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## Contents

- 3 **Chief Editor 's Note**  
Mulugeta F. Dinbabo
- 4 **Editorial**  
**From the Margins to the Mainstream?: Bridging the Scholarship Gap on Statelessness in Africa**  
Benyam Dawit Mezmur and Charissa Fawole
- 17 **The Impact of Gender Discrimination on Statelessness: Causes, Consequences and Legal Responses**  
Christina Beninger and Rashida Manjoo
- 41 **Statelessness, Trauma and Mental Well-being: Implication for Practice, Research and Advocacy**  
Ajwang' Warriia and Victor Chikadzi
- 56 **Statelessness, Development, and Protection of 'Disadvantaged Groups': Bridging the Post-2030 Sustainable Development Gaps**  
Adeyemi Saheed Badewa
- 75 **The Role of Colonialism in Creating and Perpetuating Statelessness in Southern Africa**  
Aimée-Noël Mbiyozo
- 94 **The Impact of Climate Change on Statelessness in the Southern African Region**  
Leah Ndimurwimo and Michaela Jahnig
- 129 **Challenging the Practice of Administrative Detention for Stateless Persons in South Africa**  
Fatima Khan
- 145 **Statelessness in Protracted Refugee situations: Former Angolan and Rwandan Refugees in Zambia**  
Mazuba Muchindu

# Chief Editor's Note

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This *Special Issue* on Statelessness brings together a selection of critical research contributions from scholars who offer knowledge and bridge the scholarship gap on Statelessness in Africa. It also provides a venue for further research on emerging areas, highlights important issues and describes new cross-disciplinary applications.

We are confident that this *Special Issue* provides a significant resource for researchers, practitioners, and students to support scholarship that offers new ways of thinking about the interaction between human mobility and statelessness, as well as promoting the critical roles of knowledge. Given our commitment to interdisciplinary work we believe that it will be helpful to our readership to be aware of how some of the complex socio-economic, political, legislative, and developmental aspects of statelessness in Africa are being addressed from a wide range of perspectives.

This *Special Issue* would not have been possible without the professionalism and hard work of the Guest Editors. We are grateful to Professor Benyam Dawit Mezmur, Eleanor Roosevelt Fellow at the Harvard Law School, Human Rights Program and Professor of Law at the University of the Western Cape, and Dr Charissa Fawole, Lecturer in the Department of Public Law, University of Johannesburg, for convening and Guest Editing this *Special Issue*.

We acknowledge all the support of Professor Fatima Khan, Director of the Refugee Rights Unit, University of Cape Town and extend our sincere appreciation to all reviewers for their thoughtful, insightful, and scholarly evaluation of manuscripts.

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# Editorial

## From the Margins to the Mainstream?: Bridging the Scholarship Gap on Statelessness in Africa

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### I. INTRODUCTION

As has been the case in a number of other major global sporting events, the 2022 international football tournament — the FIFA World Cup — has attracted attention to the issue of nationality. The *New York Times* published an article titled ‘At This World Cup, Nationality Is a Fluid Concept’, in which it underscored that ‘[m]ore than 130 players at the World Cup represent a country other than that of their birth’. Qatar, the host country, for example, has a diverse team of whom a reported 38 per cent are not native-born Qataris.<sup>1</sup> Such fluidity is also underscored in a BBC piece titled ‘Ghana at World Cup: How to dribble around nationality issues’ where the country’s relatively strict nationality laws ‘do not extend to the country’s football team’.<sup>2</sup> A fair dose of debate around the nationality of players has also unfolded too on social media, including questions around the fact the son of the President of Liberia (and soccer superstar), Timothy Weah, is playing for the United States instead of Liberia.

These and other similar discussions on nationality matters are interesting, but (hopefully, less arguably) they are neither the most important nor pressing debates. Rather, the issue of stateless persons — by definition ‘a person who is not considered as a national by any State under the operation of its law’ — is a more crucial aspect of the topic as it often has serious implications for human rights, security, and

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<sup>1</sup> Stephen Osserman & Youyou Zhou ‘How migration has shaped the World Cup’ (08 December 2022), available at <https://www.vox.com/c/world/2022/12/8/23471181/how-migration-has-shaped-the-world-cup>

<sup>2</sup> British Broadcasting Corporation (BBC) ‘Ghana at World Cup: How to dribble around nationality issues’ (1 December 2022), available at <https://www.bbc.com/news/world-africa-63795721>

development.<sup>3</sup>

The number of stateless persons globally is not known with any exactitude; however, it is reasonable to estimate that it extends into the millions.<sup>4</sup> These estimates can vary widely — for example, at mid-2022 the United Nations High Commissioner for Refugees (UNHCR) reported a total of 4.3 million stateless people worldwide,<sup>5</sup> while the Institute on Statelessness and Inclusion (ISI) put the number at around 15 million stateless persons globally.<sup>6</sup>

