

Statelessness, Development, and Protection of ‘Disadvantaged Groups’: Bridging the Post-2030 Sustainable Development Gaps

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Abstract

Statelessness constricts development opportunities, human capital, and the potential of affected communities and persons over successive generations. The marginalisation of stateless persons, deprivation of their basic rights, legal recognition, and access to essential services further induce their vulnerability and the risk of intergenerational statelessness. Unfortunately, the nexus between statelessness and development remains poorly investigated amid the lack of coherent measures to address it. Hence, the need to understand how global, regional, or national development policies, programmes, and processes often constrict stateless persons and communities. The paper argues that mismatches in the implementation of multilateral development programmes and national policies increase deprivation by statelessness and its conditions of vulnerability, suspicion, and exclusion of affected persons and communities. Although not explicitly encapsulated to address statelessness, the Sustainable Development Goals (SDGs) unlock significant opportunities, with relevance and applicability of some of the goals. Therefore, incorporating statelessness into the post-2030 development agenda is critical for addressing its challenges, and improving the human security and conditions of stateless persons.

Keywords: statelessness, development, vulnerability, SDGs, human rights, inclusion

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I. INTRODUCTION

A stateless person, in a precise legal phrase or as defined in international law, denotes a person not considered a citizen by any state, under the operation of its law.¹ Statelessness is prohibited under international law; it is often induced by the refusal of a person's right to nationality, birth registration, and denationalisation or renunciation of nationality by several factors, including socio-political circumstances.² Regrettably, statelessness remains a highly contested subject matter in many aspects, including data, statistics, definitions, and terminologies, and politically, it is facing resistance. For instance, the United Nations High Commissioner for Refugees (UNHCR) statistical reporting estimated 4.2 million stateless people across 94 countries (including those of undetermined nationality in 76 countries).³ Given the UNHCR's assumption that the number of stateless persons is substantially higher, and the inability of most countries to collect adequate data on statelessness, the Institute on Statelessness and Inclusion (ISI) projected the existence of at least 15 million stateless people globally.⁴ The restriction of their basic rights — such as access to birth registration and identity documentation, and socio-economic opportunities — healthcare, education, property ownership, legal employment, freedom of movement and political participation, undermine their individual potentials. Also, their 'difficulties in accessing opportunities, owning or registering businesses; limited access to bank accounts or loan(s); and, in some cases, the threat of extortion, detention or expulsion' often trap them in poverty and extreme circumstances across the world.⁵ Consequently, marginalisation and refusal of their basic rights generate social mobility tensions, including socio-economic crises,⁶ and thus, constitute a major development problem over successive generations.

Development is a multi-dimensional concept that encompasses the reorganisation and reorientation of a socio-economic and political system toward improving the quality of human lives. This implies the process of bringing about a social change that enables people to attain their human potential, capabilities, and aspirations.⁷ According to Michael Todaro and Stephen Smith, development highlights three important objectives. The first entails raising human living standards, i.e., incomes and consumption, and general well-being, including health and education, through relevant growth processes. The second aspect emphasises

¹ United Nations Convention Relating to the Status of Stateless Persons 1954, Article 1(1).

² Brad Blitz 'Statelessness: Advocacy campaigns and policy development' (2009) 32 *Nationality for All* at 25.

³ United Nations High Commissioner for Refugees (UNHCR) 'UNHCR urges governments to accelerate progress and resolve plight of world's stateless' (2021), available at <https://www.unhcr.org/en-us/news/press/2021/11/618387874/unhcr-urges-governments-accelerate-progress-resolve-plight-worlds-stateless.html>

⁴ Institute on Statelessness and Inclusion (ISI) 'Statelessness in numbers: 2020 – An overview and analysis of global statistics' (2020), available at https://files.institutesi.org/ISI_statistics_analysis_2020.pdf

⁵ ISI 'Statelessness, human rights and the sustainable development agenda' (2017), available at <http://children.worldsstateless.org/3/childhood-statelessness-and-the-sustainable-development-agenda/statelessness-human-rights-and-the-sustainable-development-agenda.html>

⁶ United Nations Development Group (UNDG) 'Statelessness: UNDG guidance note on human rights for resident coordinators and UN country teams' (2017).

⁷ Organisation for Economic Co-operation and Development (OECD) 'Development' (2020) *Development Matters*, available at <https://www.oecd.org/development/>

the creation of conditions conducive to the growth of human self-esteem through social, political, and economic systems and institutions that promote human dignity and respect. The third aspect presupposes increasing people's freedom by enlarging their range of choice variables, such as goods and services.⁸ The reality that stateless persons co-exist on the margins of society globally, and remain unheard, unnoticed, and neglected, challenges the fundamental principles of the global development agenda and human rights, as advanced by the Universal Declaration of Human Rights (UDHR)⁹ over the past seventy years.

Statelessness has been attributed to several causes, ranging from discrimination in nationality laws (based on racial, ethnic, religious, gender, or linguistic minority status), to challenges of birth registration and documentary proof of identity. Other factors include state succession, conflicts between nationality laws, wars and displacement, and lack of safeguards to avert statelessness in nationality laws. Displacement may serve as a cause and consequence of statelessness. When induced by human rights abuses and abysmal development outcomes against vulnerable and deprived populations, statelessness may propel voluntary movement or forced displacement of people across international borders. Likewise, protracted displacement prompted by irregular migration may also result in statelessness.¹⁰

Moreover, occurring at different times, and in different contexts, all regions of the world are confronted by problems inducing statelessness. For example, members of Europe's Roma community were rendered stateless when the post-World War I (1914–1918) new state system could not accommodate them. Furthermore, the Palestinians, the Tamils of Sri Lanka, and the Kurds across the Middle East have become stateless due to empire collapse, occupation, or decolonisation.¹¹ In Africa, groups at risk of statelessness fall into five categories. These include: (a) orphans, abandoned infants, and other vulnerable children, including those trafficked for various purposes; (b) people of mixed parentage; (c) border populations, including nomadic and pastoralist ethnic groups who regularly cross borders, as well as those affected by border disputes or transfers of territory; (d) migrants — historical or contemporary — without (valid) documentation of nationality, especially their descendants, refugees, and internally displaced persons (IDPs); and (e) those deported or returned to a country 'of origin' where they have limited, or no current ties.¹²

This study reveals that states' unwillingness or inability to provide accurate data, inadequate mechanisms for registering stateless persons, and the lack of

⁸ Michael P Todaro & Stephen C Smith *Economic Development* 6 ed (2014) 12.

