Similarly, Boris currently resides in a men’s shelter, and Richard is staying with a friend.

Statelessness affects one’s ability to secure appropriate and safe shelter in several ways. A stateless person without identity documents cannot fulfil rental application requirements, and a stateless person who does not possess the legal right to work in Canada cannot provide necessary employment references or a credit check for such an application. In this context, immigration status can be seen as a barrier to one’s human right to shelter.

“I couldn’t find a flat under my own name because I have to be attached to somebody. I have to ask my friend or cousin. All landlords ask for employment with pay and paper. I don’t have permanent job or paper to give them.” [Razam]

“Houses very expensive. Because I have 4 kids no one accept us.” [Noor]

3.2.2 Social Assistance

Relying on social assistance is a common experience for many of the participants of this study. Some participants were grateful for the monthly social assistance they received, but also ashamed that they must rely on it while they await employment opportunities. In addition, several participants noted that the assistance they do receive is often not sufficient to cover basic expenses.

⁶⁷ Section 4 *National Housing Strategy Act*

⁶⁸ Section 5(2)c *National Housing Strategy Act*

⁶⁹ Canadian Housing and Renewal Association. (5 July 2019).

“They tell me you are relying on welfare. You didn’t give approval for my children to work. How will we survive if we don’t rely on your welfare?” [Farooq]

“I do receive and rely on social assistance but it is obviously not enough due to cost of living.” [Alejandro]

Despite receiving this assistance many of the participants are forced to rely on charitable sources of food including food banks and faith based organisations.

“I lived hand to mouth, there were some times I didn’t eat for days. Sometimes I didn’t eat for a week or two. I didn’t have the money.” [Dave]

“Yes, [welfare] pays for the rent, which is good. Just the rent, the food [we] access through food bank.” [Fatima]

“[I] go to mosque for food sometimes.” [Noor]

“I have found some basic food, and I have been fed-not too bad, not too good- average. Thanks to those particular charitable programs and food banks in Canada I have been able to put some food on my table.” [Alejandro]

Not having a status in Canada, though for some of them legally residing here, has substantial impact on a stateless person’s ability to secure basic needs, such as adequate housing and nutrition. Relying on social assistance places stateless persons in a cycle of dependency wherein they must rely on the goodwill of others and the resources of organisations, which can be inconsistent in their support. Such dependency can impact the development of children, in particular, as they have special nutritional and accommodation needs which are crucial to their health and well-being.⁷⁰

3.3 Education

Stateless persons without status in Canada who are not asylum-seekers are entitled, under federal law, to enrol in public schools. Education in Canada falls under provincial jurisdiction, although, as it relates to foreign nationals (which includes stateless persons), education falls under the legislative authority of the federal government.⁷¹ The *Immigration and Refugee Protection Act* (IRPA) states that “[e]very minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level.”⁷² In practice, however, provinces have authority to define who is eligible to attend primary and secondary schools, for example, by requiring the lawful residence of the child in

⁷⁰ World Health Organization. (2003). *Global strategy for infant and young child feeding*. World Health Organization; Brazelton, T. B., & Greenspan, S. I. (2009). *The irreducible needs of children: What every child must have to grow, learn, and flourish*. Da Capo Lifelong Books.

⁷¹ Erauw, G. *Compatibility of the 1954 convention Relating to the status of stateless persons With Canada’s legal framework and its International human rights obligations*. (2015), 58.

⁷² Section 30(2). *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

question, their parent or legal guardian, or by requiring payment of school fees.⁷³ As a result, many cities in Canada have implemented both formal policies and informal practices that allow children with no status to enrol in primary and secondary schools.

Enrolling in post-secondary school is a significant challenge for non-status stateless persons, however, as they are required to pay international student fees, which can be insurmountable considering the difficulties they face in obtaining a work permit.

