

ADDRESSING STATELESSNESS THROUGH THE RULE OF LAW



Creating a Culture
of Justice
International Development
Law Organization



UNHCR
The UN Refugee Agency



© Cover Image UNHCR / Didor Sadulloev 2019

Forty-two-year-old Mokhitobon Loikova (rear, centre) holds up her newly-obtained identity documents with her five children and a grandchild at their home in Dushanbe, Tajikistan. As she was stateless, her children did not receive birth certificates, which created obstacles for them in receiving proper education and finding employment.

TABLE OF CONTENTS

1. INTRODUCTION	4
2. STATELESSNESS AND THE RIGHT TO A NATIONALITY	5
3. HOW THE RULE OF LAW IS RELEVANT TO ADDRESSING STATELESSNESS	7
4. WHY THE RULE OF LAW AND STATELESSNESS MATTER FOR SUSTAINABLE DEVELOPMENT	12
5. CONCLUSION AND KEY RECOMMENDATIONS	14

1. INTRODUCTION



© Brian Sokol, UNHCR 2014.

Yulin, 25, and her children are stateless in the Dominican Republic. She says: "I feel Dominican because it's the only place I've ever lived. I was born here and at the time I was born the constitution said that anyone born here is a Dominican."

In this issue brief, the International Development Law Organization (IDLO) and UNHCR address the intricate links between statelessness, the rule of law and sustainable development. Ensuring adherence to the rule of law is critical to resolving existing situations of statelessness and to preventing new situations from arising. The principle of the rule of law, as embedded in international human rights instruments,¹ is key to the UN 2030 Agenda for Sustainable Development (2030 Agenda), with its call for legal and institutional reforms, protection of rights, and legal empowerment of the most vulnerable and excluded. In a world order based on State sovereignty, an individual's legal identity is expressed through the legal bond of nationality. Statelessness (i.e., not being considered as a national

by any State under the operation of its law) is therefore an anomaly and undermines the rule of law² due to both its causes and consequences. It often arises from discrimination and arbitrary laws or practices and prevents stateless persons from enjoying full equality under the law in any country. Statelessness results in widespread denial of human rights and it undermines the universal human right to a nationality.³ Statelessness can inflict a lifetime of hardship, extend across generations, and plunge whole communities into situations of protracted humanitarian crisis. Statelessness has the potential to lead to underdevelopment and to exacerbate underprivilege, exclusion and marginalisation that are often the hallmarks of conflict and displacement.

The issue brief stresses that, by upholding the rule of law, States can unlock lasting solutions to the anomaly of statelessness and dramatically improve the lives and futures of stateless people and the societies in which they live. It concludes with a set of recommendations for policymakers, focusing on:

1. **Equality before the law and non-discrimination**
2. **Compliance with international human rights norms and standards**
3. **Legal empowerment and access to justice**
4. **Inclusive and participatory system of governance**

2. STATELESSNESS AND THE RIGHT TO A NATIONALITY

Definition and extent of statelessness

A stateless person is someone who is not recognised as a national by any country. The number of stateless people globally is unknown. UNHCR data received from 96 countries indicates that, at the end of 2021, there were an estimated 4.3 million stateless people or persons of undetermined nationality.⁴ Based on these figures, the largest known populations of those who are stateless or of undetermined nationality can be found in Côte d'Ivoire (931,166), Bangladesh (918,841), Myanmar (600,000), Thailand (561,527) and Latvia (195,190).

International legal framework for protection from statelessness

There is an international legal framework to protect stateless persons and to prevent and reduce statelessness. The 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) sets out the international legal definition of a stateless person as someone “who is not considered as a national by any State under the operation of its law” and extends to these persons specific rights such as the right to education, employment and housing as well as the right to identity, travel documents and administrative assistance.⁵ The 1961 Convention on the Reduction of Statelessness (1961 Convention) requires that States establish safeguards in legislation to prevent statelessness at birth or later in life, for example due to loss or renunciation of nationality or State succession.⁶ The right to a nationality is also set out in several international human rights instruments, such as the Universal



Estimates based on UNHCR Global Trends: Forced Displacement in 2021¹²

Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and the Migrant Workers Convention.⁷ Furthermore, customary international law reinforces the statelessness conventions through key norms such as the prohibition on racial discrimination which applies both to the acquisition

and loss of nationality and the treatment of stateless persons.

Causes of statelessness

The causes of statelessness vary, and include discrimination on the basis of sex, ethnicity, race, religion or language, gaps in nationality legislation, State succession, administrative obstacles to acquisition, and lack of nationality and birth documentation. Direct and indirect discrimination on the basis of ethnicity, race, religion, or language is one of the main causes of statelessness and can

be found in the nationality laws of more than 80 countries around the world. It is estimated that more than 75% of the world's known stateless populations belong to ethnic, religious, or linguistic minority groups.⁸ Sex discrimination in nationality laws is another major cause of statelessness. Currently, 24 countries retain nationality laws that deny women the right to confer citizenship on their children on an equal basis with men, which can result in statelessness where, for example, the father is stateless, unknown, or unwilling or unable to take the administrative steps needed to confer his nationality.⁹

Gaps in legislation that can lead to statelessness include the failure to include critical safeguards in nationality laws to prevent childhood statelessness, for example to ensure that children found abandoned on the territory of a State acquire the nationality of that State where the parents are unknown. In the context of State succession, entire populations can find themselves stateless if, for example, a territory is transferred from one State to another, a new State is formed from the territory of another, or if two or more States form out of the dissolution of another and nationality

laws of the emerging entities do not recognise all persons residing on the territory as nationals. An example of administrative obstacles that can put people at risk of statelessness are costly or complex bureaucratic procedures to acquire relevant documentation to prove nationality, which may be a particular problem for children born outside the country of nationality of their parents. Finally, issues relating to lack of nationality and birth documentation can lead to statelessness due to difficulties in proving relevant links to a State, for example place of birth or parentage.

