

ISSN: 2582 - 2942



LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- VI

AUGUST 2020

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR IN CHIEF

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

EDITOR IN CHIEF

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE

OF ARBITRATORS

PHONE - +91-8500832102

EDITOR

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+ YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK EXPERIENCE IN BANKING SECTOR; CONTENT WRITER FOR BUSINESS TIMES AND ECONOMIC TIMES; EDITED 50+ BOOKS ON MANAGEMENT, ECONOMICS AND BANKING;

ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS
INTERNATIONAL UNIVERSITY) - MARKETING
MANAGEMENT

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION
BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL
AND ADMINISTRATIVE LAW)., NET (TWICE) AND
SET (MAH.)

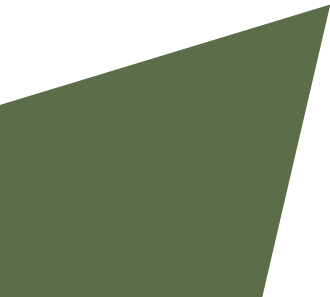
EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

ABOUT US

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



**Statelessness and inclusion of Legal identity in Sustainable development
goals**

Tanya Kukade

ABSTRACT

Every person has an inherent right to a nationality as it is believed that all rights arise from this basic right.¹ The Universal Declaration of Human Rights (“UDHR”), states that every person has an inherent right to a nationality.² In the case of stateless persons, this right to a nationality is rendered void, they have no nationality to claim rights from. The researcher aims at creating a link between the provisions of the conventions the lacunae therein which necessitated the need for imbining legal identity as a goal under the Sustainable Development Goals which were seeked to be achieved by 2030. The researcher also analyses the scope of the goal as included in the draft of the SDGs by the United Nations High Commissioner for Refugees as endorsed by the United Nations. The researcher analyses the various literature available in this regard in order to gather and enumerate suggestions in this area of research.

Keywords: nationality, stateless, rights, SDGs, legal identity

¹ Perez v. Brownwell, 356 U.S. 44, 64 (1958).

² UN General Assembly, Universal Declaration of Human Rights, Art. 15, 10 December 1948, 217 A (III), <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 13 September 2019]

LITERATURE REVIEW

The researcher has gathered relevant information for the purposes of an analysis from numerous sources, firstly the United Nation's High Commissioner for Refugees's Handbook for Parliamentarians³ which provides for an overview of the entire concept of nationality and statelessness. It discusses in detail the existing international legal framework for the right of an individual to obtain or retain nationality and for the reduction of statelessness. It further discusses certain instances or general criterion developed by the researchers which helps in identifying stateless persons although the said discussion is merely for the purposes of the research and does not exhaustively provide any straight jacket formula for the identification of stateless persons. The said issue continues to prevail even today and must be validly and expediently addressed. Thus, the handbook merely brings together the existing knowledge into an organised format without actually addressing the issues of concern although it provides for certain basic steps that can be undertaken by organisations as well as individuals in order to help prevent the occurrence of statelessness situations. The preventive measures provided for in the handbook are merely illustrative and not based on experience or application.

Secondly, the researcher has relied on the Self Study Module of UNHCR on Statelessness as published in 2012⁴ produced with the assistance of the European Union, which is meant for learning purposes only and does not represent the UNHCR's position on the issued discussed therein even though it answers some of the most important questions pertaining to Statelessness. The module discusses every aspect of statelessness in detail, and also contains discussions and research on various aspects of nationality. The module goes on to discuss the international approach and response to statelessness upto 2012 prior to the inclusion of Legal identity in the Sustainable Development Goals by the United Nations. The Module provides for general steps pertaining to the identification, prevention and reduction of statelessness and highlights the need for addressing this pressing issue and by a conjoint action of the United Nations with the independent bodies taking part in alleviating social issues. Even though the module provides for insightful information and answers the most important questions pertaining to the issue of statelessness it is merely for discussion purposes and provides no obligatory suggestions or

³ UN High Commissioner for Refugees, (2005) *Nationality and Statelessness. A Handbook for Parliamentarians*, (20th Oct. 2005), <http://www.unhcr.org/refworld/docid/436608b24.html> (Accessed 15th Sept. 2019).

⁴ Self-Study Module on Statelessness, UN High Commissioner for Refugees 2012, http://archive.ipu.org/PDF/publications/statelessness_en.pdf, (Accessed on 14th Sept. 2019).

mandates for the authorities or organisations in order to take steps towards the prevention of statelessness.