Be that as it may be, it is no exaggeration to assert that the presence of millions of stateless persons in a world with close to 200 states is an indictment of the international community's failure to address the issue head-on. This assertion gains even more weight when one is confronted with the estimation that 'more than 75 per cent of the world's known stateless populations are members of minority groups.'<sup>7</sup> Indeed, while the reasons that lead to statelessness are manifold, discrimination based on, for example, race, religion, minority status, and gender, is commonly cited as the major cause.<sup>8</sup>

The issue of statelessness is of significant importance for the African continent. It has its own historical anchors — including colonialism and the subsequent creation of superficial borders. As a result, trans-border migration in the continent has a significant synergy with statelessness. Statelessness also has direct links with some conflicts in the continent. While gaps in and between the nationality laws and practices of states have contributed to the creation of stateless populations on the continent, there is no denying that systematic marginalisation of minorities - in which children and women are disproportionately affected, takes the lion's share of the blame. While Côte d'Ivoire reportedly has the largest stateless population in Africa (around 955,000 in 2019),<sup>9</sup> at the end of 2015, more than a million persons were estimated to be under the UNHCR's statelessness mandate in Africa.<sup>10</sup>

## II. GLOBAL AND REGIONAL RESPONSES

Fortunately, in the last decades, statelessness has come out of the shadows,<sup>11</sup> both in respect of law and practice. There are multiple initiatives at the global as well as regional levels to address the issue. For example, since the launch of the #IBelong Campaign to End Statelessness by 2024 in 2014, the extent of ratification of the two

<sup>3</sup> United Nations Convention Relating to the Status of Stateless Persons 1954, Article 1.

<sup>4</sup> United Nations High Commissioner for Refugees (UNHCR) 'Refugee data finder, available at <https://www.unhcr.org/refugee-statistics/insights/explainers/forcibly-displaced-pocs.html>

<sup>5</sup> Ibid.

<sup>6</sup> Institute on Statelessness and Inclusion (ISI) 'Statelessness in numbers: 2020 An overview and analysis of global statistics' (2020), available at [https://files.institutetsi.org/ISI\\_statistics\\_analysis\\_2020.pdf](https://files.institutetsi.org/ISI_statistics_analysis_2020.pdf)

<sup>7</sup> Office of the United Nations Commissioner for Human Rights (OHCHR) 'Minorities, discrimination and statelessness, available at <https://www.ohchr.org/en/minorities/minorities-discrimination-and-statelessness>

<sup>8</sup> UNHCR 'I am here, I belong: The urgent need to end childhood statelessness' (2015).

<sup>9</sup> UNHCR 'Global trends: Forced displacement in 2019', available at <https://www.unhcr.org/5ee200e37.pdf>

<sup>10</sup> UNHCR 'Global trends: Forced displacement in 2015', available at <https://www.unhcr.org/576408cd7.pdf>

<sup>11</sup> For a detailed and historical account of some of the reasons why statelessness did not get enough attention in the four decades between 1950–1990, see UNHCR 'The state of the world's refugees: A humanitarian agenda' (1997/98), available at <http://www.unhcr.org/3eb7ba7d4.pdf>

statelessness Conventions has increased achieved significantly. The Convention relating to the Status of Stateless Persons,<sup>12</sup> has a total of 94 ratifications — almost one third of which were made in the last decade.<sup>13</sup> The ratio of recent ratifications is even higher for the Convention on the Reduction of Statelessness,<sup>14</sup> as more than half of its 75 ratifications came in the last decade.<sup>15</sup>

African countries have made their fair share of contributions to this positive development. Since 2014, Togo (July 2021), Angola (October 2019), Guinea (September 2016), Mali (May 2016), Sierra Leone (May 2016), Mozambique (October 2014), and the Gambia (July 2014) have ratified both Conventions.<sup>16</sup> Moreover, since 2014, Burkina Faso ratified the 1961 Convention (August 2017) and Niger ratified the 1954 Convention.<sup>17</sup>

The notion of ‘African solutions to African problems’ seems to have an increasing resonance within the continent and the African Union (AU). This is still the case despite the fact that AU human rights bodies that play an important role, for instance, in monitoring adherence to individuals’ right to acquire a nationality, face numerous challenges in discharging their duties.<sup>18</sup>

