

4. Addressing statelessness through the rights to equality and non-discrimination

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1. Introduction

*“My neighbours speak badly to me because I am stateless. They tell me that I am not worthy of doing anything. They mean that I can’t study further, I can’t get my certificates, I can’t fight for common man posts, I can’t do anything to make something of myself and so why would they want to speak to me. They are my neighbours, my relatives.” Siwani, Nepal.*²

Many statelessness stories, like that of Siwani, are tales of marginalisation and discrimination.³ Sometimes the centrality of discrimination to a person’s story is obvious. Siwani, for example, is stateless because her mother is Nepali but her father is not and Nepal is one of 27 countries that still have discriminatory nationality laws which do not allow women to confer their nationality on their children on the same basis as men. Sometimes the link between

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² Siwani, the stateless daughter of a Nepalese woman, reflecting on her feeling that she faces discrimination from members of the community as well as authorities in Nepal during an interview with the Equal Rights Trust in Kathmandu on 14 October 2015. See, Equal Rights Trust, *My Children’s Future: Ending Gender Discrimination in Nationality Laws*, 2015, p. 23.

³ For example, the United Nations High Commissioner for Refugees (UNHCR) has stated that, “[d]iscrimination on the basis of ethnicity, race, religion, language or disability is a recurrent cause of statelessness. In fact, the majority of the world’s known stateless populations belong to minority groups. Instances of denial, loss and deprivation of nationality on discriminatory grounds leading to statelessness continue to occur in a range of countries. These include situations of mass deprivation of nationality on the grounds of ethnicity or race during recent decades.” UNHCR, *Global Action Plan to End Statelessness: 2014-2024*, p. 14.

discrimination and statelessness is less clear. Rules which appear to apply equally, such as procedures for school enrolment may, on closer examination, disadvantage stateless children and so amount to indirect discrimination. As a result, stateless people's ability to participate in all aspects of life on an equal basis with others and to fully enjoy their human rights is often severely impeded. They are typically excluded from civic life and rarely have full access to key rights such as work, education and healthcare. Whether obvious at first glance or not, discrimination is present in nearly every stateless person's story.

One can neither tell the story of statelessness, nor seek to finish it for good, without addressing the inequality and discrimination faced by its protagonists. This chapter begins by exploring the relationship between inequality and statelessness. It argues that statelessness cannot be eradicated unless discriminatory societal attitudes which view some people as less worthy of inclusion than others are comprehensively tackled. While such attitudes will not change overnight, there are some measures that can be used to put changes in motion now. This chapter posits that an improved use of the legal framework on equality to address statelessness is both possible and important.⁴ This framework is both powerful – enshrined as it is in international human rights law – vital and, to-date, under-used. This chapter provides an overview of the legal framework on equality before reviewing some practical ways in which the framework can be used both to tackle the existence of statelessness and to mitigate its impacts.

2. The relationship between inequality and statelessness

No society is equal. In all societies the privileged disproportionately enjoy social goods and opportunities while other groups battle against socio-economic and political disadvantage. The equality activist's role is to struggle for the utopian world reflected in the Universal Declaration of Human Rights (UDHR), which recognises "the inherent dignity and [...] the equal and inalienable rights of all members of

⁴ The legal framework on equality has multiple sources and continues to develop. For a best practice interpretation of its content see, Equal Rights Trust, Declaration of Principles on Equality, 2008. For further insight into its content and legal sources see also B. Hepple, *Equality: The New Legal Framework*, Hart Publishing 2014; S. Fredman, *Discrimination Law*, Oxford University Press, 2011; T. Khaitan, *A Theory of Discrimination Law*, Oxford University Press 2015.

the human family”.⁵ In this utopia stateless people, indeed all people, would be free to live their lives in dignity and to achieve their potential without being affected by prejudice and discrimination. They would have equal opportunities to participate in society and to enjoy a full range of civil, political, economic, social and cultural rights.⁶ Sadly, in today’s world the stateless are among those situated the furthest from the privileged few. They suffer significant disadvantage and inequality both in their own country, which fails to recognise them as citizens, and in migratory contexts. Moreover, discrimination is often a central cause for their being stateless in the first place.

2.1 Discrimination as a cause of statelessness

The various causes of statelessness are well known and include: nationality laws which are discriminatory on grounds of gender (limiting women’s ability to confer, acquire or retain their nationality), race, ethnicity or religion (denying equal access to nationality for ethnic and religious groups), disability and other grounds; conflict between the laws of different States which leave people stateless when they fall through the gaps of legal recognition; State succession leading to new States (or newly redefined States) setting up new criteria for citizenship which may exclude some; the legacy of colonisation, de-colonisation and subsequent nation-building; bad administrative practices both in determining nationality and in relation to documentation which may be needed to help establish nationality; and (the largest category) the inheritance of statelessness, whereby statelessness imposed on a person or community in the past remains unrectified today and is passed on to new generations.⁷ In many of these circumstances,

⁵ Universal Declaration of Human Rights, 10 December 1948, Adopted and proclaimed by General Assembly resolution 217 A (III), Preamble. See also the UN Sustainable Development Goals, which are based on the fundamental assertion that no one will be left behind. UN General Assembly, *Transforming our World: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1. See, R. Govil, “The Sustainable Development Goals and solutions to statelessness”, chapter 2 in this book.