Further, the researcher reviews the Report of the International Consultation on Human Rights of Stateless People⁵ which analyses data pertaining to stateless persons submitted by numerous researchers and contains a compilation of numerous research articles pertaining to individual aspects of Statelessness and Nationality issues existing worldwide. It contains research material pertaining to the thematic presentations on the general topic of statelessness and regional perspectives dealing with issues pertaining to stateless groups in Bangladesh, Burma, Haiti, South Sudan and Netherlands. The Report provides a restricted approach towards the issue of statelessness and merely compiles other research articles without providing for a reliable analysis of the issue of statelessness. The researcher has referred to the regional studies mentioned in the report for the purposes of better understanding of the practical issues faced by stateless persons in various regions of the World.

⁵ Report of the International Consultation “Towards an Ecumenical Advocacy on Rights of Stateless People”, Human Rights of Stateless People, Commission of the Churches in International Affairs, WORLD COUNCIL OF CHURCHES , ISBN: 978-2-8254-1625-9, (27th Feb. to 01st Mar. 2013), <http://publications.oikoumene.org>.

INTRODUCTION

Every person has an inherent right to a nationality as it is believed that all rights arise from this basic right.⁶ The Universal Declaration of Human Rights (“UDHR”), states that every person has an inherent right to a nationality.⁷ In the case of stateless persons, this right to a nationality is rendered void, they have no nationality to claim rights from. The right to nationality is fundamental, as many rights which are granted to individuals are granted by a state only to nationals; many states only allow their own nationals to exercise full civil, political, economic and social rights within their territory⁸ and this protection for nationals of a state is effective at both a domestic and international level, as states are able to protect its nationals in the international arena under principles of International Law.⁹

Statelessness came to be recognized as a glaring issue of concern to the protection of human rights worldwide and subsequently came to be included within the Sustainable Development Goals (“SDGs”) determined by the United Nations.

NATIONALITY, LEGAL IDENTITY & STATELESSNESS

Nationality is the legal bond between a State and an individual which pertains to or signifies a legal membership.¹⁰ Nationality may be acquired automatically at birth, either through the parents or by virtue of being born in a country. Although, membership may also be acquired by means of an application to become a national of a country upon satisfying certain criteria as may be laid down by the individual countries. Such a nationality signifies certain rights and responsibilities for the State as well as the individual.

A person who is stateless lacks this membership and will be seen and treated as a foreigner by every country in the world. This phenomenon has also been described as “de jure statelessness”.¹¹

⁶ Perez v. Brownwell, 356 U.S. 44, 64 (1958).

⁷UN General Assembly, Universal Declaration of Human Rights, (10th Dec. 1948), <https://www.refworld.org/docid/3ae6b3712c.html> [Accessed 13th Sept., 2019], Art. 15.

⁸ Weisbrodt, D and Collins, C., ‘The Human Rights of Stateless Persons’, (2006), *HUMAN RIGHTS QUARTERLY*, 28, pg.248.

⁹ Elyse Wakelin, *The Implications of Statelessness on the Politics of Protection*, E-International Relations Students, (06 Aug., 2012), <https://www.e-ir.info/2012/08/06/the-implications-of-statelessness-on-the-politics-of-protection/>.

¹⁰Self-Study Module on Statelessness, UNHCR 2012, http://archive.ipu.org/PDF/publications/statelessness_en.pdf, (Accessed on 14th Sept. 2019).

¹¹What is Statelessness, The International Observatory on Statelessness, <https://www.nationalityforall.org/whatis>.

According to International law, it is for each individual state to determine its own domestic laws in order to stipulate criterion to achieve nationality. Traditionally, states follow either the principles of jus soli or jus sanguinis for the attribution of nationality. The former stipulates nationality attribution to the place of birth, whereas the latter entails nationality attribution through parental descent. According to Chan, “Statelessness arises as a result of a deliberate act of deprivation of nationality by the state concerned, as a result of territorial change, or more frequently, as a result of a conflict of nationality law.¹² It is when this conflict of laws occurs that cases of statelessness arises.

A person is considered stateless if he or she is not considered a national by any State under the operation of the law.¹³ The said situation remains a glaring anomaly having direct implications on the rights bestowed upon an individual or a minimum level of protection of rights of an individual granted by the State. As stated above, the legal bond in terms of the nationality granted by the state is absent in circumstances of statelessness.

Statelessness can occur for several reasons, including discrimination against particular ethnic or religious groups, or on the basis of gender; the emergence of new States and transfers of territory between existing States; and gaps in nationality laws. Whatever the cause, statelessness has serious consequences for people in almost every country and in all regions of the world.¹⁴

Whether or not a person is stateless can be determined based on an assessment of relevant nationality laws and how these laws are implemented by the State. Since nationality is generally acquired on the basis of an existing, factual link between the individual and the State – some kind of connection either with the territory (place of birth or residence) or with a national (descent, adoption or marriage) – the task at hand is to look at the domestic nationality legislation and practice of States with which an individual enjoys a relevant factual link, to see if nationality is indeed attributed to the individual under any State’s law.¹⁵ If not, then he or she is stateless.

