

Statelessness, Human Rights and the Sustainable Development Agenda

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1. Introduction

*Difficulties accessing education and employment; restricted property rights; lack of opportunities to own or register a business; limited access to a bank account or a loan; and, in some cases, the threat of extortion, detention or expulsion; these factors can trap stateless persons in poverty and make it extremely challenging for them to improve their circumstances. Where statelessness affects whole communities over several successive generations – as it often sadly does, such communities can be neglected by development actors and processes. This can result in a significant lag behind others in the country or region in terms of development. Statelessness means a waste, of individual potential, of human capital and of development opportunities. **So, if development matters, statelessness matters.***¹

In September 2000, world leaders came together at UN Headquarters in New York to adopt the *United Nations Millennium Declaration*, committing their countries to a new global partnership to reduce extreme poverty and setting out a series of targets to be achieved by 2015. These targets, which became known as the Millennium Development Goals (MDGs), helped galvanised development efforts and guide national and global development priorities. As the ‘expiry date’ for the MDGs drew closer, discussions began at the Rio +20 UN Conference on Sustainable Development, on the content and modalities of the Post-2015 Development Agenda.² The new *Sustainable Development Agenda* which was adopted in September 2015, outlined the [Sustainable Development Goals](#) (SDGs) to guide development work from 2016 - 2030.

A core focus of the 2030 development agenda is to “[strive for a world that is just, equitable and inclusive](#)”. It is not just about economic growth, social development and environmental protection, but about achieving this *for all*.³ [No one must be left behind](#) and the furthest behind must be reached first. This means paying special attention to those groups most in need and addressing systems and structures that engender exclusion, disadvantage and impoverishment.

Statelessness (the lack of a nationality)⁴ places people in a situation of extreme vulnerability, because nationality often acts as a key to unlock access to basic rights. Stateless populations can also be invisible in population data and other tools that help governments to plan for development work and the delivery of services, such that they may be left out of policy planning. The link between statelessness and discrimination is often inextricable – with statelessness being a consequence of discriminatory law, policy and practice, and the stateless being subject to further discrimination. Therefore, the barriers to accessing socio-economic rights are not merely practical, they are often political, with stateless persons being targeted for exclusion. Furthermore, once denied enjoyment of socio-economic rights and inclusion within development activities, stateless persons are more likely to face barriers to accessing justice. Thus, they are seldom able to benefit from legal recourse against discriminatory exclusion. There is a self-reinforcing and cyclical nature to this problem, with those who have been excluded having great difficulty finding avenues for their inclusion. This enhances the likelihood of inter-generational statelessness, which leads to further disadvantage and exclusion, as well as the normalisation of, and therefore tolerance towards, statelessness in society.

For all these reasons statelessness poses a significant threat to achieving sustainable development and equality for all. It is difficult for stateless persons to benefit from broad-strokes development programmes that, for instance, improve the availability of schooling or of healthcare, without altering who has (equal)

¹ Institute on Statelessness and Inclusion, *The World’s Stateless*, Wolf Legal Publishers 2014, page 34.

² For an analysis and critique of the MDGs in the lead up to the SDGs, see Darrow, *The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post 2015 Development Agenda*, Yale Human Rights and Development Journal, Volume 15, Issue 1, 18.02.2014. Available at: <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1111&context=yhrdlj>. See also, Pogge, *The First UN Millennium Development Goal: A Cause for Celebration?* Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/publication/wcms_087882.pdf.

³ For an analysis of what the term ‘no one left behind’ should mean to the stateless, see Tendayi Bloom, *Transforming Our World – How can we make sure that No One is Left Behind?* Available at: <http://www.statelessness.eu/blog/transforming-our-world%E2%80%99-how-can-we-make-sure-no-one-left-behind>.

⁴ See Chapter 2 for an overview of statelessness

access to them. In the context of the SDGs, the position of the stateless should be carefully considered through three mutually reinforcing questions:

- **How can we capitalise on the opportunities presented by the SDGs to improve the lives of stateless persons and foster inclusion to ultimately end statelessness?**
- **How can we mitigate the risks inherent in the SDGs to the lives of stateless persons and the enjoyment of the right to a nationality?**
- **How would the failure of development actors to address the marginalisation and vulnerability of stateless persons impact on their ability to reach the targets of the Sustainable Development Agenda?**

This paper grapples with these and other questions, in an attempt to set out a human rights based approach to development and the implementation of the SDGs, through which statelessness can be directly addressed, and the development needs of stateless persons catered to in a non-discriminatory and inclusive manner.

Part 1:

Conceptual framework, key opportunities and challenges

2. A brief overview of statelessness – a human rights issue

A stateless person is someone who is “not considered as a national by any state under the operation of its law”.⁵ The 1954 Convention Relating to the Status of Stateless Persons, in addition to enshrining the above definition, sets out the protection framework for stateless persons (complementing the subsequent international human rights treaties). The 1961 Convention on the Reduction of Statelessness sets out the international standards related to the avoidance and reduction of statelessness.⁶ Many human rights treaties also contain standards that are relevant both to the protection of stateless persons and to the avoidance/reduction of statelessness. In terms of the latter, the right to a nationality is well established under international law, and the existence of statelessness can be viewed as the most extreme violation of this right. The Convention on the Rights of the Child, which enjoys almost universal ratification, contains a safeguard against statelessness,⁷ and the Convention on the Elimination of all forms of Discrimination Against Women protects against gender discriminatory nationality laws – one of the causes of statelessness.⁸ Similarly, the Convention on the Elimination of all forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities respectively protect the right to nationality of ethnic and racial minority groups and disabled persons.⁹

There are many causes of statelessness, which are well known and explored in greater detail in other publications.¹⁰ Gender discriminatory nationality laws; discriminatory law and policy on other grounds including race, ethnicity, religion and disability; conflicts of nationality laws; state succession (including decolonisation) which often results in the discriminatory treatment of minority groups; poor and discriminatory administrative practices in determining nationality and issuing documentation; and the inheritance of statelessness from previous generations are all well-known causes. In many of these circumstances, statelessness is the result of the denial of nationality which may be arbitrary under international law.¹¹ In most, discrimination is a key element.¹²

The 2014 World’s Stateless Report of ISI, sets out why statelessness is a human rights issue, but also sets out the limitations of the human rights framework to addressing statelessness. It is important to understand the nexus between statelessness and human rights before going on to the question of the SDGs, and so, an excerpt of the 2014 World’s Stateless Report is reproduced below:¹³

Human rights are those rights which are to be enjoyed by all of us, by virtue of our belonging to the human race and in accordance with human dignity. However, without any nationality, a number of rights are immediately out of reach even according to the mechanics of contemporary human rights law. Political rights in particular, such as the right to vote or

⁵ United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954, Article 1(1).

⁶ United Nations Convention on the Reduction of Statelessness, U.N.T.S. 989, 1961.

⁷ See Articles 7 and 8, read in conjunction with Article 3, Convention on the Rights of the Child, G.A. Res. A/RES/44/25, 1989.

⁸ Article 9, Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. A/RES/34/180, 1979.

⁹ See Article 5(d) iii of the Convention on the Elimination of all forms of Discrimination, which protects the right to a nationality; and Article 18 of the Convention on the Rights of Persons with Disabilities.

¹⁰ Institute on Statelessness and Inclusion, *The World’s Stateless*, Wolf Legal Publishers 2014, pp. 23–27.

¹¹ See for example, various UN Secretary General reports on arbitrary deprivation of nationality: A/HRC/31/29; A/HRC/25/28; A/HRC/23/23; A/HRC/19/43 etc.; and various UN Human Rights Council Resolutions on the arbitrary deprivation of nationality: Resolution 32/5 (2016); 26/14 (2014); 20/05 (2012) etc.

¹² See for example, A. de Chickera and J. Whiteman, “Addressing statelessness through the rights to equality and non-discrimination”, in van Waas & Khanna (eds), *Solving Statelessness*, Wolf Legal Publishers, 2016; and L. Kingston, “Worth of Rights: Statelessness as a Cause and Symptom of Marginalisation” in Bloom, Tonkiss & Cole (eds), *Understanding Statelessness*, Routledge, Forthcoming.

¹³ Institute on Statelessness and Inclusion, *The World’s Stateless*, Wolf Legal Publishers 2014, pp. 28–31.

stand for election and to perform certain public functions, may be restricted to a country's citizens,¹⁴ such that stateless persons are not owed them by any state. Disenfranchisement therefore is an immediate and almost universal problem for stateless persons,¹⁵ limiting their ability to influence laws and policies that affect them or to call for reforms that would bring an end to their statelessness. This undoubtedly also contributes to the invisibility of and lack of attention to the problem of statelessness in general, and its resultant manifestation and growth over generations. Developing countries may also limit the enjoyment of economic rights by non-nationals in certain circumstances,¹⁶ which may be used to justify the economic disempowerment of stateless persons. With regards to other rights, states can treat nationals and non-nationals differently if that treatment can be justified by the pursuit of a legitimate aim and if the principle of proportionality can be satisfied – providing a margin of discretion that may be detrimental to the position of stateless persons.¹⁷ All this means that the stateless experience a degree of deficit of rights under international human rights law. Yet, this should only be limited. As the UN Committee on the Elimination of Racial Discrimination (CERD) has stated, any such restrictions must be seen as an exception to the principle of equality and consequently, “must be construed so as to avoid undermining the basic prohibition of discrimination”.¹⁸ Similarly, the UN Committee on Economic, Social and Cultural Rights (CESCR) has asserted that “The ground of nationality should not bar access to Covenant rights (...) [which] apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation”.¹⁹ Furthermore, as the Human Rights Committee, has stated, “in general, the rights set forth [...] apply to everyone, irrespective of reciprocity, irrespective of his or her nationality or statelessness”.²⁰

In practice though, the situation of many stateless individuals and groups betrays a far greater problem: as a non-national generally and as a stateless person in particular, actually effectuating rights can be distinctly challenging.

In reality stateless persons face challenges in all areas of life. Stateless persons may struggle to access education, healthcare, labour and property markets. They may also experience difficulties in obtaining key documents (birth, marriage, death certificates, driving licenses, passports), such that many stateless persons have no proof that they exist and no means to identify themselves in day-to-day interactions. This makes legal international travel almost inconceivable and free movement within the State of residence can also be impaired. Stateless persons are vulnerable to arbitrary arrest and detention, even prolonged or indefinite detention, and often struggle to access the protection of the police or justice systems. Often labelled as outsiders, stateless persons can be subject to denial of land, attempts at deportation, and other restrictions that do not apply to other residents, even if there is no other State upon which they can call. Slated as outsiders by all States, stateless persons are then made easier targets for victimisation and exploitation and seen as less deserving of compassion, protection and support. This all has an additional affect on their well-being. A diminished sense of self-worth and in some instances an confused sense of identity and belonging can prompt sentiments of hopelessness, anxiety and depression.²¹

The UN Secretary General's 2015 report on the arbitrary deprivation of nationality of children also adds:

International human rights law is not premised on the nationality of the person but rather on the dignity that is equally inherent to all human beings. In practice, however, those who enjoy the right to a nationality have greater access to the enjoyment of various other human rights. Key political rights, such as the right to vote or stand for election, or to perform certain public functions, which may be restricted to a country's citizens, stand

¹⁴ Article 25, International Covenant on Civil and Political Rights, G. A. Res 2200A (XXI), 1976.

¹⁵ There may be some minor exceptions, where special arrangements with regard to voting for non-nationals in certain elections or the recruitment of long-term residents into public functions does create some political space for stateless individuals. For instance, in Estonia, the country's long-standing stateless population is eligible to vote in municipal elections. Such arrangements are far and away the exception, rather than the rule, and don't necessarily mean that the right of stateless persons to vote has been recognised, and can instead mean that they have merely been granted a privilege that can be revoked.

¹⁶ Article 2(3), International Covenant on Economic, Social and Cultural Rights, G.A. Res 2200A (XXI), 1976.

¹⁷ See further on the rights of non-citizens, Office of the High Commissioner For Human Rights, *The Rights of non-Citizens*, 2006.

¹⁸ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination Against Non Citizens*, UN Doc. CERD/C/64/Misc.11/rev.3, 2004, Para 2.

¹⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Article 2, Para 2 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 25 May 2009, Para 30.

²⁰ Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant*, UN Doc. HRI/GEN/1/Rev.6, 1986.

²¹ See Institute on Statelessness and Inclusion, *The World's Stateless*, Wolf Legal Publishers 2014, pp. 30–31.

*in exception to the above statement, as they are examples of human rights to which persons with no nationality generally have no claim. All other human rights are to be enjoyed by all persons.*²²

Importantly, the Secretary General's Report goes on to say that there is no legal basis upon which a state that has arbitrarily deprived someone of their nationality can then proceed to justify the denial of other rights on the basis of their resultant statelessness.²³

The above text reveals a few key factors about statelessness:

- Firstly, it shows that statelessness is fundamentally a human rights issue, which brings various rights into play, including the right to a nationality but also other civil, political and socio-economic rights.
- It shows however, that there are structural limitations to the human rights framework which (can) limit stateless persons' enjoyment of certain rights. Significantly in the context of the development agenda, developing countries may limit the enjoyment of economic rights of non-nationals, and states may legitimately discriminate against non-nationals in certain other contexts as well.
- Thirdly, it shows that even where none of the structural limitations allowed under international law are in place; discriminatory attitudes, political indifference and the prioritisation of limited resources can all converge to undermine the enjoyment of human rights of stateless persons.
- Finally, it provides some insight into the human impact of this exclusion and discrimination.

3. The statelessness, human rights and development frameworks: common ground and points of divergence

Statelessness should also be regarded as a development issue. The development world has, in the past, been legitimately critiqued for its failure to integrate human rights principles into its work. This can explain why a rights based approach has increasingly been recognised by development actors as the most sustainable and credible way to approach development work. This approach aims to transform the relationship between rights holders (including the stateless) and duty bearers through empowering the duty bearer to uphold rights and the rights holder to be able to claim them, or contest their exclusion.

In this context, the SDGs provide a unique opportunity both to further entrench human rights principles within the development framework, and to ensure that the most excluded and vulnerable persons, including stateless persons, have equal access to development. In the lead up to the drafting of the SDG's, former High Commissioner for Human Rights Navi Pillay stated:

*"[T]he Post-2015 Agenda must be built on a human rights-based approach, in both process and substance. This means taking seriously the right of those affected to free, active and meaningful participation. It means ensuring the accountability of duty bearers to rights-holders, especially the most vulnerable, marginalized and excluded. It means a focus on non-discrimination, equality and equity in the distribution of costs and benefits. It means embracing approaches that empower people, both politically and economically. And it means explicitly aligning the new development framework with the international human rights framework – including civil, cultural, economic, political and social rights, as well as the right to development. In essence, it means deliberately directing development efforts to the realization of human rights."*²⁴

Similarly, the outcome document for the UN Summit in September 2015 envisioned:

²² SG's Report, A/HRC/31/29, Para 27.

²³ Ibid., Para 28.

²⁴ UN High Commissioner for Human Rights Navi Pillay, *Open Letter on Human Rights in the Post 2015 Agenda*, 6 June 2013, Available at: http://www.ohchr.org/Documents/Issues/MDGs/OpenLetterMS_Post2015.pdf.

“A world of universal respect for human rights and human dignity; of justice and equality; of respect for race and ethnicity; and of equal opportunity permitting the full realization of human potential while promoting shared prosperity.”²⁵

One of the true tests of whether the SDGs have succeeded both in adopting a rights based approach and in the aim of leaving no one behind, will be the benefit they bring to stateless persons and those at risk of statelessness around the world.

3.1. Statelessness and different frameworks

Statelessness is centrally relevant to the international human rights regime. On the one hand, statelessness is the most extreme violation of the right to a nationality. On the other, the lack of any nationality closes down opportunities to access other rights and services and increases vulnerability to discrimination, exploitation and the violation of rights. This multiple victimisation – where one rights violation can lead to many repeated violations over a lifetime – combined with the barriers stateless people have accessing justice and claiming their rights, makes statelessness a particularly difficult challenge to the universality and indivisibility of human rights.

Similarly, statelessness is also relevant to the SDGs. In the same way as there is a human right to a nationality, SDG Target 16.9 is to “*by 2030, provide legal identity for all, including birth registration*”. What ‘legal identity’ entails and whether nationality (the solution to statelessness) comes within its scope is open to interpretation (this question is looked at in section 6 of this paper). But this can be seen as a parallel to human rights obligations related to nationality, identity and birth registration, as articulated in treaties such as the ICCPR, CRC, CEDAW, CERD and CRPD. Thus, the SDGs have the potential to provide a complementary framework to end statelessness. Similarly, the SDGs must be implemented in a manner that does not leave the stateless behind. In other words, the same way that lack of a nationality shouldn’t be a barrier to human rights protection, it should also not be a barrier to accessing development on equal terms. Consequently, goals and targets related to *inter alia*, poverty, food, health, education, gender equality, water and sanitation, employment, reducing inequality, peace, inclusiveness, security and access to justice should be approached in a manner that ensures the stateless are accounted for through dedicated strategies to reach stateless persons.

