

# Canadian Centre on Statelessness Institute on Statelessness and Inclusion

## Joint Submission to the Human Rights Council at the 30th Session of the Universal Periodic Review

### Canada

#### Introduction

1. The Canadian Centre on Statelessness (CCS) and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR) in relation to statelessness, access to nationality and human rights in Canada.
2. The Canadian Centre on Statelessness<sup>1</sup> is a federally incorporated non-profit organisation that seeks action against statelessness through research, advocacy and the fostering of a national community of allies including persons affected by statelessness. Founded in 2014, the Centre's mandate is to affect societal, political and legislative changes as they relate to the protection and status of stateless persons. CCS has particular expertise in researching statelessness in Canada, including on government data collection on stateless persons, and the health and well-being of stateless persons in Canada.
3. The Institute on Statelessness and Inclusion<sup>2</sup> is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Over the past two years, the Institute has made over 20 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 28th UPR Sessions.<sup>3</sup>
4. This joint submission focuses on the identification and the human rights protection of stateless persons, the right of every child to acquire a nationality, the protection of stateless persons from arbitrary detention in Canada, and deprivation of nationality. It draws on the combined expertise of the submitting organisations both in Canada and internationally.

#### The Universal Periodic Review of Canada under the First and Second Cycles (2009 and 2013)

5. Canada was subject to the UPR under the First Cycle in 2009 and under the Second Cycle in 2013. No recommendations were issued directly on the issue of statelessness in the First Cycle. In the Second Cycle, Mexico, Brazil and Uruguay recommended that Canada ratify the American Convention on Human

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<sup>1</sup> For more information about the Canadian Centre on Statelessness, please see the website [www.statelessness.ca](http://www.statelessness.ca).

<sup>2</sup> For more information about ISI, please see the website <http://www.institutesi.org/>.

<sup>3</sup> For more on the Institute's UPR advocacy, see <http://www.institutesi.org/ourwork/humanrights.php>.

Rights, which guarantees every person's right to a nationality and prohibits the arbitrary deprivation of nationality. Ecuador also recommended that Canada ratify the 1954 Convention relating to the Status of Stateless Persons.<sup>4</sup> All these recommendations were noted. To date, Canada has not ratified either of the Conventions but has set out its position that the 1951 Convention relating to the Status of Refugees, of which it is a State Party, 'to a large extent duplicates the 1954 Statelessness Convention and thus there is no need to accede to both; Canadian law contains all necessary safeguards to cover adequately the situation of stateless persons; and Canada has concerns that ratification and subsequent inclusion in Canadian legislation of specific provisions governing the status of stateless persons would encourage stateless persons to come to Canada from other countries (the "pull-factor"), and would encourage persons already in Canada to renounce their citizenship'.<sup>5</sup> However, as this submission illustrates, Canada does not have in place adequate legal safeguards to identify and reduce statelessness nor mechanisms to effectively protect stateless persons.

6. Canada also received a recommendation from Uruguay to revise legislation and administrative practices to correct the amendment of birth certificates in which the name of the father is removed for children born out of wedlock.<sup>6</sup> This recommendation was noted by Canada. Birth registration is the first step in establishing identity. While incomplete information on a birth certificate does not always result in statelessness, the nationality law of many countries requires that both parents or the father is recognised in order for a person to acquire a nationality.

## Canada's International Obligations

7. Canada is not a party to the 1954 Convention relating to the Status of Stateless Persons.
8. Canada acceded to the 1961 Convention on the Reduction of Statelessness in 1978. Canada ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol in 1969. Canada is also a party to core human rights treaties that have provisions related to statelessness and nationality including the International Covenant on Civil and Political Rights (ICCPR, 1976), 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 addition to guarantees of the right to a nationality, both the ICCPR and CRC contain provisions that oblige Canada to ensure the timely birth registration of every child immediately after birth.
9. Canada became a permanent observer to the Organization of American States (OAS) in 1972 and joined as a member in 1990 by ratifying the OAS Charter. As a State Party to the OAS Charter, Canada is obliged to observe the human rights obligations set out therein, which are represented by the American Declaration on the Rights and Duties of Man. Canada has not ratified the American Convention on Human Rights (American Convention) or the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).<sup>7</sup>
10. Canada has additional international obligations under ICCPR Article 9 to protect the liberty and security of all persons and to protect against arbitrary and unlawful detention.