¹² Chan, J., ‘*The right to a nationality is a human right: the current trend towards recognition*’, *HUMAN RIGHTS LAW JOURNAL*, (1991) Vol. 12, No. 1, 2, pg. 12.

¹³The *Convention relating to the Status of Stateless Persons*, 1954, UNITED NATIONS, <http://www2.ohchr.org/english/law/stateless.htm>, Art. 1.

¹⁴ Ending Statelessness, UNHCR, <https://www.unhcr.org/stateless-people.html>.

¹⁵ Supra at 10.

CATEGORIES OF STATELESSNESS

There are two categories of stateless persons; de jure statelessness and de facto statelessness. Even though statelessness renders an individual without an effective nationality, the distinction between the two categories has both theoretical and practical implications for the level of protection provided for those found to be stateless under either category.

The category of de jure statelessness is defined in the 1954 convention which states that ‘the term stateless person means a person who is not considered a national by any state under the operation of its law’.¹⁶ Under this definition, whether a person is stateless is a question of law, focusing on the existence of a formal bond of nationality with a state under domestic law. Those who do not have an effective and genuine link are de jure stateless.

Subsequently, some persons possess a nationality but are not able to rely upon it for protection¹⁷ and are in a similar situation as a stateless person. These persons are deemed to be de facto stateless and are not protected under the 1954 convention. The issue of de facto statelessness, due to its exclusion from the conventions has developed into a grey area resulting in confusion. Since one is considered to be de facto stateless once his nationality is deemed to be ineffective, without any mention of a criterion of what constitutes ineffectiveness an anomaly in international law approach towards such persons has been created. For example, in situations where a person is outside the country of his or her nationality and is unable, or for valid reasons, unwilling to avail him or herself of the protection of that country.¹⁸ In certain situations they may also be considered as refugees.

The 1961 Convention¹⁹ includes a resolution recommending “that persons who are stateless de facto should as far as possible be treated as stateless de jure to enable them to acquire an effective nationality”. The utility of the concept remains rather limited since there exist no legal imperatives to grant such stateless persons nationality by the States.

¹⁶ *Supra* at 13.

¹⁷ Van Waas, L. ‘*The Statelessness Phenomenon and a first encounter with the International Response*’, *NATIONALITY MATTERS. STATELESSNESS UNDER INTERNATIONAL LAW*, Mortsel: Intersentia, pg.20.

¹⁸ UN High Commissioner for Refugees, Expert Meeting - The Concept of Stateless Persons under International Law (Summary Conclusions), (May 2010), Section II.A, <http://www.unhcr.org/refworld/docid/4ca1ae002.html>.

¹⁹ *The Convention on the Reduction of Statelessness, 1961, UNITED NATIONS*, http://untreaty.un.org/ilc/texts/instruments/english/conventions/6_1_1961.pdf.

The distinction between the two types of statelessness developed when the drafters of the two conventions failed to include de facto statelessness in the definition. This was done in an attempt to prevent any overlap with the 1951 Refugee Convention; as the Refugee convention dealt with de facto statelessness.²⁰ However the assumption of all de facto stateless persons being refugees is misplaced. A definition of statelessness is important in order to preclude situations where a person may be de facto but not de jure stateless. The distinction signifies that many stateless persons are excluded from the protection of the conventions.

Due to the non-binding nature of International law principles, it is unlikely that de facto stateless persons shall be afforded equal levels of protection as de jure stateless persons. In essence if a stateless person is to receive protection under international legal frameworks it is essential that they are able to prove de jure statelessness.

The primary reason for this is that there has been limited support for the statelessness conventions by the international community; the two conventions relating to stateless persons have had few ratifications. According to the UNHCR, as of 02nd July 2012, the 1954 convention had 72 state parties (most with reservations) (UNHCR 2012a), whereas, the 1961 convention has only 45 state parties (UNHCR 2012b). This limited level of international support means that the two conventions have in fact only had the opportunity to have minimal impact.

CAUSES OF STATELESSNESS

In various countries, citizenship as well as nationality are terms which have been used synonymously, although there are numerous other countries which vary in their approach towards these concepts hence a proper definition of the terminology seems important.

For a person to be stateless it is not relevant how the person came to be without a nationality or whether there is the possibility for the person to acquire a nationality by taking some kind of action one only has to objectively consider whether the person at the given point of time is considered as a national by any state. Statelessness may occur either by migration or non-migratory means. One need not prove that an individual lacks the recognition by the State of being a national.

²⁰ Weisbrodt,D and Collins,C., '*The Human Rights of Stateless Persons*', (2006), *HUMAN RIGHTS QUARTERLY*, 28, pg.252.