This recognition seems to be one of the main reasons why the African Commission on Human and Peoples’ Rights initiated the process of the 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 (Draft Protocol).<sup>19</sup> The Draft Protocol has a number of objectives in regard to these issues. They include providing legal solutions to practical problems linked to the recognition and the exercise of the right to a nationality; seeking to eradicate statelessness; and, identifying the principles that should govern relations between individuals and states.<sup>20</sup>

The Draft Protocol has already introduced at least two notable additions that appear to be informed by the reality on the continent, and which aim to provide more protection for stateless persons in Africa. The first relates to the very definition of a ‘stateless person’. According to the Draft Protocol, a ‘stateless person’ is defined as someone ‘who is not considered as a national by any State under the operation of its

<sup>12</sup> United Nations Convention Relating to the Status of Stateless Persons 1954 — adopted on 28 September 1954 and came into force in 1960.

<sup>13</sup> More than 20 states ratified the Convention since 2010. See [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-3&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en)

<sup>14</sup> More than 30 states ratified the Convention since 2008. See [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-4&chapter=5&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=en)

<sup>15</sup> United Nations Convention on the Reduction of Statelessness 1961 — adopted on 30 August 1961.

<sup>16</sup> See <https://www.refworld.org/statelessness.html> for more details.

<sup>17</sup> Ibid.

<sup>18</sup> See, for example, Amnesty International ‘The state of African regional human rights bodies and mechanisms 2019–2020’ (21 October 2020), available at <https://reliefweb.int/sites/reliefweb.int/files/resources/AFR0130892020ENGLISH.PDF>

<sup>19</sup> See African Union ‘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: Explanatory Memorandum’ (Draft revised June 2018), available at [https://au.int/sites/default/files/newsevents/workingdocuments/35139-wd-pa-22527\\_e\\_original\\_explanatory\\_memorandum.pdf](https://au.int/sites/default/files/newsevents/workingdocuments/35139-wd-pa-22527_e_original_explanatory_memorandum.pdf)

<sup>20</sup> Ibid.

law, including a person whose nationality cannot be established.<sup>21</sup> The second part of the definition is a new addition that has not found its way into the 1954 Convention, and appears to acknowledge the complexity of establishing whether an individual is not considered as a national under the operation of its law.<sup>22</sup>

Secondly, the Draft Protocol has embraced the concept of ‘appropriate connection’ instead of ‘genuine link’ for the purpose of determining one’s nationality or statelessness. The concept of ‘appropriate connection’ is broad and can therefore assist in the prevention of statelessness, and is defined as:

[a] connection by personal or family life to a State, including a connection by one or more of the following attributes: birth in the relevant State, descent from or adoption or kafala (fostering) by a national of the State, habitual residence in the State, marriage to a national of the State, birth of a person’s parent, child or spouse in the State’s territory, the State being the location of the person’s family life, or, in the context of succession of States, a legal bond to a territorial unit of a predecessor State which has become territory of the successor State.<sup>23</sup>

There are also positive initiatives at the sub-regional levels within the continent. One such example is the Abidjan Declaration by the Heads of State of the Economic Community of West African States (ECOWAS), which displays some level of political will to eradicate statelessness.

These efforts point in one direction — that statelessness is receiving more attention. With political will, and evidence-based interventions, such efforts will probably continue to grow. Their impact, however, in preventing and addressing statelessness warrants closer scrutiny.

### III. WHAT IS IN THE *SPECIAL ISSUE*?

There are very few continent-wide studies on statelessness in Africa. One example is the study by the African Commission on Human and Peoples’ Rights, entitled: ‘The right to nationality in Africa.’<sup>24</sup> A few other examples written by Bronwen Manby include ‘Struggles for Citizenship in Africa’;<sup>25</sup> ‘Citizenship and Statelessness in Africa: The Law and Politics of Belonging’;<sup>26</sup> ‘Citizenship and Statelessness in Africa: The Law and Politics of Belonging’;<sup>27</sup> and ‘Citizenship in Africa: The Law of Belonging.’<sup>28</sup>

This *Special Issue* contains articles that focus on statelessness in Africa. The authors approached the problem of statelessness from various perspectives and

<sup>21</sup> Ibid.

<sup>22</sup> See UNHCR op cit note 3 paras 16 and 17, available at <https://www.refworld.org/docid/4f4371b82.html>

<sup>23</sup> African Union Draft Protocol op cit note 19, Article 1.

