

SUSTAINABLE DEVELOPMENT GOAL 16.9

'Legal Identity', Nationality & Statelessness

On SDG 16.9:

“All people are persons before the law. I analyse this target to mean something more specific. To mean that states have duties and obligations to effectively register people without discrimination, so they can use that to access the rights they are already entitled too.”

**Laura Bingham, Open Society Justice Initiative,
Paperless People Podcast Series**

Cover photo © Greg Constantine

The notebook of a 'legally invisible' Roma child in Serbia. Before his father died, he wrote down the names and dates of birth of the boy and his siblings – the only record of their existence.

This booklet was written by Laura van Waas, Zahra Albarazi and Amal de Chickera, with financial support from the Knowledge Management Fund of the Knowledge Platform Security and the Rule of Law and Open Society Justice Initiative.

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Nationality is the legal link an individual has with a State. Statelessness is the most acute violation of the right to a nationality – which is a well-entrenched principle of international human rights law. A stateless person is someone who is not considered as a national by any state, under the operation of its law. Individuals, families, communities, minorities and nations can be affected by statelessness.

There is no internationally agreed definition of 'legal identity'. It can be understood to mean a set of elements and characteristics, which defines each person and governs their relationships, obligations and rights under both private and public law. Legal identity is to be protected by the law and is based on principles of human rights law. Persons should not be discriminated against on grounds of their legal identity, or lack of proof or evidence of legal identity.

Statelessness not only exposes people to poverty and marginalisation, it can render them invisible to state structures because they are not registered or counted anywhere. Without nationality and proof of legal identity, stateless people are increasingly vulnerable to being arbitrarily denied various rights.

SDG Goal 16.9 aims to "By 2030, provide legal identity for all, including birth registration". The language used here lacks clarity, and while it has tremendous potential to unlock resources to enhance access to rights for vulnerable groups, its ambiguity means that there is a risk that it could be counterproductive if it is blind to the structural discrimination and denial which often results in individuals and groups being denied proof of legal identity and being made stateless.

The invisibility of statelessness poses a cross-cutting challenge for the Sustainable Development Goals, and a distinct threat to implementing Goal 16.9. Developing technological solutions to provide a legal identity for all in a context where so many communities are denied identity, or wrongly identified as not belonging, can aggravate statelessness and its impact, undermining the core purpose of the SDGs, in particular, the aim to 'leave no one behind'.

Actors involved in implementing or monitoring the Sustainable Development Goals, particularly Goal 16.9, must understand the implications of statelessness for their work. They must also understand what ensuring legal identity may mean for stateless groups, if they are to achieve inclusive development, that has the potential to resolve the statelessness and exclusion for stateless communities worldwide.

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Issuance of birth notifications at a clinic in Northern Thailand. Ensuring that every child's birth is registered is part of the SDG 'legal identity' target (Goal 16.9) and can play an important role in preventing statelessness because it provides official documentation of the facts of a child's birth.

Photo © Laura van Waas

INTRODUCTION

At least 15 million people face a life without nationality. Many more have no legal identity documentation and are at risk of statelessness. In many instances, the lack of legal identity documentation is primarily a resource issue, which can be resolved through spending more, increasing capacities and devising more efficient systems of registration and documentation. However, when the lack of legal identity impacts stateless communities or increases the risk of statelessness among certain groups, there is likely to be deeper, structural discrimination at play. Understanding that the denial of legal identity documentation is often a political choice, and that resulting exclusion and/or statelessness is the intended outcome of this choice, is imperative.

When stateless communities are rendered invisible through a denial of documents, or when minorities face the risk of statelessness due to a denial of documentation or the provision of the wrong type of documentation which does not recognise them as citizens, they are likely to be further excluded and marginalised. They will have no access to basic services and rights, no political participation and no access to justice. Such exclusion is often intergenerational, resulting in each new stateless generation being further left behind. Such groups are the most in need of development assistance. However, their vulnerability and marginalisation often goes unrecognised and is poorly understood by those working on legal identity in the development sector.

By contrast, the gains to be made by addressing structural problems and ensuring the meaningful inclusion of such individuals and groups, through the provision of proof of legal identity, can be significant. Therefore, it is crucially important to get these policies and indicators right. It is vital that statelessness and legal identity actors become familiar with each other's fields so that they understand the extremely important role legal identity documentation can play in securing inclusion and equal rights for stateless persons and addressing global statelessness.

This booklet introduces key concepts that can be adopted by legal identity practitioners to protect vulnerable and marginalised groups. It also explains how flawed identity policies can cause and/or perpetuate statelessness. Finally, it presents some strategies to help ensure statelessness is effectively addressed through inclusive and human rights based development policies on legal identity.