For actors in the ‘statelessness field’, their work is commonly categorised under the pillars of **identification, prevention, reduction** (with the ultimate aim of eradication) on the one hand, and **protection** on the other.²⁶ The UNHCR led #ibelong campaign to end statelessness²⁷ and its Global Action Plan²⁸ has 10 action points, many of which relate to the human right to a nationality, identity and birth registration and consequently, to SDG 16.9. Similarly, ongoing work on protecting the stateless relates to other human rights principles and SDGs related to education, health, work, equality, poverty etc.

Given that many stateless persons (though not the majority) live as migrants (and often as irregular migrants); and that many stateless persons have been displaced by conflict and persecution and some refugees have become stateless after displacement,²⁹ the 2016 New York Declaration for Refugees and Migrants³⁰ and the

²⁵ See, *Transforming our World: the 2030 Agenda for Sustainable Development*, Finalised text for adoption, 1 August 2015.

Available at: <https://sustainabledevelopment.un.org/content/documents/7891TRANSFORMING%20OUR%20WORLD.pdf>

²⁶ See UNHCR ExCom *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, No. 106 (LVII) – 2006, available at: <http://www.unhcr.org/uk/excom/exconc/453497302/conclusion-identification-prevention-reduction-statelessness-protection.html>

²⁷ See <http://www.unhcr.org/ibelong/>

²⁸ UNHCR, *Global Action Plan to End Statelessness: 2014 – 2024*, available at:

<http://www.unhcr.org/uk/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html>

²⁹ See for example, Institute on Statelessness and Inclusion and Norwegian Refugee Council, *Understanding statelessness in the Syria refugee context*, 2016, available at: <http://www.syrianationality.org/pdf/report.pdf>

³⁰ UNGA, A/71/L.1*, *New York Declaration for Refugees and Migrants*, 13 September 2016, available at:

http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1. Paragraph 72 of the New York Declaration states as follows: “We

Global Compacts on Refugees and Migrants which will be negotiated and finalised by 2018, may also develop as an important complementary framework.³¹

Thus, there is an alignment of the different frameworks and discourses, which gives us the opportunity to engage across and between fields, developing arguments that resonate widely and strategising to address statelessness through human rights *and* development mechanisms. For this to be effectively done though, there is an impetus on actors from all of these fields to learn to speak the same language, and to translate vocabularies across different frameworks.

3.2. Points of divergence

As there are clear overlaps between the frameworks, there are also clear points of divergence. The most significant is that while human rights are justiciable (or enforceable), the SDGs are not. The justiciability of human rights law comes with its own challenges. International law is notoriously ‘far’ from its subjects, and even those who can access UN human rights treaty bodies through individual or group complaints, often receive only token relief, which may progress human rights jurisprudence without necessarily solving the problems faced by the applicants. Regional human rights mechanisms (in Africa, the Americas and Europe) are relatively more accessible, and play an important role, particularly when national mechanisms fail to protect. At national level – with courts having fundamental rights jurisdiction – rights are more tangible, but as set out above, stateless persons have difficulties accessing justice through these mechanisms. Nevertheless, the monitoring role played by the UN Treaty Bodies and Human Rights Council (through the Universal Periodic Review) and the obligations that stem from international, regional and national human rights law still comprise a much stronger and more established framework to shape policy and law than the SDGs, and one through which individuals and communities may more readily assert their rights and access justice. The different approaches to justiciability of the two frameworks is evident in the fact that international reporting on progress under the SDGs is purely voluntary for states, whereas states are obligated to periodically report on their human rights performance.

That the human rights framework sets out obligations and the development agenda is aspirational is not in itself necessarily a problem. However, as discussed further below, it is of concern when the aspirations of the development agenda fall short of the obligations of human rights law. This counter-intuitive messaging, that states have come together to agree a set of aspirations, some of which fall short of their previously agreed obligations, raises concern that the SDG framework may be set against the human rights one and used to undermine human rights standards. It is important to be alert to this danger and to ensure that while the SDG framework should be used to complement the human rights framework, it should not undermine it. In this context, it is of concern that the draft indicator to SDG 16.9 - “Percentage of children under 5 whose births have been registered with civil authority”, is less ambitious than the legal obligation under CRC Article 7, that “the child shall be registered immediately after birth”.³²

The other key point of divergence, alluded to above, is that international human rights law allows for some differential treatment between nationals and non-nationals (to the disadvantage of the latter), whereas the SDG framework does not differentiate between these two groups. For example, the International Covenant on Socio-Economic Rights provides developing states with some leeway in implementing its obligations under the Covenant, when it comes to non-nationals. Article 2.3 of the Covenant states that: “*Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.*” The rationale behind

recognize that statelessness can be a root cause of forced displacement and that forced displacement, in turn, can lead to statelessness. We take note of the campaign of the Office of the United Nations High Commissioner for Refugees to end statelessness within a decade and we encourage States to consider actions they could take to reduce the incidence of statelessness. We encourage those States that have not yet acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness to consider doing so.”

³¹ For more information, see: <http://refugeesmigrants.un.org/>

³² Institute on Statelessness and Inclusion, *Response to consultation on draft indicator to SDG 16.9*, November 2015.

this provision is that developing countries may not have the resources to fulfil all their obligations under the Covenant, and in planning and implementing, it may deprioritise non-nationals' access to certain rights. The thinking behind this is that non-nationals – if they require this safety net – could arguably return to their own countries to benefit from the full enjoyment of economic rights. This provision does not take into consideration the uniquely vulnerable situation of stateless persons who are vulnerable everywhere, particularly those who are stateless in their own countries.

The SDGs take the opposite (and fairer) approach of not discriminating against migrants or non-nationals, but clearly articulating that the most vulnerable should be reached first. In other words, when resources are scarce, there is a strong argument to be made for starting with the worst off – even if these are non-nationals. This approach is refreshing and has the potential to plug a big protection gap in the international human rights framework.

3.3. Aligning human rights obligations with development goals

Greater awareness of the points of divergence as well as overlap will enable us to enhance the complementarity of these two frameworks, to ensure maximum possible protection, inclusion and benefit for the stateless and other vulnerable groups.

Significantly, it is evident from the above that a world in which statelessness exists and stateless persons are discriminated against is one in which it is more difficult to fulfil the obligations of human rights or reach the aspirations of development. **For development to be sustainable (and human rights to be universally enjoyed), statelessness must be solved.**

As highlighted above, there is ample overlap and synergy between the human rights framework and the development agenda. The human rights framework however, offers something that the development framework does not – it places the individual at the centre and provides him or her with the means by which to hold accountable, duty bearers with obligations to fulfil. Thus, one key means of making the SDGs 'sustainable' is to align them to human rights obligations. For example, the right of every child to an education and the goal of achieving education for all must speak to each other. The child who is excluded from accessing education should have a means of accessing justice and demanding her right.

While the question of aligning these two frameworks has a wider resonance, it is of real relevance to the stateless – a group with significant challenges accessing justice. In other words, not only do the human rights and development frameworks need to be aligned, they both need to do better by the stateless.

4. Combatting discrimination and promoting equality through the SDGs

There is, then, a mutually reinforcing relationship between statelessness on the one hand, and discrimination and inequality on the other.³³ The rights to equality and non-discrimination are well entrenched in international, regional and most national laws. The Universal Declaration of Human Rights provides in Article 1 that "all human beings are born free and equal in dignity and rights" and in Article 2 that all rights shall be enjoyed without discrimination. The ICCPR (Articles 2 and 26), ICESCR (Article 2.1) and a range of other treaties³⁴ enshrine the rights to equality and non-discrimination under international law. At the regional level

³³ For a more detailed analysis, see A. de Chickera and J. Whiteman, "Addressing statelessness through the rights to equality and non-discrimination", in van Waas & Khanna (eds), *Solving Statelessness*, Wolf Legal Publishers, 2016.

³⁴ Including the Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, entry into force 3 September 1981, 1249 UNTS 13; Convention on the Elimination of All forms of Racial Discrimination, 7 March 1966, entry into force 4 January 1969, 660 UNTS 195; Convention on the Rights of Persons with Disabilities, 13 December 2006, entry into force 3 May 2008, 2515 UNTS 3; and Convention on the Rights of the Child (CRC), 20 November 1989, entry into force 2 September 1990, 1577 UNTS 3

the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),³⁵ the American Convention on Human Rights,³⁶ the African Charter on Human and People's Rights,³⁷ the Arab Charter on Human Right and the ASEAN Human Rights Declaration all protect the rights to equality and non-discrimination. Most states also have Constitutional Bills of Rights which are justiciable and which protect the right to equality and non-discrimination.

The reality of discrimination and inequality is one that must be taken into account if statelessness is to be systematically addressed through human rights and development frameworks. Following are some specific issues that development actors will encounter when applying the SDGs to statelessness situations.

4.1. Understanding direct and indirect discrimination

Before further exploring how discrimination relates to and poses a challenge to the SDG agenda, it is important to understand how direct and indirect discrimination can impact on statelessness. Below is an excerpt from a book chapter, which sets this out:³⁸

*One of the most widely understood elements of the equality framework is the right to be free from **direct discrimination**. Direct discrimination is less favourable treatment because of a protected characteristic. It can only be justified in very exceptional circumstances.³⁹ As with all forms of discrimination, people are protected from direct discrimination on an increasingly wide variety of grounds (i.e. by reference to an increasingly long list of protected characteristics) including gender, race and disability. The equality framework also demands not only that States do not discriminate – including through the introduction of or failure to overturn discriminatory laws – but also that States act to ensure that people do not suffer discrimination by private actors.⁴⁰*

Direct discrimination is at the heart of a number of the causes of statelessness ... For example, there can be no justification for distinctions based on gender under the equality framework. A less commonly known and challenged example of direct discrimination is the less favourable treatment of people with disabilities in some nationality laws. For example, the naturalisation criteria of Indonesia require a person to be "sound in health and mind".⁴¹ This constitutes direct discrimination on grounds of mental disability, something which cannot fall within the "very exceptional" circumstances in which different treatment is permitted by the equality framework.

Further... nationality laws may be applied by individual State agents in ways which directly discriminate against certain groups... [I]n Madagascar there is evidence that an individual's race or religion will impact whether or not their application for the acquisition of nationality is accepted. Less favourable treatment of minorities such as the Karana community are central to the ongoing fact of that population's statelessness. The equality framework requires that the State not only prohibit such discriminatory application of nationality laws and punish individuals who breach the right to non-discrimination, but also that it implement protective measures to ensure that individuals are not discriminated against on grounds such as their race and religion when interacting with national laws and regulations governing nationality. This includes a requirement that the State ensure that individual officers are adequately trained on their obligation not to discriminate and that individual decisions are subject to sufficient oversight.

*The equality framework also prohibits **indirect discrimination**. Often less easy to identify than direct discrimination, indirect discrimination occurs when a provision, criterion or practice puts people at a particular disadvantage because of a protected characteristic, in circumstances where the provision, criterion or practice cannot be justified as a*

³⁵ 4 November 1950, entry into force 3 September 1953, ETS 005

³⁶ 22 November 1969, entry into force 18 July 1978, OAS Treaty Series No. 36

³⁷ 27 June 1981, entry into force 21 October 1986, OAU Doc. CAB/LEG/67/3 rev. 5

³⁸ A. de Chickera and J. Whiteman, "Addressing statelessness through the rights to equality and non-discrimination", in van Waas & Khanna (eds), Solving Statelessness, Wolf Legal Publishers, 2016.

³⁹ In some jurisdictions certain forms of direct discrimination can never be justified e.g. under the UK's Equality Act 2010 only direct discrimination because of age can be justified. However, the best practice approach is that direct discrimination may be permitted but only very exceptionally, see, Equal Rights Trust, Declaration of Principles on Equality, *supra* n4, Principle 5.

⁴⁰ For example see Principle 10, Declaration of Principles on Equality, p. 9.

⁴¹ Law of the Republic of Indonesia, Number 12, Year 2006, on Citizenship of The Republic of Indonesia, Art. 9(c).

proportionate means of achieving a legitimate aim.⁴² ... [I]n addition to the prejudice and stigma on grounds of their statelessness, race or other characteristics that many stateless people report facing in their day-to-day lives and which limits their ability to enjoy education, work, healthcare and other basic rights (which constitutes direct discrimination), structural and apparently neutral barriers also exist.

A particularly prevalent form of indirect discrimination affecting stateless persons relates to the need for identity documents in order to access services. Many States require individuals to provide identity documents – which stateless people are less likely to have – in order to access their rights. For example, parents of children in Nepal are increasingly being required to show the child's birth certificate in order for the child to be enrolled in school.⁴³ However stateless parents in Nepal have reported being unable to obtain birth certificates for their children.⁴⁴ In addition to the underlying direct discrimination which may have caused their statelessness, this requirement to show a birth certificate for enrolment is a practice which applies equally to all children, but puts stateless children at a particular disadvantage. The result is that many stateless children in Nepal are unable to enjoy their right to education. Under the equality framework, in order to be lawful, this practice, which puts some children at a particular disadvantage, must be justified. Schools may be pursuing a legitimate aim in ensuring that they can identify their students, but whether an inflexible requirement to show a birth certificate is proportionate to this aim is questionable. While the underlying (direct) discrimination is commonly challenged (e.g. nationality laws which don't allow women to pass their nationality to their children), the equality framework is not used often enough to challenge whether such indirectly discriminatory practices can be justified. The right to protection from indirect discrimination requires that such measures are scrutinised and that authorities are required to adequately explain how they are justified.

4.2. The challenge of discrimination

Development can be 'simplistically' viewed as a question of "is there enough for all?" The more difficult but appropriate question may be – "is there willingness to include all?" This is particularly so in the case of statelessness that has arisen out of discrimination on grounds such as race, religion, national origin etc. When stateless persons are seen as 'the other', the socio-political consensus is for their exclusion and not for their inclusion. In such contexts, the 'development' of such communities will yield little by way of political gain and may even be a controversial and unpopular act which the state will try to avoid.

The development agenda will only succeed in leaving no one behind if it is complemented by dedicated action to engage and counter entrenched socio-political attitudes and stereotypes. Indeed, a rights based approach to development calls for engagement with populations that are heavily discriminated against and excluded, such as indigenous groups, minorities, migrants, the disabled and the stateless. Importantly, these groups need to find effective ways to work together to promote their collective inclusion.

Ensuring that the stateless are included and not left behind is both logical and necessary for the development project under the SDGs. Equally important (perhaps even more so) is engaging with majority populations and state structures that are the source of dominant societal attitudes which justify the discrimination and exclusion of the stateless. Challenging dominant negative stereotypes and prejudices is essential.

Furthermore, for development to be truly sustainable, it should address the root structural causes which serve as barriers to development – of which statelessness is one. Sustainable development is not merely providing access to education for stateless children generation after generation. Sustainable development is doing so, but also solving statelessness, so that there are increasingly fewer stateless children, who risk exclusion.

⁴² See, Equal Rights Trust, Declaration of Principles on Equality, *supra* n4, Principle 5. Whether or not the disadvantaged person has to possess the protected characteristic themselves, be associated with someone who possesses that characteristic or simply be disadvantaged by a rule which indirectly discriminates against others, has recently been opened for question by the judgment of the Court of Justice of the European Union in *CHEZ Razpredelenie Bulgaria AD v Komisia za Zashtita ot Diskriminatsia* (Case C-83/14).

⁴³ Equal Rights Trust, My Children's Future, *supra* n2, p. 33

⁴⁴ *Ibid.*

4.3. Intergenerational statelessness and positive action

One of the biggest challenges that statelessness poses to the development agenda (and indeed the human rights framework), is that communities that have been stateless for many generations, have increasingly been 'left further behind' with each new generation. Malnourished and uneducated children grow into unemployed adults, who have less to offer their own children than their parents had to offer them. As the general trend of the world is one of children having access to more and being higher educated than their parents, the trend with intergenerational statelessness can be exactly the reverse. Unless intergenerational statelessness is directly addressed, the gap between the stateless and those with a nationality (including those who live in the same communities as stateless persons) can only widen.

Thus, while it is important to document, to provide healthcare, to educate, this alone is not sufficient. Historical disadvantage can only be redressed through more targeted positive action that takes into account the cumulative impact of intergenerational statelessness and offers the new generation as fair a chance as possible of competing on equal terms.