<sup>24</sup> Study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, pursuant to Resolution 234 of April 2013 and approved by the Commission at its 55th Ordinary Session (May 2014), available at <https://www.refworld.org/docid/54cb3c8f4.html>

<sup>25</sup> Bronwen Manby *Struggles for Citizenship in Africa* (2009).

<sup>26</sup> Bronwen Manby *Citizenship and Statelessness in Africa: The Law and Politics of Belonging* (2015).

<sup>27</sup> Bronwen Manby *Citizenship Law in Africa: A Comparative Study* (2016).

<sup>28</sup> Bronwen Manby *Citizenship in Africa: The Law of Belonging* (2018).

engaged with topics such as gender, the generational impacts of statelessness, legal protections, the application of immigration laws and detention, mental health, and climate change. Some of the articles in this issue examine situations of statelessness broadly on the continent, with a focus on Southern Africa. Other articles analyse aspects of statelessness in specific states. While it is correct to view the problem of statelessness mostly as a failure of law and policy as well as a result of discrimination, the articles also broach the possibilities of “solutions from below” whereby stateless persons themselves can shape the improvement of their situations.

Unfortunately, globally, close to 20 countries continue to have legislation that does not allow women to pass their nationality to their children on the same basis as men.<sup>29</sup> There is also a possibility that women may be discriminated against in their ability to confer a nationality to a spouse, or to acquire, change, and retain their nationality. It is hence no surprise that gender-based discrimination is ‘a leading cause of statelessness worldwide’, which the article by Beninger and Manjoo firmly underscores with an anchor on Africa. Their article, richly substantiated, makes a strong case for the challenges that stateless persons, especially women, face in ‘exercising a range of internationally protected civil, political, social, and economic rights.’

As such, the authors do not shy away from locating the gender gaps in international laws on statelessness. As the article zooms on Southern Africa, the relevant regional and sub-regional instruments (including the Draft Protocol on Nationality) benefit from a gender-lens exposé; indeed, it might come as a surprise to learn that ‘even the Maputo Protocol provides an exception allowing states to retain gender discriminatory laws with respect to passing nationality to children.’ The authors’ overall assessment is that there is progress in some areas of the law (both international and national), especially in reforming gender-discriminatory laws; at the same time, the article details ongoing challenges in bridging the gap of statelessness due to gender discrimination gap.

Warria and Chikadzi contribute a psychosocial approach to a predominantly legal examination of statelessness in Africa. This approach draws attention to the stress and trauma experienced by stateless persons as individuals. Thus, it also underscores the humanity and personhood of a stateless person - something which is often underrepresented in discussions of stateless persons as a group. Statelessness affects the ability of individuals to meet their basic needs, access services such as education and healthcare and realise their human rights. The authors demonstrate the difference between big ‘T’ trauma and little ‘t’ trauma by emphasising how day-to-day traumas (little ‘t’ traumas) negatively affect stateless persons. The article uses a case study of a young man in South Africa to illustrate the cumulative effects of little ‘t’ traumas. Acknowledging the stress and trauma as a result of statelessness should be part not only of understanding the problem, but of pursuing solutions to it. In this regard, the authors advocate for a holistic and collaborative approach among policy-

<sup>29</sup> See Equal Nationality Rights ‘The problem’ (2019), available at <https://equalnationalityrights.org/the-issue/the-problem>



makers, activists, and mental-health practitioners to mitigate the factors that lead to the trauma of stateless persons.

While a great deal of attention - deservedly so - is given to the nexus between human rights and statelessness, it is not common to link sustainable development and statelessness. Badewa's article broaches this particular nexus, which he describes as 'poorly investigated'. The main thrust of the article is that there is a strong case to be made for the inclusion of statelessness in the post-2030 development agenda. While the significant potential that the Sustainable Development Goals (SDGs) have for addressing statelessness is acknowledged, the lack of coherence in the implementation of multilateral development programmes and national policies is decried as one factor that increases the marginalisation of stateless persons and communities. Pursuing the SDGs, with attention to detail on equity and vulnerable groups, can help stakeholders appreciate that stateless persons are not a homogenous group, and also contribute to enhancing the resilience of stateless persons. Badewa's article tells a cautionary tale, and offers a well-nuanced narrative on the interconnected risks of exclusion that implementation of the SDGs' Target on legal identities could involve. It argues that mitigating factors include: embracing the principle of 'nothing about us without us' in regard to stateless persons and communities in the context of development; developing a collaborative strategy on statelessness that is tailored to local (national) and regional contexts and political realities; and accelerating the reform of discriminatory and exclusive legal and societal structures.