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<sup>4</sup> A/HRC/WG.6/16/CAN/1, para. 128.10.

<sup>5</sup> Brouwer, Andrew. 'Statelessness in the Canadian Context'. UNHCR, 2012, page 31.

<sup>6</sup> A/HRC/WG.6/16/CAN/1, para. 128.23.

<sup>7</sup> Organization of American States. 'Member State: Canada'. [http://www.oas.org/en/member\\_states/member\\_state.asp?sCode=CAN](http://www.oas.org/en/member_states/member_state.asp?sCode=CAN).

## Statelessness in Canada

11. Article 1 (1) of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as someone ‘who is not considered as a national by any state under the operation of its law.’ This definition is part of customary international law and has been authoritatively interpreted by the United Nations High Commissioner for Refugees (UNHCR) as requiring ‘a careful analysis of how a State applies its nationality laws in an individual’s case in practice and any review/appeal decisions that may have had an impact on the individual’s status. This is a mixed question of fact and law.’<sup>8</sup> Canada’s *Citizenship Act* does not define a stateless person nor has it adopted a procedure to determine whether a person is stateless.
12. Four government agencies in Canada maintain data on stateless persons: Statistics Canada, Immigration and Refugee Board of Canada (IRB), Immigration, Refugees and Citizenship Canada (IRCC), and Canada Border Services Agency (CBSA). The latest data available from Statistics Canada reports that there are 1,690 self-reported stateless persons in Canada.<sup>9</sup> According to figures provided by IRCC, there are 316,882 stateless persons who have received permanent residency in Canada since 1981. It is not clear how many of these people remain stateless, or how many have been granted Canadian citizenship. Furthermore, this figure is not broken down into refugee, humanitarian and compassionate grounds, or whether permanent resident status was granted after the stateless persons had obtained a work or student visa.<sup>10</sup> CBSA has reported that the total number of stateless detainees from 2003 – 2014 was 530.<sup>11</sup>
13. On June 17, 2017 Canada repealed several of the previous government’s immigration measures, including the revocation of citizenship for dual citizens who commit crimes related to national security. This ends what was referred to as two-tiered citizenship, and ensures the protection of Canadian citizenship for all Canadians. Furthermore, Canada’s *Citizenship Act* stipulates that the Minister of Immigration may, at his or her discretion, grant citizenship to any person to alleviate cases of statelessness or of special and unusual hardship.<sup>12</sup> However, the lack of a statelessness determination procedure and a legal definition of statelessness in national legislation leaves the Minister with wide discretionary power to determine who is considered stateless for this purpose.
14. Further, gaps exist in the implementation of safeguards to prevent statelessness among children who are born abroad. According to the *Citizenship Act*, the Minister of Immigration shall, on application, grant citizenship to a person who is born outside Canada on or after April 17, 2009, if at least one parent was Canadian at the time of birth, is less than 23 years of age, has been physically present in Canada for at least 1,095 days during the four years immediately before the date of his or her application, who has always been stateless, and who has not been convicted of specific criminal offenses.<sup>13</sup>

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<sup>8</sup> UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>, para 23.

<sup>9</sup> Statistics Canada (2011). <http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=0&PID=107551&PRID=0&PTYPE=105277&S=0&SHOWALL=0&SUB=0&Temporal=2013&THEME=95&VID=0&VNAMEE=&VNAMEF=>

<sup>10</sup> Canadian Centre on Statelessness. “Data Collection on Stateless Persons in Canada”. 2017, page 11 [http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs\\_data\\_collection\\_2017.pdf](http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs_data_collection_2017.pdf),

<sup>11</sup> *Ibid.*, page 14

<sup>12</sup> Section 5(4). *Citizenship Act*, R.S.C., 1985, c. C-29

<sup>13</sup> Section 5(5). *Citizenship Act*, R.S.C., 1985, c. C-29

15. As observed in a recent report:

*The Canadian Charter of Rights and Freedoms (Charter) is Canada's constitutional 'Bill of Rights' and applies to all federal and provincial legislation and government action. Under the Charter's equality provisions, 'every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.' The Supreme Court of Canada has also recognized citizenship as an analogous ground under the equality rights provision of the Charter.<sup>14</sup>*