“[Before my protection was granted] I have no rights. I don’t have study permit. I am not even entitled to study here. If I could study I could have gone to school 2.5 years ago.” [Razam]

“Even if I am academically prepared and still intellectually capable to do a masters or academic training I am denied to do so until I have status.” [Alejandro]

“I want to go to college. I can’t even go college because if I go I have to pay international fees. That’s double the amount that other people pay.” [Rabhu]

Furthermore, the cost of daycare is not subsidised for those without status, preventing stateless parents from enrolling their children into daycare programs.

“Daycare needs money. Other schools have daycare but not allowed for us because still in Canada we do not get residence.” [Khaled]

Stateless persons who do not have the ability to work in Canada repeatedly expressed the desire to learn new skills and enhance their education, and were discouraged not being able to do so. Many expressed that not being able to study while they were awaiting decisions on their respective cases was “wasting time”, contributing to a feeling of uselessness. In this respect, the government could reduce tertiary education fees for stateless persons in order to give them the opportunity to improve their livelihood opportunities.

3.4 Identity and Mobility

The lack of identity papers restricts stateless persons from travelling outside of Canada. For many of the participants of this study being restricted from travelling outside of Canada was a significant source of stress when it came to seeing family abroad or ‘back home’.

“We don’t have an extra set of documents under our mattress. A stateless person does not have a second set of documents that allows him or her to travel abroad.” [Alejandro]

“It broke my heart. My brother passed away last year. All my friends and family they said you have to travel here for three days. You have to see your brother. By that time I had a rejection from court, I couldn’t even apply for travel document. My travel document, which I came to Canada with, it was taken from me. When I applied for refugee, they took travel document from me. I couldn’t even see my brother.” [Razam]

⁷³ Erauw, G. *Compatibility of the 1954 convention Relating to the status of stateless persons With Canada’s legal framework and its International human rights obligations.* (2015), 60-66.

“When my brother was dying [...] from car accident, I couldn’t see him. Big challenge for me. I can’t fly or go anywhere. I can’t see his dead body. He is my brother I can’t live without him. Big problem I faced in my life.” [Hakim]

“We don’t have ID, only stateless paper or ID. Not stable. I don’t have like place for me. I don’t belong to this place.” [Noor]

Dave explains that identity documents are a way to prove something that cannot be proven – his feeling of belonging to Canada, the feeling that he is Canadian:

“I have always been Canadian, always been Canadian. It’s the one thing nobody could ever take away from me. I’ve always been in my heart. I’m Canadian. I don’t care what the piece of paper says, don’t care what the law says, I am Canadian! ‘Prove that I’m not a Canadian’ is how I always wanted to put it to them, but I had to prove I was Canadian, that I did belong here”. [Dave]

In this respect, identity is not only related to legal recognition of one’s personhood, but also to a sense of purpose that includes connection with one’s loved ones and culture, for example the burial of a family member.

3.5 Liberty

Liberty is something that is both articulated in law and something that can affect one’s sense of self. For stateless persons, liberty is intricately connected to the ability to prove one’s identity, the ability to travel and related restrictions on mobility, and, of course, the increased risk of detention. These issues align with the administrative provisions outlined in Chapter Five of the 1954 Convention.⁷⁴

“I am not saying it is bad here [in Canada], it’s not bad, but still being able to choose where to live is something which makes you feel good about yourself. It makes you feel like a human who can decide any minute to change his future for a better life, somewhere else maybe.” [Nirsan]

3.5.1 Detention

Stateless persons without immigration status in Canada are sometimes subject to immigration enforcement detention when they are unable to prove their identity, and when CBSA considers that detention is necessary for the purpose of removal. Individuals who are not able to prove their identity or nationality, and particularly those who are perceived not to be cooperating with removal, face lengthy and sometimes indefinite detention,⁷⁵ despite a legislated process for the ongoing review of immigration detention decisions, and the possibility of challenging a detention before the courts by way of *habeas corpus* application.⁷⁶

⁷⁴ United Nations High Commissioner for Refugees. *Convention relating to the Status of Stateless Persons*. (1954).