It is said that 'citizenship' in pre-colonial Africa was characterised by multi-ethnic and multicultural societies where individuals had multiple, overlapping and alternative collective identities.<sup>30</sup> The same could hardly be said of colonial Africa or its legacy, which continues to affect laws, policies, and practices with a bearing on statelessness in Africa. Mbiyozo's article - which in part can be described as taking the stance of 'looking back to look ahead' -, interrogates the linkages between statelessness in Southern Africa and 'colonial histories, border changes, migration, gender, and ethnic and religious discrimination', as well as poor civil registry systems. The article laments that several Southern African countries have drawn inspiration from colonial-era laws, thereby exacerbating the politics of *othering* in nationality legislation. As a result, xenophobia and nationalism are rearing their ugly heads, and are being weaponised to promote exclusionary politics, which in turn hampers or even reverses the fight against statelessness. Efforts to instrumentalise statelessness as a migration management tool are ill-advised, and are neither human-rights compliant nor a lasting policy choice.

Conflict and violence are key triggers of both internal and external forced migration across the continent.<sup>31</sup> While it is not necessarily a new phenomenon, climate change is recognised as a contributing factor to situations of forced migration.

<sup>30</sup> Bruce J Berman 'Ethnicity, patronage and the African state: The politics of uncivil nationalism' 97 (1998) *African Affairs* at 310.

<sup>31</sup> Internal Displacement Monitoring Centre (IDMC) 'Global report on internal displacement' (2022); UNHCR 'Global trends: Forced displacements in 2021'.

However, the majority of displacements attributable — at least in part — to climate change, are internal.<sup>32</sup> In Africa, persons who are internally displaced due to climate change have access to legal protections pursuant to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).<sup>33</sup> However, persons who are displaced externally due to the effects of climate change do not have access to the same protections as them.

In light of this gap in the law, Ndimurwimo and Jahning engage in their contribution with challenges to the legal protection of stateless persons externally displaced due to the effects of climate change. The authors draw on case studies from South Africa, Mozambique, and Tanzania to provide context to their analysis. The case studies are used to assess current legal frameworks inasmuch these apply to persons who are rendered stateless due to the effects of climate change and highlight where protection is lacking or absent. Based on this analysis, the authors make recommendations for ameliorating these frameworks so as to provide more comprehensive legal protections.

The need for stateless persons to have access to adequate legal protections is evidenced by the many articles in this *Special Issue*, which highlight that the human rights of stateless persons are routinely violated. One such violation is arbitrary detention.<sup>34</sup> Unable to demonstrate that they have a legal right to remain within the state, stateless persons are vulnerable to arbitrary detention. Khan critically analyses the practice of immigration detention in South Africa as it is applied to stateless persons. She explains the disconnect between the purpose of immigration detention — namely, deportation — and the reality that it is unlikely for stateless persons to be deported to a state where they will obtain citizenship. The author finds that stateless persons are summarily detained as they are unable to confirm their legal status - essentially, they do not have legal protection from immigration detention in South Africa. The treatment of stateless persons, as demonstrated by the author, stands in stark contrast with the values and rights of the South African Constitution. In response to this problem, Khan advocates for solutions that would provide stateless persons with legal protection from detention, among these being to apply the Immigration Act in a manner that considers their specific challenges.

Last but not least, the article by Muchindu is focused on an equally important aspect - protracted refugee situations- by definition situations where at least 25,000 refugees from the same country have been living in exile and find themselves in a long-lasting and intractable state of limbo.<sup>35</sup> and their implications for statelessness.

<sup>32</sup> J McAdam 'Building international approaches to climate change, disasters and displacement' (2016) 33 *Windsor Yearbook of Access to Justice* at 1, 2.

<sup>33</sup> United Nations Treaty Series (UNTS) 3014 'African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)'. Adopted on 23 October 2009, entered into force on 6 December 2012.

<sup>34</sup> United Nations Treaty Series (UNTS) 171 'International Covenant on Civil and Political Rights 999' Article 9(1). Adopted on 16 December 1966, entered into force on 23 March 1976; United Nations Treaty Series (UNTS) 217 African Charter on Human and Peoples' Rights 1520' Article 6. Adopted on 27 June 1981, entered into force on 21 October 1986

<sup>35</sup> See, UNHCR, "Protracted Refugee Situations Explained" (2020) available at <https://www.unrefugees.org/news/protracted-refugee-situations-explained/>

