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THE COMMITTEE ON THE RIGHTS OF THE CHILD
87th Pre-Sessional Working Group (28-09-2020 - 02-10-2020)

CANADA

**Civil society submission on nationality and identity
under the United Nations Convention on the Rights of the Child**

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List of Abbreviations

United Nations Convention on the Rights of the Child (CRC)
United Nations Committee on the Rights of the Child's (the Committee)
The United Nations High Commissioner for Refugees (UNHCR)
United Nations General Assembly (UNGA)
Canadian Centre on Statelessness (CCS)
Canadian Citizens Rights Council (CCRC)
Combined fifth and sixth reports submitted by Canada under article 44 of the Convention (Canada's Response)
Committee's Concluding Observations on the Convention on the Rights of the Child (CRC/C/CAN/CO/3-4), 2006 Concluding Observations on the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/CAN/CO/1), and 2012 Concluding Observations on the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/CAN/CO/1) (Concluding Observations)
1954 Convention relating to the Status of Stateless Persons (Statelessness Convention)
1961 Convention on the Reduction of Statelessness (Reduction of Statelessness Convention)
Immigration and Refugee Protection Act (IRPA)
Citizenship Act (Citizenship Act)
Immigration, Refugees and Citizenship (IRCC).
The Immigration and Refugee Board (IRB)

Introduction

1. CCS and CCRC welcome the Committee's review of Canada under the CRC.
2. CCS and CCRC are concerned with the implementation of the CRC which sets out a child's right to be registered immediately after birth, to a name, nationality, and to know and be cared for by their parents. The CRC requires State Parties to fulfil these rights in accordance with other national and international obligations, especially where children would otherwise be stateless. This review presents an important opportunity for Canada to assess its progress in implementing the CRC since ratification on December 12, 1991. This submission outlines CCS' and CCRC's concerns and associated recommendations with respect to the full implementation of the CRC in Canada. CCS and CCRC encourage Canada to fully honour the aspirational vision behind the CRC.
3. This civil society joint submission by CCS and CCRC highlights problems 1) in the realisation of the right of every child to acquire a nationality and the avoidance of childhood statelessness in Canada, and 2) the right of the child to preserve her identity. We welcome the open publication of this submission.
4. Evidence for this submission is drawn from a number of sources including a review of pertinent case law in Canada related to the nationality and statelessness of children, interviews with people affected by certain gaps in Canadian citizenship legislation, a review of briefs submitted to relevant Parliamentary Committees calling for legislative amendments related to nationality and identity, and a comprehensive review of research and data on statelessness in Canada with specific focus on children.

Evidence includes the Canada's Response, Concluding Observations, and the concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012).

5. This submission is outlined as follows:
 - A review of Canada's Report to the Committee as well as all relevant recommendations and observations made by the Committee to Canada since 1995
 - CCS' and CCRC's position on the gaps in Canada's Report to the Committee
 - International calls for action on nationality and identity
 - Nationality and Identity in Canada
 - Positive developments
 - Domestic calls for action on nationality and identity
 - Populations at risk of loss of nationality and identity in Canada
 - Children at risk of loss of nationality and identity in Canada
 - Impacts of nationality and identity as related to children in Canada
 - Summary of recommendations

A review of Canada's 2018 Report to the Committee

6. Canada's Response encompasses its combined fifth and sixth reports submitted by Canada under article 44 of the CRC, due in 2018 to the Committee, the Government of Canada provided Canada's response to the Committee's 2012 Concluding Observations on the CRC, 2006 Concluding Observations on the Optional Protocol on the involvement of children in armed conflict, and 2012 Concluding Observations on the Optional Protocol on the sale of children, child prostitution and child pornography.
7. Canada's Response provides an overview of federal, provincial and territorial (FPT) measures, initiated since Canada's appearance in 2012, related to the implementation of the CRC and its Optional Protocols. Canada noted that in preparing the report, Canada consulted select civil society organizations (CSOs) and Indigenous groups on a draft outline of Canada's Response. Federal government officials also attended workshops convened by CSOs and engaged in discussions on children's rights. Additionally, the

Government of Canada contracted the Students Commission of Canada to consult children in advance of Canada's Response.

8. Our analysis below refers to the Concluding Observations by CRC¹ in 2012 and Canada's Response which pointed out several important aspects of nationality and identity in Canada in Article 7 and 8 of the CRC. We focus on Article 7 because it pertains to children's "right to acquire a nationality". Article 7 obligates states parties to implement this right "in particular where the child would otherwise be stateless." States have an obligation to take every appropriate measure to ensure that no children are left stateless, and state parties to the CRC must implement children's right to a nationality in such a way that the best interests of the child are observed. Article 8 guarantees the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference. Thus, the scope of the review below is limited to Articles 7 and 8 as they are the most related to nationality and identity, the major foci of our advocacy work.

Article 7: Nationality and citizenship

9. Concluding Observations:
 - First, in 2012 the Committee noted their concern regarding some provisions of the *Citizenship Act* amendment which placed significant limitations on acquiring Canadian citizenship for children born to Canadian parents abroad.
 - Furthermore, the Committee was concerned that children born abroad to government officials or military personnel are exempted from such limitations on acquiring Canadian citizenship.
 - The Committee recommended that Canada review the provisions of the amendment to the *Citizenship Act* that are not in line with the CRC with a view to removing restrictions on acquiring Canadian citizenship for children born abroad to Canadian parents.
 - The Committee also urged Canada to consider ratifying the 1954 Statelessness Convention.² This was similar to 2003, when the Committee recommended that Canada take further measures in accordance with article 7 of the CRC, including measures to ensure birth registration and to facilitate applications for citizenship, so as to resolve the situation of stateless children.
10. Canada's Response:
 - Canada is a party to the *1961 Reduction of Statelessness Convention* and Canada complies with its obligation to prevent and reduce future cases of statelessness. Canada noted that protections exist in the IRPA and *Citizenship Act* for stateless people and that any stateless person in Canada requiring refugee protection can access protection through the asylum system. For those who do not require refugee protection they can apply to remain in Canada on humanitarian and compassionate grounds or through other immigration programs.
 - When the Government of Canada amended the *Citizenship Act*, in 2009, it also enacted a safeguarding provision to comply with its obligations under the *1961 Reduction of Statelessness Convention*. Pursuant to the *Citizenship Act*, citizenship will be granted to a child born abroad to a Canadian parent if that child is stateless, and if the other criteria in the *Citizenship Act* are met.³

Article 8: Preservation of identity

11. Concluding Observations:
 - The Committee was concerned that Indigenous and African Canadian children, who are greatly over-represented in the child welfare system often lose their connections to their families, community, and culture.