The below excerpts sets out the role that positive action can play in relation to statelessness:⁴⁵

The flurry of progress in the development of the legal framework on equality, ... has brought us to a point where the majority of academics and lawmakers recognise that substantive equality is necessary, meaning that steps must be taken to correct disadvantages faced by individuals as a result of living in a society which structurally favours some over others, and that the rights to equality and non-discrimination are to be interpreted in this vein.⁴⁶ The implications of this element of the equality framework for stateless people have been little considered or tested. ...

Positive action demands not only that States acknowledge the disadvantages faced by certain groups, but also that they take action to correct those. Accordingly, it can be argued that, in tackling some of the disadvantages faced by stateless people in accessing other rights ..., States also have the opportunity and indeed obligation to go further and institute positive measures for longer term equality by solving statelessness. ...

Finally, positive action to address structural disadvantage should continue even after statelessness has been "solved". Studies conducted in Sri Lanka show that the hill country Tamils of Indian origin – a group whose statelessness has largely been resolved over the past decade – are still the most disadvantaged group in the country.⁴⁷ Such studies are evidence that solving statelessness and ensuring equality are two different things, and that while the former certainly helps with the latter, it does not guarantee it. Therefore, the positive action obligation should endure beyond "solving statelessness" and should serve to promote real equality, inclusion and the enjoyment of rights.

While the notion of 'positive action' is common parlance in the human rights discourse, this is less familiar territory for the development world. However, the motto 'no one left behind' will only be truly achievable if historical disadvantage is taken into account and substantive equality pursued. Consequently, there is likely to be a steep learning curve for development actors who seeking to pursue the Sustainable Development Agenda in a meaningful manner. It would be essential that human rights actors weigh in, to help development actors mould and target their activities accordingly, and to ensure that this is the basis for further complementarity and collaboration.

⁴⁵ A. de Chickera and J. Whiteman, "Addressing statelessness through the rights to equality and non-discrimination", in van Waas & Khanna (eds), *Solving Statelessness*, Wolf Legal Publishers, 2016.

⁴⁶ For a detailed discussion of the developments in equality jurisprudence, with a focus on the development in the UK legal framework see, B. Hepple, *supra* n4, pp. 17-29

⁴⁷ A.H. Ilyas, "Estate Tamils of Sri Lanka a socio-economic review", *International Journal of Sociology and Anthropology* 2014, vol 6(6), pp.184-191

5. Data, research and related challenges

Though there have been improvements in mapping and data gathering on statelessness in the recent past, in general, data on statelessness and research on the impact that statelessness has on the access to various rights and services is limited and can even be poor.⁴⁸ UNHCR has identified this as a significant gap that (together with states, civil society and academia) it aims to address through Action 10 of its Global Action Plan to End Statelessness by 2024.⁴⁹ These efforts should be complemented by those of development actors who are well placed to collect data on statelessness – and indeed, who require this data in order to plan allocation and distribution of resources, assess and monitor implementation and ensure that no one has been left behind. Indeed, it is extremely important that stateless persons are included in general data sets and the monitoring of the SDGs. For example, if stateless persons are not included in census data and in other development data, their poverty will not be visible, making it more difficult (and politically less urgent) to bring them out of poverty.

SDG 17.8 focuses on data and targets to:

By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts

It is extremely important that ‘statelessness’ is identified as one of the ‘other characteristics’ under this Target. It is also important to ensure that the pursuit and delivery of disaggregated data serves the positive purpose of ensuring that the needs of stateless persons are accounted for and addressed through development planning. There is a risk though, that such data can be used to target people for further marginalisation. Even if not intentional, this process can lead to further vulnerability if it results in the ‘otherness’ of people being highlighted, with nothing subsequently being done to improve their situation. Consequently, the process of data collection and the way in which such data is used, can be a delicate and challenging issue.⁵⁰

UNHCR estimates the total non-refugee stateless population to be at least 10 million,⁵¹ and civil society estimates place the global stateless population inclusive of all stateless Palestinians under the UNRWA mandate and other refugees at over 15 million.⁵² But the reality is, there are large gaps in the statistics. There are many countries, including those with large known stateless populations that don’t record a single stateless person in their statistics. Even where statistics are available, these do not necessarily give a comprehensive or fully accurate picture.⁵³ As a result, current statistics on statelessness account for just over 3.5 million people in 77 countries that have communicated such data to UNHCR. The gap between the aforementioned estimates and the population for which there currently is data is very wide and demands our greater attention. Furthermore, it is possible that further research and action (including through the implementation of SDG 16.9) will unearth an even larger global stateless population. As Bronwen Manby wrote when the UNHCR campaign to end statelessness was launched in 2014, one likely outcome may be that in 2024 we recognise that there are even more stateless people in the world. As she put it:

“I confidently predict that the result of this campaign will be to “increase” statelessness by many millions of people. This is not because I think that the campaign is misconceived - far from it - but because the statistics on the numbers

⁴⁸ For a detailed critique and analysis in this regard, see Institute on Statelessness and Inclusion, *The World’s Stateless*, 2014, available at: <http://www.institutesi.org/worldsstateless.pdf>.

⁴⁹ Improve quantitative and qualitative data on stateless populations.

⁵⁰ With regard to vulnerable populations more generally, see OHCHR, ‘SDGs Indicator Framework: A Human Rights Approach to Data Disaggregation to Leave No One Behind’ (2015) Draft background note, available at <http://www.ohchr.org/Documents/Issues/HRIndicators/DataDisaggregation.pdf>

⁵¹ UNHCR, *Global Trends Forced Displacement in 2014*, 2015, available at: <http://unhcr.org/556725e69.html>.

⁵² Institute on Statelessness and Inclusion, *The World’s Stateless*, 2014, available at: <http://www.institutesi.org/worldsstateless.pdf>.

⁵³ Ibid.

*of stateless persons are currently so inadequate that one of the main impacts of greater attention to the issue will be that currently uncounted populations will come into focus.*⁵⁴

While this is not a criticism of the UNHCR campaign – it would be a positive development if we are able to more accurately quantify the scope of the issue – it does highlight the challenge of taking a quantitative approach to a problem – as the SDGs would as evident in its draft indicator to SDG 16.9 - that has not yet been fully quantified.

5.1. Causalities of exclusion and inequality

It is also important to give further thought to what type of data and information is most urgently needed, to aid proper planning to address statelessness. One of the key questions, is of the processes and causalities at play, which lead to the exclusion and unequal treatment of the stateless. This is an area in which more research is required,⁵⁵ but nonetheless, that development (and human rights) actors need to be mindful of. For example, it has often been said that stateless children have great difficulty accessing education. But why exactly?

- Is it that they are excluded from education purely because of their status of being stateless?
- Is it because they have no documents (or do not have the right documents) and therefore are not admitted to schools?
- Is it because without documents they do not enjoy free movement and therefore cannot access education (or education after a certain level)?
- Is it because their parents can only do informal, exploitative work because they do not have documents (or the right documents), and therefore cannot afford to send them to school?
- Is it because the stateless population is an ethno-linguistic minority and local schools do not cater to their language?
- Etc.

Identifying multiple discriminations and the triggers that make stateless children more likely to be excluded from education is the first step to addressing and overcoming them. The same would apply to other development priorities including healthcare, work, sanitation and shelter.

⁵⁴ <http://africanarguments.org/2014/11/12/how-will-the-unhcrs-statelessness-campaign-affect-africa-by-bronwen-manby/>

⁵⁵ Research carried out on the nexus between statelessness and trafficking in Thailand has explored some of the processes and causalities at play in rendering stateless persons more vulnerable to trafficking than their non-stateless neighbours. (Rijken, van Waas, Gramatikov and Brennan, *The nexus between statelessness and human trafficking in Thailand*, Wolf Legal Publishers, 2015.) Research utilising a similar methodology but focussing on other rights issues in relation to the stateless would be invaluable in this regard.

Part 2:

A closer look at the SDGs

This paper now takes a closer look at the SDGs, to identify which are (or can be) most relevant to the issue of statelessness – both to reducing statelessness and to ensuring the development needs of stateless persons.⁵⁶ It is important to ensure that these SDGs are implemented with sensitivity to the statelessness issue. Here, these SDGs have been grouped into three categories for discussion:

1. The SDG on legal identity (Goal 16.9)
2. SDGs that represent the more traditional development issues which can also be viewed as socio-economic rights (such as ending poverty – Goal 1; and hunger – Goal 2; health – Goal 3; water and sanitation – Goal 6; education – Goal 4; and economic growth and work for all – Goal 8).
3. SDGs which cannot be fulfilled without achieving structural change that addresses discrimination and exclusion (gender equality – Goal 5; reducing inequality – Goal 10; and peaceful and inclusive societies... access to justice for all and build effective, accountable and inclusive institutions at all levels - Goal 16).

6. Legal identity for all (including the stateless)⁵⁷

SDG Goal 16.9 aims to “*By 2030, provide legal identity for all, including birth registration*”. The language used here is imprecise, and while it has tremendous potential to unlock resources to enhance access to rights for vulnerable groups, its ambiguity means that there is a risk that it could end up being counterproductive unless a rights-based interpretation is ensured.

6.1. The lack of a definition

The SDGs do not define legal identity. Hence, one risk is that the scope of SDG 16.9 may be reduced to only include birth registration – which is the only named aspect of ‘legal identity’ in what is clearly an open-ended list (hence the term ‘including’). At present, the only draft indicator to monitor progress under SDG 16.9, relates to birth registration. There is therefore a likelihood that planning, energy and resources will be invested around rolling out birth registration, without proportionate attention being paid to the other elements of legal identity which should also be addressed through this process. While birth registration can help address the risk of statelessness if it reaches those who currently face structural barriers to registration (as those without birth registration documentation can be at heightened risk of statelessness), it does not address all that is included in the term ‘legal identity’. Furthermore, this limited view of legal identity can be counter-productive by increasing the cost of non-documentation and making the fault-line between those who are documented and those who are not, more visible and even bigger.

The phrasing of 16.9 is also concerning. “[P]rovide legal identity for all” could imply that some do not have a legal identity to begin with. Article 8 of the CRC on the other hand, protects “the right of the child to **preserve** his or her identity”.

From a human rights perspective, identity, like dignity, is inherent to all people regardless of whether it can be proven. This is why for example the ICCPR states that every person has the “right to recognition everywhere as a person before the law”,⁵⁸ and to equality before the law.⁵⁹ These principles are also found

⁵⁶ Annexed to this background paper is a full list of the SDGs, which appear to be the most relevant to protecting the stateless and ending statelessness.

⁵⁷ This section has drawn on some of the discussions at the 2015 Hague and New York meetings on legal identity

⁵⁸ Article 16 of the International Covenant on Civil and Political Rights

⁵⁹ Article 14 of the International Covenant on Civil and Political Rights

in most regional and national human rights documents and are considered bedrocks of human rights, administrative law and the notion of the rule of law. Any person – whatever their status, whatever their level of documentation – is entitled to recognition as a person and to equality before the law. This is because every single person has legal identity.

6.2. The legal identity ‘basket’

Before offering a definition of legal identity, let us start by considering the different elements of identity which should be included in a ‘basket’ of legal identity. Below is a non-exhaustive list of such elements.

The Convention on the Rights of the Child is a good place to start. Article 8 provides an open-ended list of the contents of ‘identity’ which includes “nationality, name and family relations as recognized by law”. Significantly, the child’s right to “be registered immediately after birth” (Article 7) is not an instantiation of the child’s right to identity, but rather, one of the ways in which a child’s identity is preserved and evidenced. Thus, we can include with the ‘basket’ of legal identity, the nationality, name and recognition of the nuclear family of any individual. In the *Mennesson v. France* case, the European Court of Human Rights held that “an essential aspect of the identity of individuals is at stake where the legal parent-child relationship is concerned”,⁶⁰ and that nationality is also an element of identity.⁶¹ The Court also held that denial of the parent-child relationship can have an impact on the child’s inheritance rights, which is also related to their identity.⁶² Hence, it is clear that the European Court of Human Rights takes a view of ‘legal identity’ which is very much in line with CRC Article 8.

This approach immediately places ‘nationality’ at the heart of legal identity. It follows that the stateless have been denied two rights – their right to a nationality and their right to full legal identity. Making this connection and linking it to the SDGs, a 2015 UN Secretary General’s Report states that:

*Target 16.9 of the Sustainable Development Goals is to provide, by 2030, legal identity for all, including birth registration. The arbitrary deprivation of nationality of children is a significant barrier to the realization of this target, which will not be fully met unless articles 7 and 8 of the Convention on the Rights of the Child are universally respected and fulfilled and childhood statelessness has been eradicated.*⁶³

The CRC list is also open-ended, intimating that there is more to legal identity than these three elements.

Another key component, is arguably those characteristics that are the basis upon which persons are more vulnerable to being discriminated against, and which are protected against discrimination under the law. The grounds of non-discrimination are foundational to international human rights law. These characteristics are inherent to the identity of the person and it is unlawful to disadvantage persons based on such characteristics (with very limited and strictly scrutinised exceptions). The prohibition of discrimination on grounds of such characteristics necessitates the recognition of these characteristics as integral elements to legal identity. The open-ended list in the ICCPR is “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Other characteristics such as disability, age and sexual orientation are now permanent additions to the discrimination lexicon. A further ground which is gaining increasing traction, and which is extremely relevant to both the statelessness and development discourses, is ‘socio-economic disadvantage’.⁶⁴ In the case of *Alyne da Silva Pimentel v Brazil* for example, the Committee on the Elimination of All Forms of Discrimination against Women stated that poor obstetric care which lead to the death of a woman, was discriminatory on grounds of sex and race, but also of socio-economic

⁶⁰ *Mennesson v. France*, European Court of Human Rights, application no. 65192/11, June 2014, Para 80.

⁶¹ Para 97. See also, *Genovese v. Malta*, application no. [53124/09](#), October 2011, Para 33.

⁶² Para 98.

⁶³ A/HRC/31/29, Para 33.

⁶⁴ For further discussion of this see, Equal Rights Trust, *Economic and Social Rights in the Courtroom*, 2014, pp. 68-76. Key references include, S. Fredman, “Positive Duties and Socio-Economic Disadvantage: Bringing Disadvantage onto the Equality Agenda”, *European Human Rights Law Review* 2010, Issue 3, p. 10

background.⁶⁵ Statelessness has also been considered as falling under the ‘national and social origin’ characteristic.⁶⁶

It is our proposition that these characteristics also form part of a person’s legal identity, in that these are characteristics that are inherent to a person’s identity, and which are legally protected from being the basis upon which discrimination is suffered. Some of these characteristics are more permanent than others, and some of them require special protection in specific contexts – such as pregnancy for women - but collectively they represent the more fundamental elements of a person’s identity which dictate (or at least influence) their life experience and treatment by society.

Another important aspect of legal identity is ‘protection status’. International law protects those who are persecuted or in some other way, denied protection by their own country, or indeed, who have no nationality. Refugee (under the 1951 Convention and its Protocol), stateless person (under the 1954 Convention), victim of trafficking (as defined under the UN Convention against transnational crime and its Protocols) and other statuses based on criteria which trigger some kind of subsidiary protection (for example, under the EU Qualification Directive) are all elements of legal identity that bring with it, specific rights and obligations.

Similarly, ‘legal status’ – as a national or foreigner and in the case of the latter, a permanent resident, resident or irregular migrant – is also an important component of identity. Each status has corresponding rights and obligations, and sets out to what extent particularly non-nationals can be lawfully disadvantaged, as well as the threshold of proportionality and reasonableness in this regard.

Finally, an important element of identity is likely to be ‘employment status’. Are you employed, and if so, what labour rights do you have? Are you unemployed and if so, what entitlements to social welfare? Are you a pensioner or a migrant worker?

The below table, sets out these various (non-exhaustive) elements of the basket of legal identity:

Element/ characteristic	Description/ elaboration	Legal norms/principles
Nationality		Every person has the right to a nationality. No person should be stateless. No person should be discriminated against in exercising their right to a nationality (CRC, ICCPR, CERD, 1961 Convention)
Name		Every person has the right to a name (CRC)
Family, family ties, descent, and relationships	This includes biological/adopted/surrogate son, daughter, parent; husband, wife, widow, widower, divorcee	The right to a family, to a private life, etc. is protected under international, regional and national laws including the CRC and ICCPR. These elements of identity are also relevant to family law and issues such as property, inheritance, re-marriage, adoption etc.

⁶⁵ Committee on the Elimination of All Forms of Discrimination against Women, Communication No. 17/2008, *Alyne da Silva Pimentel v Brazil*, 25 July 2011,,UN Doc. CEDAW/C/49/D/17/2008, para. 7(7)

⁶⁶ See for example, European Court of Human Rights, Application No. 55707/00, *Andrejeva v Latvia*, 18 February 2009.