⁹ United Nations (UN) 'Universal Declaration of Human Rights' (1948) 4, available at <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>

¹⁰ UNDG op cit note 6 at 5.

¹¹ UNHCR 'Citizenship and statelessness in the member states of the Southern African Development Community' (2020) 7 SSRN *Electronic Journal*, available at <https://doi.org/10.2139/ssrn.3783295>

¹² African Commission on Human and Peoples' Rights (ACHPR) 'The right to nationality in Africa' African Union (AU) (2015).

obligation to report or index the numbers of stateless persons in their territories have worsened the phenomenon.¹³ The consequences of being without nationality, denial of citizenship, and inability to register to vote, marry, and apply for a travel document in a country of abode, exacerbate the deprivation of stateless persons. The long-term detention of stateless persons outside their country of origin or previous country of residence when refused re-entry to their territories of origin often threatened their well-being and community. Thus, denial of their basic rights — rights to education, employment, and medical care — for being unable to prove any legal connection to a country,¹⁴ not only exacerbates their vulnerability and marginalisation but induces development challenges.

Unfortunately, the neglect of stateless persons and communities by development actors and processes has often lagged them in national or regional development. Against this backdrop, scholars and activists have increasingly advocated for incorporating statelessness into development programming and research. The ISI’s World Statelessness Report (2014) advances the human security and prospects of stateless persons.¹⁵ Remarkably, the Sustainable Development Goals (SDGs), articulated in 2015, unlock significant opportunities in this regard, by setting an ambitious agenda to be achieved by 2030.¹⁵ Although statelessness is not explicitly encapsulated in the SDGs, the relevance and applicability of the goals to statelessness are apparent at first glance.

Given the above dichotomy, this study advances the need to understand the nexus between the fundamental causes of statelessness and the challenges of non-inclusive development. It takes into cognisance, (a) how the growing vulnerability of marginalised groups, including the stateless, enhances the risk and trend of statelessness; (b) the implication of intergenerational statelessness on human security and development; and (c) bridging the implementation gaps between national policies and multilateral mechanisms to address the vulnerability of stateless persons and other excluded groups. Furthermore, an inductive review of public documents — secondary and primary — including official reports, online sources, and scholarly publications on statelessness and development is conceived along several themes. These include: (a) critical debates on statelessness, frameworks, and campaign for the rights to a nationality, toward socio-economic inclusion; (b) the SDGs and statelessness; (c) socio-economic rights — risks of exclusion, discrimination, and intergenerational statelessness; and (d) challenges and prospects.

¹³ UNHCR & Inter-Parliamentary Union (IPU) *Nationality and Statelessness: A Handbook for Parliamentarians* (2005) 6.

¹⁴ *Ibid.*

¹⁵ ISI *op cit* note 5 at 3.

¹⁶ UNHCR ‘The Sustainable Development Goals and addressing statelessness’ Briefing Notes (2017) 2, available at <http://www.refworld.org/docid/58b6e3364.html>

II. CRITICAL DEBATES ON STATELESSNESS: FRAMEWORKS AND CAMPAIGN FOR THE RIGHTS TO A NATIONALITY, AND SOCIO-ECONOMIC INCLUSION

Statelessness as a concern for human rights and development is a truism that is poorly understood. This is due to inadequate publication, teaching, and research on its causes and ramifying effects. Critical debates on statelessness and development reflect on the SDGs; however, the purpose to relieve or alleviate the vulnerabilities of stateless persons predates the SDGs. Institutional reports reflect on the impact of relevant international standards, treaties, and conventions concluded through international and regional human rights obligations. The UDHR, a milestone international document adopted by the United Nations (UN) General Assembly on 10 December 1948, enshrines the rights and freedoms of all human beings. Its article 15 explicitly provides the foremost guarantee to all: ‘Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.’¹⁷ Recognising the UDHR’s guarantee on the right to a nationality, legal provision among state parties concerning the prevention of statelessness was further elaborated in two important international conventions — the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. These conventions represent a landmark in the historical development of international law for the protection of stateless persons.¹⁸

Promoting the dignity and human security of the stateless and vulnerable groups brings statelessness into the human rights regime. The 1966 International Covenant on Civil and Political Rights (ICCPR), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the 1990 Convention on the Rights of the Child (CRC), among others, reflect states’ obligations relating to acquisition and loss of nationality and the protection of vulnerable groups.¹⁹ However, these conventions’ emphasis on the prevention and reduction of statelessness is undermined by the lack of procedures for the determination of statelessness, amid persistent gaps and discrimination in nationality laws. To bridge this gap, the 1986 Declaration on the Right to Development, recognises the universal freedom to ‘participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights can be fully realised.’²⁰

Statelessness has taken a centre stage in official policy discourse at the United Nations (UN); this is explicitly connected to the campaigns to regularise migration, identity and nationality, and policies on non-discrimination.²¹ International campaigns, particularly by international non-governmental organisations (NGOs) and monitoring bodies, vigorously influence the profile of de jure and de facto

¹⁷ UDHR op cit note 9.