¹ United Nations, Committee on the Rights of the Child. *Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012)*. (6 December 2012). Available from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en

² *Ibid.*

³ United Nations, Committee on the Rights of the Child. *Combined fifth and sixth reports submitted by Canada under article 44 of the Convention, due in 2018*. (3 March 2020). Available from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en

- The Committee also highlighted that under federal legislation, Indigenous men are legally entitled to pass their status to two generations while Aboriginal women do not have the right to pass their Aboriginal status to their grandchildren.
- The Committee urged Canada to:
 - Ensure full respect for the preservation of identity for all children, and to take effective measures so as to ensure that Indigenous children in the child welfare system are able to preserve their identity.
- The Committee urged Canada to:
 - adopt legislative and administrative measures to account for the rights, such as name, culture and language, of children belonging to minority and indigenous populations and ensure that the large number of children in the child welfare system receive an education on their cultural background and do not lose their identity.
 - Canada revises its legislation to ensure that women and men are equally legally entitled to pass their Aboriginal status to their grandchildren.⁴

12. Canada's response:

- Bill S-3, adopted in December 2017, extends eligibility for registration under the *Indian Act* to descendants of women who lost eligibility upon marriage to a non-Indian man prior to 1985, on a basis fully equal to the descendants of Indigenous men.
- Canada consulted civil society organizations, National Indigenous Organizations and Indigenous groups on three separate occasions. Related to preservation of identity, one Indigenous group noted the need for revitalization of Indigenous culture and language for off-reserve Indigenous children. Similarly, one group asked for a review of measures preserving the cultural identity of Indigenous and racialized children by prioritizing any out-of-home placements in an environment that maintains cultural connections. Particular attention was drawn to the correlation between placement in child welfare institutions and youth homelessness, as well as the need to preserve the identity and culture of Indigenous and Black Canadian children in care.⁵

CCS' and CCRC's Position on the Gaps in Canada's Report to the Committee

13. As noted above, although Articles 7 (nationality and citizenship) and 8 (preservation of identity) relate explicitly to the issues that CCS and CCRC advocate on, we further acknowledge that the issues of nationality and identity are not limited to these Articles, and nationality and identity are in fact deeper root causes and consequences of a litany of issues that spill over into other Articles. Our core position is that the Concluding Observations and Canada's Response cannot be understood without understanding the issues of nationality and identity more broadly. We outline two examples below of this spill over effect.

Ratifying the 1954 Statelessness Convention

14. For example, the Committee noted a direct link between a child's right to nationality and Canada's relationship with the 1954 Statelessness Convention. Canada has not yet ratified the *1954 Statelessness Convention*. The CRC advised in its Concluding Observations that Canada ratify the *1954 Statelessness Convention*. Canada claimed in its Response that ratifying the *1954 Statelessness Convention* is not necessary as its implementation of the *1951 Convention Relating to the Status of Refugees* and the *1961 Reduction of Statelessness Convention* adequately protect non-refugee stateless persons.⁶ This was

⁴ United Nations, Committee on the Rights of the Child. *Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012)*. (6 December 2012). Available from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en

⁵ United Nations, Committee on the Rights of the Child. *Combined fifth and sixth reports submitted by Canada under article 44 of the Convention, due in 2018*. (3 March 2020). Available from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en

⁶ Brouwer, A. (2012). *Statelessness in a Canadian Context: A Discussion Paper*. United Nations High Commissioner for Refugees

challenged directly by a 2015 UNHCR report that investigated the compatibility of Canada's legal framework with the *1954 Statelessness Convention*, and the Working Group on the 39th Session of the Universal Periodic Review in 2018. The 2015 UNHCR Report found that there are gaps in Canadian legislation as it pertains to statelessness in several domains: the definition of stateless person, social housing, public education, healthcare and social assistance, social security, identity papers, travel documents, expulsion, and naturalization.⁷ Without ratification of the *1954 Statelessness Convention*, all of these spill over areas cannot be addressed.

Canada does not define 'stateless person'

15. As a second example, elsewhere in the Concluding Observations outside of Articles 7 and 8, the Committee urged Canada to bring its immigration and asylum laws into full conformity with the CRC and other relevant international standards. The Committee urged Canada to:

- Reconsider its policy of detaining children who are asylum-seeking, refugees and/or irregular migrants; and ensure that detention is only used in exceptional circumstances, in keeping with the best interests of the child, and subject to judicial review;
- Ensure that legislation and procedures use the best interests of the child as the primary consideration in all immigration and asylum processes, that determination of the best interests is consistently conducted by professionals who have been adequately applying such procedures;
- Expeditiously establish the institution of independent guardianships for unaccompanied migrant children;
- Ensure that cases of asylum-seeking children progress quickly so as to prevent children from waiting long periods of time for the decisions;
- Consider implementing the United Nations High Commission for Refugees Guidelines on International Protection No.8: Child Asylum Claims under articles 1(A)2 and 1(F) of the 1951 Convention. In implementing this recommendation, the Committee stresses the need for the State party to pay particular attention to ensuring that its policies and procedures for children in asylum-seeking, refugee and/or immigration detention give due primacy to the principle of the best interests of the child and that immigration authorities are trained on the principle and procedures of the best interest of the child.

16. Yet, Canada cannot address these Special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d), and 32-36 of the CRC) for stateless people, since Canada's IRPA defines a foreign national as "a person who is not a Canadian citizen or a permanent resident, and includes a stateless person."⁸ Canada continues to omit a definition of 'stateless person' in the IRPA. 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. As stateless persons in Canada are included under the general category of 'foreign national' it is difficult to understand how the special protection measures would apply to stateless children who are also asylum-seeking or are refugees. In other words, the way a stateless person is defined in Canada's legislation may adversely affect children and their access to nationality. So, while noting that these recommendations are for asylum-seeking and refugee children, they can very well apply to stateless asylum-seeking and refugee children as well.

17. In summary, the issue of lack of definition on statelessness is not expressed explicitly in the Concluding Observations or Canada's Response related to Articles 7 and 8, but a definition of statelessness is integral to understanding how to fulfil Articles 7 and 8, and the spill over effects into all other Articles.