⁷⁵ See for example *Ali v Canada (Attorney General)*, 2017 ONSC 2660.

⁷⁶ *Canada (Public Safety and Emergency Preparedness) v Chhina*, 2019 SCC 29; *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9.

Boris and Richard both spent a significant amount of time in detention (over two years each) and the experiences they describe is of serious concern. Early mornings, late nights, minimal communication, and being mixed in with the general prison population which included inmates with serious criminal charges.

Lengthy detention of stateless persons can occur in provincial criminal facilities despite the fact that many immigration detainees have no criminal record or charges pending. Boris was held in a provincial correctional centre for three years despite having no criminal record, because he was perceived as uncooperative in relation to his removal to Russia.

“Well in detention it was all criminals. I mean, I could easily get stabbed and killed for just saying or looking wrong way. [...] It doesn’t really matter that you live in that, you know, in that immigration unit. You really have to be smart to survive there. As I said, once I freaked out and I went on hunger strike they treat me like everybody else. They freaking crazy people in segregation where I was living, you know, in cold very cold cell without anything except toilet. It was horrible. Now, security, what security?” [Boris]

Richard describes one of the more challenging aspects of his detention: the trip from the detention centre to his detention review hearings every 30 days.

“The condition wasn’t good at all... first, they wake you up at 4am to take you [to the review hearing] ... and then they kept you in the van with different people... it’s so cold in there and [then you wait for] the next two hours [with] everyone from [the other detention centre] who is on trial for murder, robbery, or whatever... the condition in the truck is so bad. It’s hot or it’s very cold. And if they have to stop somewhere, they have to leave you inside with the conditions... You have to wait until you get to one of those institutions [to go to the bathroom]. There’s no water or anything. [There is food] only when you get to the institution... When you get [to court] you sit [from] 8:30am or 9am o’clock until 4pm o’clock when they are ready to bring you back and then you don’t even see [anyone]. They’ll just bring you down to sign a piece of paper or to make a phone call to the embassy. So we’ll leave at 4pm o’clock [to go back to the detention centre]. It’ll take maybe an hour and a half, depending on the traffic. So they get to [the other detention centre to drop off the others] at 5:30pm. You have to wait in a room --the room is very cold, especially in winter—from 5:30 in the afternoon until 8 or 8:30 at night, then they’ll pick you up from there, and they’ll take you up to [the detention centre], which is the next 40 minutes or so, and then when you get there, you’re not getting anything hot, you’ll get a frozen meal... sometimes you’ll get to your unit and you cannot even have a shower, you cannot even heat up your food because it’s already lock-up time, or it’s close to lock-up time. There is no communication. Nothing”. [Richard]

In practice, it can be extremely difficult for persons to advocate for themselves during detention reviews, especially if they do not have legal representation, as support and resources are limited or nil.

While the bulk of immigration detainees are held in one of three immigration holding centres, lengthy and indefinite detention of stateless persons also occurs in provincial correctional facilities despite the fact that many immigration detainees, like Boris, have no criminal record or charges pending.

Removal is also complicated for stateless persons leading to prolonged detention. In a 2017 Federal Court decision dealing with a permanent application on humanitarian and compassionate grounds, the judge recognized that the person's statelessness condition did not facilitate removal despite efforts from the government to deport him to "any country that will authorize his entry within a reasonable time."⁷⁷ In this case, the court recognized hardships experienced by stateless persons, such as the impossibility of removal and indefinite detention.

Stateless persons without any immigration status are at risk of prolonged detention, during the process of immigration enforcement while authorities attempt to determine their identities, and should a removal be ordered, obtain travel documents in order to execute that removal order. The practice of immigration detention in jails is particularly of concern as many stateless persons have not committed a criminal offence. According to international human rights law, mechanisms to identify nationality should be established in order to avoid arbitrary and long-term detention and to comply with articles 3 and 9 of the *Universal Declaration of Human Rights* (UDHR) and article 9 of the *International Covenant on Civil and Political Rights* (ICCPR).