¹⁸ Alice Edwards & Laura van Waas ‘Statelessness’ in Elena Fiddian-Qasimiyeh Gil Loescher Katy Long and Nando Sigona (eds) *The Oxford Handbook of Refugee and Forced Migration Studies* (2014) 290–301.

¹⁹ UNDG op cit note 6 at 2.

²⁰ Blitz op cit note 2.

²¹ UNHCR op cit note 11.

stateless populations, although both remained unsettled. In most instances, they are supported by UN agencies such as the UNHCR and the Office of the United Nations High Commissioner for Human Rights (OHCHR), and UN Committees, including the Committee on the Elimination of Racial Discrimination, a joined-up action by the UN to boost the protection of human rights through social and economic factors for development, safety, and security. Its 2003 draft report, by the UN Special Rapporteur on the rights of non-citizens, revealed the huge gap between the guarantees of international human rights law to non-citizens and the realities of the challenges confronting them. It also provided the agenda setting for activists and human rights monitoring organisations working with the UNHCR, e.g., Refugees International and the Open Society Institute's (OSI) Justice Initiative.²²

The United Nations Children's Fund (UNICEF) and PLAN International's joint ten-year campaign on universal birth registration was instrumental in addressing the challenges of both *de jure* and *de facto* stateless persons. This includes the challenge of proving one's nationality before accessing basic services, travelling, marrying, giving birth, and protecting children from the dangers of legal anonymity, or trafficking. Plan International's 2005 campaign featured in the recommendations of the UN Secretary-General's 2006 Study on Violence Against Children, and the human rights monitors' reports and legal cases brought before international tribunals improve the profile of statelessness. The significance of this reflects on increased western governmental agencies' direct involvement in coordinating the cause of preventing statelessness since 2006.²³ The joint African Union (AU)–UNICEF 'No Name Campaign: For Every Child, a Legal Identity, For Every Child Access to Justice', launched in February 2019, identifies birth registration as fundamental for access to child-friendly justice. It has rallied actions and rapid implementation by AU member states toward a commitment to universal registration of a child's birth and repositioning civil registration and crucial statistics in Africa, to address the indignity of invisibility.²⁴ Nevertheless, the persistent idea of proving one's nationality before accessing basic services is discriminatory and requires urgent attention.

Moreover, the agenda on statelessness was also popularised by mass protests across the Global North in the mid–2000s. This was geared toward transforming the (Westphalian) state into more inclusive models of political organisation and supporting the growing transborder migration and the recognition of multi-ethnic and multi-national populations. The protests were often linked to the treatment of minorities and the right to non-discrimination. The opinion found support among grassroots campaigners, non-professional associations, local NGOs, migrant community organisations, and collective pushing to regularise the status of irregular workers, unsuccessful asylum seekers, and 'over-stayers'. This includes the May 2006 protest by over one million persons across American cities on the plights of

²² Brad Blitz 'Statelessness, protection and equality' (2009) *Forced Migration Policy Briefing* No 3 at 1.

²³ ISI op cit note 5.

²⁴ African Union 'No Name Campaign' (2021), available at <https://au.int/en/newsevents/20200617/no-name-campaign>

some 12 million undocumented migrants left with no route to citizenship and being criminalised.²⁵ This resonated across Europe, through various protests, such as the May 2007 rally 'From Strangers into Citizens' in the United Kingdom, and the revival of debate in France over the 'sans papiers' — undocumented former migrants from North Africa. Likewise, the 2007 pan-European 'caravan of the erased' convoy of activists from Ljubljana (Slovenia) to Brussels protested the cancellation of residency rights and mistreatment of over 18,000 persons who lost their social, economic, and political rights in the aftermath of Slovenia's independence.²⁶

Regional human rights mechanisms across Africa, Asia, Europe, and the Americas complement the international conventions, institutional processes, and campaigns. The AU's 2006 Migration Policy Framework for Africa (MPFA), for instance, incorporates guidelines from the 1954 and 1961 Statelessness Conventions. The 2018 revised MPFA and Plan of Action (2018–2030) provide improved strategic guidelines to AU member states and Regional Economic Communities (RECs) in the management of migration. This includes the states' capacities to 'develop national policy frameworks to counter statelessness, through long-term residency, reform citizenship legislation, and grant more rights to foreigners in member countries. Other measures include boundary demarcations, protection of the rights of those at risk of loss of nationality, and forced displacement.²⁷ In addition, the African Commission adopted the African Commission on Human and Peoples' Rights (ACHPR) Resolution on Refugees, Asylum Seekers, and Internally Displaced Persons in Africa. The April 2013 draft study on the right to nationality in Africa, adopted a multifaceted thought process on the right to nationality in the continent.²⁸ The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) — drawing its mandate from articles 32–46 of the African Charter on the Rights and Welfare of the Child (ACRWC) — together with the African Court on Human and Peoples' Rights were instrumental in the formulation of the 2015 Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, adopted by the ACHPR.²⁹

Significant essays and institutional reports have distinguished two contexts in which statelessness emanates — the migratory and in situ contexts of statelessness.³⁰ Statelessness in the migratory context illustrates the migrant stateless persons or those with a migratory background. The in-situ statelessness encompasses the populations in their own country who have stable and significant ties, i.e., through

²⁵ Blitz op cit note 2.

²⁶ Blitz op cit note 22.

²⁷ African Union Commission (AUC) 'Migration Policy Framework for Africa and Plan of Action (2018–2030) (2018), available at <https://au.int/en/documents/20181206/migration-policy-framework-africa-mpfa>

²⁸ ACHPR op cit note 12 at 10.

²⁹ African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 'Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa' (2015).