Nationality is almost always granted based on certain factual links between a person and a state, which may either be the links through the family or through territory.

Further, to determine whether a person is considered as a national by a state under the operation of its law, one has to analyse the application of nationality laws by the state. Since the State is responsible for drafting such nationality laws by which one may acquire nationality as well as have it withdrawn, it is of immense importance that such laws be drafted with precision and correctly applied. In some cases, an objective analysis of the law would lead to the conclusion that the person is a national, but the state may not in practice follow the letter of the law, so the analysis must be based on how the competent authorities interpret the law. An example is children who are of unknown parentage in a country where nationality is acquired based on descent from a national. Fortunately, most nationality laws recognize them as nationals of the state in which they are found.

There are many causes of statelessness which have been highlighted by the UNHCR's executive committee (UN High Commissioner for Refugees 2006). Firstly are the restrictions which may be applied to parents on passing on their nationality to their children. This is prominent in countries which apply the *jus soli* principle for the attribution of nationality. In particular, this refers to the denial of many women's ability to pass on nationality as many countries only afford the *jus sanguinis* principle to parental descent not maternal. This creates statelessness when a father is either stateless himself or has died and so has no nationality to pass on leaving the child stateless. The renunciation of nationality without having secured another nationality and the automatic loss of citizenship from prolonged residence abroad are other key causes for statelessness.

For women, there also exists the possibility of loss of nationality through marriage to an alien. This occurs where conflicting nationality laws exist, i.e. where marriage to an alien result in the automatic renunciation of the wife's nationality but the husband's nationality is not automatically acquired upon marriage. Furthermore, the deprivation of nationality due to discriminatory practices is cause of statelessness seen among the Bihari persons in Bangladesh.²¹

²¹ Report of the International Consultation "Towards an Ecumenical Advocacy on Rights of Stateless People", Human Rights of Stateless People, Commission of the Churches in International Affairs, WORLD COUNCIL OF CHURCHES, ISBN: 978-2-8254-1625-9, (27th Feb. to 01st Mar. 2013), <http://publications.oikoumene.org>.

²¹ *Perez v. Brownwell*, 356 U.S. 44, 64 (1958).

The fact that a stateless person can be a refugee, if in addition to not being considered as a national by any state they also meet the definition of Article 1 of the 1951 Refugee Convention (i.e. have fled their country due to a fear of persecution). Statelessness may occur upon a change of civil status of an individual by way of adoption, marriage or divorce.

Citizenship law that discriminates against women is another common way in which people become stateless. [Um Chadi](#)²² explains how, despite being a Jordanian citizen living with her family in Jordan, her children cannot be officially recognized as hers and she is unable to pass her citizenship to them. This is because her husband is not Jordanian. Similar laws exist in 31 countries.²³

This inability to have official recognition of parentage also entrenches statelessness among some groups. The situation for members of the Roma community and other [stateless groups in Serbia](#) demonstrates how a lack of birth registration and parental statelessness can lead to situations of inherited exclusion and poverty, along with a lack of rights

The extreme difficulties of such groups can be seen, for example, through the case of [Rohingya people](#) living in Myanmar whose extreme situation of intentional statelessness has been an explicit government policy since 1982 when a [Myanmar law](#) made it impossible for them to receive full citizenship.

Another important reason for statelessness is the emergence of new states and changes in their borders. In many cases, specific groups can be left without a nationality as a result and, even where new countries allow nationality for all, ethnic, racial and religious minorities individuals experience difficulty in proving their link to the country.

Finally, statelessness can also be caused by loss or deprivation of nationality. In some countries, citizens can lose their nationality simply from having lived outside their country for a long period of time. States can also deprive citizens of their nationality through changes in law that leave whole populations stateless, using discriminatory criteria like ethnicity or race.

²² *No Nationality. No Future*, (English), (06th Jun., 2013), https://www.youtube.com/watch?v=qZ_Y0hW3DdA.

²³ Tendayi Bloom, *What Would It mean to end Statelessness by 2024*, United Nations University, (11 Apr., 2014) <https://unu.edu/publications/articles/what-would-it-mean-to-end-statelessness-by-2024.html#info>.

LEGAL IDENTITY IN SUSTAINABLE DEVELOPMENT GOALS

The need for addressing the problem of statelessness arises in the absence of a straight-jacket formula of determining such a status and subsequently accounting for the number of people that are covered under such status within a country. UNHCR estimated that there are at least 10 million people of this status [globally](#), though the lack of reliable ways of establishing that someone is stateless and also the gaps in reporting make this figure only a rough estimate.²⁴ Statelessness not only hampers the ability of such persons to travel freely within and without the country but have serious consequences upon the rights and protection enjoyed by their legally identified counterparts.