Characteristics protected from discrimination	Sex, including male, female, transgender, intersex	The CEDAW, ICCPR etc. are relevant instruments. Relevant factors to take into consideration include: <ul style="list-style-type: none"> - For women, the different rights related to pregnancy, maternity etc., and the various equality and non-discrimination challenges faced by women. For transgender and intersex, the capacity of identity documentation to accurately reflect the gender identity of the person is of paramount importance
	Sexuality, including heterosexual, lesbian, gay, bisexual, queer, transgender	ICCPR etc.
	Race, ethnicity, religion, national origin etc.	CERD, ICCPR, CRC etc.
	Age (including child and elderly)	CRC for children. Evidence of age is important for various key life events such as access to education, eligibility to vote, recognition as a minor/determination of age for protection purposes, criminal justice and sentencing purposes etc. For the elderly, pension, social services related rights etc.
	Disability	CRPD Evidence, proof of disability is necessary to not be discriminated against on grounds of disability
	Other status – this includes economic disadvantage	ICCPR etc.
Protection status	including refugee, stateless person, subsidiary protection and victim of trafficking.	1951 Refugee Convention and its Protocol 1954 Statelessness Convention Relevant regional laws including the EU Qualification Directive UN Convention against transnational crime and its protocols
Legal status	including citizen, non-citizen, resident, permanent resident and irregular migrant	International and national law differentiates and protects according to legal status. For example, while citizens may have a right to free university, non-citizens may not. While such differentiation is permissible under international law, it must not be arbitrary (i.e. must be proportionate, reasonable etc.) It is important to note that a lack of a legal status (i.e. some but not all irregular migrants) does not mean no protection or no access to basic rights.
Employment status	Employed, unemployed, pensioner, migrant worker etc.	People have various rights and obligations related to their employment / labour status. ILO Conventions, the ICESCR and the CMW as well as regional treaties and national labour laws protect various aspects of this status. Special provision must be made for those who work in the informal sector.

It is important to note that not all elements of a person’s legal identity should be documented in a way which makes this information public – both because of privacy related considerations and to ensure that vulnerable people are protected against discrimination. For example, there is no legal reason to include race or religion on an identity card. As noted by Tendayi Bloom:

There are ways to mitigate these risks. For example, work in this area might include firewalls between identification systems and development data, so that the increased use of identification documents does not

force individuals to reveal sensitive information (such as that relating to ethnicity, membership of a minority group, or lack of recognised status) to school authorities and healthcare providers.⁶⁷

6.3. Defining legal identity

Based on the above analysis and discussions at the 2015 New York meeting on legal identity, we propose the following working definition of (or set of characteristics which collectively amount to) legal identity:

‘Legal identity’ is a set of elements and characteristics, the combination of which is unique to every person, which defines each person and governs their relationships, obligations and rights under both private and public law. Legal identity is to be protected by the law and is based on principles of human rights law. Legal identity is not static, but evolves with changing circumstances. Legal identity is inherent to the dignity and equality of the person. Persons should not be discriminated against on grounds of their legal identity, or lack of proof or evidence of legal identity. Furthermore, the enjoyment and exercise of other rights and services which are grounded on elements of legal identity, should not be undermined due to lack of proof of identity.

Corresponding to the ‘whole’ or to the separate elements of the legal identity of the person, are rights and obligations, which should be understood and guaranteed in compliance with standards of international law. For example, as a working mother and citizen, a person has a legally defined set of obligations, responsibilities and rights in relation to her child, and a set of rights, obligations and benefits in relation to her employer and the state. As a refugee, international law provides that a person has a set of rights and obligations in relation to the state of refuge and the international community. As a non-citizen, a person has a set of rights and obligations in relation to the state he or she is living in. Within the confines of each corresponding set of rights and obligations (as set out under national and international law), the individual should not be discriminated against or treated arbitrarily as a result of their legal identity. For example, a non-citizen child should not be denied access to education because she is a non-citizen.

Consequently, fundamental notions including the rule of law, equality before the law, non-discrimination, the inherent dignity of the person, access to justice, enjoyment of human rights and services, become integral to the recognition and protection of legal identity. These are the core principles underpinning the right to a legal identity, and resonate strongly with other targets under SDG 16.

Legal identity should not be confused with ‘evidence’ of legal identity, or ‘proof’ of legal identity. While a person’s name is an element of his or her legal identity, a birth certificate is ‘proof’ of that element. The state therefore has the obligation to:

1. Ensure that the lack of proof or evidence of legal identity is not used as the basis upon which to disadvantage and deny access to rights or justice of the person (for example, failure to identify statelessness is not a defence for the arbitrary detention of stateless persons).
2. Ensure that evidence of a particular type of legal identity does not lead to discriminatory treatment by state or non-state actors.
3. Ensure that where appropriate, proof of legal identity is provided to the individual (such as civil registration) in a manner that protects the person’s right to privacy and non-discrimination.

This is an area where more work is urgently needed. In further strengthening the definition of ‘legal identity’, Articles 7 & 8 of the CRC, relevant provisions of other key international and regional treaties, and the jurisprudence of international, regional and national courts (including the *Mennesson* judgment) should be further studied.

⁶⁷ Tendayi Bloom, ‘The SDGs and childhood statelessness’, in Institute on Statelessness and Inclusion, *The World’s Stateless 2017*, Forthcoming.

6.4. Other issues and concerns

There is a reasonable concern that the more identity documentation becomes the norm and the key to accessing rights and the fruits of development, the stronger and more visible the fault-line will become, between those who have documentation which confirms they are the 'right type of person' (e.g., citizens from the majority race and religion) on the one hand, and those who have documentation which confirms that they are the 'wrong type of person' (e.g., ethnic minorities or stateless persons or migrants) or have no documentation at all on the other. As observed by Bronwen Manby:

The achievement of Target 16.9 is relevant for the realisation of many of the other SDGs and their detailed targets, and for the overall ambition to "Leave no one behind". Without a legal identity, in the form of an official entry in a state register, people are invisible to the state and other agencies that are working to fulfil the different goals and monitor their implementation.⁶⁸ Effective systems to identify individuals in need will be required, amongst other purposes, to implement social protection systems (Target 1.3); for the poor to have control over land and other assets (Target 1.4); and to measure progress in women's empowerment (many of the targets under Goal 5).⁶⁹ Civil registration in general is also a priority for public health professionals, since recording cause of death is an important source of information around disease and mortality (several targets under Goal 3).⁷⁰ A document showing legal identity is essential to "facilitate orderly, safe, regular and responsible migration and mobility of people", one of the objectives in reducing inequalities within and between countries (Target 10.7).⁷¹

Elsewhere it has been stated that:

The ability to establish and verify identity can be critical for those seeking to register property or hold a financial account or obtain employment in the formal sector, or for governments to administer a range of social protection and other programs effectively—areas that relate directly to other SDG goals and targets. One study found [that at least 10 SDG targets required accurate identification](#). The identity goal can therefore be viewed in part as an instrument, to facilitate the achievement of many other SDG goals.⁷²

In this context, distinctions of national/non-national, citizen/stateless, documented/undocumented will become more acute and life-changing, and the stakes to fall on the right side of the divide, or to keep unwanted minorities on the wrong side would be higher than ever before.

A related concern is the quantitative approach that development actors are likely to take (as evidenced through the draft indicator to SDG 16.9, which is "percentage of children under age 5 whose birth is registered with a civil authority"), with no reference to quality. Quantitative approaches which ignore structural and qualitative issues such as discrimination are likely to be counter-productive, particularly in light of the increasing importance of having the right type of documentation. Commenting on this draft indicator in November 2015, the Institute for Statelessness and Inclusion stated that:

[W]hile this indicator is quantitative in nature, and such indicators are necessary, it is equally important to measure the quality of the basis on which legal identity is recognised and documented. For example, are persons who should be recognised as nationals of a state, arbitrarily deprived of their nationality due to gender or race discriminatory laws, or the discriminatory implementation of laws? Failing to measure performance in terms of

⁶⁸ E Stuart, E Samman, W Avis & T Berliner, *The data revolution: Finding the missing millions* (2015) Overseas Development Institute, available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9604.pdf>

⁶⁹ M Dahan & A Gelb, 'The Role of Identification in the Post-2015 Development Agenda' (2015) Centre for Global Development Essays, available at http://www.cgdev.org/sites/default/files/CGD-Essay-Dahan-Gelb-Role-Identification-Post-2015-ID4D_0.pdf

⁷⁰ The Lancet, 'Counting births and deaths' (series) (2015) *The Lancet*, available at <http://www.thelancet.com/series/counting-births-and-deaths>.

⁷¹ Bronwen Manby, 'Legal identity for all and childhood statelessness', in Institute on Statelessness and Inclusion, *The World's Stateless 2017*, Forthcoming.

⁷² Alan Gelb and Bronwen Manby, *Has development converged with human rights? Implications for the legal identity SDG*, 3 November 2016, available at: <http://www.cgdev.org/blog/has-development-converged-human-rights-implications-legal-identity-sdg>

*qualitative developments, can be extremely damaging, as children and adults alike are at risk of being denied recognition of their identity on discriminatory grounds.*⁷³

It is important to be mindful that there are often historical reasons behind why communities are stateless or large populations are impoverished or undocumented. Discrimination is often central to this story, whether it is in a context of state succession – as with the Ethnic Russians of Latvia, patriarchy – as with the gender discriminatory nationality laws in Nepal or on grounds of ethnicity, as with the Dominican Republic, the Rohingya and other situations. Solutions which prioritise quantitative gains, without addressing the root causes and structural challenges, can further entrench the disadvantage of already disadvantaged groups.

Poor registration practices can sometimes result in persons who have a nationality, being identified as stateless, and/or being attributed a wrong nationality (particularly in migration contexts). Similarly, people who should have a nationality under the law of a particular country, may not be recognised as nationals. Perhaps most problematically, discriminatory and arbitrary nationality laws deny people nationality in violation of international law. An approach which is neutral to the quality and legality of the basis of registration, but which targets universal registration (good or bad) is likely to create more statelessness and entrench statelessness and the disadvantage of the stateless.

This is particularly so because legal identity – in particular nationality - is a political issue, as it determines who benefits from citizenship and who does not. States have been known to use various degrees of coercion to prevent disputed or vulnerable minorities from self-identifying and asserting their own identity. As an extreme example, efforts by the state of Myanmar to prevent Rohingya from identifying as ‘Rohingya’ and efforts by some state and provincial actors to impose the identity of ‘Bengali’ on this group, have been a source of further conflict and strife for the already persecuted Rohingya. The 2014 census, in which Rohingya were not allowed to self-identify (despite assurances to the international community to the contrary) is a case in point.⁷⁴ In other contexts, when a child is born out of wedlock, this is recorded in their birth certificate. Parents can even face criminal prosecution for adultery, if they have children out of wedlock. The resultant discrimination, stigmatisation and even punishment is a disincentive for birth registration. The sensitivities pertaining to particular identities in particular contexts should be taken into account by development actors in their efforts to implement SDG 16.9. The task of doing so in a manner which respects the human rights (including the right to self-identification) of minority groups can face stiff resistance, which slows down development programming at large. However, a failure to stand with such minority groups, could result in their long-term exclusion from the fruits of development and the further erosion of their human rights.

When looked at this way, it becomes evident that under human rights law, the rights to a nationality, to a name and to know one’s parents, to a private life, to non-discrimination, to equality *inter alia*, should inform the implementation of SDG 16.9. Furthermore, in relation to UNHCR Global Action Plan to End Statelessness, not only its Actions 7 (birth registration) and 8 (nationality documentation), but also Actions 1 (resolve existing major situations of statelessness), 3 (remove gender discriminatory nationality laws) and 4 (prevent denial, loss or deprivation of nationality on discriminatory grounds) are relevant in this regard.

Given the above analysis and the identified concerns and limitations, but bearing in mind that there is an important opportunity to be seized to give greater definition and meaning to the notion of ‘legal identity’ (both in relation to the SDG framework and also the human rights framework), it is important to:

- a. As a starting point, acknowledge the limitations of SDG 16.9, and work to maximise its effectiveness within these limitations.
- b. Ensure that SDG 16.9 is not understood or implemented in a manner which undermines enjoyment of the wider right to a legal identity and/or contribute to further discrimination based on various elements of identity.

⁷³ Institute on Statelessness and Inclusion, *Response to consultation on draft indicator to SDG 16.9*, November 2015.

⁷⁴ See for example, The Guardian, *Burma census is not counting Rohingya Muslims, says UN agency*, 2 April 2014, available at: <https://www.theguardian.com/world/2014/apr/02/burma-census-rohingya-muslims-un-agency>

- c. Develop measurements and indicators which are based on international law and relate to more than just the rate of birth registration of children.
- d. Push for an additional indicator that focuses on the quality of legal regimes related to legal identity, the effectiveness of implementation of such regimes, equality before the law and access to justice in the face of violations to such legal frameworks.

7. Development, socio-economic rights and the stateless

Traditionally, development efforts most obviously overlap with socio-economic rights, which set out the minimum core socio-economic standards that states are obligated to provide to all persons on their territory. The ICESCR is the principle human rights treaty which sets out socio-economic rights, but other treaties (CRC, CEDAW, CMW etc.) also contain important socio-economic rights related provisions. As explained above, Article 2.3 of the ICESCR limits the obligation of developing states to guarantee economic rights to non-nationals, a significant limitation which does not apply to the SDG framework or to other human rights treaties.

As set out above, discrimination is often the root cause of statelessness and the socio-economic disadvantage of stateless persons, who are often viewed as not belonging, outsiders, inferior and to be discriminated against. The intergenerational nature of the majority of statelessness situations in the world, whereby the statelessness of parents is inherited by their children and grandchildren, further exacerbates their 'otherness' and the discrimination and disadvantage they endure.

However, as discussed above, there is often little political incentive (and perhaps even strong disincentive) for states to support the development of stateless persons. The aspiration to leave no one behind and to reach the furthest behind first, requires development actors to find creative and sustainable ways to incentivise states to ensure that stateless persons and other similarly disadvantaged and marginalised groups are included, consulted, reached and empowered to exercise their rights in relation to development. Emphasising the link between development priorities and human rights obligations, can be an important strategy in this regard.

7.1. Stumbling blocks

There are some common 'stumbling blocks', which historically have served as barriers to people – particularly vulnerable and marginalised people - accessing rights and services. In the context of stateless persons, or those at risk of statelessness, the lack of documentation and the lack of a 'legal status' are two of the most visible, significant and seemingly insurmountable stumbling blocks. Other stumbling blocks, such as language, race, gender etc., can have an equally debilitating impact, but often play out in a subtler manner. Discrimination on such grounds that undermines access to socio-economic rights often manifests through 'proxy reasons' such as the lack of documentation, which can be presented as a more objective, bureaucratic and fair basis on which to deny people access to their rights, than overtly referring to their race or language or gender.

These stumbling blocks do not only serve as barriers to accessing the rights or services being sought by the individual; they can also bring the individual to the attention of the authorities, resulting in the violation of other rights. For example, an undocumented migrant who seeks healthcare, risks being denied the healthcare he or she needs, and being criminally charged for violating immigration law (in some countries, immigration violations are criminal offences), and being detained and subject to removal proceedings. When the individual is stateless and irremovable, this is likely to lead to other human rights violations as well.⁷⁵

⁷⁵ See European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A Regional Toolkit for Practitioners*, 2015, available at: http://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf

A paradigm shift is required in how these stumbling blocks are perceived and approached. Instead of seeing the lack of documentation or legal status as legitimate reasons to deny people their rights and access to development, the emergence of this information in the specific context of them attempting to access another right, should trigger a process which results in their documentation or status also being addressed and resolved. Many people go through life without documents or even without a legal status, unaware that this places them in a vulnerable position, or unable to do anything about it. Certain trigger points – the need to access healthcare or education, the need to access work in the formal labour sector or even being issued removal orders – can lead to immense crises, as it is only then that the cost of not having documents or even being stateless becomes evident. At this stage, state actors are confronted with two options:

1. Remain rigid and implement the law or policy as it is, even if this means that the person will not be able to access healthcare or education, or will have to continue to work in the informal labour sector in exploitative conditions, or will be detained while removal which is not possible due to them being stateless is pursued.
2. Adopt a more progressive approach of seeing the person as someone who is entitled to access healthcare or education or work, and has a right not to be arbitrarily detained, while also having a right to documentation and to nationality; and taking the necessary steps to respect and fulfil their rights.