³⁰ Caia Vlieks 'The concepts "statelessness in situ" and "statelessness in the migratory context" in T Bloom K Tonkiss & P Cole (eds) *Understanding Statelessness* (2017) 35–52

birth or long-term residence, with a state. These two contexts have also determined the different forms of legal responses, in different countries, to address the challenges of statelessness.³¹ These encompass: (a) the determination of statelessness and protection status (including facilitation of access to naturalisation, as required under Article 32 of the 1954 Convention Relating to the Status of Stateless Persons — for stateless persons in the migratory context; and (b) recognition of nationality — for the stateless in situ persons.³²

Similar contemporary thoughts on statelessness characterised three significant milestones — the post-Second World War (1939–1945) drafting of the UDHR; the inception of the twenty-first century (protests in the Global North); and the recent UNHCR #IBelong campaign (2014), which coincides with the pioneer Global Forum on Statelessness.³³ The UNHCR's #IBelong campaign enhances states' and other stakeholders' commitment to the Global Action Plan to end statelessness by 2024.³⁴ The above milestones significantly put statelessness on the front burner of multilateral discourses, human rights policies, awareness, and development agendas. With enhanced identification of aliens, birth registration, naturalisation, and permanent residency worldwide (particularly in the Global North), the campaign's influence is not uniform, as commitments and outcomes vary across countries and regions.³⁵ Nonetheless, Thailand's development of nationality laws, and evaluation of historical situations of stateless persons, aliens, and minorities, are noteworthy across the Global South. Since 2005, the Thai government's efforts in reducing statelessness include measures on education, quality of life and integration of stateless and vulnerable persons, amid collaborations with civil societies and international organisations.³⁶

The intricacy of a parastate caught between statehood and frozen conflict elicits yet another development concern for statelessness. The entrapment of the Azawad — a remote parastate situated in northern Mali — in a protracted conflict involving non-state armed groups, national security forces, and external interveners, is a critical example.³⁷ The above reality illustrates a temporary and volatile circumstance linking parastate, patronage politics, hybrid governance and statelessness, amid deprivation and marginalisation. The typical nature of the Sahara Desert's spatial porosity highlights how ethnic and religious drivers intertwine and overlap with the

³¹ Gábor Gyulai 'Statelessness in the EU framework for international protection' *European Journal of Migration and Law* (2012) 279.

³² C Vlieks op cit note 30.

³³ Tendayi Bloom Katherine Tonkiss & Phillip Cole *Understanding Statelessness* (2017).

³⁴ UNDG op cit note 6.

³⁵ ACHPR op cit note 12; Bronwen Manby 'The Sustainable Development Goals and "Legal identity for all": "First, do no harm"' (2021) 14 *World Development* at 279 ; UNHCR op cit note 11; Punthip K Saisoonthorn 'Development of concepts on nationality and the efforts to reduce statelessness in Thailand' (2006) 25 *Refugee Survey Quarterly (Nationality and Reduction of Statelessness: International, Regional and National Perspectives)* at 40; Christoph Sperfeldt 'Legal identity in the sustainable development agenda: Actors, perspectives and trends in an emerging field of research' (2022) 26 *IJHR* at 217, available at <https://doi.org/10.1080/13642987.2021.1913409>

³⁶ Saisoonthorn *ibid*.

³⁷ Edoardo Baldaro & Luca Raineri 'Azawad: A parastate between nomads and mujahidins?' (2020) 48 *Nationalities Papers* 48 at 100.

struggle for identification, recognition, and borderline impositions.

The inclusion of stateless and vulnerable persons in global development discourse, a previously neglected concern, as implied, occupies a primacy in the SDG aim to ‘provide legal identity for all’ by 2030, including birth registration.³⁸ While this is praiseworthy, it is subject to criticism due to a lack of clear definition and link with the ‘right to a nationality’. While the SDGs take birth registration as attaining legal identity, this may not be the case, as many stateless persons and communities exist even with their births registered. Advocacies for independent oversight of executive decisions on legal identity may be reinforced by regulation of enrolment processes and reforms of nationality laws. These can enhance effective public-driven identity schemes.³⁹ The challenges associated with the trends of birth registrations, technological solutions to legal identity problems, and the risks of identification systems, particularly in the Global South, where a significant population at risk of statelessness exists, can be further evaluated. Thus, the SDGs’ legal identity target can be refocused with priority on the ‘right to a nationality’ and practical measures for addressing the vulnerability of stateless persons.

Unfortunately, the mismatch in citizenship laws, state collapse or changes in nationality laws, including denationalisation, i.e., the removal of a person’s citizenship, have potentially rendered many people stateless.⁴¹ Yet, complex and multi-faceted, contentions about appropriate responses to address the rising trend of statelessness have amplified concerns for the victims’ rights eligibility and legal personhood. Understanding statelessness and developments requires the need to link the increasing deprivations, conditions of vulnerability, suspicion, and exclusion of stateless persons across the world, including people at risk of statelessness. Digging deeper into the SDGs unearths not only its provisions for stateless persons’ access to essential services, but its potential for preventing or addressing statelessness. However, some causes for concern regarding statelessness that need to be renegotiated, also become apparent upon its critical assessment.

III. THE SDGS AND STATELESSNESS

The purpose of development is to improve human well-being, address human security problems including poverty, and inclusively enhance opportunity. In September 2015, the United Nations General Assembly adopted the 2030 Global Agenda for Sustainable Development, replacing the Millennium Development Goals (MDGs) (2000–2015). It comprised 17 goals across a broad range of areas and challenges to be addressed — including poverty, education, health, gender and inequality, climate change and justice. The 17 goals further encompassed a total of 169 targets, with

³⁸ Manby op cit note 35; Sperfeldt op cit note 35.

³⁹ Manby ibid.

⁴⁰ Sperfeldt op cit note 35.