⁷ Erauw, G. (2015). *Compatibility of the 1954 convention Relating to the status of stateless persons With Canada's legal framework and its International human rights obligations*, 8

⁸ Section 2 *Immigration and Refugee Protection Act*.

18. In the rest of our Report we thus outline why statelessness and identity need to be further understood in order to truly understand the ripple effects of lack of nationality and issues around preservation of identity.

International Calls for Action on Nationality and Identity

19. UNHCR highlights the importance of eradicating statelessness as expressed in the #IBelong campaign.⁹ 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. The Global Action Plan, developed in consultation with States, civil society and international organizations, sets out a guiding framework made up of 10 actions that need to be taken to end statelessness within 10 years. The Plan includes actions to resolve existing situations of statelessness; prevent new cases of statelessness from emerging; and better identify and protect stateless persons. The main purpose is to bring an end to statelessness within 10 years by resolving existing situations and preventing the emergence of new cases of statelessness.
20. In September 2015, the UNGA adopted the 2030 Agenda for Sustainable Development, replacing the Millennium Development Goals which the international community had committed to achieve by 2015. This new Agenda lays the foundation for global development work for the next fifteen years and focuses on economic growth, social development, and environmental protection for all people. There are seventeen goals made up of 169 targets. Goal 16 is "Peace, Justice and Strong Institutions" and target 16.9 is to provide legal identity for all persons including free birth registrations by 2030.

Nationality and Identity in Canada

21. Canada is not a party to the 1954 *Statelessness Convention*. Despite not being a party to the 1954 *Statelessness Convention*, Canada is a party to human rights treaties that have provisions related to statelessness and nationality. Canada acceded to the 1961 *Reduction of Statelessness Convention* in 1978, and Canada ratified the 1951 *Convention Relating to the Status of Refugees* and its 1967 Protocol in 1969.
22. Other than the CRC, Canada ratified 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), 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.
23. 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).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.

⁹ The UNHCR #IBelong campaign aims to eradicate statelessness by the year 2024, see further: <http://www.unhcr.org/ibelong/>.

¹⁰ Organization of American States. 'Member State: Canada'. http://www.oas.org/en/member_states/member_state.asp?sCode=CAN.

24. Canada grants citizenship based on both *jus soli* and first-generation *jus sanguinis* bases.¹¹ 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.¹² All other children born in Canada are entitled to Canadian citizenship, regardless of their parents' legal status or nationality. Another exception exists for children whose Canadian citizen parents were born outside of Canada.
25. 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. Aside from regular naturalisation procedures, the key mechanisms through which stateless persons seek to obtain legal status in Canada are application for permanent residence on humanitarian and compassionate grounds¹³ and application for a discretionary grant of citizenship to the Minister of IRCC.¹⁴
26. Stateless persons who have a fear of persecution have access to the refugee determination system. If their claim is accepted, they become refugees or protected persons¹⁵ under Canadian law and can apply for permanent residency and eventually for citizenship. The 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, including paragraph 89 of the *UNHCR Guidelines on Procedures and Criteria for Determining Refugee Status*.¹⁶
27. As noted earlier, Canada's IRPA defines a foreign national as "a person who is not a Canadian citizen or a permanent resident, and includes a stateless person."¹⁷ However, neither the IRPA nor the *Citizenship Act* and its *Regulations* define statelessness or stateless person.¹⁸ 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.

Positive Developments

28. Bill C-24 was implemented on June 19, 2014 and introduced several measures which appealed to Canadian values and belonging to Canada. Prior to this Bill, revocation of citizenship was limited to naturalised Canadians who acquired their citizenship falsely. The *Strengthening Canadian Citizenship Act* implemented a new revocation model whereby dual nationals convicted of serious crimes could be stripped of their Canadian citizenship. These measures were repealed in 2017 by way of Bill C-6, *An Act to amend the Citizenship Act and to make consequential amendments to another Act*, and as it stands, citizenship can only be revoked if acquired by misrepresentation.¹⁹
29. Bill C-6 also resulted in a revision to Section 5(4) of the *Citizenship Act*, whereby the Minister of IRCC has the discretion to grant citizenship to a person to alleviate cases of statelessness or special and unusual hardship.²⁰ Statelessness was specifically added as a stand-alone ground that can be considered for a discretionary grant of citizenship.²¹

¹¹ Section 3(1) *Citizenship Act*.

¹² Section 3(2) *Citizenship Act*.

¹³ Section 25(1) *Immigration and Refugee Protection Act*.

¹⁴ Section 5(4) *Citizenship Act*.

¹⁵ 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.

¹⁶ United Nations High Commissioner for Refugees. (1992). Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

¹⁷ Section 2 *Immigration and Refugee Protection Act*.

¹⁸ Erauw, G. (2015), 8

¹⁹ See https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/10/changes_to_the_citizenshipactasaresultofbillc-6.html

²⁰ Section 5(4). *Citizenship Act*.

²¹ Government of Canada. *Bill C-6 Receives Royal Assent*. (19 June 2017).

30. Also in 2017, the Department of 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.²² IRCC defines a stateless person as “a person who is not considered to be a national of any state under the operation of its law. To be stateless is to be without nationality or citizenship.”²³ 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.*²⁴

31. This definition provides a benchmark against which stateless persons in Canada can be assessed with respect to applications for residency. The guiding evidence acceptable for applications outlined by IRCC addresses some of the unique circumstances stateless persons find themselves in, for example, lacking certain identity documents including birth certificates.
32. It must be noted, however, that the lack of a statelessness determination procedure and the absence of a legal definition in Canadian law does not address statelessness comprehensively, but limits resolution of cases of statelessness to a case-by-case, discretionary basis instead of enshrining a protection mechanism in law based on legal definitions.

Domestic Calls for Action on Nationality and Identity in Canada

33. CCS²⁵ 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.
- CCS co-hosted the First Summit on Statelessness in Canada.²⁶
 - CCS submitted a brief to the House of Commons Standing Committee on Citizenship and Immigration calling for several amendments to citizenship legislation pertaining to statelessness.²⁷
 - CCS partnered with the Institute on Statelessness and Inclusion to submit a brief on statelessness in Canada for Canada’s third cycle Universal Periodic Review at the United Nations Human Rights Council.²⁸
 - CCS published “Data Collection on Stateless Persons in Canada”,²⁹ which found that the data collection and reporting practices in four government agencies are poor and in need of significant improvement.
 - CCS partnered with Professor Jamie Liew of the University of Ottawa and submitted a proposal to the IRB to adopt a definition of statelessness, enhance information gathering and data collection practices, and create Chairperson guidelines on statelessness.