If you are a legal identity practitioner who would like to learn more about statelessness, or if you are a statelessness actor trying to understand how statelessness relates to legal identity, this booklet is for you. It is part of our **Statelessness essentials** booklet series, which includes introductory booklets on statelessness and how it relates to various human rights, development and other issues. To learn more about this series and other available or forthcoming titles, please visit our website:

www.institutesi.org

THE SUSTAINABLE DEVELOPMENT GOALS

In September 2015, the United Nations General Assembly unanimously adopted the 2030 Agenda for Sustainable Development, replacing the Millennium Development Goals (MDGs) which the international community had committed to achieve by 2015.¹ This new Agenda lays the foundation for global development work for the next fifteen years and the core focus is to “strive for a world that is just, equitable and inclusive”. So, it is not just about economic growth, social development and environmental protection, but about **achieving this for all**.

No one must be left behind

The Agenda sets out 17 Sustainable Development Goals (SDGs or “Global Goals”) which cover a broad range of areas and challenges – including poverty, health, education, gender inequality, justice and climate change. The SDGs recognise the interconnectedness of different development challenges and opportunities, as well as their intersectionality with human rights principles. Importantly, the SDGs make it clear that development is not only a concern for developing countries – they are universal goals to be achieved by all UN member states.



The seventeen goals are made up of a total of 169 targets, which identify more specific objectives to be achieved. For instance, under Goal 10: Reduce inequality within and among countries, one of the targets is to “By 2030, progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average”. In total there are 232 agreed indicators against which progress to achieve the SDGs will be monitored.

SDG 16 & LEGAL IDENTITY FOR ALL

"All my friends go to places and I cannot go to them. I feel sad because I don't have ID and all my friends have ID"

A young stateless girl in Lebanon²

Ensuring that **no one is left behind** means paying special attention to the groups that are furthest behind. Inevitably, these are groups who have suffered structural discrimination over generations, resulting in the undermining of their potential and the engendering of their exclusion, disadvantage and impoverishment. It also means addressing problems such as violence and conflict that create insecurity and instability, thereby undermining development.

SDG16 focuses on peace, justice and strong institutions. This focus is essential to ensuring that no one is left behind, but it is new territory for development actors, representing a significant shift from the approach of the MDGs. Goal 16 has twelve targets on a range of issues from reducing violence, exploitation, human trafficking and corruption; to promoting the rule of law, access to justice and inclusive and participatory decision-making. SDG16.9 targets "legal identity" for all.

The World Bank estimates that **1.1 billion people lack proof of identity.** This is rightly viewed as a major impediment to the realisation of the SDGs.

How does a person access justice or benefit from development programmes if his or her very existence is not recognised?

How can progress on the SDGs be effectively monitored or measured if there are people who are invisible to the system as a whole?

What purpose does an indicator serve, if there are unrecognised communities who fall beyond the 100%?

Legal identity is perceived as being instrumental to realising many of the SDGs because it helps to unlock access to systems of social welfare and economic empowerment; and it helps to ensure that people are counted. A key aspect of legal identity that has been explicitly named in the target and indicator for SDG16.9, is birth registration, the act of officially recording the facts of a person's birth.



SDG Goal 16
"Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels"



SDG Target 16.9
"By 2030, provide legal identity for all, including birth registration"



SDG Target 16.9, Indicator
"Proportion of children under 5 years of age whose births have been registered with a civil authority, by age"

WHAT IS “LEGAL IDENTITY”?

Identity, like dignity, is inherent to all people, regardless of whether it can be proven. International human rights law protects the right to recognition everywhere as a person before the law and the right to equality before the law. Even the “legally invisible” enjoy basic legal personhood – they are equal subjects of the law. For instance, if an injury were inflicted on them, this would constitute a crime – or if they were accused of criminal behaviour, they would be subjected to criminal law.

However, there is no internationally agreed definition of “legal identity”, and the SDGs themselves offer no guidance in this regard. To help inform its work, ISI – in consultation with various experts - has developed the following working definition:

“Legal identity is a set of elements and characteristics, the combination of which is unique to every person, which defines each person and governs their relationships, obligations and rights under both private and public law.”³

Adopting this approach, and drawing on human right standards, we argue that:

- Legal identity is to be protected by the law and is based on principles of human rights law.
- Legal identity is not static, but evolves with changing circumstances.
- Legal identity is inherent to the dignity and equality of the person.
- Persons should not be discriminated against on grounds of their legal identity, or lack of proof or evidence of legal identity.
- The enjoyment and exercise of other rights and services which are grounded on elements of legal identity, should not be undermined due to lack of proof of identity.



Me



My Name



My family



My Nationality



My Personality

As the SDGs do not define legal identity, there is a risk that the scope of SDG 16.9 may be reduced exclusively to birth registration, the only named component of “legal identity” in what is clearly an open-ended list. Further, the only indicator to monitor progress under SDG 16.9, relates to birth registration. There is a risk that planning, energy and resources will be invested around rolling out birth registration, without proportionate attention being paid to the other elements of legal identity.