International organizations had taken upon a task of recording the life stories of a few individuals in order to relay the practical issues arising out of such a status which they may know either from the outset or may gradually realise.

For example, [Khumbulani Frederik Ngubane](#)²⁵ in South Africa describes how, despite having connections to a number of countries, no country will offer him citizenship. The consequent lack of legal recognition prevents him from basic activities like opening a bank account and has even led him to be detained for long periods. His story is an example of how a person can accidentally fall between citizenship systems.²⁶

This was the situation for [Thai Ha](#)²⁷ in the Netherlands, who was already a graduate student of human rights law when she discovered her lack of status upon applying for a government job. As she followed up the situation, she found that she was unable to obtain a passport from Vietnam, her country of birth, nor any other country, and she could therefore not naturalise in the Netherlands.²⁸ [Railya Abulkhanova](#)²⁹ was studying in Russia when the Soviet Union broke up. She was far from her home in the former Soviet Republic of Kazakhstan. Unable to naturalise in any of the new states, she is still stateless and now lives in France.³⁰

Moreover, stateless persons are often victims of human rights violations and should be able to assert their rights under other International mechanisms which often contain clauses suggesting

²⁴ *Measuring Statelessness through Population Census. Note by the Secretariat of the United Nations High Commissioner for Refugees*, UN High Commissioner for Refugees, (2008), (13th May 2008), ECE/CES/AC.6/2008/SP/5, <http://www.unhcr.org/refworld/docid/4a705e4b2.html> accessed 27 April 2010.

²⁵ *Belonging Part One*, (11 Sept., 2014), <https://www.youtube.com/watch?v=s07egavs3FM>.

²⁶ *Supra* at 22.

²⁷ *The Story of Thai Ha*, (18 Feb., 2014), <https://www.youtube.com/watch?v=o9EhPr3ETXw>.

²⁸ *Supra* at 22.

²⁹ *Railya*, (24 Aug., 2011), <https://www.youtube.com/watch?v=GUEfwLtBcUY>.

³⁰ *Supra* at 22.

that holding a nationality is not a prerequisite to enjoying human rights. Stateless persons are afforded a certain level of protection regardless of category, due to other international legal frameworks which ensure certain levels of rights and protections to everyone. Frameworks on Human rights are sufficient to ensure protection of de facto stateless persons. Most international legal instruments referring to an individual's human rights omit a need for citizenship or nationality at all, in order to show non-discrimination, meaning they apply to stateless persons.

The enjoyment of an effective nationality is now seen as a crucial component of human security and statelessness as creating the conditions for human insecurity. This means that nationality disputes and statelessness are connected with broader issues that affect the surrounding community, such as poverty, social unrest, displacement and conflict. It implies exploitation of non-citizen population or stateless population by the neighbors or surrounding communities, social exclusion, no guarantee of protection of rights as well as no legal protection by the State. Since, apart from affecting the lives of

individuals and the wider community, statelessness also impacts on the international community the need was felt to place the issue of statelessness on the international agenda. Hence legal identity came to be included as an important aspect of the Sustainable Development Goals (“SDGs”) which are a United Nations-led initiative to define the development agenda.

Building on the eight Millennium Development Goals, the SDG's 17 goals and the 169 targets serve as an opportunity to tackle many of the most pressing issues in the world today. The SDGs are also explicitly grounded in human rights. Goal 16 on “peace, justice, and sustainable institutions” aims to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”³¹ Within this is Goal 16.9, on identity which states that: “By 2030, provide legal identity for all, including birth registration”.

Identity is massively important in order to claim protection of the State as well as exercise fundamental rights. This is particularly clear when looking at cases like those of stateless people,

³¹ Transforming our World: The 2030 Agenda for Sustainable Development, A/RES/70/1, UNITED NATIONS, Pg.30,16.9, <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

who often lack documentation to establish who they are, leaving them open to discrimination and abuse.³²

INTERPRETING GOAL 16.9 ON LEGAL IDENTITY

The challenge in interpreting Goal 16.9 is that there is no clear definition as to what “legal identity” means or constitutes. This creates a ‘gap’ a level of ambiguity about the intention of the goal and thus what it would mean for the goal to be successfully met. However, each of the targets for the SDGs has an indicator – a more concrete measure of the success of the goals. The current indicator for Goal 16.9 based upon interpretations is purely about birth registration.

Having a strong system of birth registration is not the measure to ensure that individuals have a strong way of proving who they are for example, birth registration may not be enough for the existing millions of adults whose birth was not registered when they were young. Similarly, it is essential that the design of a system protects stateless persons, as well as those who have entered a state after their birth, including refugees. Yet the issue that is left ambiguous by the current wording of the Goal 16.9 is that for an individual, is having a birth registration sufficient - or necessary and sufficient – for them to have a “legal identity”?