The former approach is largely the way state bureaucracies tend to approach such situations, treating those without documents and legal status with suspicion and penalising them (often for what has been beyond their control) by withholding from them the rights or services they desperately need. The latter approach is more in line with principles of human rights including equality and non-discrimination, dignity and liberty. Such an approach, in addition to ensuring that more stateless and similarly disadvantaged persons will benefit from development programmes related to poverty, education etc., will also:

1. Strengthen the rolling out of SDG 16.9 and other SDGs which require structural change (see section 8 below), by identifying disadvantaged, excluded and discriminated against individuals and groups when they come into interaction with the state for very 'normal' reasons – such as accessing healthcare and education. If these moments are used to also ensure that such people receive documentation etc., states will be able to progress towards their development goals more efficiently.
2. Minimise the risk in relation to one of the concerns flagged in section 6. Namely, that the more important 'documentation' becomes, the greater the divide between those who have the 'right' type of documentation, and those who have the 'wrong' type or no documentation at all. If the lack of documentation does not become a barrier to accessing other services, but instead, other services become a gateway to accessing documentation, this risk is effectively addressed in a manner which fulfils human rights obligations and contributes to combatting structural discrimination.
3. Closer align the human rights and development frameworks and contribute to strengthening state observance and compliance with treaty obligations.

7.2. The SDGs that directly deliver socio-economic rights

This paper does not provide a comprehensive analysis of the overlap between the SDGs and socio-economic rights, or where the stateless fit in this picture. Rather, table below provides a brief overview of some of the SDGs which strongly relate to specific socio-economic rights, and why it is important to ensure that the stateless are not left behind in relation to each.⁷⁶

Theme	Relevance to statelessness	Relevant SDGs	Relevant socio-economic rights
Ending poverty, hunger & ensuring water & sanitation for all	Undocumented, disenfranchised, discriminated against, it is not unreasonable to assume that in many instances, stateless people are likely to be poorer than their neighbours who have a nationality. Furthermore, there is a growing body of research which demonstrates this reality. Consequently, the relevance of these goals and related socio-economic rights to statelessness is self-evident. The challenge is to get beyond barriers of discrimination, lack of political will and lack of documentation to bring stateless people out of poverty in a sustainable and dignified manner.	SDG 1 on ending poverty, elaborates through various targets, a roadmap for development actors to follow. Accordingly, the target is to ensure that no one is living on less than \$ 1.25 per day, by 2030. Importantly, the SDGs promote a mixed approach of development aid, access to equal rights and resources, ownership and control over land, property and resources, the implementation of social welfare and protection etc., in order to achieve this most fundamental Goal.	The most relevant socio-economic rights under the ICESCR, are Article 9, which establishes everyone's right to social security, including social insurance; and Article 11 which recognises " <i>the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.</i> "
		SDG 2 on ending hunger, sets out the targets for a multi-faceted approach to ensure there is no hunger or malnutrition in the world – focusing on food delivery and agricultural productivity, sustainable agriculture and the genetic diversity of seeds.	Article 11 also recognises " <i>the fundamental right of everyone to be free from hunger</i> " and sets out a collective obligation of the international community to take steps to avoiding hunger including through cooperation, improving methods of production, conservation and distribution of food etc.
		SDG 6 on ensuring availability and sustainable management of water and sanitation for all, targets 'universal' and as importantly, 'equitable' access to safe and affordable drinking water for all. This SDG specifically targets access to sanitation and hygiene for all, paying special attention to the needs of women and girls, while also targeting the improvement of water quality and the related reduction of pollution.	While the Right to Water is not explicitly guaranteed under the ICESCR, the Committee on Economic, Social and Cultural Rights has elaborated through its General Comment No. 15 on the Right to Water, the manner in which Articles 11 and 12 of the ICESCR, guarantee this right. ⁷⁷
Ensuring healthy live & wellbeing	In many countries, healthcare (or free/subsidised healthcare) is only available to nationals. Even if this is not the case, the fear of being arrested for lack of documentation can serve as a significant deterrent for certain stateless	SDG 3 on ensuring healthy lives and promoting well-being for all, at all ages, directly targets the most important, life-threatening healthcare challenges faced by humanity: maternal and infant mortality, epidemics of AIDS, TB, malaria etc., while also targeting a reduction in road accident related deaths, and deaths caused by	The most relevant socio-economic right under the ICESCR is Article 12, according to which everyone has the right " <i>to the enjoyment of the highest attainable standard of physical and mental health.</i> "

⁷⁶ The relevant SDGs and Targets are annexed to this paper.

⁷⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11.

	<p>people attempting to access healthcare. Thus, in addition to the general challenge of building more hospitals and increasing healthcare standards, Goals related to health, wellbeing and sanitation will only be achieved if stateless people are allowed equal access and feel safe to access relevant services.</p>	<p>hazardous materials. The SDG also targets universal access to healthcare and reproductive healthcare.</p>	<p>The Covenant sets out various steps for states to take to achieve full realisation of this right, including reducing infant mortality and providing for the healthy development of the child, improving environmental and industrial hygiene, preventing and treating epidemics etc.</p>
<p>Ensure inclusive and equitable quality education</p>	<p>Some of the challenges that stateless children face in accessing education have been set out above. On the flip-side, the value of education as a vehicle to break the cycle of inter-generational disadvantage cannot be over-emphasised. Thus, it is crucial that the development field promotes special measures to make high quality education accessible to all – including the stateless.</p>	<p>SDG 4 includes various targets to achieve this, including the pursuit of free primary and secondary education for all girls and boys by 2030, a strong focus on quality pre-school and to technical and vocational training for adults. The SDG also targets progress in relation to literacy and numeracy, and the upkeep and upgrade of education facilities.</p>	<p>The related right under the ICESCR, is Article 13, according to which everyone has the right to education, which <i>shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms... shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.</i></p> <p>The Convention also holds that primary education shall be compulsory and free for all and that secondary and higher education is to be made available and equally accessible to all <i>“by every appropriate means, and in particular by the progressive introduction of free education”.</i></p>
<p>Economic growth and work for all</p>	<p>Often without a legal status or documentation, stateless persons are more likely to be denied the right to work, more vulnerable to exploitative work conditions in the informal sector and less likely to have access to justice in relation to their labour rights and accidents at the work-place. Without safe and secure work, stateless people and their families are more likely to live in poverty, having an impact on all areas of life from health and wellbeing to education.</p>	<p>SDG 8 targets both economic growth and achieving full, productive and decent employment for men and women by 2030. It also prioritises addressing youth unemployment and eradicating forced labour, modern day slavery, trafficking and exploitative child labour. Furthermore, SDG 8 targets the protection of labour rights and ensuring safe and secure working conditions for all workers, including migrant workers.</p>	<p>Under the ICESCR, Article 6 recognises every person’s right to work and Article 7 elaborates on <i>“the right of everyone to the enjoyment of just and favourable conditions of work”.</i> In particular, the Convention ensures <i>“fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work”</i>, as well as a decent living, safe and healthy work conditions, equal opportunities and rest, leisure and reasonable limitation of working hours and paid holiday.</p> <p>Furthermore, Article 8 recognises every person’s right to join a trade union.</p>

8. Achieving structural change related to statelessness

Arguably, the most revolutionary aspect of the SDGs, is that many of them go beyond the ‘standard’ delivery of development aid, to require the scrutiny and reform of discriminatory and exclusive legal and societal structures. As observed by Apple and Bingham:

Notably, the SDGs mark the first time that countries have recognised the centrality of justice to sustainable development. The previous attempt to coordinate development across all nations through the MDGs failed to address structural injustice and inequality, thereby ignoring crucial root causes of persistent poverty, instability, and underdevelopment. It is axiomatic now that sustainable development can only be realised when people are able to be their own agents of development, but this is a fairly recent revelation.⁷⁸

While many of the SDG targets across the different goals require (or depend upon) structural change in some form or other, there are three Goals which stand out for what they set out to achieve, and how this in turn relates to statelessness:

- SDG 5: Achieve gender equality and empower all women and girls
- SDG 10: Reduce inequality within and among countries
- SDG 16: Provide peaceful and inclusive societies for sustainable development, access to justice for all and build effective, accountable and inclusive institutions at all levels

All three of these Goals and the targets they contain are strongly aligned with existing human rights obligations. They address some of the root causes of statelessness (in particular, discrimination in all its forms) as well as the key factors which further disadvantage the stateless. Furthermore, they provide important avenues for structural and institutional change, which can create a more conducive environment to confront and effectively address statelessness, and to ensure that stateless people are treated more fairly and equally by society.

One of the challenges that development actors are likely to face in their efforts to implement these SDGs, is resistance from states when raising questions about structural inequality, when they have previously been welcomed by those very same state actors, for example, when offering to construct schools. The relationship that states have historically had with human rights actors has been more fractious and confrontational than the relationship between states and development actors. This is because states see more tangible benefits through the work of development actors, whereas human rights actors are more likely associated with uncomfortable questions and notions of encroachments on state sovereignty. However, in the absence of efforts to address structural change, the MDGs largely failed to address crucial issues of inequality, discrimination and exclusion, ultimately undermining the sustainability of development efforts.

In this context, it is significant that the SDGs also include structural issues. It will require some adjustment in strategy and approach, as development actors begin occupying this more difficult territory, which is likely to bring with it more closed doors and challenges to their mandate and legitimacy. It is of crucial importance that this adjustment is handled properly. The danger if not, is that certain SDGs and targets will get left behind. A fractured approach through which – not the full package, but its component elements – are separately offered to states, will allow states to pick out the development activities which they see as non-threatening and beneficial, while pushing back on those which promote structural change. As development actors are ready to ‘run’ with the activities they have been implementing for decades, but face a steep learning curve with regard to others, this is a very tangible danger.

⁷⁸ Betsy Apple and Laura Bingham, ‘The SDGs, an opportunity to leave no stateless child behind’, in Institute on Statelessness and Inclusion, *The World’s Stateless Report 2017*, Forthcoming.

8.1. SDG 5: Achieve gender equality and empower all women and girls

Under this Goal, the most relevant target is SDG 5.1, which aims to “*End all forms of discrimination against all women and girls everywhere.*” Gender discrimination in nationality laws remains one of the significant causes of statelessness in the world today. 27 countries – from most regions of the world - do not allow women to confer nationality on their children on an equal basis with men, and close to 50 countries do not allow women to confer nationality on their spouses on an equal basis with men.⁷⁹ Some of these countries have significant stateless populations (including Nepal, Kuwait, Syria and Madagascar), and gender discrimination has played a detrimental role in this regard. Even where the law is not overtly gender discriminatory, gender discriminatory administrative practices can also contribute to statelessness, as is happening in the Dominican Republic.⁸⁰ Gender equality will not be achieved until gender discriminatory nationality laws and policies (and the gender-discriminatory implementation of laws and policies) have been eradicated. Furthermore, while research is lacking in this area, it is likely that stateless girls and women are more vulnerable to multiple discrimination (on the basis of their statelessness and their gender), disadvantaging them more than stateless men and non-stateless women in comparable circumstances.

Gender discriminatory nationality laws are prohibited under Article 9 of the CEDAW, according to which:

- 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.*
- 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.*

Similarly, the CRC through Article 7, when read with Article 2, obligates states to ensure that children are not denied their right to acquire a nationality as a result of gender discriminatory nationality laws. In fact, The CRC ensures that children have the right to acquire a nationality, irrespective of the child’s or his or her parents’ or legal guardians’ race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. “*Where a child is precluded from obtaining a nationality on discriminatory grounds, this amounts to arbitrary deprivation of nationality*”.⁸¹

The complementarity of SDG 5.1 to human rights principles which prohibit gender discrimination in nationality laws and the denial of children’s right to a nationality on this basis, is evident. Furthermore, the UN human rights frameworks have systematically made recommendations to states in this regard.⁸² The CRC for example, made the following recommendation to Iran in 2016:

*The Committee strongly urges the State Party to review the provisions of the Act on Determination of Nationality of Children Born into Marriages of Iranian Women with Men of Foreign Nationality amending the Civil Code and ensure that all children who are born to Iranian mothers, including children born out of wedlock, are entitled to Iranian citizenship on the same conditions as children born to Iranian fathers. The Committee also recommends that the State Party provide information on the number of children born to Iranian mothers who have been naturalised in its next periodic report.*⁸³

⁷⁹ For more information, see the website of the Global Campaign for Equal Nationality Rights:

<http://www.equalnationalityrights.org/countries/global-overview>

⁸⁰ Allison Petrozziello, ‘Profiling the stateless children of the Dominican Republic’, in Institute on Statelessness and Inclusion, *The World’s Stateless: 2017*, Forthcoming.

⁸¹ UN General Assembly, “Secretary-General report on Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless”, A/HRC/31/29, 16 December 2015, para 8. Available at: <https://documents-ddsny.un.org/doc/UNDOC/GEN/G15/286/02/PDF/G1528602.pdf?OpenElement>.

⁸² For more information, see Institute on Statelessness and Inclusion, *Addressing the right to a nationality through the Convention on the Rights of the Child*, 2016, available at: <http://www.statelessnessandhumanrights.org/>

⁸³ CRC/C/IRN/CO/3-4, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/IRN/CO/3-4&Lang=En

Similarly, the CEDAW has recommended to Swaziland in 2014:

The Committee recommends that the State party repeal the discriminatory provisions in the Constitution and the Citizenship Act to ensure that Swazi women married to foreign men can transfer their nationality to their husbands and children on the same basis as Swazi men married to foreign women, in line with article 9 of the Convention. Furthermore, the Committee recommends that the State party undertake programmes aimed at ensuring that children born to Swazi women married to non-Swazi men are not rendered stateless and have equal access to education, health care and other basic services.⁸⁴

Consequently, it would be mutually beneficial to actors working under the human rights and development frameworks, to ensure complementarity and reinforcement through their efforts.

The other targets under SDG 5 can also be relevant to statelessness. For example, SDG 5.2 aims to *Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation*, and 5.3 aims to *Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation*. While further research is required on these issues, there is evidence to suggest that stateless women and girls are particularly vulnerable to this type of violent and harmful treatment, and that children born out of these contexts are more likely to face challenges accessing a nationality.⁸⁵ Other targets on effective participation in economic, political and public life (SDG 5.5), universal access to sexual and reproductive health and rights (SDG 5.6), equal rights to economic resources (SDG 5.a) and to *Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels* (SDG 5.c) are all important as well.

8.2. SDG 10: Reduce inequality within and among countries

Alongside Goal 16 (below), this Goal probably has the most wide-reaching potential to strengthen the rights of stateless persons and to challenge the structures which perpetuate and exacerbate statelessness. The Goal speaks of political inclusion for all, ensuring equal opportunity and reducing inequalities of outcome. As this paper has touched on, there is a strong correlation between statelessness on the one hand and discrimination and inequality on the other. This correlation is further heightened over generations, through the phenomenon of intergenerational statelessness and disadvantage. Consequently, an SDG which aims to reduce inequality is a welcome addition to the development framework, and one which squarely places the stateless – who are among the most discriminated against and vulnerable - as one of the priority populations of focus.

The following targets under SDG 10 are particularly important to addressing statelessness:

10.1: *By 2030, progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average*

10.2: *By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status*

10.3: *Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard*

10.4: *Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality*

⁸⁴ CEDAW/C/SWZ/CO/1-2, Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SWZ/CO/1-2&Lang=en

⁸⁵ See for example, Rijken, van Waas, Gramatikov and Brennan, *The nexus between statelessness and human trafficking in Thailand*, Wolf Legal Publishers, 2015, available at: http://www.institutesi.org/Stateless-Trafficking_Thailand.pdf. See also more generally, www.equalnationalityrights.org

10.7: Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies

SDG 10.3 is perhaps the most far-reaching of these targets, and its focus on law and policy reform and changing discriminatory practices is a significant departure from what has been considered traditional development territory, to human rights territory. The discriminatory laws, policies and practices of various countries around the world which cause statelessness, should be addressed through SDG 10.3, in a manner which complements the efforts of human rights actors. Ethnic and race discrimination for example, which has been the basis on which Rohingya of Myanmar and Dominicans of Haitian descent in the Dominican Republic have been arbitrarily deprived of their nationality and made stateless, should be systematically addressed under SDG 10.3.

SDG 10.7 is also pertinent to the statelessness issue, particularly as stateless persons are more likely to face unfair restrictions on their freedom of movement. It would be important therefore, to promote the inclusion of stateless persons under the implementation of SDG 10.7, while also identifying complementarities between this target and the Global Compacts on migration and refugees.

SDG 10.2, which promotes social, economic and political inclusion of all, is also extremely important. The social, economic and political exclusion of the stateless is well documented, and their political exclusion is even allowed under international human rights law.⁸⁶ Hence, this SDG which, in some ways goes beyond human rights standards by aspiring to ensure the political inclusion of even the stateless, has immense potential to strengthen the rights, inclusion and role that stateless persons play in society.