⁴¹ Matthew J Gibney ‘Should citizenship be conditional? The ethics of denationalisation’ (2013) 75 *The Journal of Politics* at 646.

specific objectives to be attained, and indeed a total of 232 agreed indicators against which achievable progress is monitored. The SDGs differ from its precursor — the MDGs — in diverse and critical ways. They are broad — addressing a complex and diverse range of interconnected issues — intersecting different development challenges and opportunities, and universal issues — achievable by all UN member states and regions rather than mere low and middle-income countries. The SDGs also provide an exceptional opportunity to entrench human rights principles within the development agenda, hence ensuring that the most vulnerable and excluded persons, including the stateless, enjoy equal access to development. This view was captured by former UN High Commissioner for Human Rights, Navi Pillay, in the run-up to the drafting of the SDGs:

The 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. ... 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.⁴²

The SDG as a plan of action attempts to leave no one behind. It pays utmost attention to the most deprived groups, combatting systems and structures that stimulate exclusion and impoverishment of vulnerable and disadvantaged groups, including stateless persons. Statelessness is detrimental to human development, trapping affected people and communities in vicious poverty and deprivation. Accordingly, the September 2015 UN Summit's outcome document envisaged:

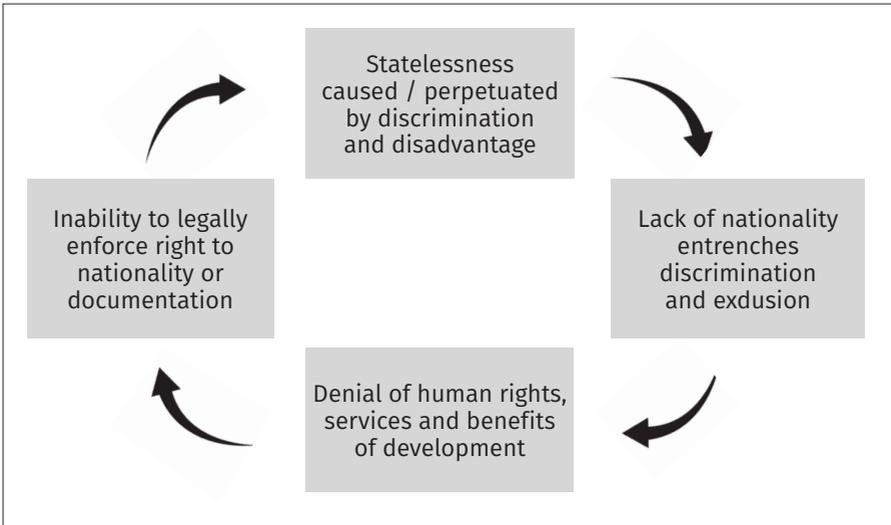
“(a) world of universal respect for human rights and human dignity; of justice and equality; of respect for race and ethnicity; and of equal opportunity permitting the full realization of human potential while promoting shared prosperity”⁴³

The intergenerational nature of statelessness, where affected parents are inherited by their children and grandchildren, exacerbates exclusion, poverty, disadvantage, and marginalisation of stateless persons. Such a factor perpetuates statelessness across the most affected communities in the world (see Figure 1). Thus, the persistence of statelessness may undermine the progress of attaining the SDGs.

⁴² ISI op cit note 5 at 3.

⁴³ Ibid.

Figure1: Development challenges and intergenerational cycle of statelessness



Source: ISI (2018) at 18

The SDGs emphasise how development benefits the stateless persons through inclusion in the implementation of development priorities, and sustained effort to eliminate structural discrimination and disadvantage. By far, all 17 goals (see Figure 2) are relevant to stateless persons and communities. Invariably, some of the SDGs have a stronger link with statelessness than others. SDG 5 (gender equality), SDG 10 (reducing inequality) and SDG 16 (peace, justice, and strong institutions) oblige member states and other states to combat structural inequality and discrimination, intrinsic to the root causes of statelessness. Other goals address critical areas where stateless persons seem disadvantaged, toward bringing development programming to stateless persons. These include SDG 1 (combatting poverty), SDG 2 (zero hunger), SDG 3 (health and well-being), SDG 4 (quality and affordable education), SDG 6 (water and sanitation), and SDG 8 (decent work and economic growth), and SDG 11 (sustainable cities and communities).⁴⁴

⁴⁴ ISI 'All about the SDGs: What statelessness actors need to know' (2018).

Figure 2: Sustainable Development Goals (2015–2030)



Source: United Nations – SDGs (2020)

Significantly, the campaign to end statelessness, championed by the UNHCR-led #Ibelong and its 10-point Global Action Plan have focused on the right to nationality, identity, and birth registration, as protected under international human rights treaties. These now find support in the SDGs, just as the International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Covenant on Economic, Social and Cultural Rights (ICESCR), and other relevant regional instruments such as the 1990 African Charter on the Rights and Welfare of the Child (ACRWC), and the 1997 European Convention on Nationality are relevant to statelessness. Hence, several goals can contribute to preventing and reducing statelessness, including enhancing the well-being of stateless persons and groups.⁴⁵ How applicable are the SDGs to statelessness? Given the fact that most of the world's stateless persons and communities remained consigned to the bottom of society in terms of economic opportunity, social inclusion and political participation, the principal objective of the 2030 Agenda 'to reach the furthest behind first' and 'leave no one behind' distinctly applies to the stateless. Specific SDGs and targets (see Figure 3), if properly implemented, will help prevent and reduce statelessness. These notably include SDG 5, Target 5.1 — relating to the elimination of gender discrimination, and SDG 16, Target 16.9 — urging states to provide legal identity for all, and birth registration.⁴⁶

Moreover, the SDGs and related targets also illustrate their relevance to improving the stateless persons' living conditions. For instance, SDG 4, Target 4.1 obliges states' commitment to ensuring by 2030, 'that all girls and boys complete

⁴⁵ Blitz op cit note 2.