However, this ambiguity in the definition has not prevented Goal 16.9 from having a large impact. The benefits have been described as extending far beyond the issues immediately surrounding legal identity from social protection (SDG 1.3) to women’s empowerment (SDG 5a and 5b); etc. The World Bank argues that SDG 16.9 is “key to attainment of many other SDG goals”. They identify three overarching impacts of an identity system in the context of development: inclusion and access to services; effective administration of public services; and to measure development progress.

Perhaps more than any other single SDG, a sweeping range of initiatives have emerged from SDG 16.9 – or, rather, have stated it as part of the justification for their existence. This includes the

³² *THE SUSTAINABLE DEVELOPMENT GOALS, IDENTITY, AND PRIVACY: DOES THEIR IMPLEMENTATION RISK HUMAN RIGHTS?*, PRIVACY INTERNATIONAL ORGANISATION (18 AUG., 2018), [HTTPS://PRIVACYINTERNATIONAL.ORG/LONG-READ/2237/SUSTAINABLE-DEVELOPMENT-GOALS-IDENTITY-AND-PRIVACY-DOES-THEIR-IMPLEMENTATION-RISK](https://privacyinternational.org/long-read/2237/sustainable-development-goals-identity-and-privacy-does-their-implementation-risk).

World Bank's Identification for Development (ID4D) initiative, which is an alliance between governments, NGOs, and the private sector.

Legal Frameworks for Protection of Stateless Persons

Due to the gravity of statelessness, the United Nations (UN) has taken active steps to improve the status of stateless persons and trying to reduce the problem. There are two UN conventions, aimed specifically at stateless persons. These provide a legal framework to support stateless persons and to ensure that individuals are guaranteed a minimum standard of rights and privileges so providing them with some stability.

First is the 1954 Convention relating to the Status of Stateless Persons. This convention contains provisions which provide a legal status and basic rights to stateless persons. The rights afforded for in this convention act only as a minimum standard and are not as broad as those given by nationality occurring from a legal bond between the individual and the state; the convention provides for basic rights for an individual though these rights do not act as a substitute for nationality. Article 32 of the Convention states that contracting states shall, as far as possible facilitate the assimilation and naturalisation of stateless persons. The convention does not impose upon states an absolute obligation to naturalise stateless persons, rather it recommends a state party do this where possible. As a result, the convention can only be seen as a legal framework for international protection where national protection is not available rather than a substitute to nationality.³³

Furthermore, there are circumstances when the convention does not apply. The 1954 convention does not apply to persons about whom there are serious reasons for considering that they have committed a crime against peace; a war crime; a crime against humanity; or who have committed a serious non-political crime outside the country of their residence prior to admission to that country.³⁴ These exceptions mean not all those who are stateless can be protected under this framework. However, one must ask if these exceptions, given their nature, are justifiable in the protection of the state and its nationals.

³³ Batchelor, C. (2002) 'The International Legal Framework Concerning Statelessness and Access for Stateless Persons, contribution to the *European Union seminar on the content and Scope of International Protection*, <http://www.unhcr.org/3dca6fc84.pdf> accessed 22/04/2010, pg. 6.

³⁴ Supra at 13.

Second is the 1961 Convention on the Reduction of Statelessness. This convention differs from the 1954 convention as it does not provide rights, rather it is the primary international legal instrument aimed at the prevention of the creation of statelessness.³⁵ The purpose of the convention is to prevent future cases of statelessness through three basic principles. Firstly it seeks citizenship for persons who would otherwise be stateless if the person is born on the states territory or born abroad to state's national. Secondly it seeks protection against the loss or deprivation of citizenship if the person will become stateless as a result. Thirdly, it calls for guarantees against statelessness in cases of transfer of territory. These three principles, if all upheld would take great steps in the reduction of the problem of statelessness.³⁶ In regards to the first principle, it is clear that the convention does not require contracting states unconditionally to grant nationality to any stateless person but seeks to balance factors of birth and descent in an effort to avoid the creation of statelessness.³⁷ At present some of the principle causes of statelessness are the conflicts of law or the transfer of territory; the principles of the convention outlined take introductory steps to address these causes of the problem of statelessness.

As with the 1954 convention there are restrictions to when the 1961 convention applies to an individual. The convention does not apply to an individual when nationality has been obtained by misrepresentation or fraud; or where the individual has conducted himself in a manner seriously prejudicial to the vital interests of the state (Articles 8(2) and 8(3) of the Convention on the Reduction of Statelessness 1961). These limitations are in place in to protect the state in question so are arguably justifiable, despite the fact it results in individuals not benefitting from the convention provisions.