²² Government of Canada. (11 July 2017). *Humanitarian and Compassionate Assessment: Statelessness*. <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/humanitarian-compassionate-consideration/processing.html>

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ For more information on the Canadian Centre on Statelessness, please see the website www.statelessness.ca.

²⁶ See <http://www.statelessness.ca/summit-2016.html>

²⁷ Canadian Centre on Statelessness. (2016). "Submission to the Standing Committee on Immigration and Citizenship: Bill C-6 and Amendments related to Statelessness." *BILL C-6: An Act to amend the Citizenship Act and to make consequential amendments to another Act*. Government of Canada. <https://www.ourcommons.ca/Committees/en/CIMM/StudyActivity?studyActivityId=8842920>

²⁸ Universal Periodic Review Thirty-ninth session. (11 July 2018). *Report of the Working Group on the Universal Periodic Review: Canada*

²⁹ Canadian Centre on Statelessness. (2017). *Data Collection on Stateless Person in Canada*. http://www.statelessness.ca/uploads/3/1/9/0/31903945/ccs_data_collection_2017.pdf

- CCS submitted an official statement to the 11th session of the United Nations Office of the High Commissioner of Human Rights Minority Rights Forum calling on Canada to define statelessness in its immigration and citizenship law, and to implement a statelessness determination mechanism.
34. CCRC is a federally incorporated not-for-profit organisation established in 2017 to address limitations of democratic rights, equality rights, mobility rights. CCRC has met on several occasions with the offices of Ministers, MPs, Senators, and the Director General of Citizenship to recommend solutions to the problems caused by Canada’s “after first generation” exclusion to citizenship.
35. In 2003, the UNHCR commissioned an initial report on statelessness in Canada. Despite having taken steps in the areas of citizenship at birth, refugee protection, resettlement, permanent resident status, naturalization and detention and removal, the author recommended that Canada ratify the 1954 *Statelessness Convention*. The author recommended that Canada might also consider promoting the establishment of a tribunal or arbitral body to adjudicate disputes and set clear international standards regarding nationality, as was proposed in the International Law Commission’s early draft of the 1961 *Reduction of Statelessness Convention*.³⁰
36. In March 2009, The Canadian Council for Refugees made recommendations to Canada on statelessness. The recommendations included:
- Canada should ratify the 1954 *Statelessness Convention*.
 - Canada should include statelessness as a ground for protection, under the *IRPA*
 - Canada should include statelessness as a ground for resettlement.
 - Parliament should amend the *Citizenship Act* to provide that no child of Canadian parents will be denied Canadian citizenship if this would leave them stateless.
 - Canada should offer resettlement to Palestinian refugees forced out of Iraq.
 - Canadian government agencies should collect and report accurate and timely statistics relating to statelessness.³¹
37. In 2012, the UNHCR commissioned a second report on statelessness in Canada, which concluded that Canada’s laws and policies read as if statelessness does not exist outside of the refugee context, as there is no protection or provision of status given to stateless persons solely on the basis of being stateless. There is no protection mechanism to deal with stateless people who are not also refugees under the 1951 Convention.³²
38. As noted earlier, in 2015, the UNHCR commissioned a third report which investigated the compatibility of Canada’s legal framework with the 1954 *Statelessness Convention*. The report found that there are gaps in Canadian legislation as it pertains to statelessness in several domains: the definition of stateless person, social housing, public education, healthcare and social assistance, social security, identity papers, travel documents, expulsion, and naturalization.³³
39. During the 2016 study of *Bill C-6, An Act to amend the Citizenship Act and to make consequential amendments to another Act* by the House of Commons Standing Committee on Citizenship and Immigration, the following organizations, either in writing or during appearances, recommended either to amend or to repeal section 3(3) *Citizenship Act*, the “after first generation” exclusion:
- The Canadian Expat - repeal³⁴
 - Ontario Council of Agencies Serving Immigrants - repeal³⁵

³⁰ Brouwer, A. (2003). *Statelessness in a Canadian Context: A Discussion Paper*. United Nations High Commissioner for Refugees

³¹ See <https://ccrweb.ca/sites/ccrweb.ca/files/statelessnessprimeren.pdf>

³² Brouwer, A. (2012).

³³ Erauw, G. (2015).

³⁴ See <https://www.ourcommons.ca/Content/Committee/421/CIMM/Brief/BR8221904/br-external/CanadianExpatAssociation-e.pdf>

³⁵ See <https://www.ourcommons.ca/DocumentViewer/en/42-1/CIMM/meeting-7/evidence> for comments by Ms. Debbie Douglas, Executive Director, OCASI, on 14 April 2016, and <https://ocasi.org/ocasi-comments-bill-c-6-citizenship-bill> for full positions, including this topic

- Metro Toronto Chinese and Southeast Asian Legal Clinic - amend³⁶
- Canadian Council for Refugees - repeal or at least exempt stateless children³⁷
- Canadian Bar Association - amend to exclude children who would otherwise be stateless³⁸

40. Lloyd Axworthy, Canada's Minister of Foreign Affairs from 1996-2000, and Allan Rock, Canada's Ambassador to the United Nations from 2003-2006, have publicly called for a repeal as well:³⁹

"A little-known 2009 amendment to the Citizenship Act limits Canadian citizenship to just the first-generation of children born to or adopted by Canadians who live outside Canada. Thus, children born to or adopted by Canadian parents who are travelling, studying, or working abroad become citizens of Canada at birth or at the time of adoption, but their children are not entitled to Canadian citizenship if they are born outside Canada.

This is harmful for at least two reasons.

First, the amendment to the Citizenship Act strikes us as discriminatory, and out of step with the principle that "a Canadian is a Canadian is a Canadian," as articulated by Prime Minister Justin Trudeau. The amendment effectively creates two classes of Canadians: those who can pass along citizenship to their children and those who cannot. Furthermore, the amendment discriminates in favour of federal employees and military personnel who serve outside Canada. Under the current legislation, they are explicitly exempted from the limits on citizenship imposed by the amendment.