⁴⁶ UNHCR op cit note 16.

free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.’ Achieving this target will alleviate stateless children’s challenges in accessing education and obtaining certificates of school completion. Again, SDG 4 is significant for protecting stateless persons and ensuring their access to basic rights.⁴⁷ By improving their basic rights and living conditions, these SDGs may enhance the integration and inclusion of stateless (and former stateless) populations in development at all levels. This may empower large in situ groups, with longer-term initiatives toward resolving their statelessness and averting new incidents.⁴⁸

Figure 3: UNHCR global actions and key SDGs/Targets relating to statelessness

Actions to end statelessness	Statelessness mandate	
		Key SDGs and Targets
Action 1: Resolve existing major situations of statelessness.	1	Reduction SDG 10, Target 10.3 .and SDG 16, Target 16.b
Action 2: Ensure that no child is born stateless.	2	Prevention/Reduction
Action 3: Remove gender discrimination from nationality laws.	3	Prevention/ Reduction SDG 5, Target 5.1; SDG 10, Target 10.c and SDG 16, Target 16.b
Action 4: Prevent denial, loss or deprivation of nationality on discriminatory grounds.	4	Prevention SDG 10, Target 10.3 and SDG 16, Target 16.b
Action 5: Prevent statelessness in cases of State succession.	5	Prevention
Action 6: Grant protection status to stateless migrants and facilitate their naturalization.	6	Protection/Identification SDG10, Target 10.c and SDG16, Targets 16.9 and 16.b
Action 7: Ensure birth registration for the prevention of statelessness.	7	Prevention SDG 10, Target 10.c and SDG 16, Targets 16.9 and 16.b
Action 8: Issue nationality documentation to those with entitlement to it.	8	Prevention SDG 10, Target 10.c and SDG 16, Targets 16.9 and 16.b
Action 9: Accede to the UN Statelessness Conventions.	9	Protection/Prevention/Reduction
Action 10: Improve quantitative and qualitative data on stateless populations.	10	Identification SDG 17, Target 17.18

Source: UNHCR (2017) at 4.

Tore, the UNHCR’s mandate of resolving (current) and averting (future) incidents of statelessness encompasses 4 key elements: identify, prevent, reduce, and protect.⁴⁹ This obliges the following: to work with governments to identify stateless persons and populations with undetermined nationality; to prevent the occurrence of statelessness; to reduce statelessness, particularly in protracted situations; and to work with states and stakeholders to protect and assist stateless groups/persons.

⁴⁷ Ibid.

⁴⁸ Manby op cit note 35; Sperfeldt op cit note 35.

⁴⁹ UNHCR op cit note 16.

Concerning this mandate, SDGs 5, 10, 16, and 17, in addition to certain related targets appeared most applicable.

- § SDG 5: Target 5.1, ‘End all forms of discrimination against all women and girls everywhere’, is directly relevant to addressing the issue of gender discrimination in nationality laws. This is relevant because where nationality laws make women’s nationality status contingent on their husbands’, or prevent (stateless) men from acquiring their wives’ nationality, can be a major cause of statelessness.⁵⁰
- § SDG 10: Target 10.3, ‘Ensure equal opportunity and reduce inequalities of outcome, ... eliminating discriminatory laws, policies, and practices, and promoting appropriate legislation, policies, and action.’ This confronts discrimination based on ethnicity, race, religion, language, or gender. Instances of denial, loss, and deprivation of nationality on discriminatory grounds may induce statelessness. Targets 10.3 and 16.b ensure that stateless persons enjoy their human rights without discrimination due to lack of citizenship.
- § SDG 16 seeks to ‘promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels.’ Its Target 16.9 aims to, ‘by 2030, provide legal identity for all, including birth registration’ toward leaving no one behind, including the stateless. Accordingly, a lack of nationality should not constitute a barrier to human rights protection or equal access to development. Target 16.b implores states to ‘promote and enforce non-discriminatory laws and policies for sustainable development’, particularly in terms of education, health, equality, work, and addressing poverty.
- § SDG 17 requires states to ‘strengthen the means of implementation and revitalize the global partnership for sustainable development’. This illustrates key action enablers across the whole SDG framework. It focuses on implementing the SDGs through partnerships, and stakeholder engagement, including civil society, the private sector, and donor states and organisations. Its Target 17.18 centres on data, monitoring, and accountability: “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.’ This provides an opportunity for the improvement of statistical data on stateless populations —

⁵⁰ UNHCR *ibid*; ISI *op cit* note 44.

particularly in developing countries — who are frequently ignored by authorities and are sometimes uncouneted in national population censuses, databases, and administrative registries. Likewise, Target 17.18 could be used to improve civil registration and vital statistics (CRVS) systems to integrate stateless persons and people of undetermined nationality in national development planning.

The above targets can only be applied for the benefit of stateless persons, provided that the assumption behind them is inclusive, given the risk of neglect and vulnerability of the stateless. Nonetheless, the universal goals set out by the Sustainable Development Agenda recognise the roles all regions and states must play to achieve the goals rather than imposing an idea inflexibly on states. Hence, all UN member states exercise the free will to mainstream the SDGs into national planning, develop their national implementation strategies, and regularly review progress. This embraces engagements among stakeholders — civil society, private sector, local governments, and interest groups — and offers crucial opportunities for agenda setting and review, advocacy, and monitoring at all levels — global, regional, national, and local. Importantly, the SDGs provide development actors and stakeholders with the tools to break the cycle of exclusion, rights deprivation, and intergenerational statelessness, through development programming. Addressing statelessness requires constructive collaboration between actors in the development, human rights, and statelessness areas. This implies understanding the intersection and divergence between sustainable policies, development agenda, and (legal) frameworks.