Consequences of statelessness

The consequences of statelessness can be severely debilitating. Stateless persons often do not enjoy their human rights, such as access to education, healthcare, employment, property ownership, freedom to marry, freedom of movement and political participation as well as basic services such as opening a bank account and obtaining a SIM card. They are also at a heightened risk of abuse and exploitation, arbitrary detention, and trafficking. Statelessness can cause individuals to face a lifetime of obstacles and

exclusion and prevents individuals' full participation in society. This may not only impact individuals affected by statelessness but also society at large, as intergenerational statelessness can lead to alienated and marginalised communities, exacerbating social tensions and increasing the potential for conflict. An example of this was seen in Côte d'Ivoire, where nationality and identity issues led to a divide between Ivorians and non-Ivorians, fuelling community tensions that contributed to civil war.¹⁰ Statelessness may also negatively impact a society's economy and development process, as it is often accompanied by unemployment and poverty. Stateless persons are in many instances excluded from formal employment and economic opportunities and face challenges in accessing education.¹¹ This negatively impacts human development and prevents individuals from contributing to a country's economic growth and development. As a result, stateless persons are some of the most vulnerable people in the world.

Box 1: Statelessness in Kenya and Lebanon

Recently conducted surveys in Kenya and Lebanon found stark quantifiable differences in the socio-economic conditions in which stateless people live. In Kenya, a survey conducted in 2019 by UNHCR and the World Bank amongst the then stateless Shona population, found that the rate of poverty amongst this community was 24% higher than in the urban Kenyan population.¹³ A survey conducted in 2021 by UNHCR and Siren Associates in the Akkar region of Lebanon found that 39% of stateless persons lacked formal education compared to 15% Lebanese nationals, 65% were unemployed as compared to 54% Lebanese nationals, and the average monthly wage of those who are stateless being as low as half of the minimum wage in the country or USD 19 per month.¹⁴

3. HOW THE RULE OF LAW IS RELEVANT TO ADDRESSING STATELESSNESS

The rule of law is defined by the United Nations as:

a principle of governance under which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.¹⁵

The rule of law requires that law and policy are applied equally and without discrimination by all significant relevant institutions (independent judiciary, police and other security agencies, oversight bodies, etc.). It protects individuals from arbitrariness and the arbitrary exercise of power. The rule of law further puts an obligation on States to comply with international human rights norms and standards and provide everyone with equal access to justice to defend their rights. This also requires that law and policy are shaped with the participation of all, and that no one is left behind.

The rule of law is the vehicle for the promotion and protection of this common normative framework and provides a structure through which the exercise of power is subjected to agreed rules, guaranteeing the protection of all human rights. It is argued, furthermore, that there is no rule of law within societies if human rights are not protected and vice versa; human rights cannot be protected in societies without a strong rule of law. The rule of law is the implementation mechanism for human rights, turning them from a principle into a reality.¹⁶ The rule of law also plays an

integral part in anchoring economic, social, and cultural rights in national constitutions, laws, and regulations. Where such rights are justiciable or their legal protection is otherwise ensured, the rule of law provides the means of redress when those rights are not upheld, or public resources are misused.

There are clear linkages between statelessness and these four central tenets of the rule of law,¹⁷ and these are elaborated below:

KEY ELEMENTS OF RULE OF LAW RELEVANT TO STATELESSNESS



Equality under the law and non-discrimination



Compliance with international human rights standards



Legal empowerment and access to justice



Inclusive and participatory governance

Equality under the law and non-discrimination

Discrimination and inequality are both causes and consequences of statelessness. Millions of people are left stateless due to discriminatory deprivation of nationality on the basis of ethnicity or religion and as a consequence of formal or informal policies and practices that have a disproportionate impact on certain groups.¹⁸ A notable example of statelessness as a result of discrimination can be found in Myanmar, where the ethnic and religious minority Rohingya have been deprived of their right to a legal identity for decades. Other stateless populations affected by discriminatory laws and policies

include persons of Haitian descent in the Dominican Republic, ethnic Kurds in Syria, and Romani populations in Europe. Statelessness often exacerbates the marginalisation and exclusion that minorities may face, further limiting their access to rights and services, and deepening their sense of being outsiders and not belonging.

The rule of law requires measures to ensure adherence to the principles of equality before the law and fairness in the application of the law. All persons subject to the jurisdiction of any State, regardless of legal status, are in principle equal before the law and have equal protection under the law. States have a positive obligation to ensure that stateless persons

within their jurisdiction are protected against such rights violations and are able to access justice mechanisms. The adoption of just and equitable legislative measures, as well as the elimination of discriminatory laws, helps prevent rights violations and promotes the realisation of rights more broadly. International and regional law, international jurisprudence, and treaty body conclusions and recommendations, as well as States' commitments to the 2030 Agenda, require States to refrain from arbitrarily depriving anyone of nationality,¹⁹ discriminating against individuals or groups in the application of nationality laws, policies, and procedures, or discriminating against stateless persons due to their lack of citizenship.