The article demonstrates aptly why academicians and practitioners should ‘think about statelessness as one of the threats/ risks associated with protracted refugee situations’ and give more attention to the link between the risk of statelessness and local integration as a solution to protracted refugee situations. The cases of Rwandan and Angolan refugees seeking to regularize their stay in Zambia are deployed to highlight the risks of statelessness in protracted refugee situations. Issues such as the risks of cumbersome requirements (for example, the need to have national identity documents) that refugees have to meet in order to become locally integrated in a host country especially when their refugee status ceases, the risks of intergenerational transmission of statelessness to children because their parents have a weak bond with their country of origin and because Zambia operates on the basis of *jus sanguinis* and therefore does not grant citizenship by birth, as well some potential policy solutions are proffered. While the focus of the article are Rwandese and Angolan refugees in Zambia, and some comparison with other countries in the Southern African Development Community (SADC) region on how they have resolved protracted refugee situations through naturalisation is undertaken, the findings have significant resonance to other refugees on the continent such as South Sudanese refugees in Uganda and Congolese refugees in Rwanda.

As can be gleaned from the above, all the articles tackle important and contemporary issues pertaining to statelessness in Africa. A good number of them offer a combination of theoretical as well as practical insights. Some also underscore that part of accountability in upholding the rights of stateless persons should entail not just taking action, but taking action with a sense of urgency. The articles contained in this *Special Issue* are refreshing and do not skimp on depth or detail, but leave no doubt that much more remains to be done. As a result, one golden thread that runs through most of the articles is the need for more focused research on statelessness in Africa- a topic to which this *Editorial* now turns.

#### IV. GRAPPLING WITH SOME OLD DEBATES AND A FEW EMERGING THEMES

Scholarship around statelessness in Africa still needs to grapple with existing debates. These include: the impact of membership requirements (such as race, ethnicity, religion) contained in nationality laws on statelessness; prolonged residency requirements for naturalisation; the disproportionate risks of statelessness and accompanying protection gaps faced by children<sup>36</sup> and women; the links between

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<sup>36</sup> See, for example, Yoana Kuzmova and Thomas McGee, ‘Comment on the Zhao Case: Can A “Victory for Human Rights” in the Netherlands Benefit Children at Risk of Statelessness in the Middle East and North Africa?’ (2022) 4(1) *Statelessness & Citizenship Review* 145; Mihloti Basil Sherinda and Jonathan Klaaren “The South African Constitutional Court Decides Against Statelessness and in Favour of Children: *Chisuse v Director-General, Department of Home Affairs* [2020] ZACC 20 (2022) 4(1) *Statelessness & Citizenship Review* 170; Benyam Dawit Mezmur, ‘Making Their Days Count: The 1961 Convention on the Reduction of Statelessness and the Convention on the Rights of the Child’ (2022) 4(1) *Statelessness & Citizenship Review* 198; and Jacqueline Bhabha “Editorial” (2022) 4(1) *Statelessness & Citizenship Review* 1..

statelessness, on the one hand, and forced migration, mass migration, trafficking, and similar phenomena, on the other; and legitimate as well as arbitrary grounds for deprivation of nationality. Moreover, the role of stakeholders such as the judiciary and the question of how to include the voices of affected communities in the development and implementation of laws, policies, and programmes that impact on statelessness remain examples of ongoing areas of research interest.

At the same time, many newly emerging issues related to statelessness in Africa should also be interrogated. These are not necessarily unique to Africa, but their interactions with the continent's social, economic, cultural, historical, legal, developmental, and other aspects of African realities could call for a more focused or context-specific response with a view to preventing and addressing statelessness. A few key areas — namely, the SDGs, COVID-19, counter-terrorism measures, and climate change — and their interactions with stateless persons are highlighted below.

First, the implementation of actions directed towards achieving the SDGs has significant implications for preventing and addressing statelessness. This is demonstrated, for example, by Badewa's article. Target 16.9 — 'Achieve universal legal identity and birth registration by 2030'<sup>37</sup> — is the most obvious candidate for interrogation in respect of statelessness in Africa, including how 'legal identity' is understood and what it could entail for stateless persons.<sup>38</sup> Meanwhile, other SDGs goals such as Goals 3 (on health) and Goal 4 (on education) are also important. Another worthy focus, is understanding the impact on statelessness of Goal 10, which aims to '[r]educe inequality within and among countries,' and its corresponding Target 10.7 on migration, which aims to '[f]acilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.' Since the SDGs are complemented by the continent-wide Agenda 2063 of the AU, the impact of the implementation of the latter on statelessness has mostly escaped scrutiny to date.