Second, Canada is deeply interconnected economically, socially and culturally with communities and countries around the globe. Canadians have a long history of important global contributions in international finance, peacekeeping, United Nations' service, and humanitarian action, to name a few. We should be encouraging Canadians to venture beyond our borders to contribute to the broader global community, whether this be as students, travellers, or professionals – now, more than ever. Unfortunately, the current provisions of the Citizenship Act may have the opposite effect, by deterring Canadians from going overseas to work.

To date, the government has sought to justify this provision based on "simplicity and transparency." We respectfully submit that any administrative advantages are substantially outweighed both by the principles of fairness and equity required by Canadian law, and by the importance of maintaining Canada's standing in, and contributions to, the community of nations.

In terms of scope of impact, it is worth considering that at any point in time, 2-3 million Canadians live, work, or travel overseas. If even 0.5 per cent of these people have children overseas, this would amount to 10,000-15,000 children whose rights are limited and whose options are narrowed by this legislation each year. These numbers underscore the urgency and importance of addressing this matter quickly."

41. More recently, in 2019, the UNHCR commissioned another report to map the prevalence of statelessness in Canada. Their recommendations include:

- Refine data collection on stateless people in Canada, particularly in immigration categories and those in detention

³⁶ See <https://www.ourcommons.ca/DocumentViewer/en/42-1/CIMM/meeting-9/evidence#Int-8878372> comments by Ms. Avvy Go, Clinic Director, Metro Toronto Chinese and Southeast Asian Legal Clinic, 12:42 pm, 21 April 21 2016

³⁷ See <https://www.ourcommons.ca/Content/Committee/421/CIMM/Brief/BR8194086/br-external/CanadianCouncilForRefugees-e.pdf>

³⁸ See <https://www.ourcommons.ca/Content/Committee/421/CIMM/Brief/BR8179717/br-external/CanadianBarAssociation-e.pdf>

³⁹ Axworthy, L., P.C., & Rock, A., P.C. (27 March 2017). More federal action needed to restore lost Canadian citizenship rights. The Globe and Mail. Retrieved from <https://www.theglobeandmail.com/opinion/more-federal-action-needed-to-restore-lost-canadian-citizenship-rights/article34428893/>

- Make the humanitarian and compassionate (H&C) mechanism more systematically accessible, predictable and affordable to stateless people
- Simplify the procedures for stateless persons to access permanent residence status
- Simplify citizenship procedures for stateless persons
- Amend existing legislation to prevent new cases of statelessness, specifically in relation to “second generation born abroad” limitation
- Ensure stateless persons' prompt and full access to social services, including with respect to facilitating access to higher education and work
- End the detention of stateless persons by making use of the various alternatives to detention recently adopted under Canada’s National Immigration Detention Framework.⁴⁰

Populations at risk of Loss of Nationality and Identity in Canada

42. Stateless persons in Canada are made up of a complex and diverse group of people including Indigenous persons, asylum-seekers, permanent and temporary residents who enter Canada through economic and non-economic migration streams, and second-generation children born abroad. Those stateless persons who have pending applications for residency, or whose applications have been rejected may reside in Canada without status, and thus live 'in limbo' and be at risk of detention or removal.⁴¹
43. In the 2016 Census, the Canadian government reported that there were 3,790 stateless persons in Canada: 3,400 are considered as permanent residents and 390 non-permanent residents. 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 centres and hotels. 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.⁴²

Children at Risk of Loss of Nationality and Identity in Canada

Statelessness and loss of national identity with respect to children in Canada or children born to Canadian children is mostly due to technical issues in the interpretation or implementation of nationality laws and procedures.

Second Generation Born Abroad

44. 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, 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 Canada. 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.⁴³ Under Section 5(5) 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.

⁴⁰ Kane, J. (2019). *Statelessness in Canada: A study on the situation of stateless persons in Canada*. United Nations High Commissioner for Refugees.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Section 3(3) *Citizenship Act*.

45. In 2012, under Civil Rights and Freedoms, the Committee recommended that Canada review the provisions of the 2009 amendment to the *Citizenship Act* that are not in line with CRC with a view to removing restrictions on acquiring Canadian citizenship for children born abroad to Canadian parents. In its Concluding Observations, the Committee noted that when the Government of Canada amended the *Citizenship Act*, in 2009, it also enacted a safeguarding provision to comply with its obligations under the 1961 Reduction of Statelessness Convention. Pursuant to the Act, citizenship will be granted to a child born abroad to a Canadian parent if that child is stateless, and if the other criteria in the Act are met. Canada's Response articulated that when the Government of Canada amended the *Citizenship Act*, in 2009, it also enacted Section 5(5) as a safeguarding provision to comply with its obligations under the 1961 Convention on the Reduction of Statelessness.
46. Pursuant to section 5(5) of the *Citizenship Act*, the Minister shall grant citizenship, upon application, to a stateless child born abroad if the person a) was born outside of Canada after April 17, 2009, b) has a birth parent who was a citizen at the time of the birth, c) is less than 23 years of age, d) has been physically present in Canada for at least 1,095 days during the four years immediately before the date of application, e) has always been stateless, and f) has not been convicted of specific criminal offenses.⁴⁴
47. There are three major issues with section 5(5) of the *Citizenship Act*. First, the residency requirement of 1,095 days during the four years immediately prior to the date of application discriminates based on mobility. As several stateless people do not possess identity documents, they often cannot access travel documents. Thus, this residency requirement places an undue burden on the stateless person to migrate to Canada. To reside in Canada for 1,095 days would require valid residency status, however, stateless persons with no valid residency permit are prohibited from entering Canada, and stateless persons with no status in Canada are subject to removal. This requirement restricts an otherwise eligible applicant from applying for a Section 5(5) grant, and thus renders Section 5(5) ineffectual in practice.
48. Second, the requirement that the stateless person to have "always been stateless" is arbitrary and ignores the possibility that the individual became stateless after birth. Several stateless persons are not born stateless but become so during their lives, as evidenced by the regional expulsion of Soviet citizens as a result of the U.S.S.R. collapse and subsequent creation of new states,⁴⁵ and the Dominican Republic's 2013 implementation of legislation which retroactively stripped the citizenship of thousands of Dominican Republic-born descendants of Haitian migrants.⁴⁶
49. Third, these requirements create 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 *Reduction of Statelessness Convention*, Canada is obliged to ensure that its citizenship laws and policies reflect the provisions of the CRC so that those who might otherwise be stateless may be granted citizenship.
50. 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.⁴⁷ An expert meeting on the 1961 Convention convened by UNHCR concluded as follows:

⁴⁴ Section 5(5). *Citizenship Act*. 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. This section does not present a challenge for stateless children as they will have already fulfilled the required residency and travel requirements for their permanent residency.