3.5.2 Reporting to CBSA

Stateless persons without any residency status are often required to report regularly to CBSA. Despite expressing the desire to cooperate with Canadian authorities, many participants noted that reporting makes them feel like criminals, and is a significant source of stress.

"I am doing reporting every two months as a criminal." [Nirsan]

"I was released because they couldn't find anywhere to send me. They got rejection from [my home country] and they got a rejection from the States. What they call indefinite detention, based on that they let me sign myself out. Under the terms, I have to attend to CBSA to sign-in, first it was every month and now it's every other month. It's something you have to constantly think about, this is the day I have to go and sign-in. I am fearful if I ever forget. They can come arrest me at any time because I missed it." [Katerina]

Several participants noted the irony of having to report to the CBSA to prove they have remained in Canada, despite their lack of identity and travel documents, which would not allow them to travel anywhere.

"[I] report every three months to immigration office. It makes you feel as a wanted criminal. You have to go every now and then saying I haven't run away. It doesn't feel good at all. You just go there stand in front of officer, okay your name, your number, your location, you are working where now, your home address. You know, they know he cannot travel anymore. He doesn't have

⁷⁷ *Abeira v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1008.

a passport. He doesn't have any damn document. Where is he going? Even if he decided to leave, he cannot leave. Even the minimum human right of leaving a place you wouldn't want to live in, you cannot have it." [Said]

Though stateless persons who are required to report to the CBSA are not detained, they live under the constant fear of being detained in the future if they fail to report and feel the pressure of being constantly supervised.

3.6 Access to Health Care

As a party to the *International Covenant on Economic, Social and Cultural Rights*, Canada has recognized the right to everyone the highest attainable standard of health, and is obligated to take steps to ensure the full realization of the right.⁷⁸ Stateless persons without a permanent residency, and thus no access to health care, may be forced to resort to 'back alley' treatment, or perhaps treating themselves or not receiving any treatment.

"I was sick, oh god, there were times I was sick I just wanted to die but, where can I go? I can't go anywhere. I learned a long time ago how to stitch myself up, and I've stitched myself up a couple times from cuts and wounds, but I don't go to doctors because I can't afford to." [Dave]

The cost of healthcare was described as a significant barrier to care. Dave described owing almost CAD 250,000 in medical bills after his second heart attack. Farah described a similar experience when she was forced to visit the hospital a second time.

"I found myself in the hospital and I ask the nurse. She said - I don't have insurance, so I have to pay, I was afraid because how much am I going to pay so I told them I want to go. They gave me something for the panic attack, just to calm down and I wanted to go, I didn't want to do any other test because it's so expensive. So luckily, I stopped all the tests but I had to pay CAD 650." [Farah]

"[My daughter] has allergies but they don't cover her medication, because she doesn't have OHIP, so she has to pay for it which is too much." [Fatima]

3.7 Mental Health

Mental health and addiction conditions impact stateless people in a variety of ways. Some of these issues may have been present prior to becoming stateless, but being stateless in Canada can exacerbate such issues. For some, the frustration and challenge of maneuvering the immigration system, trying to get a visa or permit, and living without a home can lead to problems such as depression and anxiety.

Participants described various challenges to their mental health. Dave spoke to the prevalence of depression.

⁷⁸ *International Covenant on Economic, Social and Cultural Rights*, Article 12; See also *Convention on the Rights of the Child*, Article 24.

“The depression will come, [to] every one of them [other stateless people]. They [stateless people] may not admit it to you, but it’s there. When they’re speaking to you they’re having a good day. But when they’re by themselves the depression will set in. Because, how can you live like this? You can’t even get a job, you’re watching all your friends making good money, they got new cars, just finished building their house, and I got 50 cents in my pocket I can maybe buy a pack of Mr. Noodles. I can do that job, but I can’t do that job, because I don’t have a SIN. That job could have set me up for the rest of my life, that was my future, but I can’t get it. So eventually, you don’t even look at stuff like that because how can it be?”
[Dave]

Farah reported several incidents of having panic attacks. This started during her time at the refugee camp and later in Canada.