Box 2: Reforming nationality laws in Morocco

The reform of discriminatory laws, policies, and procedures helps prevent and resolve statelessness and has a direct impact on the number of stateless persons in a country. This can be seen in countries that have taken steps to remove gender discrimination from their nationality laws such as Morocco.²⁰ In March 2007, Morocco passed a bill amending the Nationality Code, granting Moroccan women the same rights as those enjoyed by men to confer nationality on their children, with retroactive effect.²¹ The new provision provides that a child born to a Moroccan father, or a Moroccan mother is Moroccan. In 2008, Morocco lifted its reservation to Article 9(2) of the Convention on the Elimination of All Forms of Discrimination Against Women.²² At the end of December 2011, the number of children born to Moroccan mothers and foreign fathers who had been able to obtain Moroccan nationality since the entry into force of the Nationality Code had reached 32,571. In 2018 alone, the number was 33,587.

Compliance with international human rights norms and standards

The right to nationality can be found in a number of major human rights instruments, starting with Article 15 of the Universal Declaration of Human Rights, with a particular emphasis placed on the right of every child to acquire a nationality.²³ Unfortunately, laws and policies which deprive children of nationality on a discriminatory or arbitrary basis, as well as laws that fail to include crucial safeguards to prevent statelessness from occurring during childhood and later in life mean that in many countries the right to nationality is an obligation that is often breached. For example, apart from countries that

subscribe to a *jus soli* regime under which children born on the territory of a State acquire the nationality of that State simply as a result of being born there, States must enact safeguards so that children who are not able to acquire nationality from their parents are not left stateless. This would be the case, for example, for children born to two stateless parents, or in the case of children left abandoned and whose parents are unknown.

In his report 'In larger freedom: Towards development, security and human rights for all,' the UN Secretary-General noted that "...[a]ll human beings have the right to be treated with dignity and respect".²⁴ Such dignity and respect are afforded to people through

the enjoyment of all human rights and are protected through the rule of law. The backbone of the freedom to live in dignity is the international human rights law framework, together with international humanitarian law, international criminal law, and international refugee law.

While it is in principle for each State to determine under its own law who are its nationals, States are also required to comply with international human rights law concerning the granting and loss of nationality, which puts significant limits on State discretion in this respect.²⁵ The consistent application of international standards on statelessness is essential to end statelessness. Accession to international and regional conventions

on statelessness and effective implementation of those conventions through domestic laws and policies remains the most effective way to prevent and resolve statelessness. The 1961 Convention remains the only universal instrument that elaborates

clear, detailed, and concrete safeguards to ensure a fair and appropriate response to statelessness.²⁶ Accession to the 1961 Convention equips States with the means to avoid and resolve nationality-related disputes and mobilise international support to

address the prevention and reduction of statelessness. Accession may further boost legal transparency and predictability in States' responses to the threat of statelessness through the promotion of common safeguards.

Box 3: Compliance with the 1961 Convention in The Philippines

The Philippines moved swiftly following its accession to the 1961 Convention in March 2022. The country's Senate passed the Foundling Recognition and Protection Act in 2022. This legislation ensures that foundlings (abandoned children whose parents are unknown) found in The Philippines or in The Philippines's embassies, consulates, and territories are recognised as Philippines' nationals.²⁷

Legal empowerment and access to justice

When stateless people seek to access justice, they face multiple specific forms of exclusion in addition to the everyday barriers encountered by the general population. While broader issues of cost, proximity, and language impede access to justice for stateless people, stateless people are also negatively affected by their lack of legal standing, procedural obstacles (for example, related to lack of national ID), and fear of engaging with institutions that might behave prejudicially or sanction them based on their stateless status, among other challenges. Stateless people are often rendered invisible within the justice system, unable to claim their rights, receive legal services, or challenge their fundamental lack of legal status,

and remain dependent on support from civil society and the few international bodies charged with addressing the problem. Denial of access to justice also negatively affects the ability of stateless people to obtain basic services, or remedy deprivation of service delivery: and to assert their right to participate in civic affairs, and therefore shape solutions to their own problems through democratic governance.

The Commission on Legal Empowerment of the Poor defines legal empowerment as the process through which people "are enabled to use the law to advance their rights and their interests in relation to the State and the market."²⁸ Among other dimensions, legal empowerment includes legal education, especially for the most vulnerable and excluded

constituencies; provision of legal aid and paralegal services; protection of civic space that allows people to act collectively to demand realisation of their rights, and of human rights defenders who might be threatened in doing so. For the rule of law to act as an effective enabler of people's access to justice and for sustainable development, all people must be able to realise their rights in practice,²⁹ including through access to public services and participation in governance processes, irrespective of nationality or legal status. Pathways must be available for stateless people to demand fulfilment of their rights, seek remedy for violations, and resolve disputes with others and the State. For this reason, legal empowerment is essential, as shown in the examples below from various parts of the world.