A Human Rights Council Resolution recognises that while it is important to promote birth registration for all, those who lack registration documents should not be penalised:

“[E]nsure that lack of birth registration or documents of proof of birth does not constitute an obstacle to access to and the enjoyment of relevant national services and programmes, in accordance with international human rights law”⁴

The Resolution also urges UN bodies, agencies, funds and programmes “to ensure that persons with no birth registration are not discriminated against in any of their programmes”. The approach taken by the Human Rights Council is to:

- Promote universal access to birth registration and other legal ID because this is critical in unlocking access to rights and services.
- Ensure that those without legal identity documentation are not denied access to or discriminated against in their enjoyment of rights and services.

This inevitable tension also underlies the issue of statelessness: everyone has the right to a nationality, yet no one should be denied access to other rights because their right to a nationality has been denied.

Paperless People Podcast

The SDGs have set the target of ensuring legal identity for all. This sounds great in principle, but are the right decisions being made? Also, is there a danger that well intentioned policies could leave the most marginalised and vulnerable locked into invisibility and exclusion? ISI's Paperless People Podcast explores these questions and more. It presents case studies from Serbia, India and the Dominican Republic and draws on the analysis of development, human rights and statelessness experts from around the world to look closely at how legal identity and statelessness interact. The Podcast also explores current attempts to try and address statelessness through the paradigm of legal identity work. Listen to the podcasts via itunes or your preferred podcast App, or scan the QR code to find out more and listen online.

You can also access the podcast online at:
<http://institutesi.buzzsprout.com>



LEGAL IDENTITY, NATIONALITY AND STATELESSNESS

There are two UN statelessness conventions and multiple human rights treaties that protect the right to a nationality and also protect the human rights of the stateless - who have been denied their right to a nationality. The causes of statelessness vary, but most often, statelessness is triggered by some form of discrimination. Discriminatory nationality laws,

discrimination against minorities in the context of de-colonisation and state succession, the inheritance of statelessness and poor administrative practices and procedures, which mostly impact the rural poor and ethnic and/or linguistic minorities, can all cause statelessness.

a **STATELESS PERSON** is someone who is "not considered as a national by any state under the operation of its law"

The majority of stateless persons have no legal identity documentation. They are often seen as outsiders, with no legal status, vulnerable to deportation, detention and other abuses. The nature of the problem is such that there are no comprehensive statistics on statelessness, but according to conservative estimates, there are at least 15 million stateless persons worldwide. The problem is expanding, as more children are born into statelessness each year than the number of stateless persons who obtain a nationality.

Statelessness and nationality should both be viewed as types of legal identity. Proof of nationality serves to identify the country with which an individual has a particular socio-legal bond, with corresponding rights and obligations. Proof of statelessness serves to identify the lack of any nationality, which is a protection status under international law, with corresponding rights and obligations in relation to the country the stateless person is in. The challenge when programming to provide legal identity documentation for all, is to ensure that:

All persons who have nationality are documented as such:

All persons who have the right to a particular nationality are documented in a manner that allows them to access that nationality without discrimination;

All those who are stateless and do not (yet) have an entitlement to nationality are documented as stateless, so they can receive protection and access to facilitated naturalisation as required under the 1954 Statelessness Convention.

This is particularly important because distinctions between national and non-national, citizen and stateless, documented and the undocumented will become more acute and life altering, the more access to rights and services are linked to providing the right type of documentation.

THE LEGAL IDENTITY BASKET

Building on ISI's working definition of "legal identity", we began exploring what would constitute "legal identity". All people have multiple identities, based on their belonging, beliefs, interests, affiliations etc. Where these identities have legal implications, in the form of relationships, obligations and rights, we are of the view that they comprise a part of the person's legal identity. Taking this approach to understanding and defining "legal identity", it is possible to visualise a basket of legal identities, the exact nature and composition of which is unique to each person. For example, Article 8 of the CRC provides that "nationality, name and family relations" are part of an open-ended list of integral aspects of a child's identity. These three aspects of legal identity are fundamental, to the extent that the UN Secretary General stated in 2015 that:

The arbitrary deprivation of nationality of children is a significant barrier to the realization of ... target (16.9), which will not be fully met unless articles 7 and 8 of the CRC are universally respected and fulfilled and childhood statelessness has been eradicated."³

We propose that another key set of components of the Legal Identity basket are the immutable or acquired characteristics of any person, which are legally protected from being the basis for discrimination. The ICCPR's open-ended list is "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Other characteristics such as disability, age and sexual orientation are now permanent additions to the discrimination lexicon.