Secondly, the COVID-19 pandemic sheds light on the disproportionate impact of health emergency measures on stateless persons. Sharon Kane aptly conveys this in describing how the initial mantra that 'we are all in the same boat' changed to 'we are all in the same storm, but in different boats,' with stateless persons being in effect 'boatless.'<sup>39</sup> For example, restrictions on the right to freedom of movement had disproportionate impacts on stateless persons in Africa. The mostly inward-looking measures a number of states took to protect their own citizens reveal how easily refugees and stateless persons can be excluded from humanitarian and other

<sup>37</sup> United Nations Sustainable Development Goals (SDGs) (2015). Goal 16 aims to 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.'

<sup>38</sup> See, for example, Bronwen Manby "'Legal identity for all" and statelessness: Opportunity and threat at the junction of public and private international law' (2021) *World Development* at 270, for reflections on the advantages as well as risks posed by the conceptualisation and implementation of measures around Target 16.9.

<sup>39</sup> Sharon Kane 'Caught in the storm without a boat: The impact of COVID-19 pandemic on stateless persons' (24 January 2022) Refugee Law Initiative Blog on Refugee Law and Forced Migration, available at <https://rli.blogs.sas.ac.uk/2022/01/24/caught-in-the-storm-without-a-boat-the-impact-of-the-covid-19-pandemic-on-stateless-persons/>

critical services.<sup>40</sup> There is also evidence showing that the impact of the pandemic has forced stateless women to resort to negative coping mechanisms such as the ‘forced commodification of their sexuality’.<sup>41</sup> As the direct health impacts of the COVID-19 pandemic subside, its long-term effects, including the exacerbated economic inequities that most stateless persons inevitably face in Africa, the issue should not escape the gaze of researchers.

Thirdly, like most parts of the world, the African continent has seen a flurry of anti-terrorism legislation in the last decade, some of which does not pass the scrutiny of human rights standards. While laws that propagate for the deprivation of nationality as a counter-terrorism (national security) measure appear to be concentrated in Europe,<sup>42</sup> it is also worth monitoring and interrogating developments on the African continent.<sup>43</sup> For example, have the African countries whose citizens joined the Islamic State (ISIS) considered such legislative measures? Do continent-wide and sub-regional frameworks on counter-terrorism measures contain elements that are aimed at preventing or addressing statelessness?

Lastly, the climate emergency that the world faces has been called ‘the biggest issue of our time.’ The African continent is severely affected by climate change, and climate-induced migration is taking place throughout the continent, and is disproportionately affecting children and women.<sup>44</sup> Challenges around data collection; the lack of consistent understanding of terminology such as the term ‘climate change-induced migration’; the need for international law (including the relevant AU law) to adapt to changing circumstances in the context of climate change; and efforts to ensure that the interpretation and application of domestic laws and policies are ‘fit for purpose’ to prevent and address statelessness in Africa. These are some of the many themes that could benefit from a more rigorous inquiry.

## V. BEYOND A THEMATIC FOCUS: MAKING THE CIRCLE BIGGER

There is no doubt that the issue of statelessness is receiving increasing academic interest. The operative word here is ‘increasing’; in respect of academic scholarship on statelessness within the African continent, what exists is far from adequate, and it appears to be dominated by a few voices and disciplines.

Notably, legal scholarship on statelessness is predominant amongst the contributing disciplines. This is somehow understandable, since the very state of ‘being stateless’ is primarily a legal concept. The other ‘usual suspects’ such as political science, sociology, and history have contributed their share – although one is

<sup>40</sup> See, for example, Roshni Chakraborty & Jacqueline Bhabha ‘Gender, and COVID-19 in South Asia’ (2021) 23(1) *Health and Human Rights Journal* at 237–50.

<sup>41</sup> *Ibid.*

<sup>42</sup> For example in Austria, the Netherlands, United Kingdom, France, and Belgium.

<sup>43</sup> For more details on the issue, see UN Human Rights Council ‘Human rights and arbitrary deprivation of nationality: Report of the Secretary-General’ A/HRC/25/28 9 (2014).

<sup>44</sup> See, for example, United Nations Children’s Fund (UNICEF) ‘Children’s climate risk index’ (2021); UNICEF ‘The challenges of climate change: Children on the frontline’ (2015); Mo Ibrahim Foundation ‘The road to COP 27: Making Africa’s case in the global climate debate’ (July 2022).

reluctant even so to call it ‘their fair share’. However, the scholarship on statelessness still needs to make meaningful headway in fields such as economics, philosophy, and anthropology. Moreover, the role that psychology could play in helping us to understand the implications of statelessness both at the individual and communal levels is yet to be taken up in earnest. It is also not off the mark to inquire if there are elements of traditional, customary, or religious law and practice that could help inform the scholarship on statelessness in Africa.