Box 4: Legal empowerment of stateless people in Uganda

In Uganda, IDLO has supported pathways to justice for refugees who do not enjoy nationality rights and who thus, despite protracted residency, are unable to acquire Ugandan citizenship.³⁰ IDLO's Community Justice Programme supports local partners like World Voices Uganda to provide legal aid to South Sudanese refugees in Kyegegwa district, many of whom needed legal redress including legal identity. Trained Community Legal Volunteers have provided legal education and supported refugees, including those at risk of statelessness, to secure documents including movement permits and identity cards, realise their rights, access services, and resolve disputes. Community Legal Volunteers have also worked to link the informal justice structures, such as the *bataka* courts, to the statutory justice system in ways that improved access to justice for people experiencing displacement and statelessness.

Box 5: Community paralegals and stateless communities in Kenya

In implementing its pilot Securing Citizenship Rights programme, the global civil society organization Namati has pioneered a model of mobilising community paralegals from historically stateless communities to help people acquire and use identity documents and monitor implementation of relevant laws. Paralegals are not lawyers but receive training and support, enabling them to assist people in understanding documentation requirements and navigating bureaucracy. In Kenya, for example, the programme supported members of the Nubian community to assert their right to Kenyan citizenship. Paralegals from the Nubian community helped other members of their group to obtain birth certificates, national ID cards, and passports in accordance with legal procedures.³¹



© Wanja Munaita, UNHCR, 2014:

Thomas Nguli, spokesperson for the Makonde community, has his fingerprints taken during the launch of the naturalisation and registration process that saw the once stateless ethnic group finally given Kenyan nationality and rights.

Inclusive and participatory system of governance

It is rare for stateless people to be given a seat at the decision-making table when it comes to crafting laws and policies that determine their legal status and the conditions in which they must live. As a result, even well-meaning initiatives to, for example, grant stateless persons in a migratory context a pathway to regularise their legal status and to facilitate their naturalisation can be beset with problems. This can be because such processes have failed to account for the lived reality of being stateless which can include a lifetime of illiteracy, making it impossible to

understand information provided, fear of authorities which can hamper uptake, and poverty, which can render even the most minimal application fees prohibitive.

In order to embody key principles of the rule of law, laws and policies must be shaped with the meaningful participation of those affected by such laws and policies. For this reason, the rule of law is predicated on governance systems that are accessible, responsive, and accountable to everyone in a given society. The Secretary-General's report *Our Common Agenda* acknowledges that "a vibrant social contract guarantees the conditions for people to live a

decent life, leaving no one behind and enabling all to participate in society, as promised in the 2030 Agenda".³² Participation is a fundamental requirement of public decision-making that ultimately guarantees that laws represent the collective will of all people and underpins the social contract between the State and the governed; it is also a substantive right on its own, enshrined in international human rights law.³³ An inclusive and participatory system of governance places people at the centre of justice as the key to ensuring that the rule of law extends human rights and fundamental freedoms to "all persons," not merely its citizens.

Box 6: Resolving Makonde statelessness in Kenya

In Kenya, the stateless Makonde people were able to resolve their plight in close cooperation with civil society organisations, the Catholic Church and UNHCR. In July 2016, the Makonde community, supported by the Kenyan Human Rights Commission (KHRC), petitioned the President to be registered as Kenyan citizens. In October 2016, around 300 members of the Makonde community embarked on a four-day trek from Kwale to Nairobi to seek an audience before the President to present a new petition calling on the President's office to ensure that the Makonde and other stateless persons would be recognised as Kenyan citizens. The march gave significant visibility to the plight of the Makonde and had a galvanising effect. As a result, the President issued a directive that all eligible stateless Makonde be registered as Kenyan nationals and issued with Kenyan identity cards by December 2016, which eventually led to the resolution of their statelessness at the end of 2019.

Box 7: Addressing stateless children in the Brazilian diaspora

In Brazil, strong and effective lobbying by civil society led to the resolution of the situation of stateless children in the Brazilian diaspora. In response to a 1994 Constitutional Amendment that rendered children of Brazilians abroad stateless, members of the Brazilian diaspora joined together to form a civil society movement called *Brasileirinhos Apatridas* to push for legal reform. Due to active engagement with the media, both in countries of the diaspora and in Brazil, and strong lobbying by Congress, *Brasileirinhos Apatridas* was able to effect legal reform that resolved the statelessness problems that were created by the 1994 Constitutional Amendment.³⁴

4. WHY THE RULE OF LAW AND STATELESSNESS MATTER FOR SUSTAINABLE DEVELOPMENT

Sustainable development is defined as broad social, economic and environmental change “that meets the needs of the present without compromising the ability of future generations to meet their own needs.”³⁵ The rule of law advances the three pillars of sustainable development: social, economic and environmental.³⁶ By ensuring equal opportunity and equitable access to basic services, it promotes social justice;³⁷ by providing stable and transparent legal regimes, the rule of law encourages economic development;³⁸ by strengthening laws to protect the natural environment and ensure proper management of land and resources, it ensures environmental sustainability.³⁹ The rule of law also reinforces the interlinkage with sustainable development through calls for legal and institutional reforms, protection of rights, and legal empowerment of the most vulnerable and excluded.⁴⁰ At the 2012 High-level Meeting on the Rule of Law, Member States noted that “the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realisation of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law”.⁴¹

The 2030 Agenda is the primary vehicle through which the UN seeks to deliver its human-rights based vision for sustainable development.⁴² The overarching aim of the 2030 Agenda to “reach the furthest behind first” and “leave no one behind” seems particularly relevant to those who experience the many negative consequences of not being recognised

as citizens of any country. The very existence of statelessness is at odds with the aspirations of sustainable development, and the reduction of statelessness is vital to delivering sustainable development for all.