Protection status – that of refugee, stateless person or victim of trafficking for example – is another important set of legal identities; as is the legal status of national, voter, permanent resident, tourist, irregular migrant etc. Finally, other statuses with correlating rights and obligations, such as employment status, may also be included. While documentation or proof of these different types of legal identity is not always necessary or even desirable (e.g., in relation to protected characteristics), documentation establishing many of these different aspects of legal identity is often necessary to establish belonging and access rights.

| |
|---|
| Legal Identity Basket |
| Nationality |
| Name |
| Family, family ties, descent, and relationships |
| Protected Characteristics |
| Protection status |
| Legal status |
| Employment status |

Paperless People Podcast
#1 What is statelessness?



"You have a fundamental problem if the state can't see you and a state very often can't see you if you are stateless. So, what SDG 16.9 tries to do is emphasise the need to register people."

Joshua Castellino, expert on minority rights,
Paperless People podcast series

CASE STUDY: THE DOMINICAN REPUBLIC

Dominicans of Haitian descent have faced discrimination and racism for many generations, culminating in the arbitrary deprivation of their citizenship. In 2013, a judgment of the Constitutional Court of the Dominican Republic (DR) retroactively deprived those born in the Dominican Republic of their Dominican citizenship if their parents were irregular migrants at the time of their birth, even though they had been recognised as citizens according to the laws in effect between 1929 and 2010. This decision made an estimated 133,770 Dominicans of Haitian descent stateless overnight.⁶

In response to national and international outcries against the mass deprivation of nationality caused by the judgment, the Dominican State issued Law 169-14, which divided affected persons into two groups. Those in Group A were born on Dominican territory between June 16, 1929 and April 18, 2007 and had their births recorded in the Civil Registry, while Group B corresponded to persons born in the DR during the same period whose births were never registered. The law provides for those in Group A to register as Dominican citizens (though they face many challenges in practice), whereas those in Group B are required to register as foreigners.

This approach of dividing the community into groups and attaching different levels of belonging and status to each group, further added to the confusion, insecurity and discrimination faced by members of this minority community. The state's efforts to "document" these persons in Groups A and B, can be portrayed as meeting the target of realising legal identity for all. However, in reality, what has happened is an entire community, who had a legal identity as "nationals" of the DR, have had their nationality stripped from them, with those deemed to be in Group B (by virtue of them having been denied access to birth registration) now being required to register as "foreigners", which is an inappropriate identity to impose on persons born and raised in the country and entitled to its nationality under the constitution in place at the time of their birth and who also hold no other citizenship. These people have been excluded and caste as outsiders through a discriminatory process that does not conform with international legal standards. However, they have been registered and therefore it could be argued that they do have a legal identity.

| Legal Timeline | |
|----------------|--|
| 2004 | "In transit" redefined as without residence status. |
| 2007 | The Book of Foreigners segregates those born in the country into 'citizens' and 'non-citizens', denying ID cards and basic rights to the latter. |
| 2010 | New Constitution denies nationality to children of foreigners "residing illegally" in the D.R. However, those recognised as citizens prior to when the Constitution was enacted remain citizens. |
| 2013 | Constitutional Court retroactively deprives nationality of hundreds of thousands of Dominicans of Haitian descent born between 1929 and 2010. |
| 2014 | Those affected by Court ruling divided into Group A (births were recorded in the Registry) and Group B (births never registered). |



Paperless People Podcast #5:
Identity denied: citizenship stripping
in the Dominican Republic



Photo © Laura van Waas

The example of the DR demonstrates why legal identity should not be approached merely as a quantitative target. The objective should not be to register the highest possible number of people, but to ensure that all persons receive proof of legal identity which correlates to their reality, and that the laws, policies and practices which enable the attribution of legal identity documentation are neither discriminatory nor arbitrary.

“We always had birth certificates because our father had us all registered when we were born. So, whenever I needed a copy of my birth certificate, I went to the Civil Registry and got it. That was up until 2007... I turned 18, which is the age of majority and to get an ID. I began the process and when I returned to the Registry Office I was told they cannot give me an ID because my parents are foreigners - Haitians. [Later], what they did was create a new registry. They took us out of the normal registry and put us in a ‘foreign’ registry. My current birth certificate says I was registered in 2014. My life was paralysed for 7 years.”

Isidro, a Dominican citizen of Haitian descent

Lessons from the Dominican Republic

- It is not adequate to merely issue a birth certificate to a child, the ‘quality’ of that certificate is important.
- It is important to protect the integrity of birth registration and other forms of legal identity documentation from discrimination and arbitrary interference that may have a direct impact on a person’s status and access to socio-economic rights.

IMPLEMENTING SDG 16.9

The ID4D programme of the World Bank and UNDP are spearheading the implementation of SDG 16.9, in partnership with states, other development actors and private sector entities. The World Bank has described its role as follows:

To enable all people to exercise their rights and access services, ID4D helps countries realize the transformational potential of inclusive, robust, and responsible digital identification systems.”