8.3. SDG 16: Provide peaceful and inclusive societies for sustainable development, access to justice for all and build effective, accountable and inclusive institutions at all levels

SDG 16, is perhaps the most wide-ranging of the SDGs, covering everything from transnational crime and terrorism, to access to justice, institution-building, combatting corruption, fundamental rights and legal identity. Commenting on its scope and potential, Bingham and Apple say that:

This SDG—Goal 16—represents a sea change from the last set of global development goals (the Millennium Development Goals, or MDGs), and provides a crucial platform for advocacy, action, and outreach toward some of the world’s most marginalised peoples, including those who are stateless. The admonition to “leave no one behind” inevitably places the emphasis on those populations whose vulnerability is uncontested, namely, children (and in particular, stateless children). It also creates an imperative for states to recognise that sustainable development cannot be achieved without access to justice for all, and access to justice for all cannot be achieved by ignoring stateless persons.⁸⁷

In addition to Target 16.9 which has been discussed in some detail above, some of the other targets under this Goal are also relevant to statelessness and should be implemented in a way that caters to their specific circumstances:

16.1: Significantly reduce all forms of violence and related death rates everywhere

16.2: End abuse, exploitation, trafficking and all forms of violence against and torture of children

16.3: Promote the rule of law at the national and international levels and ensure equal access to justice for all

⁸⁶ See Institute on Statelessness and Inclusion, *The World’s Stateless Report*, 2014, available at: <http://www.institutesi.org/worldsstateless.pdf>

⁸⁷ Betsy Apple and Laura Bingham, ‘The SDGs, an opportunity to leave no stateless child behind’, in Institute on Statelessness and Inclusion, *The World’s Stateless Report 2017*, Forthcoming.

16.5: *Substantially reduce corruption and bribery in all their forms*

16.6: *Develop effective, accountable and transparent institutions at all levels*

16.7: *Ensure responsive, inclusive, participatory and representative decision-making at all levels*

16.10: *Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements*

16.b: *Promote and enforce non-discriminatory laws and policies for sustainable development*

Target 16.b, clearly reinforces Target 10.3 (discussed above). The inclusion of Target 16.10 further strengthens the complementarity of the SDG framework and human rights. Accordingly, the fulfilment of international and national human rights obligations is a development objective. This is a profound statement – it means that we have completed the circle of connectivity between human rights and development – with a mutually reinforcing human right to development⁸⁸ and development objective to protect human rights. While the influence of human rights is evident throughout the SDGs, SDG 16.10 sets out in clear terms that development actors have a role to play in promoting human rights more widely.

Similarly, the focus of SDG 16.6 on the development of effective, accountable and transparent institutions is extremely significant. State institutions can play a pivotal role in excluding stateless persons and denying them their rights, as well as obstructing access to nationality. A focus on institutional building as a means to changing the nature and culture of state structures and transforming them from entities that exclude to those that promote inclusion, can play an important role in both reducing stateless and increasing the quality of life of stateless persons. Closely connected, is SDG 16.5 on reducing bribery and corruption. Stateless persons often fall victim to the predatory nature of corrupt public officials. Previously in this paper, the impact of the lack of access to justice on stateless persons who are also vulnerable to being denied their rights, was mentioned. In this context, SDG 16.3 to *Promote the rule of law at the national and international levels and ensure equal access to justice for all*, is extremely important as well.

⁸⁸ For more on the right to development, see: <http://www.ohchr.org/EN/Issues/Development/Pages/InformationMaterials.aspx>

Part 3:

Consultation, Participation, Accountability, Monitoring and Implementation

Having looked briefly at the content of relevant SDGs, the third part of this paper looks at their operation, and asks which steps can be taken to ensure that the stateless are included throughout the process, from planning to implementation and monitoring. In particular, it will look at:

1. National action plans and statelessness
2. Consultation and participation of and accountability to the stateless in development programming
3. Monitoring and implementation of the SDGs

9. National Action Plans and statelessness

While the Sustainable Development Agenda sets out the high-level goals and targets that states have collectively agreed to prioritise until 2030, it is at the national planning level that these goals and targets are given proper context and specificity and made tangible. Furthermore, while the SDGs have identified metrics through which progress will be measured at the international level, there will be a need to develop nationally appropriate plans and progress monitoring mechanisms. Therefore, while the SDGs themselves do not explicitly refer to stateless persons, countries with stateless populations should be identifying the special development needs of these communities and addressing them through their National Action Plans (NAPs).

9.1. Civil society's role in developing NAPs

In the development sector, NAPs have been promoted as a results-based management approach to programming and performance management. NAPs should take into account the principles of national ownership, capacity development, accountability through monitoring and evaluation, and focus on results (rather than ensuring that all activities and outputs get produced as planned).⁸⁹ A NAP in and of itself will not be sufficient to ensure that development results will be achieved. The quality of the NAP, in particular, its capacity to identify and cater to the needs of the furthest behind (including the stateless), the level of resourcing, how well resources are used and its capacity to catalyse structural change are critical factors for success. UNDP has identified the four areas of planning, programme and project definition; stakeholder involvement; communication; and monitoring and evaluation; as being crucial for the success of NAPs.⁹⁰

These rather generic areas would apply to drafting all NAPs. In order to address statelessness, there is also a significant need for education and awareness of statelessness among relevant stakeholders responsible for developing NAPs; and crucially, for openness in the face of discriminatory and prejudicial stereotypes of and social attitudes towards stateless communities. Unless actors from all different sectors recognise that the stateless are a legitimate and indeed priority stakeholder in development processes, it will be difficult to move forward in a concrete manner. Indeed, there is a danger that NAPs can be drafted so as to tick all the boxes, while concealing a failure to address core structural issues of discrimination and exclusion. For example, as Tendayi Bloom observes in relation to the Dominican Republic National Development Strategy 2030:⁹¹

⁸⁹ RBM is defined as a broad management strategy aimed at achieving improved performance and demonstrable results, and has been adopted by many multilateral development organizations, bilateral development agencies and public administrations throughout the world (often now referred to as MfDR to place the emphasis on development rather than organizational results).

⁹⁰ See <http://web.undp.org/evaluation/evaluations/handbook/english/documents/pme-handbook.pdf>

⁹¹ Ley Orgánica de la Estrategia Nacional de Desarrollo de la República Dominicana 2030.

Articles 2.3.3.5 and 2.3.4.2 are ostensibly supportive of the inclusion of stateless children in development. The former commits to strengthen programmes providing identity documents in order to facilitate better inclusion, while the latter commits to improve the coverage of registration of children, particularly members of excluded groups. And yet a narrowing of the definition of who is eligible for citizenship means that this is likely not to address the principle cause of statelessness in the Dominican Republic, which is the denationalisation of persons considered to be of Haitian heritage.⁹²

The above example serves as a gentle reminder that the SDGs will not be a panacea to all situations of structural discrimination. However, in other situations, proper planning and action, can result in real benefits. Bingham and Apple provide some insight into NAP processes, in relation to SDG 16.9:

The creation and execution of a national development plan is often led by a working group made up of relevant government actors and civil society representatives. Depending on the situation in each country, this group may become a formal body or remain a more informal coalition of justice reformers. In many countries, the Ministry of Planning (or Planning Commission) will lead this process. Civil society groups are often well placed to offer baseline data which can help governments identify gaps in their current development scheme and progress needed to meet the challenge of the SDGs. Baseline assessments in relation to the numbers of stateless persons on a territory, whether the state has a statelessness status determination process, the availability of a pathway to naturalisation, access to birth registration systems, and other relevant data points will help to assess whether a government's current efforts satisfy the "legal identity for all" commitments in SDG 16.9. States and other stakeholders should also study the existing legal and policy framework before the introduction of new systems for administering birth registration or issuance of documents that may serve as proof of nationality, to ensure that those who are present left out due to discriminatory law or practice are brought within the protection of the law.⁹³

Therefore, this process clearly provides civil society with an opportunity to leverage the SDGs and simultaneously help governments focus the lens on the issue of statelessness. CSOs can also be "inclusiveness watchdogs" and ensure that marginalised groups are involved in the planning, monitoring and evaluation processes. Apple and Bingham provide two examples of good practices by civil society which have positively influenced planning processes:

In 2015, the legal empowerment NGO Kituo cha Sheria, the International Commission of Jurists Kenya, and the Law Society of Kenya, began advocating for a National Justice Plan that incorporated the SDGs' justice targets. The organisations held a two-day meeting that brought together the Kenyan Parliamentary Human Rights Association, the Attorney General, and the Human Rights Commission to discuss justice issues in Kenya. The government representatives supported justice reforms but stressed that a National Justice Plan could take several years to develop. They suggested instead that civil society and government work together to revise existing legislation. The organisations agreed. The National Human Rights Policy was selected as the legislation to tackle first as it would serve as a strong foundation on which to develop other laws and policies. The policy had been in draft form since 2008, but by capitalising on the momentum created by the SDGs, advocates were able to get the policy to the top of the legislative agenda in less than a year. The legislation was passed and led to the development of related policies, including the Legal Aid Bill; the Right to Information Bill, the Community Land Bill. All of which have since been signed into law. Within months of the first advocacy meeting, Kenya passed its first Legal Aid Law.

In 2009, the Government of Indonesia incorporated a National Access to Justice Strategy (NAJS) into its 2010-2014 mid-term development plan. NAJS was created to embody the Indonesian Constitution and relevant legislation, which recognise that Indonesian people have a right to access to justice. Similar to the SDGs, the mid-term development plan incorporated high-level development goals and targets that were used to measure progress towards achieving these goals. As the government looked to update this plan for its 2015-2019 mid-term development plan, civil society organisations collaborated with the government to ensure that the planning process was organised around the ideal of providing access to justice to all citizens and residents of

⁹² Tendayi Bloom, 'The SDGs and childhood statelessness', in Institute on Statelessness and Inclusion, *The World's Stateless Report 2017*, Forthcoming

⁹³ Betsy Apple and Laura Bingham, 'The SDGs, an opportunity to leave no stateless child behind', in Institute on Statelessness and Inclusion, *The World's Stateless Report 2017*, Forthcoming.

Indonesia. They pushed for the inclusion of themes related to legal identity, curbing corruption, and access to legal services. This collaboration contributed to the process of building the national coalitions and partnerships needed to advance access to justice in Indonesia.⁹⁴

9.2. Utilising UNHCR's Global Action Plan to develop SDG NAPs

As part of UNHCR's Global Action Plan to end statelessness by 2024,⁹⁵ countries are encouraged to accomplish Actions by developing and implementing NAPs, a sample template of which is set out in Annex 1 of the Global Action Plan.⁹⁶ These NAPs set out detailed strategies to complete selected actions and indicate detailed country-level goals and milestones, and should be developed through a consultation process which includes the involvement of UNHCR, other UN and development actors and regional bodies where relevant, national institutions (relevant ministries, parliament, etc.), civil society and stateless groups. UNHCR, civil society and governments have worked together in many regions and countries to map out and research statelessness at the national level. UNHCR has noted that though much progress has been made in raising awareness, challenges still remain, and the SDGs were identified as a significant opportunity to further position statelessness as a priority on the international agenda.⁹⁷

To-date, various countries have developed NAPs to address statelessness under the UNHCR Global Action Plan.⁹⁸ A successful example is that of Kyrgyzstan:⁹⁹

- *a government expert group produced an analysis of gaps and conflicts in the national legislation. UNHCR also supported the Ministry of Finance to undertake a financial analysis of accession to the two Statelessness Conventions.*
- *government officials, representatives of civil society and experts reviewed progress in the implementation of the Kyrgyz NAP on Reduction and Prevention of Statelessness and agreed on the next steps to end statelessness.*
- *The Kyrgyz government, legal NGOs and UNHCR launched a joint effort between 2014 and 2016, to address the remaining cases of statelessness in the country as part of the NAP. Sixty-eight mobile teams worked throughout the country, including remote villages, providing free legal consultations and helping to file for documentation or citizenship determination. To date, the government has registered about 12,000 applications and has resolved nearly 9,000 cases with documentation, citizenship acquisition or determination.*

As states make NAPs for the SDGs as well, it is imperative that these two processes speak to each other, and that SDG NAPs build on those made in relation to the Global Action Plan. Many countries also have human rights NAPs, and again, it is important that these parallel planning processes under parallel frameworks are brought together, so they influence and build off each other, promoting the same human rights based standards.

⁹⁴ Betsy Apple and Laura Bingham, 'The SDGs, an opportunity to leave no stateless child behind', in Institute on Statelessness and Inclusion, *The World's Stateless Report 2017*, Forthcoming.

⁹⁵ The 10 point Global Action Plan is a major component of the UNHCR campaign, and seeks to resolve existing situations and to prevent the emergence of new cases of statelessness by closing gaps in procedures and laws. The action plan encourages states to: resolve existing situations of statelessness; ensure that no child is born stateless; 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; ensure birth registration for the prevention of statelessness; issue nationality documentation to those entitled; accede to the UN Statelessness Conventions; and improve quantitative and qualitative data on stateless populations.

⁹⁶ See <http://www.unhcr.org/statelesscampaign2014/Global-Action-Plan-eng.pdf>

⁹⁷ See for example,

https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20141104StatelessnessInternationalLaw.pdf

⁹⁸ NAPs to eradicate statelessness have been adopted/drafted by countries such as Croatia

(<http://www.statewatch.org/news/2016/oct/cioe-croatia-report.pdf>); Ghana (http://unhcr-ghana.org/wp-content/uploads/2016/03/Ghana-Fact-sheet_Jan-Feb-2016.pdf); Niger and Cote d'Ivoire

([http://reporting.unhcr.org/sites/default/files/Statelessness%20in%20West%20Africa%20Newsletter%20\(ENG\)%20-%20July-September%202016.pdf](http://reporting.unhcr.org/sites/default/files/Statelessness%20in%20West%20Africa%20Newsletter%20(ENG)%20-%20July-September%202016.pdf)).

⁹⁹ See <http://www.unhcr.kz/eng/news-of-the-region/news/2619/>

9.3. The ingredients to develop a statelessness sensitive NAP

As mentioned above, the lack of accurate data and statistics on statelessness, as well as a general lack of awareness on the issue, is a significant barrier to understanding and planning to address statelessness through the SDGs. In the recent past, there has been a marked increase in levels of knowledge and expertise on the issue, and also in research on statelessness. However, expertise and information levels in this field remain far behind that of others such as migration, minority rights and refugees. The SDG agenda and the UNHCR campaign both depend on better localised information on statelessness as a pre-requisite to better planning, but also demand it through targets under each framework (for example, UNHCR Action 10 is to “improve quantitative and qualitative data on stateless populations”).

By way of example, in Ghana, the number of stateless persons or persons at risk of statelessness is unknown. There is neither a comprehensive assessment available on the scale of the situation of statelessness in terms of size and geographical spread, nor information on the profile of the affected population (including its demographic composition with data disaggregated by sex and age). Data on stateless persons or persons found with an undetermined nationality was not recorded in the national housing and population census. So far, limited analysis has been conducted on the causes and consequences of statelessness in Ghana as well as risk factors of statelessness. Ghana committed to the adoption of the NAP to eradicate statelessness that included, under Action 10, the delivery of a background study on statelessness in Ghana by 2016. Following this commitment, UNHCR commissioned a background study on statelessness in Ghana through a comprehensive assessment of the legal, policy and administrative frameworks as well as the processes/practices impacting on access to nationality in Ghana with the ultimate aim to identify the causes, risk factors and consequences of statelessness and to recommend measures or actions necessary to prevent and/or reduce statelessness in Ghana.¹⁰⁰ Similar studies have been commissioned for countries such as the Gambia,¹⁰¹ and completed for various countries around the world (but predominantly to-date, in Europe).¹⁰²

Mapping statelessness is a time-consuming process, which has been completed in but a few countries to-date. NAPs are being developed at present and it is crucial, that even in countries for which there has been no mapping study on statelessness, that CSOs contribute to NAP drafting processes by asking relevant questions and providing relevant information on statelessness. Importantly, in such countries, there should be a push to include further research and data collection on statelessness as part of the NAP. Models in countries such as Malaysia, Kenya, Nepal and Bangladesh, in which the provision of para-legal assistance to stateless persons has also facilitated research and mapping of stateless populations in these countries (while also advocating for policy reform) are highly recommended for their practical, efficient and sustainable processes.¹⁰³

Some areas in which CSOs can provide evidence, identify needs and help design remedies in the development of NAPs:

- Gaps in the legislative, policy and administrative frameworks that may lead to statelessness, and compliance of the domestic legislation with regional, and international standards, including whether the state has a statelessness status determination procedure, and the availability of a pathway to naturalisation;
- Procedures and processes for the issuance of birth certificate documents linked to a national civil status registry and at long-term level with the national identification system;
- Procedures and processes regarding the issuance of national passports;
- Identification of actors involved in prevention of risk of statelessness and protection of stateless persons;

¹⁰⁰ See <http://unhcr-ghana.org/wp-content/uploads/2016/05/Terms-of-Reference-Study-on-Statelessness-in-Ghana.pdf>

¹⁰¹ See <https://uncareer.net/vacancy/study-statelessness-and-risks-statelessness-gambia-62279>

¹⁰² To access the various mapping studies, see <http://www.refworld.org/statelessness.html>

¹⁰³ For more information, see the work of DHRRA Malaysia (<http://dhreramalaysia.org.my/>) and Namati (<https://namati.org/>).