Almost a decade ago, Mark Manly (the former head of the Statelessness Unit at the UNHCR) and Laura van Waas noted the existence of an adequate amount of academic activity on statelessness and concluded that ‘statelessness has “arrived” as a recognised focus of both academic and policy-oriented study’.<sup>45</sup> Five years down the line, in 2019, in an article entitled ‘The arrival of “Statelessness Studies”?’<sup>46</sup>, David C. Baluarte further consolidated these arguments. Although he acknowledging that this area of study is neither fully defined nor has one specific field to claim it, Baluarte asserted ‘that the study of statelessness has emerged as a multi-disciplinary field’<sup>46</sup> and went on to ‘urge that we institutionalise it as such’.<sup>47</sup>

It is worth exploring if researchers and academic institutions are paying adequate attention to these developments. For example, it is not clear whether any universities in Africa have engaged in activities such as curriculum development with a focus on statelessness, and if they have, what the depth and breadth of their courses are.

In moving forward, we should also ask critical questions such as the following: How do we increase academic engagement around the issue of statelessness on the African continent? What are some of the ‘dos and don’ts’ that we can learn from other regions of the world? For example, is there room for African organisations to organise themselves along the lines of the European Network on Statelessness (a ‘coordinating body and expert resource for organisations and individuals working to promote the right to a nationality in Europe’),<sup>48</sup> with membership spanning 41 European countries, for the purpose of expanding scholarship on statelessness in Africa? How do we bring the next generation of African researchers into the fold to contribute to the debate?

Part of expanding and deepening statelessness scholarship in Africa should also involve paying close attention to the role of language. For example, how do we capture the research being undertaken on the topic in languages other than English? How should research findings on statelessness be communicated using local languages?

It would also be remiss to overlook the role of donors in influencing the scholarship around statelessness in Africa. A large number of projects around legal

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<sup>45</sup> Mark Manly & Laura van Waas ‘The state of statelessness research: A human rights imperative’ (2014) 19(1–2) *Tilburg Law Review* at 3, 4.

<sup>46</sup> David C Baluarte ‘The arrival of “statelessness studies”?’ (2019) *Statelessness & Citizenship Review* at 156.

<sup>47</sup> *Ibid.*

<sup>48</sup> European Network on Statelessness (ENS), available at <https://www.statelessness.eu/about>

identity (including on birth registration, national identity cards, and digitisation) on the African continent are supported by bilateral and multilateral organisations as well as other non-state actors. There is more room for such organisations to use their resources and leverage to support work aimed at identifying (including data collection), documenting, and generally understanding and improving the lived reality of stateless persons in Africa.<sup>49</sup>

## VI. CLOSING REMARKS

There is no doubt that African scholarship on the topic at hand – statelessness in the African context – is still in short supply. The discussions in this *Special Issue* attempt to make a modest contribution to these developing debates from the perspective of a few African scholars. We encourage all stakeholders to actively engage with the challenges, gaps, responses, and solutions proposed in the articles of this *Special Issue* and consider their role in responding to statelessness in Africa. After all, ‘leaving no one behind’ deserves no less.

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<sup>49</sup> See, for example, Sneha Raghavan & Alan Gelb ‘10 million stateless and growing: How donors can help’ (17 November 2014), available at <https://www.cgdev.org/blog/10-million-stateless-and-growing-how-donors-can-help>

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Journal: Studi Emigrazione  
[www.cser.it](http://www.cser.it)

**CIEMI** (Centre d'Information et Études sur les Migrations Internationales), established in 1971 in Paris (France)  
Journal: Migrations Société  
[www.ciemi.org](http://www.ciemi.org)

**CMS** (Center for Migration Studies of New York), established in 1969 in New York (USA)  
Journal: International Migration Review (IMR)  
and Journal on Migration and Human Security (JMHS)  
[www.cmsny.org](http://www.cmsny.org)

**SMC** (Scalabrini Migration Center), established in 1987 in Manila (Philippines)  
Journal: Asian and Pacific Migration Journal (APMJ)  
[www.smc.org.ph](http://www.smc.org.ph)

**CEM** (Centro de Estudios Migratorios), established in 1985 in São Paulo (Brazil)  
Journal: Travessia  
[www.missaospaz.org](http://www.missaospaz.org)

**CEMLA** (Buenos Centro de Estudios Migratorios Latinoamericanos), established in 1985 in Buenos Aires (Argentina)  
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