The principles of the rule of law are embedded throughout the 2030 Agenda,⁴³ and especially Sustainable Development Goal (SDG) 16⁴⁴ which 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”. SDG 16 enables realisation of all other SDGs, as strengthened rule of law can have broad catalytic effects on progress toward sustainable development. Target 16.3 commits States to deliver equal access to justice, which could dramatically improve the lives of stateless persons. At the national level, the rule of law is necessary to create an environment conducive to eradicating poverty and protecting basic rights. It fosters development through strengthening the voices of people and communities, by providing access to justice and remedies for the violation of rights, and by establishing mechanisms for the non-violent resolution of conflicts.

The rule of law is also specifically relevant to the UN legal identity agenda. As enshrined in the Universal Declaration of Human Rights and other international instruments, everyone has a right to be recognised as a person before the law through legal identity, or “the basic characteristics of an individual’s identity, e.g. name, sex, place and date of birth conferred through registration and the issuance of a certificate by an authorised civil

registration authority following the occurrence of birth.”⁴⁵ SDG target 16.9 (“legal identity for all, including birth registration, by 2030”) commits States to achieve universal legal identity, which is relevant to efforts towards the prevention and reduction of statelessness through the provision of birth registration and, in certain cases, nationality documentation.

In addition to SDG 16, other SDGs with direct relevance to the identification and resolution of existing cases of statelessness and the prevention of new ones from occurring are SDG 5 (achieve gender equality and empower all women and girls), 10 (reduce inequality within and among countries), and 17 (strengthen the means of implementation and revitalise the global partnership for sustainable development). SDG target 17.19 (support to statistical capacity-building to ensure countries achieve 100% birth registration) is another key target for ensuring that no one is left behind.

Box 8: Legal identity in Malaysia





In West Malaysia, persons of Indian-Tamil origin who originally came to Malaysia in the late 19th and early 20th centuries experienced mass displacement following the closures of many rubber plantations beginning around 1980. As a result, many faced difficulty accessing birth registration and have since encountered barriers to applying for identity documents. The government launched the 'My Daftar Campaign' in 2011 to identify and assist undocumented persons by conducting mobile registration campaigns. Through the Campaign, thousands of birth certificates and national identity cards were issued and, as of 2017, these registration efforts had ended the statelessness experienced by more than 4,400 people.

Failure to address statelessness hinders development. Evidence indicates that more inclusive societies are more prosperous, effective, and resilient, and better positioned to effectively manage and allocate public resources.⁴⁶ The persistence of statelessness among any constituency in a country's population represents an acute form of exclusion. While less evidence exists on economic costs of the non-participation of stateless people than for other excluded groups (for example, women), countries with large numbers of stateless persons unable to effectively participate in the economy do not make efficient use of available human resources and economic potential. Nationality is also an enabler to realise other rights, meaning that the lack of nationality prevents people from fully participating in and contributing to society. Stateless children, for example, face significant challenges with respect to accessing education and receiving certifications for school completion. Ensuring one's right to a nationality is a vital step to enabling equal access to education in the first place.

Even as achievements in accelerating action on the SDGs will result in positive outcomes for stateless persons, failures will inevitably exacerbate the problems faced by this population. For example, failure to mitigate and adapt to climate change, which poses a significant threat to sustainable development, will significantly increase the risks of

statelessness.⁴⁷ Even the seemingly mundane risk of document loss during such an event can put millions of people at risk of statelessness. Statelessness may result in situations where individuals are unable to prove their nationality due to loss

of documentation, or the inability to obtain replacement documentation due to challenges in accessing consular services.

SDG	Relevant target	Link to Statelessness and the Rule of Law
 <p>4 QUALITY EDUCATION</p>	Target 4.1: Free, equitable and quality primary and secondary education for all girls	Improves the living conditions of stateless persons, as it ensures that they have access to basic rights
 <p>5 GENDER EQUALITY</p>	Target 5.1: All forms of discrimination against all women and girls ended	Relevant to addressing the issue of sex discrimination in nationality laws, which continues to be a major cause of statelessness globally
 <p>10 REDUCED INEQUALITIES</p>	Target 10.3: Equal opportunity ensured and inequalities reduced	Relevant to addressing discrimination in nationality matters and arbitrary deprivation of nationality, which lies at the root of some of the largest and most protracted situations of statelessness
 <p>16 PEACE, JUSTICE AND STRONG INSTITUTIONS</p>	Target 16.b: Non-discriminatory laws and policies promoted and enforced; target 16.3: Rule of law promoted at the national and international levels and equal access to justice for all; target 16.9: Legal identity provided for all, including birth registration	Enforcement of non-discriminatory laws and legal empowerment are crucial for stateless people to realise their rights; provision of birth registration and nationality documentation is directly relevant for the prevention and reduction of statelessness
 <p>17 PARTNERSHIPS FOR THE GOALS</p>	Target 17.18: Support to developing countries provided to increase availability of data	Improved statistical data on stateless populations in developing countries is important to gain a better understanding of the scale of the problem

5. CONCLUSION AND KEY RECOMMENDATIONS

As statelessness creates barriers to individuals' enjoyment of human rights and their contributions to economies and national development, it creates a burden for both the people who suffer from a lack of nationality and for societies and governments more broadly. A rule of law approach is therefore necessary to address the problem of statelessness. The rule of law can help governments address the challenges of statelessness, meet their international obligations, and improve their development outcomes in line with the SDGs. There are clear steps that States and other actors can take to apply a rule of law approach to address statelessness in a way that also bolsters sustainable development aspirations and ensures individuals rights.