“My school [in Canada] found the room for me but when I arrived to this room and I saw it and it was without a good ventilation and I have some breathing problems so I had a severe panic attack.” [Farah]

“So you are under pressure and depression your whole life.” [Razam]

“I feel stressed. Sometimes it’s hard to stay like this. Thinking about this is hard. Just waiting and waiting. They hold us.” [Noor]

The challenges of a stateless man with memory and cognitive problems to obtain documentation to prove his identity were noted in a Federal Court judge’s statement in 2017: “imposing an obligation to prove a negative in these circumstances may give rise to a Catch-22 situation for the stateless, nameless, mentally ill, and other vulnerable individuals who may not be able to establish identity.”⁷⁹ One of the main problems he encountered was remaining in detention for three years as he was unable to establish his identity. The Federal Court judge further noted this unfortunate consequence and referred to the limited guidance that the Canadian legislative framework provides for dealing with persons who are unable to establish their identity and nationality, including prolonged detention.

3.7.1 Addiction

Alcohol is a depressant⁸⁰ and many who consume heavy amounts of alcohol admit it is used as a way to numb pain,⁸¹ or provide a temporary relief from anguish. Boris reported developing an addiction to alcohol as a result being stateless and the frustration that created.

“I’m not allowed to work. I applied for work permit but it can take another one year or year and a half so after all that struggle and desperation I became an alcoholic. I drink more and more and end up in detox. You know, I start to have

⁷⁹ *Canada (Public Safety and Emergency Preparedness) v. Rooney*, [2017] 2 FCR 375, 2016 FC 1097, para. 46

⁸⁰ Puz, Carol A. et al. “Alcohol Withdrawal Syndrome: Assessment and Treatment with the Use of the Clinical Institute Withdrawal Assessment for Alcohol-Revised.” *Critical Care Nursing Clinics*, 17 no. 3 (2005): 297-304.

⁸¹ Weber, G. “Using to Numb the Pain: Substance Use and Abuse Among Lesbian, Gay, and Bisexual Individuals.” *Journal of Mental Health Counseling*, 30 no. 1 (2008): 31-48.

seizures and it happened in the hospital. In the hospital they took me in emergency.” [Boris]

3.7.2 Suicidality

Severe depression can also lead to suicide,⁸² and some participants reported suicidal ideation.

“I’m stateless and I can’t live like this for the rest of my life because if I will stay stateless, I don’t want to live. It’s impossible to live without any rights. I feel very afraid. I see black future and I feel like I can’t hold up anymore. Many times in Jordan I was on the edge of breaking down. I was having thoughts of suicide. Sometimes even here I just think that I don’t want to continue this.” [Farah]

“Now I have nightmares. I see things crawling on the walls. I thought of committing suicide because I feel [...] so frustrated. It was so hard. Everything... they’ll [CBSA] knock you down.” [Richard]

3.7.3 Hopelessness and despair

Hopelessness and despair were discussed by several of the participants. They explained that despite their efforts, getting a permit (for example) and therefore living independently seems unlikely. This led to feeling completely hopeless.

“Basically, I’m losing my confidence [...] Yeah, as a human being... I go to CBSA every month, report, and I still have no way of getting around my situation. It’s same page, I’m outside. [...] And that’s what brought me to become an alcoholic because I just get desperate and just didn’t care about anything. So security, no I don’t feel secured, I just don’t care. I just give up. Whatever happens, happens. I don’t have control over it. Because my experience, in that respect, it showed me that fighting the system was futile. It didn’t really do anything, neither my hunger strike nor my arguments, it didn’t bring anything. Right now I am trapped in the system bureaucracy and I basically rely on this. It makes me really sort of hopeless, desperate and yeah, lack of confidence.” [Boris]