16. With respect to protecting stateless persons, Section 7 of the Charter applies to every individual, including a stateless person, thereby protecting their rights to liberty and personal security. The guarantee of these rights constrains government practices relating to immigration detention and deportation;<sup>15</sup> however, stateless persons in Canada are subject to arbitrary and indefinite detention.
17. Moreover, Canada's legal framework does not safeguard all the rights of stateless persons as stipulated in the 1954 Convention.<sup>16</sup> Specifically, gaps exist in Canada's legal framework with respect to the definition of stateless persons (Article 1); social housing (Article 21); public education (Article 22); healthcare and social assistance (Article 23); social security (Article 24); identity papers (Article 27); travel documents (Article 28); expulsion (Article 31); and naturalization (Article 32).
18. Stateless persons who are not lawful residents of Canada face realities unlike those faced by any other group in the country. They are ineligible to leave Canada and ineligible to 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, which affects their human right to State protection of the family unit. Moreover, they cannot access health care or education, have difficulties in obtaining legal and legitimate employment, and are often forced to live in sub-standard housing. In addition, stateless persons in Canada are often subject to lengthy detention.<sup>17</sup> Stateless persons with irregular migration status in Canada are vulnerable to discrimination, and exposed to serious human rights challenges. Those stateless persons who have been denied refugee status and who are at risk of being removed from Canada have the opportunity to apply for a Pre-Removal Risk Assessment, whereby they can provide new evidence for Protected Person status.<sup>18</sup>
19. Stateless refugees, stateless refugee claimants, and non-refugee stateless persons are protected differently in Canada. Non-refugee stateless persons in Canada lawfully do not have access to health care or travel documents. If they fulfil relevant residency and language requirements, however, they can apply for permanent residency<sup>19</sup> and ultimately citizenship in Canada<sup>20</sup>. Stateless persons with refugee status or who are awaiting refugee determination in Canada have the right to work, and access to health care, and a stateless person with refugee status can obtain a travel document.<sup>21</sup>

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<sup>14</sup> Erauw, Gregg. "Compatibility of the 1954 convention Relating to the status of stateless persons With Canada's legal framework and its International human rights obligations". UNHCR, 2015, page 15.

<sup>15</sup> Suresh v Canada (Minister of Citizenship and Immigration), [2002] 1 SCR 3 and Scotland v Canada (AG), 2017 ONSC 4850.

<sup>16</sup> Erauw, Gregg. "Compatibility of the 1954 convention Relating to the status of stateless persons With Canada's legal framework and its International human rights obligations". UNHCR, 2015, page 115.

<sup>17</sup> Brouwer, Andrew. "Statelessness in the Canadian Context". UNHCR, 2012, page 38.

<sup>18</sup> Ibid., page 45.

<sup>19</sup> Section 10.1. Immigration and Refugee Protection Act, S.C. 2001, c. 27.

<sup>20</sup> Section 5(1). Citizenship Act, R.S.C., 1985, c. C-29.

<sup>21</sup> Government of Canada. 'Types of Passports and Travel Documents', 2017. <http://www.cic.gc.ca/english/passport/travel-documents/types.asp>.