The discourse around SDG 16.9 makes it clear that the main priority of the key players is to invest in digital technologies, through which legal identity documentation can be rolled out more efficiently and comprehensively. UNDP, for example, has spoken of the transition from paper-based systems to biometric systems which will harness digital technology for legal identity. The thinking appears to be that these technologies may be the key to unlocking more universal access rights and services. By contrast, there is little to no emphasis on scrutinising the legal and policy structures which determine legal identity and ensuring that these are not discriminatory or arbitrary.

As mentioned above, the only indicator for Goal 16.9 is birth registration coverage of children under the age of five. It is not clear what other aspects of legal identity documentation will be prioritised (if any), and how this will be implemented.

“Being given a document that proves your identity might be useful in some contexts, where your nationality is not in doubt, but if you have a document that says ‘this person is not a citizen’ of the country in which they are living and they don’t have a document confirming that they are a citizen of any other country, then all it does is lock the person into a situation of not being a citizen.”

Bronwen Manby, expert on citizenship issues in Africa, Paperless People podcast series

Paperless People Podcast #2:
The legal Identity Dilemma



The World Bank's ID4D has consulted with other actors involved in the implementation of SDG 16.9 to develop a set of shared Principles that aim to maximize the benefits of identification systems for sustainable development and mitigate some of the risks. To date, these Principles have been endorsed by over 20 stakeholders in this field, including UN agencies such as UNDP, UNICEF and UNHCR, as well as development financing, civil society and private sector actors.

One of the core areas that the Principles seek to address is "Inclusion", where the aim is to ensure universal coverage, free from discrimination, and to remove barriers to access. This is important for stateless populations, who may need reasonable accommodation through the tailoring of identification systems, to ensure that barriers to their inclusion are identified and addressed. The Principles do not, however, directly address the risks outlined in this booklet with respect to the generation, perpetuation or entrenchment of statelessness through the implementation of identification systems that are discriminatory and "lock" people out of citizenship. This is an aspect that could be brought into the Principles.

PRINCIPLES

INCLUSION:

UNIVERSAL
COVERAGE AND
ACCESSIBILITY

1. Ensuring universal coverage for individuals from birth to death, free from discrimination.
2. Removing barriers to access and usage and disparities in the availability of information and technology.

DESIGN:

ROBUST, SECURE,
RESPONSIVE, AND
SUSTAINABLE

3. Establishing a robust—unique, secure, and accurate—identity
4. Creating a platform that is interoperable and responsive to the needs of various users.
5. Using open standards and ensuring vendor and technology neutrality.
6. Protecting user privacy and control through system design.
7. Planning for financial and operational sustainability without compromising accessibility.

GOVERNANCE:

BUILDING TRUST
BY PROTECTING
PRIVACY AND
USER RIGHTS

8. Safeguarding data privacy, security, and user rights through a comprehensive legal and regulatory framework.
9. Establishing clear institutional mandates and accountability
10. Enforcing legal and trust frameworks through independent oversight and adjudication of grievances.

Visit id4d.worldbank.org/principles to find out more

PROMOTING INCLUSIVE LEGAL IDENTITY SYSTEMS

In order to mitigate the risk of exclusion and to promote inclusive legal identity systems in a context where there are challenges around citizenship and belonging is to offer tailored support to those communities most at risk. An example is Namati's Citizenship Program, which works with partners to train and support paralegals from within communities who have citizenship rights in law, but in practice face discrimination in acquiring or using legal identity documents.

Paralegals mobilize people to understand their citizenship rights and administrative requirements and to initiate the process of applying for documentation. Paralegals then empower clients to use that legal knowledge as they navigate government bureaucracy, negotiate with government officials, stand up to corruption, overcome systemic discrimination, and secure documentation. Paralegals rigorously track data on each case, such as how much time each step required, what supporting documents the client had to submit, and the outcome.

In the aggregate, across hundreds or thousands of paralegal cases, this grassroots data becomes empirical evidence on implementation of the law, including where the system is working well and what gaps remain. The data supports advocacy for systemic legal reform to end discriminatory policies and practices as well as remove administrative obstacles to improve access to documentation for all.



Photo © Namati / Noor Khamis

“Community paralegals can instill confidence in members of marginalized communities – many of whom are formerly stateless or potentially at risk – to engage the system and to persist as they navigate complex or discriminatory bureaucracies. At the same time, paralegal case data becomes evidence of how people experience the administrative system in practice – the basis for national-level systemic change on citizenship and registration.”

Laura Goodwin, Program Director, Citizenship, Namati
www.namati.org

WHAT DO YOU MEAN, I DON'T EXIST?

What do you mean I don't exist?
You just wished me "good morning"
This is not what I expected
I had no prior warning

What do you mean I don't exist?
You're looking at me now
And as I told you my story
I saw you raise an eyebrow

What do you mean I don't exist?
Because I can't show you an ID
I have come to ask you for my papers
That's where you're meant to help me

What do you mean I don't exist?
Because I'm not in your system?
If your computers told you Elvis lived
Would you just believe them?