“There is no future, you don’t dream. Why dream? Every time you try, you get your hopes up, somebody says ‘I’m going to help you’ and you get your hopes up only to have them smashed again, and there’s nothing they can do. They swore that their friend could fix this, or this person and that. You can’t, it’s bigger than you, it’s bigger than me. Nobody can help me, so I give up, there’s no future.” [Dave]

“I feel like statelessness has affected me a lot. Like I sometimes I wonder how I’m human like other people. Why I don’t have simplest rights that all people have, that those rights are granted for people. I was born in a country, why I don’t get the nationality of the country? I live in a country for 23 years, why I don’t get it? And the only citizenship I have, I lose. So it doesn’t make sense to me. I feel like so

⁸² Garlow, S. J. et al. “Depression, desperation, and suicidal ideation in college students: results from the American Foundation for Suicide Prevention College Screening Project at Emory University.” *Depress Anxiety*, 25 (2008): 482-488.

unfair. So I feel like it's affected me a lot. Trying to deal with that, but it's so hard. I feel like I'm nowhere, no one. I see myself now as a vulnerable person." [Farah]

"Not belonging anywhere. I am essentially non-existent. I don't exist. That's how I feel." [Katerina]

Several participants for this study expressed experiencing significant stress due to the uncertainty of their legal status. Awaiting the outcome of their applications for status, in some cases for years, has a negative effect on their mental health.

"You cannot imagine how bad nights I had while sleeping. I can't even imagine I lost my job. I can't study. It's very disappointing. I didn't want to waste years just sitting at home." [Razam]

"I need to at least know what will happen for us. Now 10 years and a half. I need healthcare for my kids. I need to get them driving license because most jobs if you don't drive they will not accept you. How will they live in Canada?" [Farooq]

"You don't know what is tomorrow. You don't know if you are going to do anything for your future, your kid's future, you are just living day by day." [Nirsan]

"I cannot even commit my future here. I am just stuck in middle. I am 27 years. I might be 30 and then it might be too late to start something new. Just waiting. I don't know what to do. It's been 1 year just waiting for H&C." [Rabhu]

"It was difficult because of the uncertainty of situation. I don't know what's going on. They say the process could be up to a few years, depending on paperwork." [Katerina]

Stateless persons who have permanent residency in Canada are entitled to health care. Those stateless persons who have temporary residency, or who are non-residents do not have the right to health care, including for mental health-related conditions. The impact that statelessness has on both their physical and mental wellbeing is serious as they are unable to access appropriate and timely healthcare.

4. Conclusions

This study demonstrates that, while Canada has adopted important legislative measures to reduce statelessness in recent years, **stateless persons exist in Canada** as a result of Canadian laws and policies (Indigenous people – second generation children born abroad) and in the context of migration; a stateless person's access to basic human rights and public services is contingent upon their residency status; and, the impact that statelessness has on one's human rights and well-being is detrimental, regardless of one's status. As such, this report calls for measures to identify in a systematic and reliable manner stateless persons on the Canadian territory, and to strengthen measures to remedy their situation by granting Canadian nationality through more predictable, affordable and straightforward naturalization processes.

Government statistics provide a limited view of stateless persons in Canada in the contexts of permanent and temporary residency, asylum seekers and refugees, and non-status stateless persons, but fail to provide a clear overview of the scope of the issues in relation to Indigenous persons and second generation children born abroad. **Interviews** conducted with stateless persons reveal that regardless of their profile, all face hardships in their daily lives due to their status as stateless persons. This study illustrates the complexities of living in Canada without a nationality, but more importantly, these stories demonstrate that the challenges stateless persons experience permeate every aspect of their lives: from their physical and mental health, to their ability to earn an income and their feelings of belonging. **A review of Canadian case law** on the subject of stateless persons provided important insights into their precarious legal status and corresponding place in Canadian society.