Recommendations for States and development actors:

1. Ensure equality before the law

- Remove discriminatory provisions and obstacles from nationality laws, rules and procedures, and review and reform laws, rules, and procedures in order to prevent the denial, loss, or deprivation of nationality on discriminatory grounds.
- Reform laws, policies, and procedures to ensure equal and meaningful access to birth registration for all, including birth registration through safe and innovative technological solutions.
- Implement respect for the right to a nationality and ensure compliance with international standards on statelessness through accession to the UN Statelessness Conventions and inclusion of essential safeguards against statelessness at birth and later in life in nationality legislation.

- Require local, sub-national, and national administrative bodies to strengthen and extend basic service provision to include stateless people and persons of undetermined nationality and include them in national development plans and projects.

2. Increase the capacity of rule of law institutions to address statelessness

- Establish statelessness determination procedures for the identification of stateless persons in a migratory context to ensure they have access to a recognised legal status, basic rights, and facilitated naturalisation, in line with the 1954 Convention.
- Promote awareness-raising about the root causes and consequences of statelessness for individuals, including those belonging to minorities, and support a human rights-based approach to solving these issues.
- Strengthen judiciaries, enabling them to properly and independently adjudicate cases related to statelessness and educate lawyers on the issue and how to represent stateless clients.
- Boost multilateral and bilateral investment to improve the capacity of States' rule of law institutions to address statelessness.

3. Ensure stateless people have the knowledge and support to realise their rights, redress grievances and resolve disputes, in line with human rights standards

- Foster and invest in grassroots efforts to strengthen the legal awareness and empowerment of stateless people

- Protect civic space for mobilisation and advocacy for and by stateless people, including human rights defenders and communities
- Ensure that efforts to build more people-centred justice systems account for the specific challenges and needs of stateless people and other non-citizens and are able to protect and fulfil their rights.

4. Champion decision-making mechanisms at all levels that include stateless people and take their needs and challenges into account

- Develop and mainstream innovative mechanisms for the inclusion of stateless people in decision-making about the policy issues that affect their lives, including service provision, not only at the local level but also at the national and global levels.
- Strengthen cooperation and consultation with representatives from stateless communities to better understand the obstacles they face in accessing legal identity and citizenship and use the outcomes of these consultations to develop tailored solutions to resolving statelessness amongst these communities.

Box 9: Agenda for future research

Complementing the policy recommendations, IDLO and UNHCR propose an agenda for further research on the relationship between solving statelessness and the rule of law, including efforts to:

- Develop multidisciplinary and multi-stakeholder research on a rule of law approach to resolving statelessness in specific regional contexts, to bridge identified evidence gaps and increase understanding of the issue at the regional level.
- Expand the available knowledge on how a rule of law approach to resolving statelessness might intersect with other specific forms of exclusion and precarity, with particular interest in women and girls, youth and children, and internally displaced people, refugees, and those in a migratory context.
- Develop standardised, evidence-based strategies and tools for screening and reviewing legislative, policy, and administrative frameworks that may impact the realisation of rights by stateless people
- Collaborate with partners at the global and national levels to test and document justice surveys and assessments that focus on the needs of stateless people, and explore practical ways to ensure that stateless people and their needs are included in efforts to close the justice data gap, as a crucial prerequisite for achieving SDG16.3 by 2030.
- Explore concrete examples of legal empowerment and self-organisation of stateless people that have resulted in legal or practical changes, such as acquisition of nationality or access to services, to draw out general insights on what works, how interventions can be scaled-up, and what support is needed from international actors.