## The Lack of a Formal Statelessness Determination Procedure

20. Canada does not have a specific procedure and no specific legal framework for the determination of statelessness. The identification of stateless persons is presently governed by Canada's immigration agency, Immigration, Refugees and Citizenship Canada (IRCC), as well as the independent Immigration and Refugee Board of Canada (IRB). IRCC and IRB testing mechanisms for statelessness in either of these cases has not been published. However, as of June 2017 the IRCC has published a set of guidelines for establishing proof of statelessness including what documentation and correspondence serves as evidence.<sup>22</sup>
21. The identification of stateless persons is of utmost importance in guaranteeing the rights of stateless persons living in the country. A formal statelessness determination procedure would offer the most effective means to protect the human rights of stateless persons,<sup>23</sup> including rights such as liberty and security of the person. Such a procedure would also allow the state to gain a better understanding of the extent of statelessness and to better monitor the status and treatment of stateless persons in Canada.<sup>24</sup> The co-submitting organisations therefore recommend that Canada implement a dedicated, formal statelessness determination procedure that meets the standards set out in relevant UNHCR guidance.<sup>25</sup>
22. In order to determine statelessness, a statelessness determination procedure should be simple, accessible to everyone within the Canadian territory, fair and efficient.<sup>26</sup> The procedure should be formalised in law and observe due process guarantees.<sup>27</sup> In compliance with these standards, the Canadian statelessness determination procedure should provide for a shared burden of proof, the standard of proof should be reduced and applicants should be offered an individual interview.<sup>28</sup> Moreover, information and counselling about the procedure should be widely disseminated in order to facilitate access to the procedure.<sup>29</sup> Additional procedural and evidentiary safeguards for child applicants should be put in place, including 'priority processing of their claims, provision of appropriately trained legal representatives, interviewers and interpreters as well as the assumption of a greater share of the burden of proof by the State'.<sup>30</sup> Government officials who may come in contact with stateless persons through their regular work (for example, social services or immigration control) should be trained to identify potential applicants and should refer them to the determination procedure.<sup>31</sup> Finally, authorities involved in the identification of stateless persons should be provided with training on statelessness and the rights of stateless persons.
23. The lack of a stateless determination procedure has resulted in the absence of a 'stateless person status' in Canada. As noted in a recent report, 'in some instances where the Canadian legal framework is *prima facie* compatible with articles of the 1954 Convention, the legal framework may still produce disproportionate adverse effects on stateless persons'.<sup>32</sup>

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<sup>23</sup> UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, 11 July 2016, available at: <http://www.refworld.org/docid/57836cff4.html>, p. 2.

<sup>24</sup> UNHCR, *Global Action Plan to End Statelessness, Action 6*, 4 November 2014, available at: <http://www.refworld.org/docid/545b47d64.html>; UNHCR, *Mapping Statelessness in Austria*, January 2017, available at: <http://www.refworld.org/docid/58b6e5b14.html>, para 125.

<sup>25</sup> See also Erauw, 2015.

<sup>26</sup> UNHCR, *Statelessness Handbook* (note 12), paras 63, 68 and 69.

<sup>27</sup> *Ibid*, para 71.

<sup>28</sup> *Ibid*, paras 71, 89-93.

<sup>29</sup> *Ibid*, para 68; UNHCR, *Good Practices Paper – Action 6*, (note 49), p. 5.

<sup>30</sup> UNHCR, *Statelessness Handbook* (note 12), para 119.

<sup>31</sup> UNHCR, *Good Practices Paper – Action 6*, (note 49), p. 4.

<sup>32</sup> Erauw, Gregg. "Compatibility of the 1954 convention Relating to the status of stateless persons With Canada's legal framework and its

24. In order to avoid violations of the rights of stateless persons, applicants should not be removed during a determination procedure and should instead be granted a temporary legal status, in compliance with the guidance provided in the UNHCR Handbook.<sup>33</sup> At a minimum, persons applying for statelessness recognition should be issued an identity paper and be granted assistance to meet basic needs, as well as the right to work, freedom of movement and protection against expulsion and arbitrary detention. Ideally, applicants should be offered the same standard of treatment as asylum-seekers.<sup>34</sup>

## The Right of Every Child to Acquire a Nationality

25. Article 7(1) of the CRC and Article 24(3) of the ICCPR guarantee that every child has the right to acquire a nationality. Article 7(2) of the CRC requires that state parties '*ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless*'. Stateless children are vulnerable to discrimination, in particular with regard to access to education, health and social assistance, and they also face the risk of serious human rights violations.

26. The right of the child to acquire a nationality must be implemented in accordance with the general principles of the CRC, including the right to non-discrimination and the best interest of the child.<sup>35</sup> Articles 3 and 7 of the CRC require that no child should be left stateless for an extended period of time, but should be granted the right to acquire a nationality at birth or as soon as possible after birth.<sup>36</sup> 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.

27. Canada grants citizenship based on both *jus soli* and first generation *jus sanguinis* bases.<sup>37</sup> In general, all children born in Canada, as well as those born abroad to Canadian-born parents, are Canadian citizens. An exception arises 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.<sup>38</sup> All other children born in Canada are entitled to Canadian citizenship, regardless of their parents' legal status or nationality.