The report evidences that while stateless persons may find a remedy through permanent residency applications on various grounds that are discretionary in nature, or an asylum application, **some remain in limbo**. In addition, these procedures are often complex, costly and lengthy. Those stateless persons *in limbo* are unable to obtain a work permit, access essential services, take up residence in other provinces in Canada or travel to other countries to see family. They are also more likely to be detained and vulnerable to exploitation.

Stateless persons without immigration status can be subject to immigration enforcement if they cannot provide proof of their identity, and especially if they are considered uncooperative in establishing identity. While the average length of detention on identity grounds is less than 30 days, detention on such grounds can result in **lengthy stays in immigration detention**, often exacerbating poor mental and physical health conditions of some stateless persons. Of particular concern is the situation of those having exhausted all legal remedies to remain in Canada and who cannot be removed because they either do not have a travel document, or there is no country that wants to receive them. These individuals need clear and accessible pathways to apply for permanent residency via H&C considerations from within Canada, in a process which takes into account their vulnerability and the impossibility of their return. During their application process they should not be detained. If detention is unavoidable, they should quickly be released into one of the options of the Canadian government's ATD program.

Free legal assistance and representation should be made accessible for stateless people for any type of application that will allow them to obtain permanent status in Canada, i.e. permanent

resident applications based on H&C grounds and citizenship applications. This is the most effective way that Canada can guarantee that stateless people will have quality legal representation in a fair and consistent way and that they will have an effective remedy without discrimination. A further barrier to obtaining a durable solution is the cost of making an H&C application given the precarious social and economic situation many stateless persons find themselves.

The above challenges could be resolved through making legal aid accessible to all stateless persons applying under the H&C category irrespective of their geographic location and if their application will be successful by eliminating or reducing the administrative fees associated with each application, reducing processing times and lowering residency requirements for stateless people. To facilitate access to citizenship applications, measures should be considered to waive or reduce fees, ensure that applicants benefit from free legal aid, reduce processing times and lower residency requirements.

Permanent resident status is extremely important for stateless persons. Without it, they face many barriers in their daily lives, such as accessible post-secondary education and employment opportunities. It also limits family reunification opportunities for stateless people due to the requirements to sponsor their families, including being a Canadian citizen or permanent resident and proving financial independence.

The financial instability caused by insufficient and slow access to **work permits** is a major cause of concern. Many stateless persons are confined to the social assistance they receive as they wait for work permits or are subject to removal orders. When work permits are delayed or not forthcoming, stateless persons can be pushed into informal work. Work in the informal economy is not subject to taxation, does not guarantee a person's labour rights and often results in stateless persons not being remunerated for their services as well as at risk of exploitation. Failure to mitigate this situation is harmful to the physical and mental wellbeing of stateless persons, many of whom want to work to supplement or replace welfare income. Accordingly, Canadian and provincial governments should work together to provide for a work permit system which accomplishes greater worker mobility and more predictable, timely procedures for attaining work permits.

Stateless persons often face **barriers to post-secondary education and child care services**, which can be prohibitively expensive for people whom are not Canadian citizens or permanent residents. Doubly so when legal avenues of employment are unavailable. Stateless persons are also unable to travel outside of Canada without identity papers. As a result, stateless persons are disconnected from their family support network abroad while at the same time being unable to access social services in the same way as Canadian citizens and permanent residents. Given the vulnerable economic and social situation which most stateless persons find themselves in, Canadian and provincial governments should implement programs which support stateless persons' access to post-secondary education and childcare services which would strengthen the employability and outcomes of stateless persons in Canada. For the same reason, government action is required to support stateless persons without a permanent residency who are unable to access Canada's domestic **health care system**.