ANALYSIS AND SUGGESTIONS

Regardless of the category under which stateless persons fall, these individuals are often victims of civil, political and human rights abuses and face daily sufferings due to their nationality non-status. The current international legal frameworks which are in place have a limited impact on improving their status. Thus solutions to deal with the distinctions of the different categories of

³⁵ Batchelor, C. (2002) 'The International Legal Framework Concerning Statelessness and Access for Stateless Persons, contribution to the *European Union seminar on the content and Scope of International Protection*, <http://www.unhcr.org/3dca6fc84.pdf> accessed 22/04/2010, pg. 7.

³⁶ Ibid.

³⁷ Batchelor, C. (1998) 'Statelessness and the Problem of Resolving Nationality Status', *INTERNATIONAL JOURNAL OF REFUGEE LAW* 10, 1/2, pg.161.

statelessness would have minimal effect on protection. Rather, it is necessary to consider the implications of statelessness as an international phenomenon regardless of type of statelessness.

The fact that states have different measures and provisions in regards to statelessness is fundamental in this assessment. Even in circumstances where states employ similar provisions their efforts and even dialogue toward the prevention of statelessness may be hampered due to differing interpretations. Therefore, a common platform is needed for reaching consensus on the definition of statelessness and on mechanisms for identifying statelessness and on appropriate solutions.

With regards to the position of de jure stateless persons, the effectiveness of the 1954 and 1961 conventions is limited due to its limited signing and ratification. Thus, an essential step is the promotion of principles contained in the instruments which seek to ensure as a minimum that persons will be granted a nationality under certain circumstances in which they might otherwise be stateless. This would have significant effect on reducing the number of cases of statelessness.

While protection exists for all stateless persons as ensured by non-discriminatory clauses in international instruments, there are serious questions raised relating to their effectiveness with a lack of monitoring bodies, to ensure the instruments are complied with. At present, none of the six monitoring bodies of the Human Rights Council are responsible for these treaties. Due to limited monitoring there are few or nil sanctions for failure to comply, minimising the desire to take measures for compliance. Therefore, an increase in monitoring and sanctions of these instruments would ensure greater levels of protection. Whilst this would not reduce the number of stateless persons, it would improve their situation.

The most important aspect of dealing with the fundamental issue of Statelessness is the need for better identification of stateless persons. As discussed above, this is a difficult and complex task as different nations and organisations interpret the definition differently. As a result, the number of stateless persons is unclear, so solutions are difficult to develop. In the conclusion on identification, prevention and reduction of statelessness and the protection of stateless persons, UNHCR must continue to work with interested governments to engage in or to renew efforts to identify stateless populations. By developing more effective means of establishing statelessness there would be increased awareness of the problem allowing for the development of more effective solutions to the problem. This could further be achieved through the increased exchange in statistics on statelessness by states.

The identification of statelessness is further complicated by the conflicting ways in which states may attribute nationality. Most states either grant nationality through the principles of jus sanguinis or jus soli; conflicts of these principles often result in statelessness. This is seen mostly in regards to the Jus Sanguinis principle. For example, some countries grant citizenship through parental descent alone, rendering a mother unable to independently pass on her nationality to her children. Furthermore, nationality laws can produce stateless children where the parents are married and non-stateless, if they are unable to inherit their parents' nationality.

Therefore, Hudson suggests the principle of jus connectionis, or right of attachment, which advocates the nationality of the state to which the individual is proved to be most closely connected in his or her conditions of life. Under this principle an emphasis would be placed on the positive right to a nationality by establishing which nationality the individual has a right to, based upon well founded principles of the genuine and effective link.³⁸ This principle would eliminate current conflicts.

UNHCR CAMPAIGN - ENDING STATELESSNESS BY 2024

“To bring an end to statelessness within 10 years by resolving existing situations and preventing the emergence of new cases of statelessness.”

United Nations High Commissioner for Refugees ([UNHCR](#)) had launched two campaigns – 1954 and 1961 prior to the launching of the 2011 campaign to mark the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. Thus, in 2014 the UNHCR launched a [successful campaign](#) to encourage states to sign the conventions to [end statelessness by 2024](#). In October 2013, the UN High Commissioner for Refugees called for the total commitment of the international community to end statelessness.³⁹ The Global Action Plan⁴⁰, developed in consultation with States, civil society and international organisations, which establishes a framework of ten action plans to be undertaken by States with the support of UNHCR and other entities to resolve existing situations of statelessness, prevent new cases of statelessness from

³⁸ Batchelor, C. (1998) ‘Statelessness and the Problem of Resolving Nationality Status’, *INTERNATIONAL JOURNAL OF REFUGEE LAW* 10, 1/2, pg. 181.

³⁹ High Commissioner’s Closing Remarks to the 64th Session of UNHCR’s Executive Committee, (4th Oct. 2013), <http://unhcr.org/525539159.html>.