28. In 2009, Canada's *Citizenship Act* was amended so that *jus sanguinis* citizenship was restricted to the first generation born abroad. 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.<sup>39</sup> Individuals born outside of Canada after the coming into force of the amendment, on or after April 17, 2009 can apply directly to the Minister of Immigration, Refugees and Citizenship for Canadian citizenship if they meeting the following criteria:

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International human rights obligations". UNHCR, 2015, page 30.

<sup>33</sup> UNHCR, *Statelessness Handbook* (note 12), paras 72, 145 and 146.

<sup>34</sup> *Ibid*, paras 145 and 146.

<sup>35</sup> Articles 2 and 3 *Convention on the Rights of the Child* of 1989.

<sup>36</sup> UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at:

<http://www.refworld.org/docid/50d460c72.html>, para 11. See also PACE Resolution 1989 (2014) (note 51), para 5.2.7; PACE, Resolution 2099 (2016) (note 51), para 12.2.2.

<sup>37</sup> Section 3(1). *Citizenship Act*, R.S.C., 1985, c. C-29.

<sup>38</sup> Section 3(2). *Citizenship Act*, R.S.C., 1985, c. C-29.

<sup>39</sup> Section 3(3). *Citizenship Act*, R.S.C., 1985, c. C-29.

1. they have a birth parent who was a citizen at the time of the birth,
  2. are less than 23 years of age,
  3. have been physically present in Canada for at least 1,095 days during the four years immediately before the date of application,
  4. have always been stateless, and
  5. have not been convicted of specific criminal offenses.<sup>40</sup>
29. This creates a risk that children of Canadian nationals born abroad would remain stateless for some years during their childhood. The provisions also exclude second generation children born abroad prior to the 2009 amendment. The current Canadian practice concerning a child's right to nationality is thus inconsistent with its obligations under international law. An expert meeting on the 1961 Convention convened by UNHCR indicated the following:
- 'The right of every child to acquire a nationality, as set out in CRC Article 7 and the principle of the best interest of the child contained in CRC Article 3, create a strong presumption that Contracting States should provide for automatic acquisition of their nationality at birth to an otherwise stateless child born abroad to one of its nationals. In cases where Contracting States require an application procedure, international human rights law, in particular the CRC, obliges States to accept such applications as soon as possible after birth'.<sup>41</sup>*
30. Canada's *Citizenship Act* provides that adopted children may become Canadian citizens without having first to obtain permanent resident status.<sup>42</sup> There is not, however, a simplified naturalisation process for adopted stateless children.
31. The Act also provides that foundlings under the age of seven are deemed to have been born in Canada and are thus Canadian citizens, unless within seven years of being found it is demonstrated that the child was not born in Canada.<sup>43</sup> The Act does not, however, provide protection against statelessness where a foundling is determined to have been born abroad, even where revocation of Canadian citizenship would result in statelessness.
32. The acquisition of Canadian citizenship by naturalisation can be declared null if it was acquired fraudulently, even if this results in statelessness. Under the current *Citizenship Act* the nullification of naturalisation can be extended to all family members, including children, who acquired Canadian citizenship on the same basis.<sup>44</sup>

## Risk of Arbitrary Detention

33. International law requires that where immigration detention is necessary for a legitimate purpose, it must be as brief as possible and must not be indefinite.<sup>45</sup> 'Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary'.<sup>46</sup> Stateless persons also benefit from the general

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<sup>40</sup> Section 5 (5). *Citizenship Act*, R.S.C., 1985, c. C-29.

<sup>41</sup> UNHCR, *Summary Conclusions of the Expert Meeting on Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children*, para.37 (2011)

<sup>42</sup> Section 5.1. *Citizenship Act*, R.S.C., 1985, c. C-29.

<sup>43</sup> Section 4(1). *Citizenship Act*, R.S.C., 1985, c. C-29.

<sup>44</sup> *Assal v Canada* (Minister of Citizenship and Immigration), [2016] FC 505.

<sup>45</sup> UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, paras 15-21, 34. Available at: <http://www.refworld.org/docid/503489533b8.html>.

<sup>46</sup> UNHCR, *Statelessness Handbook* (note 12), para 112.

application of international human rights standards found in the core human rights treaties, such as equality before the law, non-discrimination and an adequate standard of living.