IV. CHALLENGING THE ARBITRARINESS OF ADMINISTRATIVE DETENTION

Statelessness and discrimination or inequality are mutually reinforcing; this underscores the need to take human rights and development into cognisance. Hence, the rights to equality and non-discrimination are entrenched in several international, regional, and national policies. The ICESCR, adopted by the United Nations in 1966, and entered into force on 3 January 1976, is the principal human rights treaty on socio-economic rights. Other treaties, such as the CRC, CEDAW, and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, advocate for socio-economic rights.⁵¹ Article 6 of the African Charter on the Rights and Welfare of the Child (ACRWC) guarantees every child's right to registration at birth and to a nationality. The AU Commission's draft 'Protocol on the right to a nationality and the eradication of statelessness' in Africa was included in the African Charter on Human and People's Rights.⁵² Despite these frameworks, the risk of intergenerational statelessness inhibits human rights-based development.

⁵¹ UNDG op cit note 6.

⁵² ACERWC op cit note 29 at 3.

Development overlaps with socio-economic rights, setting the core and minimum standards and services required by states for everyone in its territory. In every new generation of statelessness, malnourished and uneducated children grow into unemployed adults, with less to offer their children, compared to what their parents offered them, including regressions in generational higher education rate from parent to children. The historical impediments exacerbated by the lack of documentation and 'legal status' are constant in the Global South. Historically disadvantaged persons or communities, whose heritage has been disrupted, are often discriminated against and marginalised. This includes their vulnerability to rights violations, illegal detentions, and denial of access to basic services — healthcare, social protection, housing, and education. The Sama Dilaut (a.k.a., Bajau Laut) is a classic example of intergenerational and protracted statelessness, exacerbated by displacement and ethno-religious discrimination. This migratory semi-nomadic group inhabits the South East Asian seas of the territories of eastern Borneo (Indonesia and Malaysia), the west coast of Sulawesi (Indonesia) and the southern Philippines.⁵³

In the Horn of Africa, vulnerable children in Somalia, Eritrea, Djibouti, and Ethiopia, whose parents are displaced, including those of mixed parentage or members of cross-border communities remain at risk of intergenerational statelessness.⁵⁴ Statelessness in Southern Africa is predominantly induced by colonial history, migration, border changes, abysmal civil registry systems, and discrimination based on gender and ethnicity. Four of Africa's nine biggest countries with stateless populations are in Southern Africa: South Africa, the Democratic Republic of the Congo, Madagascar, and Zimbabwe. No state in the region has a system for the identification and protection of stateless persons, and only a few have adopted national laws and action plans for the protection of civil, political, and socio-economic rights.⁵⁵ A critical example is The Bill of Rights enunciated in Chapter 2 of South Africa's 1996 Constitution, which guarantees the rights to human dignity, equality, nonracialism, and non-sexism.⁵⁶ Unfortunately, weaponised nationalism, xenophobia, and increasing restrictive migration measures inhibit the implementation of South Africa's National Development Plan (NDP), aimed to eliminate poverty and reduce inequality by 2030. These further put irregular and undocumented migrants, their children, refugees and asylum seekers, and other excluded minorities at risk of statelessness.⁵⁷ West Africa is also replete with a poor birth registry, undocumented

⁵³ Helen Brunt 'World stateless children: Stateless at sea' (2017) Institute on Statelessness and Inclusion at 3, available at <http://children.worldstateless.org/3/childhood-statelessness-and-the-sustainable-development-agenda/stateless-at-sea.html>

⁵⁴ UNHCR 'Children, long-term refugees among population at risk of statelessness in Horn of Africa' (2022), available at <https://www.unhcr.org/afr/news/press/2022/2/61fba07159/children-long-term-refugees-among-population-at-risk-of-statelessness-in.html>

⁵⁵ UNHCR op cit note 11 at 4.

⁵⁶ Antonia Porter 'The rights of vulnerable and marginalised groups in South Africa' (2018) 2 Centre for Conflict Resolution, available at <http://www.jstor.org/stable/resrep05159.5>

⁵⁷ Aimée-Noël Mbiyozo 'Statelessness: An old problem with new threats' (2019) 5 ISI, available at <https://issafrica.org/iss-today/statelessness-an-old-problem-with-new-threats>

nomads, and forced displacements, particularly by conflicts and environmental change. Côte d'Ivoire hosts one of the world's largest stateless populations, with an estimated 1.6 million affected persons. The gaps in nationality laws induce the denial of legal identity and nationality, to the affected populations.⁵⁸

The SDGs' 'leaving no one behind' does not reference the right to a nationality. How does the concept of 'legal identity' without the 'right to a nationality' solve the predicaments of stateless persons? These questions agitate the minds of stateless rights activists. Given the risk of neglect, vulnerability, and discrimination of stateless persons, on the grounds of race, national origin, or religion and their exclusion from the national socio-political and economic arrangements, it is regrettable that many states do not even acknowledge their existence or statistics on stateless populations. Subjecting access to socio-economic services to citizenship undermines the goal of a human rights-based approach to statelessness. This truism remains worrisome amid states' exclusive sovereignty in nationality matters and the limits of international law. Hence, the mismatch in the SDG goals and the implementation of national development plans. The minimal political incentive (or huge strong disincentive) for states' support of stateless persons might impede the SDGs' aspiration to 'leave no one behind'. The SDGs' development agenda's mantra of 'leaving no one behind', can only be successful if complemented with rights-based approaches to development that eradicate stereotypes and 'othering' of the marginalised and excluded groups.