⁴⁰ *Global Action Plan to End Statelessness*, (4 Nov. 2014), UN High Commissioner for Refugees (UNHCR), <https://www.refworld.org/docid/545b47d64.html>, pg. 3, 4 [Accessed 12th Sept. 2019].

emerging and to identify and protect the stateless population by 2024. The magnitude and intensity of the actions to be taken varies with each country.

The action plans include the goal of resolving all major non-refugee related statelessness situations, to ensure that no child is born stateless in order to imbibe nationality provisions in every state where such child may take birth and for states to imbibe nationality laws for children of unknown origin found in their territory (foundlings), to remove gender discrimination from nationality laws, prevent denial, loss or deprivation of nationality on discriminatory grounds, prevent statelessness in cases of state succession, grant protection status to stateless migrants and facilitate their naturalization to enable them to enjoy a legal status that permits residence and guarantees certain basic rights, ensure the birth registration, issue nationality documents to persons entitled to it, accede to the UN Statelessness conventions and to improve quantitative and qualitative data on stateless populations.⁴¹

INTERNATIONAL EXAMPLES

In light of the growing awareness among states of the rising issue of Statelessness, Countries such as Malaysia have undertaken policy measures to grant citizenship to Stateless persons.⁴² On the other hand, Stateless people in the UK face enormous hurdles in the road to becoming British citizens. One of those barriers is the extraordinarily high cost of acquiring British citizenship.⁴³

⁴¹ Ibid.

⁴² *UNHCR Welcomes move by Malaysia to grant citizenship to stateless persons*, UNHCR Malaysia (15th Aug., 2018), <https://www.unhcr.org/en-my/news/press/2018/8/5b73e54d4/unhcr-welcomes-move-by-malaysia-to-grant-citizenship-to-stateless-persons.html>.

⁴³ Cynthia Orchard, *Citizenship for Sale – At a cost stateless people can ill afford*, European Network on Statelessness, (05th Oct., 2017), <https://www.statelessness.eu/blog/citizenship-sale-cost-stateless-people-can-ill-afford>.

CONCLUSION

“Identity” is an important part of all our lives and having the ability to prove who we are is empowering. Having control over our identity can help not only achieve the necessities of life, but also more fundamental concerns of dignity and autonomy.

Statelessness is not merely a legal problem, it is a human problem.⁴⁴ This is due to the fact that many complications arise for those who have no nationality regardless of their category of statelessness which have been outlined in this essay. As there are limitations in the protection afforded to persons who fall under the category of de jure statelessness due to the limits of the conventions relating to statelessness, the level of protection offered to de jure and de facto stateless does not greatly differ. Instead, stateless persons gain protection through the recognition of principles of international law found in various instruments including the Covenant on Civil and Political Rights. In order to see results in the battle against statelessness, it logically follows that positive steps taken by all states can ensure the integration and implementation of these principles and standards.⁴⁵

In order to effectively deal with the problem of statelessness, there needs to be a reduction in the conflicts which cause statelessness. Therefore, Hudson suggests the improvement of status will only be achieved if the nationality of the individual is the nationality of that state with which he is, in fact most closely connected; his ‘effective nationality’.⁴⁶ By ensuring that a person is entitled to the nationality where he is most linked, an individual is more likely to be able to effectively access the rights which are bestowed upon him under the variety of international legal frameworks, as well as benefit from those rights which are only allowed to citizens of states. The implications of the distinction between de facto and de jure statelessness on protection are minimal; it is the position of being stateless which has the implications on the protection afforded to an individual.

To make a difference, we must work together. Each of the four areas of our work on statelessness – identification, prevention, reduction and protection – overlap with the expertise of other international organizations and NGOs, and we rely on the local knowledge and expertise of civil

⁴⁴ Batchelor, C., ‘*Statelessness and the Problem of Resolving Nationality Status*’, (1998), *INTERNATIONAL JOURNAL OF REFUGEE LAW* 10, 1/2, pg. 181.

⁴⁵ Batchelor, C., ‘*Statelessness and the Problem of Resolving Nationality Status*’, (1998), *INTERNATIONAL JOURNAL OF REFUGEE LAW* 10, 1/2, pg. 183.

⁴⁶ Hudson, Manley. (1952) ‘Report on Nationality including Statelessness, *International Law Commission*, 4th session, UN doc. A/CN.4/50, pg. 49.

society groups, national human rights institutions, academics and legal associations. Their contribution to our work allows us to prepare and recommend the most effective solutions.

Collaboration with other UN agencies is also important. For example, the UN Children's Fund (UNICEF) has long worked on improving birth registration and civil registries, the UN Population Fund (UNFPA) can help governments design and implement national censuses, and the Office of the High Commissioner for Human Rights (OHCHR) supports monitoring of the human rights of stateless people.