- Numbers of people at risk of statelessness including migrants, and protracted refugee populations; foundlings and abandoned children, populations leaving in border areas or/and in areas affected by border dispute; minority groups, and nomadic groups.
- Legal resources, including legal services providers, if any, and processes for stateless persons and persons at risk of statelessness to obtain proof of nationality.
- Access to rights, services and resources of stateless persons and communities, including the quality of education and healthcare they receive, and their access to the labour market.
- Access to justice for stateless persons and groups.

A potentially useful resource to help with the NAP process, which can be further adapted to fit the framework of the Sustainable Development Agenda, is the 10 Point Checklist created by ISI, for *'identifying issues related to the child's right to a nationality'*.¹⁰⁴ This Checklist was created to guide civil society stakeholders in the assessment of issues, legal gaps, and conditions in which statelessness may arise and manifest in countries under CRC review, in order to determine if and how they would engage with the CRC Process. For each of the issues on the checklist, the ISI Toolkit gives a brief description/guiding questions to help identify relevant problems, as well as some examples of relevant recommendations previously issued by the Committee. A much-condensed overview of this checklist is reproduced below:

Scale of the problem and related data/statistics

1. **Is there a large habitually resident stateless population in the country?**
20 countries have known non-refugee stateless populations of over 10,000. In many other countries, there are large but unquantified stateless populations.
2. **Does the country host to a large refugee or irregular migrant population that is stateless or at risk of statelessness?**
Forced migration can cause statelessness and stateless refugees face added vulnerability. Particularly in countries without adequate safeguards against statelessness, statelessness in migration can be inherited by new generations.
3. **Does the state maintain systematic and disaggregated data on children's acquisition of nationality, birth registration, statelessness and as relevant, the questions highlighted above?**

The Legal framework

4. **Does the country's legal framework contain discriminatory provisions which arbitrarily deprive nationality or deny access to nationality?**
27 countries discriminate against women in their ability to confer nationality to their children. Many countries discriminate in access to nationality on grounds of race, religion, disability etc. The discriminatory implementation of the law can also cause statelessness.
5. **Does the country's legal framework have adequate safeguards to protect all children born in the territory (including foundlings) from statelessness?**
Some countries have no safeguards to protect against childhood statelessness. Others have partial safeguards, conditional on the fulfilment of unreasonable criteria. Even in countries with full safeguards, implementation can be discriminatory and/or ineffective.
6. **Are there other legal gaps affecting children's access to nationality?**
In some countries, children born abroad to nationals do not have access to nationality. The law may also not protect against statelessness in the context of adoption or surrogacy, or allow for the deprivation or loss of nationality of children (including as a result of deprivation or loss of their parent's nationality)
7. **Is the State party to the most relevant treaties and has it removed any reservations that it made to these treaties?**
The 1954 and 1961 Statelessness Conventions and other core human rights treaties with statelessness relevant provisions including CEDAW, CERD, CRPD and ICCPR, are all relevant. States may be party to these treaties but have declared reservations on provisions which relate to the right to a nationality and statelessness.

¹⁰⁴ See <http://www.statelessnessandhumanrights.org/checklist> or download the full Checklist here: http://www.statelessnessandhumanrights.org/5_checklist.pdf

State practice

8. Is there universal birth registration, which is free and accessible for all?

The majority of countries have not achieved universal birth registration. Minority, rural, poor, migrant and refugee communities are disproportionately impacted. The lack of birth registration and documentation is not the same as statelessness, but it heightens the risk of statelessness, in particular in a context of forced displacement or where a population's belonging is challenged.

9. Is there access to justice and a right to a remedy?

Statelessness can serve as a barrier to accessing justice, with stateless children being denied legal recourse and a fair remedy for rights violations including the violation of their right to a nationality.

10. Do stateless children in the country benefit from the protection and enjoyment of other human rights enshrined in the CRC?

Statelessness can result in denial of (or disadvantage in) accessing a multitude of other fundamental rights including the rights to an identity, education, health, family life, adequate standard of living, freedom of movement and protection from economic exploitation.

A forensic review of previous NAPs by experts in both evaluation of development programming and statelessness, would be useful to draw up and share lessons learnt, to strengthen local CSO interventions in future SDG-related NAPs. This would also support UNHCR's work under its Global Action Plan.

10. Consultation and participation of and accountability to the stateless in development programming

One of the main challenges that development actors are likely to face, is ensuring that stateless people (and other similarly marginalised groups) are included in development planning and implementation. It is equally important that development actors are accountable to stateless communities, and that there are remedial systems in place for when development programmes fail to deliver to the stateless. There are inherent challenges in this regard, due to the 'invisibility' of stateless populations. This raises a classic 'catch 22' problem in relation to SDG 16.9 for example, of not being able to identify the group in order to consult them, while not being able to consult the group to provide them with identification. In some instances, there are also likely to be political challenges and perhaps even practical barriers to accessing stateless communities and to including them – on equal terms with other groups – in development planning. In Myanmar for example, any attempt to include stateless Rohingya in development planning is likely to face stiff resistance by Rakhine groups, due to the fractious identity politics at play.

However, stateless persons are best placed to identify their development needs. Both as a matter of efficiency and as one of justice, it is imperative that they are empowered to fully participate in development processes, that they are adequately consulted, and ultimately, that development actors are held accountable to them for implementation. As Tendayi Bloom elaborates,¹⁰⁵ the SDG Agenda already requires that stateless persons are properly included in SDG planning and implementation:

That there is recognition that stateless persons should be considered in work towards the SDGs is clear from the Reference Guide to UN Country Teams, published in February 2016.¹⁰⁶ Throughout, when referring to vulnerable and marginalised communities, the drafters of this document explicitly mention 'internally displaced persons, non-nationals such as refugees and stateless persons, and minorities',¹⁰⁷ in terms both of those who should be made aware of the Agenda's existence, and of who needs to be included in development priorities. Indeed, they even emphasise the importance of including the perspectives of 'persons affected by [...] statelessness' in

¹⁰⁵ Tendayi Bloom, 'The SDGs and childhood statelessness', in, Institute on Statelessness and Inclusion, *The World's Stateless Report 2017*, Forthcoming

¹⁰⁶ UNDP, *Mainstreaming the 2030 Agenda for Sustainable Development: Reference Guide to UN Country Teams* (2016), available at <https://undg.org/wp-content/uploads/2015/10/UNDG-Mainstreaming-the-2030-Agenda-Reference-Guide-Final-1-February-2016.pdf>

¹⁰⁷ *Ibid.*, p.16.

developing national strategies.¹⁰⁸ This can then provide a useful resource for those seeking to understand and promote the place of stateless children in the Sustainable Development Agenda.

However, Bloom raises concern about the lack of mention of stateless persons in the indicators on the SDGs:

If stateless children are to be included in the work towards the SDGs, it is particularly important to include them in the indicators as early as possible. At the time of writing, the indicators on the SDGs do not mention stateless persons or stateless children directly. Stateless children are often among the poorest and most disenfranchised. Including them in development reporting, then, where they were not included before, might initially set back reported progress. This means that if their inclusion is left too late into the process on the SDGs, it will become increasingly difficult to do so.¹⁰⁹

This implies that the stateless have not been (adequately) consulted to-date, and as Bloom has observed, this is an immediate setback which has a cost attached to it. The sooner this is rectified and stateless people are properly included through consultation and participation, the better.

Principles of consultation, participation and accountability are central to human rights, but have also become key features in development practice over the last 15 years. The plethora of development actors that might engage in programming affecting stateless stakeholders will range from government agencies, international organisations (e.g. The World Bank, UN agencies, OECD), civil society organisations (CSOs) to philanthropic foundations and firms. Each actor will possess differing incentives and face multi-directional demands (legal, contractual and ethical), which makes the task of ensuring participation and accountability from beneficiary groups complex. As stateless people wield little political power, ensuring accountability to them can be even more of a challenge than normal.

10.1. Existing standards in the development field

Accountability, transparency, participation and inclusion have become ubiquitous features of the policy statements of countless development aid organisations, and are all at the heart of the following industry initiatives and standards. Their diversity highlight some of the biggest challenges in defining and enforcing participation and accountability in a globalising world, namely for instance, those centred around the multiplicity of stakeholders and the difficulty of enforcement and liability.

Sector	Standard
State	The Paris Declaration on Aid Effectiveness and Accra Agenda for Action, ¹¹⁰ enshrine the principles of Ownership and Mutual Accountability. This Declaration is supplemented by the Busan Partnership for Effective Development Co-operation, which highlights a set of common principles that include: (a) Ownership of development priorities by developing counties; and (d) Transparency, shared responsibility and accountable to all citizens. ¹¹¹ The state-centricity of these principles is evident, as is the emphasis on transparency and accountability to <i>citizens</i> . This raises questions of how to interpret ‘citizens’, given the importance of accountability to migrants and even more crucially, to stateless persons who are citizens of nowhere.
IOs	International Organisations (IOs) are traditionally accountable to states, but in practice poorer states may find it harder to hold IOs to account, and that citizens within those countries can find it difficult to engage effectively with IOs decision and complaint making mechanisms. Each IO has its own mechanisms, which can be opaque and difficult to access, and holding IOs to account through the courts is notoriously difficult

¹⁰⁸ Ibid., p.17; see also p.24

¹⁰⁹ Tendayi Bloom, ‘The SDGs and childhood statelessness’, in Institute on Statelessness and Inclusion, *The World’s Stateless Report 2017*, Forthcoming

¹¹⁰ The Paris Declaration and Accra Agenda are available here: <http://www.oecd.org/dac/effectiveness/34428351.pdf>

¹¹¹ See <http://www.oecd.org/dac/effectiveness/49650173.pdf>

	<p>due to IO legal immunity.¹¹² IOs have increasingly begun to accept that ownership and participation are key to development,¹¹³ as can be seen by initiatives such as:</p> <ul style="list-style-type: none"> - The World Bank's Global Partnership for Social Accountability;¹¹⁴ and - The OECD Development Assistance Committee (DAC) Guidelines Strategies for Sustainable Development: Practical Guidance for Development Co-operation (2001).¹¹⁵
CSOs	<p>CSO are accountable to multiple stakeholders including donors (upward), beneficiaries (downward), CSO mission and staff (internal), industry standards of behaviour (external). Industry standards that focus on participation and accountability include:¹¹⁶</p> <ul style="list-style-type: none"> - The Siem Reap CSO Consensus on the International Framework for CSO Development Effectiveness, which include the Istanbul Principles for CSO Development Effectiveness.¹¹⁷ This is a global process set up by CSOs worldwide. Its goal has been to create a shared framework of principles that defines effective CSO development practice and elaborates the minimum standards for an enabling environment for CSOs, while at the same time promoting civil society's essential role in the international development system. Principle 3 is on people's empowerment, democratic ownership and participation; and Principle 5 is on transparency and accountability. - Accountable Now, formerly known as the INGO Accountability Charter (global),¹¹⁸ was endorsed by the largest international CSOs in June 2006. This voluntary Charter "<i>outlines (a) common commitment to excellence, transparency and accountability... [through] enhance[d] transparency and accountability, both internally and externally... [and] communication with stakeholders...</i>".
Humanitarian Sector	<p>There are also a number of accountability standards within the narrower international development humanitarian emergencies sector,¹¹⁹ including the Humanitarian Accountability Partnership International (HAP-I), which was the humanitarian sector's first self-regulatory body. HAP-I (now the Core Humanitarian Standard on Quality and Accountability (CHS))¹²⁰ aimed to identify, test and recommend a variety of accountability approaches, and to ensure the inclusion of beneficiaries as autonomous and participating members of the humanitarian agenda and action. The HAPI definition emphasised accountability to affected populations rather than the authorities, and incorporated seven Principles of Accountability.¹²¹</p>

10.2. Consultation & participation of, and accountability to stateless persons

The multiplicity of development actors and the accompanying fragmented participation and accountability standards and principles that these various actors may subscribe to, means that it will be difficult to identify one particular development industry standard that could be leveraged to ensure that the stateless will be consulted, participation ensured, and given a means to hold development actors to account, when the SDGs are programmatically operationalised. More effort will be needed to simultaneously engage multiple development actors, to educate them on statelessness as an issue, and the importance of taking necessary steps to ensure that the standards they adhere to are followed in a manner which ensures that stateless

¹¹² Article 105 of the UN Charter provides for "such privileges and immunities as are necessary for the fulfilment of its purposes". This subsequently led to the Convention on the Privileges and Immunities of the United Nations, which says in Section 2: "The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity." For a recent discussion of the immunities doctrine and the tension with individual's right to a remedy and the law's ordinary principles of responsibility for causing harm, and the recent cases against the UN of Haiti Cholera, Kosovo Lead Poisoning, and Mothers of Srebrenica, see "The United Nations as Good Samaritan: Immunity and Responsibility" by Kristen E. Boon, Chicago Journal of International Law, Winter 2016 <http://www.ijdh.org/wp-content/uploads/2016/01/16.21-Boon.pdf>

¹¹³ Burall, S. and Neligan, C. *The accountability of international organisations*, 2005 GPPI

¹¹⁴ See <http://www.thegpsa.org/sa/>

¹¹⁵ See <http://www.oecd.org/dac/environment-development/2669958.pdf>

¹¹⁶ For more than 20 other industry standards – see p.138 : <http://gcsknowledgebase.org/wp-content/uploads/0708-09-ch7-red.pdf>

¹¹⁷ http://cso-effectiveness.org/IMG/pdf/international_framework_open_forum.pdf and http://cso-effectiveness.org/IMG/pdf/final_istanbul_cso_development_effectiveness_principles_footnote_december_2010-2.pdf

¹¹⁸ See <http://www.ingoaccountabilitycharter.org/>

¹¹⁹ While the humanitarian sector adheres to the principle of neutrality, whereby humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature, certain humanitarian actors may still engage in advocacy on issues relating to justice and accountability.

¹²⁰ See <https://corehumanitarianstandard.org/the-standard>

¹²¹ See <http://www.ifrc.org/docs/idrl/I522EN.pdf>

persons and communities are able to fully participate. Vulnerable groups such as the stateless were not adequately consulted when SDG indicators were developed, and resultantly, the stateless are not identified as a group that needs greater access to development programming. This trend of exclusion risks continuation unless more effective ways to consult and be accountable to the stateless are followed through.

A useful starting point, to tie in the various standards, would be relevant UN Guidelines, such as the UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming 2003.¹²² For example, the accompanying FAQs issued by the OHCHR consider questions about what principles of accountability and participation mean for development programming:

Accountability

“Good development programming requires stakeholders (including donors and development agencies) to be accountable for specific results. A human rights-based approach goes further by grounding those accountabilities within a framework of specific human rights entitlements and corresponding obligations established under international law. To ensure accountability, a human rights-based approach to programming starts by identifying specific obstacles that duty bearers face in exercising their obligations. This analysis sets a baseline for formulating development strategies to remove them. But for accountability to be effective, it needs to be demanded. Therefore a human rights-based approach also requires an analysis of the capacities needed for rights-holders, especially the poorest and most disadvantaged, to claim their rights effectively. Accessible, transparent and effective mechanisms of accountability are called for at central and local levels.”¹²³

Participation

“Participation means ensuring that national stakeholders have genuine ownership and control over development processes in all phases of the programming cycle: assessment, analysis, planning, implementation, monitoring and evaluation. Human rights standards influence the conditions as well as reasonable limitations of participation. For processes to be truly participatory, they should reflect the requirement for “active, free and meaningful” participation under the United Nations Declaration on the Right to Development. Development strategies should empower citizens, especially the most marginalized, to articulate their expectations towards the State and other duty-bearers, and take charge of their own development.”¹²⁴

When speaking of the human rights based approach to development, it is important to acknowledge the observation made earlier in this paper, that ultimately, while human rights are obligatory and justiciable, the development framework is aspirational. However, this does not mean that development actors are free of human rights obligations when implementing their work. For example, all actors have a duty to not discriminate – including against the stateless. This obligation extends to consultation and participatory processes, as well as to accountability systems, and may also require positive action..

11. Monitoring and implementation of the SDGs

This final section of the paper looks briefly at the monitoring and implementation of the SDGs, and the implications for statelessness. As discussed above, one of the main differences between the SDG framework and the human rights framework, is that the latter sets out state obligations, which are justiciable through individual and group complaints, and which are also monitored through regular reporting to the treaty bodies and Universal Periodic Review. Furthermore, UN special mandate holders (special rapporteurs, independent experts, working groups etc.) as well as OHCHR officers can carry out more substantial monitoring and

¹²² The purpose behind developing a common understanding was to ensure that UN agencies, funds and programmes apply a consistent Human Rights-Based Approach to common programming processes at global and regional levels:

<http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>

¹²³ See at p.24, <http://www.ohchr.org/Documents/Publications/FAQen.pdf>

¹²⁴ See at p.26, <http://www.ohchr.org/Documents/Publications/FAQen.pdf>

investigation on specific issues. On the contrary, the SDG framework is aspirational, and subject to only voluntary review.