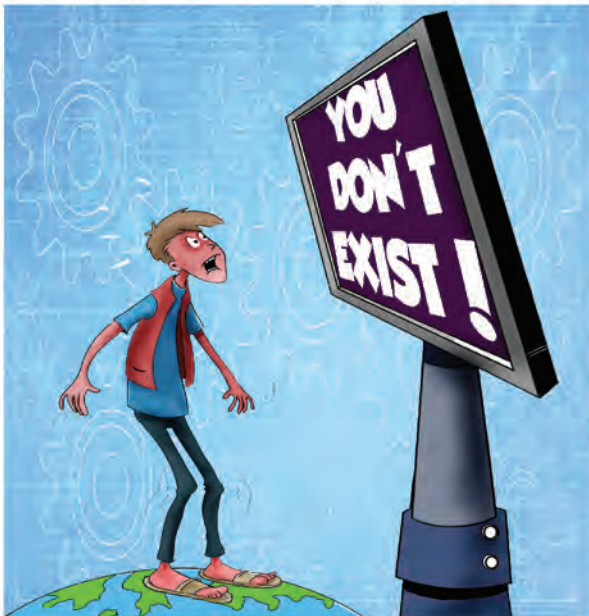
What do you mean I don't exist?
And there's nothing you can do?
Ask a colleague, get your boss
Show me to the correct queue

What do you mean I don't belong?
Because I don't exist?
And I need to seek help somewhere else?
Check another country's list?

What do you mean I don't belong?
I grew up just down the road!
My mum and dad were born here too
I have never left this postcode!

What do you mean I don't exist?
I'm pretty sure I do
After all, here I am
Standing right in front of you

Poem by Laura van Waas



Cartoon © Divakar Chettri

CASE STUDY: ASSAM, INDIA

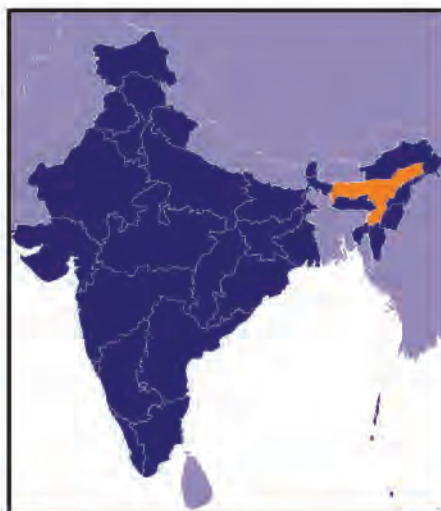
The Indian state of Assam is home to more than 32 million people, of which approximately a third are Muslim, many of them, refugees who fled to India during the Bangladesh liberation war. Anti-migrant sentiment has long festered in the state. In the 1980s for example, hundreds of people were killed in anti-immigrant protests. A 1985 accord between government and protesters, declares that anyone who irregularly entered the state after March 24, 1971, is a foreigner. In 2018, the National Registration of Citizens (NRC) went through a process of being updated for the first time in more than six decades, to create a list of citizens of India living in Assam and thereby identifying 'illegal' migrants.

Under this process, all residents were required to apply for inclusion in the citizen list by filling out a four-page application form and providing proof of their own or their ancestors' inclusion in the 1971 Electoral Rolls or in the previous 1951 NRC. If this proof could not be provided, applicants had to provide other types of documentation.

The NRC updating process is being monitored by the Supreme Court of India. A draft list was published on 30 July 2018, that excluded the names of about 4 million individual applicants. Those who were left out have been given until 15 December 2018 to file claims and objections, and face a real risk of statelessness if they are not recognised as Indian citizens. This case shows how a process of identification and registration, if motivated by discriminatory and xenophobic objectives, can result in mass scale denationalisation and exclusion of millions of people.

“People are being asked to produce documents from more than 50 years ago in a country with no history of keeping documents. The most vulnerable are the ones paying the biggest price – this is faulty bureaucratic process.”

Ravi Hemadri, Director of the Development and Justice Initiative, India



Paperless People Podcast #4
Erasing legal identity in Assam



While displacement can lead to statelessness, the opposite is also true. Stateless children are among those who cross international borders fleeing persecution. Their statelessness can make them especially vulnerable, limiting the pathways of migration available – making them more likely to be smuggled or trafficked – but potentially also creating additional challenges in accessing protection in host countries.

“What will happen to us? What will the government do to us? They might send us out of the state or harm us – these are some of the fears in my mind. The children were very sad on hearing this news. ‘What will happen mother? Our names did not appear, only yours. What will we do now?’ they asked. I cried for them that we have this problem.

We have to keep working hard to get the documents we need. My husband is upset. ‘Why has it happened like this? How has this happened?’ He asks me. I am unable to answer his questions.”