⁴⁵ European Network on Statelessness (ENS). (2019.) *Issues*. <https://www.statelessness.eu/issues>

⁴⁶ Blake, Jillian. (2017.) "Race-based statelessness in the Dominican Republic" in *Understanding Statelessness*. Edited by Tendayi Bloom, Katherine Tonkiss and Phillip Cole. Routledge: Abingdon, 102-116

⁴⁷ United Nations High Commissioner for Refugees. (2014). *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 (note 51), para 5.2.7; PACE, Resolution 2099 (2016) (note 51), para 12.2.2.

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 application procedure, international human rights law, in particular the CRC, obliges States to accept such applications as soon as possible after birth.⁴⁸

51. Furthermore, Article 2 of the CRC stipulates that the State has a duty to respect and ensure the rights set forth in CRC *"irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."* (Art. 2). Restricting a child's eligibility for Canadian citizenship based on his or her parent's place of birth is thus inconsistent with Article 2 of the CRC.
52. Despite its apparent consistency with Article 4 of the *1961 Reduction on Statelessness 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 ICCPR/CRC and the *1961 Reduction on Statelessness Convention*.
53. Canada's Second Generation Born Abroad provision, section 3(3) of the *Citizenship Act*, which restricts the automatic granting of Canadian citizenship to the first generation born abroad, outlined above, has the potential to impact children who would otherwise be entitled to Canadian citizenship.
54. Jim is the Canadian-born parent of children born outside of Canada. His children were born in a country that recognises *jus soli* citizenship only, and they will not be able to pass this citizenship to their children. His children are first generation born abroad Canadians, but they have been granted Canadian citizenship through descent. Jim's unborn grandchildren, however, will not be eligible for Canadian citizenship because his children were not born in Canada. If Jim's grandchildren are born in a country that does not recognise *jus soli* citizenship, they will be stateless. Given this risk, Jim explains how his children's mobility is restricted. Jim's children are limited in their future life choices as they must take into consideration the nationality laws of each country they travel to, in case they were to have a child there.

"There is a risk of statelessness. Mobility is something, unlike other Canadians, my children [...], unless the law changes, have to really seriously weigh [...], which is very troubling to us, not just because it's an issue of identity. It's quite troubling, taking a job somewhere could lead to this situation where the family could be split up, or someone could be kind of stranded, or turned away. And in some countries, having a connection to some other country, is the reason why they pass on citizenship, or don't let you become a citizen. By birth anyway. It's something we think about a lot. It's something that we would like to see change. Every citizen has a right to mobility under the Constitution, to leave Canada and to come back, so what does that mean if you cannot come back with your children? When people talk about statelessness, they typically talk about it in a context of the individual, but especially when we are talking about dependent minors, it's really a discussion that merits looking at the family unit. That's where our concern lies." [Jim]

This case demonstrates that the impacts of the second generation born abroad provision can extend to a Canadian born person's grandchildren. Family separation in this context is thus in contravention of a

⁴⁸ United Nations High Commissioner for Refugees. (2011). *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions")*.

child's right to family life as articulated in Articles 7, 9, 10, 16 and 18 of the CRC, and the best interests of the child as outlined in Article 3.

55. Article 8 of the CRC confers the right of all children to maintain their identity, including nationality, as recognized by law. In evaluating Canada's obligations as a signatory, we ask the committee to consider the *Canadian Charter of Rights and Freedoms*, which is the highest law in Canada, and which guarantees equality rights, mobility rights, and multicultural rights.⁴⁹
56. Section 15(1) *Canadian Charter of Rights and Freedoms* sets out equality rights and establishes that "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." Because of section 5(5) *Citizenship Act*, Canadian children who are born as Canadian citizens outside of Canada do not enjoy the same benefits as other Canadians. Of further consideration, Canadian citizenship law allows no way for Canadians born abroad to attain the full rights of citizenship. Canadian citizens who are naturalized enjoy the full benefits of citizenship, but Canadians born abroad have no way to attain the full benefits of citizenship, even if they later reside in Canada and meet all the requirements otherwise required to naturalize. One's place of birth is an immutable quality, and by denying equal benefits due to an immutable quality -- in this case Canadian parentage -- the section 3(3) *Citizenship Act* thereby conflicts with this section of the Canadian constitution.
57. Section 6(1) *Canadian Charter of Rights and Freedoms* sets out mobility rights which state that "Every citizen of Canada has the right to enter, remain in and leave Canada." Section 3(3) *Citizenship Act* serves to penalize Canadian children born abroad who later consider leaving Canada, and in so doing, limits a constitutionally protected right in Canada.
58. Section 27 *Canadian Charter of Rights and Freedoms* states that "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." Under the Canadian constitution, Canada must not confirm fewer rights to those who have ties to more than one culture, which is the very underpinning of the "after first generation" exclusion to citizenship under section 3(3) *Citizenship Act*.

Adopted Children

59. The Committee's concluding observations in 2012 did not refer specifically to adopted children and their risks of statelessness. Under Article 8, The committee did express in its concluding observations that Indigenous and African Canadian children, who are greatly over-represented in the child welfare system often lose their connections to their families, community, and culture. Canada noted, in their response, that in consultation with civil society, one Indigenous group noted the need for revitalization of Indigenous culture and language for off-reserve Indigenous children. Similarly, one group asked for a review of measures preserving the cultural identity of Indigenous and racialized children by prioritizing any out-of-home placements in an environment that maintains cultural connections. Particular attention in the civil society report was pointed to the correlation between placement in child welfare institutions and youth homelessness, as well as the need to preserve the identity and culture of Indigenous and Black Canadian children in care. Although not directly related to stateless children, these are important points to keep in mind.