34. It is unclear how many stateless persons are detained in Canada during an asylum determination procedure or pending removal. Detention of migrants is within the federal responsibility of the Canada Border Services Agency (CBSA). CBSA has the mandate to detain persons in provincial detention centres. CBSA does not define statelessness but does collect and record data on 'unknown nationality' and 'statelessness' separately.<sup>47</sup> In 2015, CBSA reported that the total number of days in detention that stateless persons spent from 2003 – 2014 was 43,214.<sup>48</sup> The total number of stateless detainees from 2003 – 2014 was 530.<sup>49</sup> Based on the total number of detainees and total number of detention days for the period of 2003-2014, the average length of detention for a stateless individual was 81 days.<sup>50</sup> As CBSA does not use a specific definition of statelessness, or have in place a statelessness determination procedure, contextualising these figures is challenging.
35. CBSA provided details on 189 records of removal orders issued from 2003 – 2014. There were 62 stateless individuals who were not detained at the time of removal, and 127 who were detained. There were 18 detained stateless individuals who were considered 'contrary to the national interest', and 171 detained stateless individuals who were not considered 'contrary to the national interest'.<sup>51</sup> CBSA does not record the legal status or detention of removed stateless persons in the countries to which they have been removed.<sup>52</sup>
36. Furthermore, as there does not exist a "stateless person status" in Canada, those who have applied for legal residence in Canada through a Humanitarian and Compassionate application, and who have been denied this status, consequently face the risk of indefinite detention while a removal order is being processed against them. Finally, the risk of repeated detention also remains. For example, when stateless persons or persons at risk of statelessness are released without legal residence status, they face the threat of being detained anew as an irregular migrant.
37. In general the *Immigration and Refugee Protection Act (IRPA)* authorizes the CBSA to detain foreign nationals and permanent residents where there are 'reasonable grounds to believe' that the individual in question is inadmissible to Canada, a danger to the public, or if s/he may be unlikely to appear for immigration processes (they are a flight risk).<sup>53</sup> Detention of foreign nationals also arises where the identity of the foreign national is in question or for examination purposes.<sup>54</sup> The IRPA also authorises the automatic detention of persons who are deemed 'Designated Foreign Nationals' and are subject to a security certificate.<sup>55</sup> Stateless persons therefore may be subject to detention not only at the outset of

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<sup>47</sup> Canadian Centre on Statelessness. "Data Collection on Stateless Persons in Canada". 2017, page 13.

[http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs\\_data\\_collection\\_2017.pdf](http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs_data_collection_2017.pdf).

<sup>48</sup> CCS received two different sets of data from CBSA with different figures for the same period: 43,214 and 42,916 detention days for 2003-2014. Canadian Centre on Statelessness. "Data Collection on Stateless Persons in Canada". 2017, page 14.

[http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs\\_data\\_collection\\_2017.pdf](http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs_data_collection_2017.pdf).

<sup>49</sup> Ibid.

<sup>50</sup> Ibid. Based on 43,214 figure.

<sup>51</sup> Canadian Centre on Statelessness. "Data Collection on Stateless Persons in Canada". 2017, page 16.

[http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs\\_data\\_collection\\_2017.pdf](http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs_data_collection_2017.pdf).

<sup>52</sup> Canadian Centre on Statelessness. "Data Collection on Stateless Persons in Canada". 2017, page 17.

[http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs\\_data\\_collection\\_2017.pdf](http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs_data_collection_2017.pdf).

<sup>53</sup> Section 55. Immigration and Refugee Protection Act, SC 2001, c 27.

<sup>54</sup> Ibid, Section 55(2).