The report of the Expert Group on Refugee, IDPs and Statelessness Statistics (established in 2016) and the UN Economic and Social Council (ECOSOC) decision (2021/224) in November 2021, was submitted for deliberation at the 54th session of the Statistical Commission in March 2023. While acknowledging the many causes of statelessness relating to challenges or gaps in nationality laws, policies, and manners of their application or practice, it seeks to provide feedback and valuable information and recommendations to improve official statistics on stateless populations nationally, regionally, and globally.⁵⁹ The OHCHR collaborates with the UNHCR to promote awareness on statelessness, and its human rights implications and proffers solutions to it. The UNHCR-OHCHR joint Virtual Roundtable on 'Equality and Non-Discrimination in Nationality Matters to End Statelessness' (21 October 2021), highlighted the imperative of removing all forms of discrimination from nationality laws, policies, procedures, and practices.⁶⁰ Nevertheless, the post-SDGs 2030 goals and targets should explicitly reference statelessness toward enhancing their socio-economic rights and protection in national development processes. Additionally, development actors need to incentivise states to acknowledge the stateless persons'

⁵⁸ Raymond A Atuguba Francis X D Tuokuu & Vitus Gbang 'Statelessness in West Africa: An assessment of stateless populations and legal, policy, and administrative frameworks in Ghana' (2020) 8 *Journal on Migration and Human Security* at 14, available at <https://doi.org/10.1177/2331502419900771>

⁵⁹ United Nations Economic and Social Council (UN-ECOSOC) 'Statistical Commission fifty-third session: Report of the Expert Group on Refugee, Internally Displaced Persons and Statelessness Statistics' (2022) Vol (E/CN.3/20 New York, available at <https://doi.org/10.1093/oxfordhb/9780199560103.003.0007>

⁶⁰ Office of the United Nations High Commissioner for Human Rights 'Outcome document prepared following the OHCHR/UNHCR Virtual Roundtable on Equality and Non-Discrimination in Nationality Matters to End Statelessness' (2021) 1, available at <https://www.ohchr.org/sites/default/files/2022-01/OHCHR-UNHCR-Event-Outcome.pdf>

existence in their territories to enhance their rights to nationality and development. Therefore, expanding the linkages between development priorities and human rights obligations is a crucial strategy.

V. CONCLUSION: CHALLENGES AND PROSPECTS

Deprivation, marginalisation, and exclusion of stateless persons undermine their human security and dignity, even though their rights are protected under international law. For development actors, statelessness presents a fundamental power dynamic — one that is most challenging for the outline and delivery of inclusive development opportunities, premised on distributive justice. The lack of complementarity between development frameworks and human rights raises critical questions about global development policy implementation. There are different groups of stateless persons with different vulnerabilities and interests; hence, stateless persons are not homogenous. In situations where some are intentionally excluded from acquiring the nationality of a given state, for political and socio-economic reasons, such intentional exclusions could be addressed through inclusive development endeavours. Ensuring development for stateless persons requires a comprehensive response, ranging from reviewing nationality laws along the UNHCR Global Actions and redesigning national development strategies along the SDG goals and targets toward addressing the layers of vulnerabilities in stateless populations. Similarly, the right to a nationality is universal, and no matter the national policies’ encumbrances, access to health and education should not in principle be constrained by citizenship.

The legal identity target in the SDGs provides guarantees for social inclusion and more equitable distribution of development opportunities. However, strengthening identification may heighten unintended consequences, and, in some cases, undermine development and human rights outcomes, particularly within the context of complex political economies and weak institutions. The experience with identification systems underlines three interconnected risks of exclusion.⁶¹ The first risk stems from identification and registration systems that are premised on policies of mandatory proof of legal identity for accessing basic rights, essential services, and protections. The second risk of exclusion can be linked to discriminatory regulations and practices. These regulations may be exclusionary or produce results based on their implementation, thus leading to negative ends for the disadvantaged. The third related risk emanates from the reality that digital identification systems at national levels are connected to citizenship or permanent residence status. Hence, determining legal status — ‘national’ or ‘non-national’ — is often problematic, particularly in countries with an abysmal enrolment process, where most people also lack proof of legal identity.⁶²

Equally, the revolutionary nature of SDGs transcends its benchmark for the delivery of development objectives. It further requires the evaluation and reform

⁶¹ Sperfeldt op cit note 35.

⁶² Sperfeldt *ibid*; UNDG op cit note 6.

of discriminatory and exclusive legal and societal structures. For example, SDGs 3 and 4 respectively aspire to a world where everyone has access to quality healthcare and education. If ‘everyone’ includes the stateless, as the intention of the drafters of the SDGs implied, why are they often denied these fundamental services? Many of the goals and targets demand structural change, thus aligned with human rights obligations. SDGs 5, 10, and 16 stand out in addressing some of the root causes of statelessness (discrimination in all its manifestations) including factors that disadvantage the stateless. The SDGs’ approach enhances the integration of human rights frameworks and development processes to address human vulnerability and exclusion. Its significant window of opportunity can be expanded in the post-2030 global development agenda setting. Explicit provisions to integrate statelessness and other vulnerable groups need to be formulated and mainstreamed into the post-SDGs (2030) global development agenda. This should encompass a full-fledged goal, with targets that encourage inclusion and prioritise issues and indicators connected to statelessness in national and regional development plans.

Furthermore, it is crucial to develop a collaborative strategy on statelessness, that is tailored to local (national) and regional contexts and political realities. Statelessness actors, including human rights, migration, and development experts, should be directly involved in the conversation, programming, and implementation strategies. A strategy, incorporating joint and complementary advocacy, communication, and stakeholders’ engagement among development and human rights actors, the private sectors, local government and traditional institutions, civil society, and the diplomatic community can periodically monitor and evaluate the ‘state of statelessness’ at all levels of governance (including transnational). Finally, international finance entities and development institutions have crucial roles to play by supporting applied research in mapping the nexus between statelessness, poverty, deprivation, and vulnerability. The outcome should be evidence based and provide a better understanding of the root causes and consequences of statelessness, including mechanisms for effective reforms.