⁴⁹ See <https://laws-lois.justice.gc.ca/eng/const/page-15.html>

60. Canada's IRPA provides for the application of permanent residency for adopted children.⁵⁰ This application process requires proof of an adoption order.⁵¹ Canada's *Citizenship Act* provides that adopted children may become Canadian citizens without having first to obtain permanent resident status.⁵² This application process requires proof of birth of the child and a record of the biological parents' identity and/or death, if applicable and available.⁵³ Stateless children thus may not qualify for either of these adoption processes if they are unable to provide proof of their birth, or their parents' births or deaths. This is a particular challenge for children born in countries where they are discriminated against on the basis of their parents' gender,⁵⁴ or their own ethnicity.⁵⁵ The lack of proof of birth can adversely impact the provision of other required documents for an application for citizenship including an Adoption Order, Judgment or Certificate.⁵⁶
61. The case of Wildene Alexis Earle is an example of the impact statelessness can have on adoption applications. Wildene Earle was born in the Dominican Republic, which will not recognize her birth citizenship as her parents were not legal residents of the Dominican Republic when she was born. Dominican Republic's 2013 constitutional amendment permitting the retroactive stripping of citizenship from persons born to irregular migrants has elicited global condemnation both for its inherent discrimination, and the impact on the well-being of thousands of its own people.⁵⁷ The Earle family of Canada sought to adopt Wildene Earle and applied for a Temporary Residence Permit on her behalf. They encountered significant challenges in securing identity documents and an adoption order from both Haiti and the Dominican Republic. The Permit was denied on several accounts, including the lack of identity documents for Wildene. The Earle's sought appeal to the Federal Court, which found that Wildene Earle's statelessness was of "minimal significance" and referred the Earle's application for a reassessment.
62. This case highlights that statelessness is both a root cause and consequence of the intersectional discrimination faced by children who lack identity documents, as well as the disproportionate burden faced by adoptive families in accessing identity documents for stateless adoptee children. This case demonstrates the importance of Article 3, which highlights that children's best interests shall be given primary consideration. Further, Article 6 underlines that the State must protect every child's right to life and ensure the survival and development of the child (Art. 6). Wildene's case was drawn out over the course of 10 years, from when she was 4-14 years old. Her situation seems inconsistent with Articles 3 and 6.

Deserted Children

63. Canada's *Citizenship Act* grants Canadian nationality to deserted children, otherwise known as foundlings, but discriminates based on age and nationality. The Act 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.⁵⁸ The Act does not provide protection against statelessness where a foundling age seven or under is determined to have been born abroad, even where revocation of Canadian citizenship would result in statelessness.

⁵⁰Section 117(1)(g) *Immigration and Refugee Protection Regulations*.

⁵¹ See <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-5196-sponsorship-adopted-children-other-relatives-sponsor.html#5196E4>

⁵² Section 5.1. *Citizenship Act*.

⁵³ See <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/application-canadian-citizenship-adopted-person.html>

⁵⁴ 25 countries deny women equal rights to pass nationality to their own children. See <https://equalnationalityrights.org/>

⁵⁵ United Nations High Commissioner on Refugees. (2017). "This is Our Home": Stateless Minorities and Their Search for Citizenship. Available at <https://www.unhcr.org/ibelong/stateless-minorities/>

⁵⁶ *Alexis v. Canada (Citizenship and Immigration)*, 2020 FC 190

⁵⁷ See Amnesty International. (2016). *Where are We Going to Live? Migration and Statelessness in Haiti and the Dominican Republic*; UN High Commissioner for Refugees. (2015). *Dominican Republic urged not to deport stateless Dominicans*; Inter American Commission on Human Rights (IACHR). (2015). *Situation of Human Rights in the Dominican Republic*.

⁵⁸ Section 4(1) *Citizenship Act*.

64. Furthermore, the limitation at age of seven is arbitrary and problematic as it restricts the granting of Canadian nationality to deserted children from the ages of eight to seventeen. Thus, deserted children of these ages are ineligible for Canadian citizenship. For deserted children of the ages between eight and seventeen there is no protection against statelessness, in that if they are found to be stateless or they cannot prove their nationality, Canada does not grant citizenship to them.
65. 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 CRC, so that those who might otherwise be stateless may be granted citizenship.
66. 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'.
67. The guiding principles of the CRC are integral when a child, from ages 8-17 may not have recourse for applying for citizenship due to their circumstance as a deserted child. Article 2 of the CRC underlines that the State has a duty to respect and ensure the rights set forth in the CRC "*irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*" Article 3 states that in all government action the best interests of the child shall be a primary consideration; the State must ensure the child such protection and care as is necessary for his or her well-being; and all institutions, services and facilities of the State responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision. Additionally, Article 6 underlines that the State must protect every child's right to life and ensure the survival and development of the child. Finally, Article 12 asserts that the State should ensure the child's right to express his or her views freely, and these views must be given due weight. In particular, the child should "*be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child*"
68. As these Articles note, the child's rights, best interests, protection, right to life, and right to express views are integral aspects of the fulfilment of the CRC. If the deserted child becomes stateless, this law may also contravene with other Articles of the CRC such as the right to freedom of movement (Article 10), the right to family life (Articles 7, 9, 10, 16 and 18), the right to the highest attainable standard of health (Article 24), the right to an adequate standard of living (Article 27) the right to education (Article 28)

Impacts of Nationality and Identity issues as related to Children in Canada

The following section presents an overview of how the status of stateless parents in Canada can impact their children's enjoyment of rights as articulated in the CRC.

69. 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. Stateless persons in Canada who are without identity documents cannot apply for a work permit. 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.⁵⁹ Restricting a stateless person's access to legal employment may negatively impact other areas of their lives including health care, stress levels, relationships with their loved ones, specifically children, and their overall well-being. Canada's practice of restricting a stateless parent's access to employment is thus in contravention of a child's right to an adequate standard of living, as articulated in Article 27 of the CRC.