NOTES

- 1 UN General Assembly, Universal Declaration of Human Rights (1948).
- 2 UN General Assembly, Convention Relating to the Status of Stateless Persons (1954), Art. 1, available at: <https://www.refworld.org/docid/3ae6b3840.html>.
- 3 UN Secretary-General (2018), Guidance Note of the Secretary General: The United Nations and Statelessness, available at: <https://www.refworld.org/docid/5c580e507.html>.
- 4 UNHCR (2022), Global Trends: Forced Displacement in 2021, available at: <https://www.unhcr.org/publications/brochures/62a9d1494/global-trends-report-2021.htm>.
- 5 UN General Assembly, Convention Relating to the Status of Stateless Persons (1954), available at: <https://www.refworld.org/docid/3ae6b3840.html>.
- 6 UN General Assembly, Convention on the Reduction of Statelessness (1961), available at: https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf
- 7 See Universal Declaration of Human Rights, Art. 15; International Covenant on Civil and Political Rights (ICCPR), Arts. 24; International Convention on the Elimination of All Forms of Racial Discrimination, Arts. 2(1) and 5(d)(iii); Convention on the Elimination of All Forms of Discrimination against Women, Art. 9; Convention on the Rights of the Child (CRC), Arts. 2, 7 and 8; the Convention on the Rights of Persons with Disabilities, Arts. 5, 12, and 18; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art. 29.
- 8 UNHCR (2021), Background Note on Discrimination in Nationality Laws and Statelessness, available at: <https://www.refworld.org/docid/616fda104.html>.
- 9 UNHCR (2022), Background Note on Gender Equality, Nationality Laws and Statelessness 2022, available at: <https://www.refworld.org/docid/6221ec1a4.html>; Liberia reformed its law in 2022, bringing the the total number down to 24.
- 10 Adjami, M. (2016), Statelessness and Nationality in Côte D'Ivoire, A Study for UNHCR, available at: <https://www.refworld.org/pdfid/58594d114.pdf>.
- 11 See for example, UNHCR & World Bank Group (2019), Understanding the Socioeconomic Conditions of the Stateless Shona Community in Kenya, 2019, available at: <https://documents1.worldbank.org/curated/en/356511608745182603/pdf/Understanding-the-Socioeconomic-Conditions-of-the-Stateless-Shona-Community-in-Kenya-Results-from-the-2019-Socioeconomic-Survey.pdf>; a key finding is that the poverty rate among the stateless Shona was 24% higher than in the urban Kenyan population.
- 12 UNHCR (2022), Global Trends: Forced Displacement in 2021, available at: <https://www.unhcr.org/publications/brochures/62a9d1494/global-trends-report-2021.htm>.
- 13 Ibid.
- 14 UNHCR & Siren Associates (2021), Mapping and understanding statelessness in the Akkar, available at: <https://sirenassociates.com/wp-content/uploads/2021/12/Mapping-and-understanding-statelessness-in-Akkar-2021.pdf>.
- 15 UN Secretary-General (2004), Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies, available at: <https://digitallibrary.un.org/record/527647?ln=en>.
- 16 UN, "The United Nations and the Rule of Law", available at: <https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/#:~:text=There%20is%20no%20rule%20of,a%20principle%20into%20a%20reality>.
- 17 While a rule of law framework is a critical mechanism to address statelessness, it is worth noting that the rule of law is under threat worldwide. The World Justice Project's 2021 Rule of Law Index recorded an overall deterioration in rule of law performance across 139 jurisdictions, the fourth consecutive year of general decline. The COVID-19 pandemic has given rise to restrictive emergency measures and exacerbated democratic erosion in ways that undermine overall progress towards the achievement of the SDGs. It is inherently challenging to advance the rule of law in a global environment increasingly inimical to people-centred justice and democratic governance. See World Justice Project (2021), Rule of Law Index 2021, available at: <https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf>.
- 18 UNHCR (2017), "This is Our Home": Stateless Minorities and their Search for Citizenship, available at: <https://www.refworld.org/docid/59e4a6534.html>.
- 19 See UN General Assembly Res. 50/152 (1996), para. 16 available at: <https://digitallibrary.un.org/record/205545?ln=en>; see also UN Human Rights Council (2016), Human rights and arbitrary deprivation of nationality, A/HRC/RES/32/5, available at: <https://www.refworld.org/docid/57e3dc204.html>.
- 20 Despite progress made in recent years, there are still 24 countries with nationality laws which do not grant women equality with men in conferring nationality to their children, and in more than 50 countries nationality laws do not afford women the same rights to acquire, change, or retain their nationality as men. See UNHCR (2022), Background Note on Gender Equality, Nationality Laws and Statelessness 2022, available at: <https://www.refworld.org/docid/6221ec1a4.html>.
- 21 William Bordat, S. & Kouzzi, S. (2010), "Legal empowerment of unwed mothers: Experiences of Moroccan NGOs," in Golub, S. (ed.), Legal Empowerment: Practitioners' Perspectives, Rome: IDLO available at: https://www.files.ethz.ch/isn/138103/LEWP_BordatKouzzi.pdf.
- 22 Art. 9(2) states that, "States Parties shall grant women equal rights with men with respect to the nationality of their children." See also UNHCR (2015), Good Practices Paper - Action 3: Removing Gender Discrimination from Nationality Laws, available at: <https://www.refworld.org/docid/54f8377d4.html>.
- 23 See Art. 24 of the ICCPR and Art. 7 of the CRC, the latter being almost universally ratified.