Based on the above, we offer the following recommendations:

- Refine data collection to better capture the number of stateless people in Canada in particular disaggregated in immigration categories and those in detention.
- Take additional measures to make the humanitarian and compassionate (H&C) mechanism more systematically accessible, predictable and affordable to stateless people in Canada by lowering or waiving administrative fees automatically, by ensuring free legal aid and by reducing processing times. Simplified procedures for stateless persons to access permanent residence status will ensure respect for their basic rights, including family reunification.
- Simplify citizenship procedures for stateless persons in Canada by limiting requirements and make a broader use of the Ministerial grant of citizenship under the Citizenship Act.
- Amend existing legislation to prevent new cases of statelessness, specifically in relation to “second generation born abroad” limitation and to ensure that any future citizenship legislation contains safeguards against rendering a person stateless.
- Encourage and work with provincial governments to contribute to the wellbeing of stateless persons by ensuring their prompt and full access to social services, including with respect to facilitating access to higher education and work.
- End the detention of stateless persons, especially of those facing removal and at risk of indefinite detention, by making use of the various alternatives to detention recently adopted under Canada’s National Immigration Detention Framework.

Annex I - Methodology

The objective of this report is to map statelessness in Canada in two ways: to profile stateless persons living in Canada, and explore their experiences as stateless persons in enjoying their basic human rights; and secondly to explore remedies currently available to stateless persons. In order to carry out these objectives, a combination of methods were employed. The research was carried out between September 2017 and April 2019.

1.1. Jurisprudential Research

In order to understand the stories, gaps and impact that statelessness has on individuals, a qualitative analysis of immigration cases heard at the Federal Courts and Immigration and Refugee Board was carried out. A search in the Canadian Legal Information Institute (CanLII) was performed using the keyword 'stateless' within a timeframe spanning between 2012 to 2018. This search generated 250 cases, from which 143 were selected for analysis because they involved stateless applicants.

1.2. Statistics

Statistics for this study were provided directly to UNHCR Canada from Immigration, Refugees, Citizenship Canada (IRCC), Statistics Canada, and the Immigration and Refugee Board (IRB). Data received reflected temporary, permanent, and non-status residency numbers for stateless persons from 2012 to 2018, as well as refugee claims made by stateless persons and the recognition rates, for this same period.

1.3. Media Reports

An analysis of cases of statelessness reported in media stories since 2012 was carried out with specific reference to persons rendered stateless under the 'second generation born abroad' provision. This search was limited to online news articles published by leading national outlets.

1.4. Semi-structured Interviews with Stateless Persons

Interviews were conducted with persons who identified as stateless. Two rounds of interviews were carried out, first in the fall of 2017, and second in the spring of 2018. In the fall of 2017, the consultant contacted seven participants by telephone and email with the assistance of the Canadian Centre on Statelessness and snowball sampling methods. In order to reach more stateless people for interviews a second round took place beginning in February 2018 through the coordination of the UNHCR. A key word search was conducted on the Canadian Legal Information Institute (CanLII) website. A total of 250 cases containing the word 'stateless' from 2012-2017 were generated. From those 250 cases, 143 cases were identified as potential sources of interviews, and from these 35 cases with the greatest impact on the stateless person were short-listed for interview. The lawyers representing those 35 cases were contacted and we were then put in contact with their respective client or with other stateless clients, resulting in 12

interviews. Four additional stateless persons were identified during the interview process via snowball sampling, totalling 16 in the second round. A total of 23 individuals were interviewed for this study.

All participants were informed of the study, its objectives, and their rights as participants, including the right to withdraw at any time and the right of anonymity. Participants were provided with a confidentiality form and, in some cases, the interview questions in advance in order to increase trust during the interview process and reduce any undue stress that certain questions may induce. Interviews lasted between 45 and 120 minutes and took place over phone, over Skype or in person. This report uses pseudonyms to protect the anonymity of participants. All transcripts were produced in English, with identifying features (name, birthday, etc.) excluded.

The interview questions comprised elements relating to four broad themes: the legal processes of statelessness including attempts made to acquire status or citizenship in Canada, and experiences engaging with courts, detention officials, and government staff. The questions addressed social elements of stateless persons' lives in Canada, including family life, friends and relationships, and participation in the community. The questions also addressed access to social and health services, employment, and education. Finally, the interview questions addressed participants' feelings on statelessness, and how statelessness affects their perceptions of themselves and their future.

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