<sup>55</sup> Ibid, Section 57.1. Designated Foreign Nationals are defined under s 20.1 of the *IRPA*. A person is designated as such by the Minister of Citizenship and Immigration due to their mode of arrival and is subject to immediate detention and different detention review rules. Persons subject to a security certificate are governed by Section 77(1) of the *IRPA* and are also subject to different review requirements as to their detention and monitoring by the CBSA.



their arrival to Canada, but also during their stay as a result of not having regularized their status or because they are deemed a flight risk, a 'danger to Canada' or a 'security risk'. Furthermore, stateless persons are at greater risk of indefinite detention because they are often not 'removal ready' due to the fact that they may not be able to be 'returned' or removed to another country.<sup>56</sup>

38. In practice, it is extremely difficult for persons to advocate for themselves in detention reviews. Persons in detention have little support, resources and opportunity to access legal representation and do not know what they need to present at a detention review to convince a decision maker of their release. Further, the courts have provided little relief for those in indefinite detention. The Federal Court of Canada recently held that the detention review scheme did not violate the *Charter of Rights and Freedoms*, and also that there was no need to impose a maximum time limit to indefinite detention despite evidence that stateless persons are at risk of prolonged and arbitrary detention.<sup>57</sup> While the Federal Court prefers to rely on the discretion of the Immigration Division of the Immigration and Refugee Board to ensure that they are considering alternatives to detention, and that all the relevant factors associated with the detained stateless person are being considered, in reality, government submissions are taken as fact, disclosure is not provided to detainees and there is a reverse onus on the detainee to justify release (and to suggest and secure alternatives to detention) rather than on the government to justify continued detention.<sup>58</sup> The indefinite detention of stateless persons is often occurring in provincial criminal facilities despite the fact that many immigration detainees have no criminal record or charges pending.

## Recommendations

39. In light of the fact that statelessness was not focused on under the First and Second Cycle of review and that Canada has not fully accepted and implemented all recommendations that relate to the rights of stateless persons, the co-submitting organisations urge reviewing states to make the following recommendations to Canada:
- I. Fully promote, respect, protect and fulfil its obligations towards stateless persons under international human rights law.
  - II. Accede to and fully implement the 1954 *Convention on the Status of Stateless Persons*, including the provision of health care, education, social assistance, and work permits to stateless persons.
  - III. Implement a definition of 'stateless person' in the *Citizenship Act*, and the *Immigration and Refugee Protection Act*. Furthermore, ensure that the definition of 'stateless person' is fully consistent with the definition provided in the 1954 Convention and that no stateless persons are excluded from this definition on extraneous criteria.
  - IV. Implement a Statelessness Determination Procedure in accordance with the 1954 Convention, and ensure that the procedure is fair, effective and accessible to all persons in Canada regardless of their legal status. The procedure should comply with international standards of due process and follow the procedural safeguards outlined in UNHCR's Handbook on Protection of Stateless Persons.

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<sup>56</sup> Section 48(1). Immigration and Refugee Protection Act, S.C. 2001, c. 27.

<sup>57</sup> *Brown v Canada (Citizenship and Immigration)*, 2017 FC 710.

<sup>58</sup> *Brown v Canada*, *Ibid*; See also Brendan Kennedy, "Immigration detainees can be jailed indefinitely, federal judge rules" (July 25, 2017) (online at Toronto Star: <https://www.thestar.com/news/canada/2017/07/25/jailing-immigration-detainees-indefinitely-does-not-violate-charter-federal-judge-rules.html>).

- V. Repeal Section 3(3) of the *Citizenship Act* in order to ensure that all children of Canadian citizens have the right to acquire Canadian citizenship, so as to eliminate potential sources of statelessness.
- VI. Amend Section 4(1) of the *Citizenship Act* to allow foundlings proved to have been born outside of Canada to retain Canadian citizenship if revocation would result in statelessness.
- VII. Create a specific temporary 'stateless person status' for applicants in line with the relevant recommendations in the UNHCR Handbook. The 'stateless person status' should allow persons identified as stateless to be eligible for work, social housing, education, public healthcare and social assistance, etc. In addition, such a status should provide stateless persons with expedited access to permanent resident status, and ultimately, Canadian citizenship.
- VIII. Collect and make publicly available reliable, disaggregated data on statelessness, including data on access to and results of existing statelessness determination measures, stateless men, women and children, stateless persons in the asylum procedure and stateless persons in detention.
- IX. Provide regular training and awareness raising on statelessness and the protection of human rights of stateless persons to all relevant state authorities, including staff of the IRCC, IRB, and CBSA.
- X. Ensure that stateless persons or persons at risk of statelessness are not subjected to arbitrary detention because of their status. Instead, statelessness should be considered as a juridically relevant fact to be assessed when deciding whether to remove or detain persons.