Tendayi Bloom offers some analysis of both the potential advantages and disadvantages of the aspirational nature of the SDGs:

In the MDGs there were no clear mechanisms for accountability, or ramifications for failing to reach (or make progress towards) the Goals.¹²⁵ While this was cause for criticism of the MDGs, it has been suggested that this lack of accountability could be used advantageously.¹²⁶ ...

The lack of accountability could have freed the development agenda to aspire to the development of a world that went beyond basic minimum standards of human rights for all. It could also have provided a vehicle for addressing some of the most difficult and intractable issues, which continue to go unaddressed despite human rights frameworks guaranteeing them. The recognition of status and the granting of nationality is one such issue. While there is a universal right to a nationality, many persons are still unable to make use of this right.

The freedom offered by the reduced accountability found in the SDGs, could have provided an opportunity to set out what an ideal world would be like for currently stateless children and adults. However, in the absence of this aspiration, the lack of accountability risks making the Agenda seem toothless.

Alongside the lack of ramifications for failure, critics have argued that the celebration of success on the MDGs provided a way in which governments could distract attention from failures to protect human rights or to progress in other areas. This possibility remains in the SDGs and those working in the area will need to ensure that the needs of stateless children are explicitly included in the Agenda. For example, local experts on statelessness and stateless children need to be vigilant to ensure that development strategies produced in line with the Agenda do not airbrush stateless children out of development commitments and take into account local contexts of statelessness....

*The importance of the intersection of development and human rights frameworks is set out for example in *The Future We Want*, which formalised the plan for drafting the Agenda.¹²⁷ However, it has been suggested that this may have been divisive. That is, the aspirational nature of the SDGs in the language of existing human rights commitments –but not going beyond them – risks lessening the power of the human rights agenda, suggesting that human rights obligations are also aspirational, rather than legally required.¹²⁸ It will be crucial to address this in the way that the SDGs are taken forward. One suggestion that has been made for how to do this is to use human rights mechanisms in monitoring the implementation of the SDGs.¹²⁹*

Bloom's analysis raises some pertinent questions regarding the monitoring of implementation of the SDGs. It is important to point out that the human rights framework too has significant limitations and is increasingly being questioned by actors on the global stage. Neither the human rights nor SDG frameworks will provide perfect solutions to statelessness. It is therefore of paramount importance that they complement and do not undermine each other.

While the SDG monitoring framework is yet to be properly tested, it is voluntary and therefore very different in feel, to the human rights mechanisms. The SDG website sets out the framework as follows:

¹²⁵ E.g. see M Darrow, 'The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post-2015 Development Agenda' (2014) 15(1) Yale Human Rights and Development Journal, available at <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1111&context=yhrdlj>

¹²⁶ T Pogge & M Sengupta, 'The Sustainable Development Goals As Drafted: Nice Idea, Poor Execution' (2015) 24(3) Washington International Law Journal, available at https://moodle.bbk.ac.uk/pluginfile.php/452432/mod_resource/content/1/Pogge_Sengupta_SDGs_WILJ.pdf

¹²⁷ UNGA, 'The Future We Want, Outcome document of the United Nations Conference on Sustainable Development' (2012) Rio de Janeiro, Brazil 20-22 June 2012, available at <https://sustainabledevelopment.un.org/futurewewant.html>

¹²⁸ E.g. A De Chickera, speaking at 'A4ID Knowledge Group: Statelessness, Sustainable Development and the Law', Wednesday 7 September 2016 at Ashurst LLP, London.

¹²⁹ Tendayi Bloom, 'The SDGs and childhood statelessness', in Institute on Statelessness and Inclusion, *The World's Stateless Report 2017*, Forthcoming

As part of its follow-up and review mechanisms, the 2030 Agenda for Sustainable Development encourages member states to “conduct regular and inclusive reviews of progress at the national and sub-national levels, which are country-led and country-driven” (paragraph 79). These national reviews are expected to serve as a basis for the regular reviews by the high-level political forum (HLPF), meeting under the auspices of ECOSOC. As stipulated in paragraph 84 of the 2030 Agenda, regular reviews by the HLPF are to be voluntary, state-led, undertaken by both developed and developing countries, and shall provide a platform for partnerships, including through the participation of major groups and other relevant stakeholders.

The voluntary national reviews (VNRs) aim to facilitate the sharing of experiences, including successes, challenges and lessons learned, with a view to accelerating the implementation of the 2030 Agenda. The VNRs also seek to strengthen policies and institutions of governments and to mobilize multi-stakeholder support and partnerships for the implementation of the Sustainable Development Goals.¹³⁰

Human rights treaty bodies have also expressed interest in – through their monitoring function – looking at the implementation of SDG targets relevant to their mandates.¹³¹ Similarly, the Universal Periodic Review can become a useful forum to monitor the human rights related aspects of the implementation of SDGs. From a statelessness perspective, it is of paramount importance that all international monitoring and review processes, be they voluntary or obligatory, also look at the inclusion of stateless persons in the implementation of SDGs. Civil society will have an important role to play, in making the relevant connections and bringing statelessness to the attention of such forums and mechanisms.

¹³⁰ See <https://sustainabledevelopment.un.org/hlpf>

¹³¹ For example, Benyam Mezmur, the chair of the Committee on the Rights of the Child stated in a UN Human Rights Council side event in September 2015, that the Committee was looking into ways in which it could also monitor SDGs that clearly overlap with state obligations under the CRC.

12. Conclusion

This paper has looked at how the human rights and development frameworks can be leveraged both to reduce the incidence of statelessness and to improve the lives of stateless people. In doing so, it has cast a critical eye on some of the challenges and shortcomings of these frameworks, while also showcasing the potential they have to make real change. The paper has argued that development, human rights and statelessness actors would benefit from increased collaboration to ensure that the development (and human rights) frameworks are effectively used to address statelessness. In this short conclusion, the paper offers some final reflections on what is needed for this to be achieved.

12.1. Moving beyond our silos

The importance of collaboration across different sectors cannot be overemphasised. Human rights, development, migration, humanitarian and other actors must increasingly work together, join up their plans and collectively promote the interests of their respective constituencies in a meaningful and mutually reinforcing manner. As a first step, there must be space for more regular and in-depth meetings and conversations between these sectors, and a sharing of expertise which compels actors to learn more about other frameworks and how they relate to their own. Until there is greater familiarity both among key actors and of the different frameworks, it will be difficult to sustain collaboration in testing times. As discussed above, the structural change that the SDGs require, may complicate existing relationships between development actors and some states. Therefore, it is crucial to find ways to work with states and to identify and strengthen ties with states that champion related issues. This may have an impact on their access, similar to the manner in which states have restricted access to human rights actors in various situations. Joined up approaches will make it more difficult for forces that discriminate and exclude, to 'divide and rule'; and it will be strategically important to offer comprehensive development packages that cannot be picked apart so as to ignore human rights obligations.

The SDGs have the potential to leverage considerable interest and investment, which go far beyond what human rights players generally have access to. Furthermore, of the human rights players, only a few prioritise statelessness. Thus, a strategic and collaborative approach among all actors is an essential prerequisite to ensuring that statelessness is effectively addressed.

12.2. Greater expertise on statelessness

In addition to greater knowledge of the different frameworks, it is essential that all actors develop their competence and expertise on statelessness, and that stateless actors (and communities) develop their expertise on the different frameworks. Failure to do so can result in important aspects of the issue being overlooked, or inappropriate 'solutions' being put forward. There is a role here for academia and civil society to play, in providing capacity building on statelessness to key development actors.

Similarly, more research and data, as well as different types of research, which goes beyond the technical/legal causes of statelessness and also looks at the socio-economic and other barriers to inclusion, the impact of multiple discrimination etc., is needed on statelessness. More actors should be approaching the issue from different perspectives to strengthen the growing body of knowledge on the issue. Stateless persons and communities are an important resource of knowledge, and should be involved and consulted in such processes as well.

12.3. Marrying obligation with aspiration

This paper has at different points, looked at the potential tension between the obligatory nature of the human rights framework and the aspirational nature of the development framework. While acknowledging the tension at play, it is important to also find ways to make this work to our advantage. Pushing for more ambitious aspirations under national action plans which take us beyond human rights, and taking steps to

ensure that development progress is monitored in relation to human rights obligations can have a positive impact. Civil society will have an important role to play in this regard. But a change in perspective, in terms of how human rights are viewed by state and other actors, is also needed. In particular, it is important to emphasise the following:

1. All actors should stop seeing human rights as one of many competing factors that must compete with each other for attention and space (some others being development, national security, economic interest etc.). Such an approach undermines the efficacy of human rights law, and creates a false competition between issues. Instead, human rights should be recognised for the all inclusive framework that it is, which provides a mechanism through which all relevant interests and realities (security, economic, public policy etc.) can be assessed and balanced in a principled manner, to arrive at the most appropriate, proportionate and rights based response. It is important to recollect that human rights principles are foundational to the UN Charter and to most national constitutions (in addition to international and regional human rights treaties). Consequently, the obligation to respect, protect, promote and fulfil human rights, should not be forgotten in any circumstance.
2. A second (false) tension that is often spoken of, is the tension between national sovereignty and international human rights law. States often speak of human rights encroaching on their national sovereignty, and are particularly sensitive on this point, in relation to the granting and revocation of nationality. Instead of viewing human rights as a force which clashes with and limits state sovereignty, it should be viewed as an expression of state sovereignty. All states take on international human rights obligations through acts of sovereign expression, by signing and ratifying treaties. These acts demonstrate state commitments to treat people subject to their jurisdiction in a particular way. As such, they are similar, to the sovereign acts of passing through legislation, national bills of rights. Such a perspective dissipates any tension between state sovereignty and human rights law, and also underscores the legitimacy of civil society human rights advocacy.

12.4. Learn from, and build partnerships with other movements

The ‘movement’ of actors working on statelessness around the world, is relatively young, small and under-resourced. It has much to learn from the example of those working on other issues, including migration, minority rights and refugee rights. Statelessness actors should build stronger alliances with these other groups, learn from them and collectively push for greater inclusion of all vulnerable groups in the SDG process. Such connections are likely to be mutually beneficial, not only because collectively, these groups will form a stronger interest group, but also because statelessness is a relevant (though poorly understood) issue for all of these groups.

12.5. Recognise the impact of discrimination

Another overarching theme of this paper has been the impact that discrimination has, as a cause and consequence of statelessness, and as a barrier to achieving sustainable change and justice for stateless groups. Discriminatory societal attitudes and prejudicial stereotypes must be engaged and challenged, the argument for the inclusion of stateless minorities in nation building projects should be made clearly, and discriminatory structures replaced with more progressive, inclusive and equal ones.

It is important that the impact of discrimination is not underestimated, nor the difficulty of changing worldviews based on the perceived ‘inferiority’ and ‘otherness’ of certain groups. Even where structural change in the law is achieved, if the guardians of the law maintain their prejudices, it will be difficult to effectively address statelessness. Therefore, it is crucial that social stereotypes and prejudices are also systematically engaged and broken down.

12.6. The importance of structural ‘qualitative’ change to complement ‘quantitative’ change

A human rights based approach to solving statelessness has to mean that the ‘solution’ leaves the formerly stateless person better off. However, a focus purely on achieving ‘quantitative’ change, can leave people in no better situation, or even worse off. Forcing an unwanted nationality on a person, promoting the nationality of a country with which the person has no ties, or pushing as the only solution the nationality of a state which persecutes the people concerned, may not make things better.

For example, Kuwait’s solution to Bidoon statelessness, to buy them Comorian nationality or pursuing Haitian nationality for Dominicans of Haitian descent who have been stripped of their Dominican nationality in violation of international law, cannot be seen as viable solutions to statelessness. Similarly, a solution to the statelessness of Rohingya which requires them to choose between their Rohingya identity and a Burmese nationality, would be deeply problematic in human rights terms. From a purely statistical viewpoint, these will all help reduce statelessness and increase legal identity. From a human rights perspective, they undermine individual rights in the most fundamental of ways. Ultimately, unless change is more structural, more long-term, more in line with principles of human rights, it risks being unsuccessful.

12.7. Meaningful participation, consultation and accountability

Finally, this paper concludes by reiterating the importance of including stateless persons in every stage of development processes. Their full participation and consultation, and accountability to them in the implementation of development programming is extremely important. The stateless, as a stakeholder group who have been excluded for too long, must now find their rightful place as a priority group for development planning and implementation purposes. To start with, steps must be taken to understand and improve the way in which stateless populations are engaged in the planning and implementation of development programmes, and this includes the Sustainable Development Agenda.

Annex 1: Some of the more relevant SDGs

<i>Goal 1. End poverty in all its forms everywhere</i>
<p>1.1 - By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than \$1.25 a day</p> <p>1.2 - By 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions</p> <p>1.3 - Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable</p> <p>1.4 - By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance</p> <p>1.5 - By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate related extreme events and other economic, social and environmental shocks and disasters</p>
<i>Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture</i>
<p>2.1 - By 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round</p> <p>2.2 - By 2030, end all forms of malnutrition, including achieving, by 2025, the internationally agreed targets on stunting and wasting in children under 5 years of age, and address the nutritional needs of adolescent girls, pregnant and lactating women and older persons</p> <p>2.3 - By 2030, double the agricultural productivity and incomes of small scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and nonfarm employment</p>
<i>Goal 3. Ensure healthy lives and promote wellbeing for all at all ages</i>
<p>3.1 - By 2030, reduce the global maternal mortality ratio to less than 70 per 100,000 live births</p> <p>3.2 - By 2030, end preventable deaths of newborns and children under 5 years of age</p> <p>3.3 - By 2030, end the epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and combat hepatitis, waterborne diseases and other communicable diseases</p> <p>3.4 - By 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and wellbeing</p> <p>3.5 - Strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol</p> <p>3.7 - By 2030, ensure universal access to sexual and reproductive healthcare services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes</p> <p>3.8 - Achieve universal health coverage, including financial risk protection, access to quality essential Health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all</p>
<i>Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all</i>
<p>4.1 - By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes</p> <p>4.2 - By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education</p>

4.3 - By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university

4.4 - By 2030, increase by [x] per cent the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship

4.5 - By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations

4.6 - By 2030, ensure that all youth and at least [x] per cent of adults, both men and women, achieve literacy and numeracy

4.7 - By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development

Goal 5. Achieve gender equality and empower all women and girls

5.1 - End all forms of discrimination against all women and girls everywhere

5.2 - Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation

5.3 - Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation

5.6 - Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences

Goal 6. Ensure availability and sustainable management of water and sanitation for all

6.1 - By 2030, achieve universal and equitable access to safe and affordable drinking water for all

6.2 - By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations

Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

8.5 - By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value

8.6 - By 2020, substantially reduce the proportion of youth not in employment, education or training

8.7 - Take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, eradicate forced labour and, by 2025, end child labour in all its forms, including the recruitment and use of child soldiers

8.8 - Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment

Goal 10. Reduce inequality within and among countries

10.1 - By 2030, progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average

10.2 - By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status

<p>10.3 - Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard</p> <p>10.4 - Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality</p> <p>10.7 - Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well managed migration policies</p>
<p>Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable</p>
<p>11.1 - By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums</p> <p>11.3 - By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries</p> <p>11.5 - By 2030, significantly reduce the number of deaths and the number of people affected and decrease by [x] per cent the economic losses relative to gross domestic product caused by disasters, including water related disasters, with a focus on protecting the poor and people in vulnerable situations</p>
<p>Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels</p>
<p>16.1 - Significantly reduce all forms of violence and related death rates everywhere</p> <p>16.2 - End abuse, exploitation, trafficking and all forms of violence against and torture of children</p> <p>16.3 - Promote the rule of law at the national and international levels and ensure equal access to justice for all</p> <p>16.5 - Substantially reduce corruption and bribery in all their forms</p> <p>16.6 - Develop effective, accountable and transparent institutions at all levels</p> <p>16.7 - Ensure responsive, inclusive, participatory and representative decision making at all levels</p> <p>16.9 - By 2030, provide legal identity for all, including birth registration</p> <p>16.10 - Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements</p>
<p>Goal 17. Strengthen the means of implementation and revitalise the global partnership for sustainable development</p>
<p>17.9 - Enhance international support for implementing effective and targeted capacity-building in developing countries to support national plans to implement all the sustainable development goals, including through North-South, South-South and triangular cooperation</p> <p>17.14 - Enhance policy coherence for sustainable development</p> <p>17.17 - Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships</p> <p>17.18 - By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts</p>