70. Not having a status in Canada has a substantial impact on a stateless person's ability to secure basic needs, such as adequate housing and nutrition. 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.⁶⁰ In this context, immigration status can be seen as a barrier to one's human right to shelter.⁶¹ Children of stateless persons in Canada who experience housing insecurity are particularly vulnerable, whose right to adequate standard of living is enshrined in Article 27 of the CRC.
71. 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.⁶² 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.⁶³ Depriving a stateless parent's access to employment and adequate housing has a direct impact on a child's right to an adequate standard of living (Article 27), and a child's right to the highest attainable standard of health (Article 24).
72. Stateless persons without regular 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. 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 manoeuvring the immigration system, trying to get a visa or permit, and living without a home can lead to problems such as depression and anxiety. Hopelessness and despair are experienced by some stateless persons in Canada who experience challenges in accessing a work permit, for example, and therefore living independently seems unlikely. This can lead to feeling completely hopeless, and the risk of addiction or suicide.⁶⁴ The mental health of parents has a direct impact on a child's well-being. Furthermore, a stateless child who is eligible for provincial health care may be required to pay for health care services. This is an egregious contravention to a child's right to the highest attainable standard of health (Article 24), a child's right to non-discrimination (Article 2), and the best interests of the child (Article 3).
73. 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.⁶⁵ The 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."⁶⁶ 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 question,

⁵⁹ Kane, J. (2019).

⁶⁰ *Ibid.*

⁶¹ Note that on 21 June 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." Section 4 *National Housing Strategy Act*.

⁶² Kane, J. (2019).

⁶³ 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.

⁶⁴ Kane, J. (2019).

⁶⁵ Erauw, G. (2015), 58

⁶⁶ Section 30(2) *Immigration and Refugee Protection Act*.

their parent or legal guardian, or by requiring payment of school fees.⁶⁷ 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. Furthermore, the cost of day-care is not subsidised for those without status, preventing stateless parents from enrolling their children into day-care programs.⁶⁸ Inconsistencies between the application of federal and provincial law in Canada with respect to a stateless child's access to education can be discriminatory and thus a contravention of a child's right to non-discrimination (Article 2), the right to education (Article 28), and the best interests of the child (Article 3).

74. 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,⁶⁹ 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*.⁷⁰ Detention of stateless persons in Canada with children may result in undue harm to the child. Family separation in this context is thus in contravention of a child's right to family life as articulated in Articles 7, 9, 10, 16 and 18 of the CRC, and the best interests of the child as outlined in Article 3.

Recommendations

75. General Measures of Implementation: In light of “*General measure of implementation on the Convention on the Rights of the Child*” ([General Comment No. 5 \(2003\)](#)),⁷¹ we hope the Committee will consider urging the Government of Canada to ensure the right of every child to acquire a nationality and to solve statelessness:
- I. Ratify the *1954 Statelessness Convention*, in accordance with the Committee's 2012 recommendation to Canada.
 - II. Amend the *Citizenship Act* and IRPA to include a definition of stateless person in accordance with international law, specifically the *1954 Statelessness Convention*.
 - III. Implement a statelessness determination procedure in accordance with international law, specifically the *1954 Statelessness Convention*.
 - IV. 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 education, health care, and employment.
 - V. Collect and present data and statistics on stateless children, access to birth registration and documentation, implementation of the nationality law, etc.
 - VI. Collect data on children of Canadian citizens born abroad, including those people ineligible for citizenship under s. 3(3) *Citizenship Act*.
 - VII. 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.⁷²
 - VIII. Ensure widespread and non-discriminatory implementation of national law and of court decisions.

⁶⁷ Erauw, G. (2015), 60-66

⁶⁸ Kane, J. (2019).

⁶⁹ See for example *Ali v Canada (Attorney General)*, 2017 ONSC 2660.

⁷⁰ *Canada (Public Safety and Emergency Preparedness) v China*, 2019 SCC 29; *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9.

⁷¹ Available at: <http://www.refworld.org/docid/4538834f11.html>.

⁷² Government of Canada. Canada Border Services Agency. (2020). <https://www.cbsa-asfc.gc.ca/security-securete/detent/nidf-cndi-eng.html>

- IX. Enhance international cooperation in efforts to ensure every child's right to a nationality, including through supporting and cooperating with the UNHCR Campaign to End Statelessness and the Global Campaign for Equal Nationality Rights and including targets in its National Action Plan under the Sustainable Development Goals related to the achievement of universal birth registration and legal identity for all.
- X. Review and reform our laws through consultation with communities and civil society to ensure we have a co-ordinated approach to managing statelessness and preventing statelessness in future generations.

76. Recommendations on the content of the CRC: Based on the content of this submission, the following recommendations are made which we hope the Committee will consider in urging the Government of Canada to ensure the right of every child to acquire a nationality and to solve statelessness:

- XI. Reform existing law and policy to remove discriminatory provisions, enhance safeguards against statelessness and address any gaps in national legislation that undermine the child's right to acquire a nationality under Article 7 CRC.
- XII. Address the current gaps in the law which allows particularly vulnerable children who are stateless or at risk of statelessness, to reach adulthood without having accessed Canadian nationality. Specifically,

Second General Born Abroad

- XIII. Repeal the second generation born abroad restriction, Section 3(3) *Citizenship Act*.
- XIV. Amend Section 5(5)(e) *Citizenship Act* to "has always been stateless or became stateless for reasons beyond his or her control."
- XV. Waive the residency requirement for those stateless individuals who are unable to migrate to Canada for lack of identity and/or travel documents.
- XVI. Amend Section 5(5)(b) to "has a birth or adoptive parent who was a citizen at the time of the birth, or familial ties to someone who was a citizen at the time of the birth."
- XVII. Grant nationality expeditiously and retroactively to those who have been wrongfully denied nationality due to the discriminatory implementation of Sections 5(5)(e) and 5(5)(b).

Adopted Children

- XVIII. Provide for special consideration to be applied to adoptee residency and citizenship applications by stateless children, or children who cannot prove their nationality, for exemption from the requirement to provide identity documents including proof of birth, proof of nationality, proof of parental lineage.
- XIX. Grant nationality expeditiously and retroactively to those children who have been wrongfully denied nationality due to the discriminatory implementation of adoption policies and practices relating to requiring proof of identity and/or nationality.

Deserted Children

- XX. Extend the age of deserted children to age 17.
- XXI. Canada's legal framework does not have adequate safeguards to protect all children born in the territory (or foundlings) from statelessness. We recommend that where a deserted child is found to have been born abroad, Canada grants citizenship to that child irrespective of whether that child possesses nationality of their birth country.
- XXII. Eliminate the arbitrary time period of "within seven years of being found" wherein a deserted child granted Canadian citizenship is subject to citizenship revocation.
- XXIII. Grant nationality expeditiously and retroactively to those who have been wrongfully denied nationality due to the discriminatory implementation of the age limit of seven years, and the revocation of Canadian citizenship provision "within seven years of being found".