Lessons from Assam

- SDG 16.9 does not address the situation in Assam: the indicator relates to birth registration for children under 5, whereas in Assam, people of all ages are facing an acute threat to a vital element of their legal identity: their citizenship.
- A bureaucratic process that appears to be an administrative exercise – seeking to ‘verify’ identity – can actually change a person’s legal identity, generating exclusion and leaving already marginalised groups even further behind.

In a letter to India’s External Affairs Minister, four UN Special Rapporteurs (on minorities, racism & xenophobia, freedom of expression and freedom of religion) expressed deep concern over the discriminatory motivations and impact of the NRC process:

“...[M]embers of the Bengali Muslim minority in Assam have experienced discrimination in access to and enjoyment of citizenship status on the basis of their ethnic and religious minority status. We are particularly concerned that this discrimination is predicted to escalate as a result of the NRC. The way this update has been conducted potentially affects a great number of Muslims and persons of Bengali descent who may be wrongfully excluded from the updated NRC because of their historical and continuing treatment as foreigners and illegal immigrants in Assam. If these allegations are founded, the updated register poses a dire risk to thousands of Indian citizens who may wrongfully be declared as “foreigners” and consequently rendered stateless.”⁷

MONITORING PROGRESS ON SDG 16.9

“Proportion of children under 5 years of age whose births have been registered with a civil authority, by age”.

Only indicator to monitor progress towards achieving SDG16.9

This indicator has been classified as being Tier 1, which means that it is considered to be conceptually clear, has an internationally established methodology and data is regularly produced by at least 50% of countries. Only 93 of the 232 SDG indicators are classified as Tier 1,⁹ suggesting that monitoring progress on SDG16.9 should be relatively straightforward as compared to other Targets.

The data source for this indicator is UNICEF, which monitors birth registration rates as part of its child rights mandate. As of 2018, data is available for 147 countries globally.⁹ This data shows that the global average for birth registration coverage of children under the age of five is 71%. However, there is significant divergence between regions, across countries and within countries (between regions and communities). The average rate in sub-Saharan Africa for example, is under 50% and the five “worst performing countries” have rates below 15%.

Globally, on average, **7** out of **10** children under the age of 5 have had their birth registered



According to a Progress Report on SDG16 by the Institute for Peace and Economics, which studied available data for the period 2006 – 2015, there is only one “data point” for SDG 16.9.¹⁰ This means that it is not (yet) possible to assess progress. More importantly, the indicator and dataset itself have a number of flaws and limitations, in particular when understood in light of the overall ambition of the SDGs to **leave no one behind**. As discussed above, ‘birth registration’ establishes only a few of the many items in the basket of legal identity. **This indicator is wholly inadequate to monitor progress of documentation of other aspects of legal identity.** Further, even in relation to monitoring birth registration, there are gaps, with no measurement of:

Immediate registration of birth, despite the CRC obligating states to register all births immediately.

Birth registration of children over 5 or adults.

The quality of birth registration. For example, what information is recorded and how does this correspond to nationality law criteria?

Disaggregated data on who has and has not been registered (girls, disabled, minorities, rural poor etc.) and why?

How the 100% is measured, and if there are communities or individuals who are not even counted within the 100% to begin with.

CASE STUDY: SERBIA

According to Serbian rules and regulations, a child of undocumented parents cannot be registered at birth until his/her parents (or at least the mother), regulate their status and obtain personal documents. Therefore, the children of undocumented parents are left without birth registration for – in the best case – at least a couple of months, but often a year or even longer. This policy can result in denial of access to rights and entitlements such as health care and social protection, and in extreme situations, can even cause statelessness.

Importantly, this problem almost exclusively affects the Roma minority. According to the latest data 99.4% of children under age 5 have had their births registered in Serbia. However, research conducted by the UNHCR in 2015 has shown that 8% of children under the age of 4 in Roma settlements are not registered in birth registry books.¹¹

“On the surface the figures look good. The underlying problem here is discrimination and marginalisation of a community, something that current SDG efforts will not notice in the way they are implemented.”

Ivanka Kostic, Executive Director of Praxis, a human rights organization based in Serbia

The disproportionate impact of poor birth registration on minorities is demonstrated by this reality. Despite the principle to leave no one behind, the SDG 16.9 indicator is not sufficiently nuanced to capture this type of disproportionate impact through disaggregated data. “Legal invisibility” is passed from generation to generation among these groups, leaving those who were already left behind not only unable to catch up, but actually falling further behind.



Paperless People Podcast #3
Legal invisibility and Roma in Serbia



Lessons from Serbia

- Structural impediments can block access to ‘legal identity, including birth registration’ for some, even if overall coverage is good or improving.
- “Legal invisibility” is perpetuated across generations, leaving those already left behind, further behind.
- Systemic barriers affect the poorest and most marginalised – including minorities - who should be the (first) targets of development support.