- 24 UN Secretary-General (2005), Report of the Secretary-General: In larger freedom – towards development, security, and human rights for all, available at: <https://www.refworld.org/docid/4a54bbfa0.html>
- 25 Edwards, A. (2014), "The meaning of nationality in international law in an era of human rights: procedural and substantive aspects," in Edwards, A. & Van Waas, L. (eds.), *Nationality and Statelessness Under International Law*, Cambridge: CUP.
- 26 UNHCR (2014), "Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness," available at: <https://www.refworld.org/docid/4cad866e2.html>; as of Dec 2022, there are 78 States Parties to the 1961 Convention and 96 States Parties to the 1954 Convention.
- 27 Senate of the Republic of The Philippines (2021), Foundling Recognition and Protection Act, available at: https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=18&q=SBN-2233.
- 28 UN Commission on Legal Empowerment of the Poor (2008), *Making the Law Work for Everyone*, New York: UNDP available at: http://content-ext.undp.org/aplaws_publications/2094181/Making_the_Law_Work_for_Everyone.pdf.
- 29 Established, for example, in the International Covenant on Economic, Social and Cultural Rights (1966), available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>; and in the Declaration on the Right to Development (1986), available at: <https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx>.
- 30 International Refugee Rights Initiative et al. (2021), "Joint Submission to the Human Rights Council at the 40th Session of the Universal Periodic Review," available at: https://files.institutesi.org/UPR40_Uganda.pdf.
- 31 See Namati, "Securing citizenship rights in Kenya," available at: <https://namati.org/ourwork/citizenship/kenya>.
- 32 UN Secretary-General (2021), Report of the Secretary-General: Our Common Agenda, available at: <https://www.un.org/en/common-agenda>.
- 33 Established, for example, in the ICPR (1966), available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.
- 34 UNCHR (2022), Practices Paper - Action 1: Resolving Existing Major Situations of Statelessness, available at: <https://www.refworld.org/docid/54e75a244.html>.
- 35 See <https://www.un.org/sustainabledevelopment/development-agenda-retired/>
- 36 UN General Assembly (2012), "Resolution adopted by the General Assembly on 27 July 2012: 66/288 The future we want" available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_66_288.pdf.
- 37 Organization for Economic Cooperation and Development (OECD) (2019), "Building a business case for access to justice," available at: <https://www.oecd.org/gov/building-a-business-case-for-access-to-justice.pdf>.
- 38 OECD (2019), "Equal Access to Justice for Inclusive Growth: Putting People at the Centre," available at: <http://www.oecd.org/gov/equal-access-to-justice-for-inclusive-growth-597f5b7f-en.htm>.
- 39 IDLO (2021), *Climate Justice: A Rule of Law Approach for Transformative Climate Action*, available at: <https://www.idlo.int/publications/climate-justice-rule-law-approach-transformative-climate-action>.
- 40 Khan, I. et al. (2016), "Shifting the Paradigm: Rule of Law and the 2030 Agenda for Sustainable Development," in Fariello, F. et al. (eds.), *The World Bank Legal Review Vol. 7: Financing and Implementing the Post-2015 Development Agenda - The Role of Law and Justice Systems*, available at: https://elibrary.worldbank.org/doi/10.1596/978-1-4648-0545-5_ch11.
- 41 UN General Assembly (2012), "Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels," available at: http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_67_1.pdf.
- 42 UNCHR (2017), *The Sustainable Development Goals and Addressing Statelessness*, available at: <https://www.refworld.org/docid/58b6e3364.html>.
- 43 UN, "The Sustainable Development Goals," available at: <https://www.un.org/sustainabledevelopment/development-agenda>.
- 44 UN, "Sustainable Development Goal 16," available at: <https://sustainabledevelopment.un.org/sdg16>.
- 45 UN Department of Social and Economic Affairs, "United Nations Legal Identity Agenda," available at: <https://unstats.un.org/legal-identity-agenda>.
- 46 OECD (2020), "OECD Development Co-Operation Paper 71: Why does inclusion matter? Assessing the links between inclusive processes and inclusive outcomes", available at: https://www.oecd-ilibrary.org/development/why-does-inclusion-matter_22285d0e-en
- 47 UNHCR (2021), "Statelessness and Climate Change Factsheet," available at: <https://www.refworld.org/docid/617c01da4.html>. See also UN Office of the High Commissioner for Human Rights (2022), Report of the Special Rapporteur on the human rights of migrants, A/77/189, available at: <https://www.ohchr.org/en/documents/thematic-reports/a77189-report-special-rapporteur-human-rights-migrants>



The International Development Law Organization (IDLO) is the only intergovernmental organization exclusively devoted to promoting the rule of law.

IDLO works to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity. Its programs, research and policy advocacy cover the spectrum of rule of law from peace and institution building to social development and economic recovery in countries emerging from conflict and striving towards democracy.



UNHCR, the UN Refugee Agency, is a global organization dedicated to saving lives, protecting rights, and building a better future for refugees, forcibly displaced communities and stateless people.

UNHCR works to ensure that everybody has the right to seek asylum and find safe refuge, having fled violence, persecution, war, or disaster at home. Since 1950, UNHCR has faced multiple crises on multiple continents, and provided vital assistance to refugees, asylum-seekers, internally displaced and stateless people, many of whom have nobody left to turn to. UNHCR helps to save lives and build better futures for millions forced from home.

Published by: International Development Law Organization (IDLO)
Viale Vaticano, 106 00165 | Rome | Italy
Tel: +39 06 40403200 | Fax: +39 06 40403232 | Web: www.idlo.int | Email: idlo@idlo.int | Twitter: @IDLO

Publication date: 2022. Copyright © 2022, International Development Law Organization (IDLO).
The views expressed in this Publication are the views of the authors and do not necessarily reflect the views or policies of IDLO or its Member Parties.
All rights reserved. This material is copyrighted but may be reproduced by any method without fee for any educational purposes, provided that the source is acknowledged. Formal permission is required for all such uses.
For copying in other circumstances or for reproduction in other publications, prior written permission must be granted from the copyright owner and a fee may be charged. Requests for commercial reproduction should be directed to the International Development Law Organization.