FURTHER READING

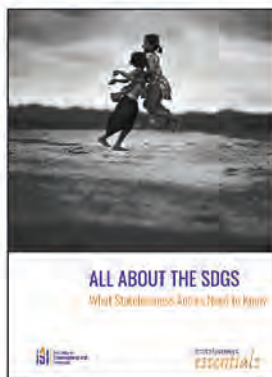
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- Namati and Open Society Justice Initiative, Documenting Citizenship and Other Forms of Legal Identity, 2018.
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ENDNOTES

- 1 UNGA, '55/2, United Nations Millennium Declaration' (2000) A/55/L2.
- 2 UNHCR, #ibelong – 9 year old Rama thinks being stateless is unfair, 2015, available at: <https://www.youtube.com/watch?v=qAGTBY42s5Q>
- 3 Institute on Statelessness and Inclusion, Statelessness, human rights and the Sustainable Development Agenda, February 2017, Available at: http://www.institutels.org/SDG_working-paper2017.pdf
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- 5 UN Secretary General's report on the arbitrary deprivation of nationality of children, 2015, A/HRC/31/29, Para 33.
- 6 Executive Committee of the High Commissioner's Programme, Overview of the UNHCR's Operations in the Americas, UNHCR Standing Committee: 65th Meeting (23 February 2016), <http://www.unhcr.org/56ed75a59.pdf>.
- 7 See <https://www.ohchr.org/Documents/Issues/Racism/SR/Communications/OL-IND-13-2018.pdf>
- 8 The remaining SDG indicators are Tier 2 (conceptually clear but data not regularly reported) or Tier 3 (no internationally established methodology or data collection yet agreed). UN Department of Economic and Social Affairs – Statistics Division, Tier Classifications of Global SDG Indicators, 11 May 2018.
- 9 UN Department of Economic and Social Affairs – Statistics Division, Data on SDG16, available at: <https://unstats.un.org/sdgs/report/2017/goal-16/>.
- 10 Institute for Economics & Peace, SDG 16 Progress Report: A comprehensive audit of progress on available SDG16 indicators, 2017.
- 11 UNHCR, Ulica u opasnosti od apatridije – Ocena napretka 2010-2015, Belgrade, June 2016, available at: http://www.unhcr.rs/media/docs/UNHCR_Brosura_Apatridi_SRPSKI.pdf, p. 21

GLOSSARY OF ABBREVIATIONS

| | |
|------------------------|---|
| 1954 Convention | 1954 Convention relating to the Status of Stateless Persons |
| CRC | Convention on the Rights of the Child |
| ICCPR | International Covenant on Civil and Political Rights |
| ID4D | Identification for Development (World Bank) |
| MDGs | Millennium Development Goals |
| NRC | National Registration of Citizens |
| SDGs | Sustainable Development Goals |
| UNDP | United Nations Development Programme |
| UNHCR | Office of the UN High Commissioner for Refugees |
| UNICEF | United Nations Children's Fund |



This booklet is number 9 of the Institute's **statelessness essentials** series. Other booklets in the series are:

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5. Statelessness & Human Rights: The Universal Periodic Review
6. Statelessness & Human Rights: The Convention on the Rights of the Child
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How can working on legal identity play a role in addressing statelessness?

At least 15 million people face a life without nationality. Many more have no legal identity documentation and are at risk of statelessness. In many instances, the lack of legal identity documentation is primarily a resource issue, which can be resolved through spending more, increasing capacities and devising more efficient systems of registration and documentation. However, when the lack of legal identity impacts stateless communities or increases the risk of statelessness among certain groups, there is likely to be deeper, structural discrimination at play. Understanding that the denial of legal identity documentation is often a political choice, and that resulting exclusion and/or statelessness is the intended outcome of this choice, is imperative.

The exclusion of stateless groups who have been denied legal identity documentation is often intergenerational, resulting in each new stateless generation being further left behind. Such groups are the most in need of development assistance. However, their vulnerability and marginalisation often goes unrecognised and is poorly understood by those working on legal identity in the development sector. By contrast, the gains to be made by addressing structural problems and ensuring the meaningful inclusion of such individuals and groups, through the provision of proof of legal identity, can be significant.

This booklet introduces key concepts that can be adopted by legal identity practitioners to protect vulnerable and marginalised groups. It also explains how flawed identity policies can cause and/or perpetuate statelessness. Finally, it presents some strategies to help ensure statelessness is effectively addressed through inclusive and human rights based development policies on legal identity.

If you are a legal identity practitioner who would like to learn more about statelessness, or if you are a statelessness actor trying to understand how statelessness relates to legal identity, this booklet is for you.

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The Institute on Statelessness and Inclusion is an independent non-profit organisation committed to realising the right to a nationality for all, through our role as expert, knowledge partner, catalyst for action and advocate for change.