⁶ These lofty ambitions for the ideal society are influenced by much thinking that has been done on the true meaning of equality. Some of this thinking is articulated in the following, Equality Act 2006 (UK), Section 3; Hepple, *supra* n3; Equal Rights Trust, *Declaration of Principles on Equality*, *supra* n4.

⁷ For a more detailed overview of the causes of statelessness see, Institute on Statelessness and Inclusion, *The World’s Stateless*, Wolf Legal Publishers 2014, pp. 23–27.

statelessness is the result of the denial of nationality which may be arbitrary under international law.⁸ The relevance of discrimination as a key element of each of these causes of statelessness is often underestimated.⁹

Most clearly, statelessness may result from discriminatory laws. As stated above, 27 countries continue to have nationality laws which discriminate between men and women in determining who can confer their nationality on their children. Where a directly sex discriminatory law prevents a mother from conferring her nationality on her child, that child may be at risk of statelessness if they are also unable to acquire nationality from their father (e.g. where he himself is stateless, he is deceased or his identity is unknown, he cannot confer his nationality on his children due to conflict of laws or he refuses to do so).¹⁰ For example, in Nepal, despite much advocacy, the recent enactment of a new Constitution has not resulted in the removal of gender discrimination from the country's nationality laws.¹¹ Accordingly, it remains the case that children born in Nepal to a Nepali mother and a father whose identity is unknown, who is deceased or has deserted the family, who is a foreigner or who refuses to acknowledge his paternity may become stateless.¹² Despite a recent increase in the calls for reform of the laws of these 27 countries, spearheaded by the Global Campaign for Equal Nationality Rights and other actors, the abolition of this cause of statelessness remains some way off.¹³

⁸ See for example, various UN Secretary General reports on arbitrary deprivation of nationality: A/HRC/31/29; A/HRC/25/28; A/HRC/23/23; A/HRC/19/43 etc.; and various UN Human Rights Council Resolutions on the arbitrary deprivation of nationality: Resolution 32/5 (2016); 26/14 (2014); 20/05 (2012) etc.

⁹ The authors explored this link in an earlier article: A. de Chickera and J. Whiteman, "Discrimination and the human security of stateless people", *Forced Migration Review* 2014, Issue 46, p. 56. This article has formed the starting point for the analysis which follows.

¹⁰ See UNHCR, Global Action Plan, *supra* n3, p. 12.

¹¹ Constitution of the Kingdom of Nepal 2015, Section 11, Part 2.

¹² For testimonies from individuals affected by the discriminatory laws in Nepal see Equal Rights Trust, *My Children's Future*, *supra* n2.

¹³ For more information about the campaign and efforts for reform in the twenty seven countries see, Global Campaign for Equal Nationality Rights, www.equalnationalityrights.org. Both ERT and ISI are steering committee members of the campaign and both authors serve on the committee.

Statelessness can also result from direct racial or ethnic discrimination.¹⁴ For example, the Rohingya – an ethnic, religious and linguistic minority are one of the most vulnerable communities in the world, considered by their home country, Myanmar, to be illegal immigrants from Bangladesh, despite having lived in Myanmar for many generations. The Rohingya have been arbitrarily deprived of their nationality and made stateless by Myanmar; its 1982 Citizenship Law clearly discriminates on grounds of ethnicity.¹⁵ In the more recent past, racial discrimination has also caused the statelessness of certain Dominicans of Haitian descent in the Dominican Republic.¹⁶

Less obviously linked to discrimination is statelessness occurring as a result of State succession. Historically this has been seen as a “technical”, almost neutral, cause of statelessness.¹⁷ However, closer analysis reveals that here too discrimination may play a significant role. Indeed, most often, “it is vulnerable minorities who are associated with either the successor or parent State who are deprived of nationality, exposing the discriminatory motivations and arbitrary nature for such exclusion”.¹⁸ This reality has played out in relation to the former Union of Soviet Socialist Republics (USSR), the former Yugoslavia (for example, many Roma are stateless in the Balkan States), Kurds whose country was divided among Iran, Iraq, Syria and Turkey, and Eritreans in Ethiopia.¹⁹ The experience of colonisation and de-colonisation is also an example of State succession and caused many of the most large scale and entrenched situations of statelessness in the world today. In

¹⁴ *Supra* n3.

¹⁵ For more information on the discrimination and arbitrary deprivation of nationality of the Rohingya, see among others, UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 2 April 2014, A/HRC/25/64; UNHCR Myanmar, 2014 UNHCR Country Operations Profile; Equal Rights Trust, *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*, 2014.

¹⁶ For more information, see among others, Inter-American Commission on Human Rights. Report on the situation of human rights in the Dominican Republic, 2015, K. Shipley, *Stateless: Dominican-born Grandchildren of Haitian Undocumented Immigrants in the Dominican Republic*, 2016; and Inter-American Court of Human Rights, *Case of Expelled Dominicans and Haitians v. Dominican Republic*, Judgment of 28 August 2014.

¹⁷ See, J. Tucker, “Statelessness in Central Asia: From State succession to solutions”, chapter 11 in this book.

¹⁸ Institute on Statelessness and Inclusion, *supra* n7, p. 24.

¹⁹ See, for example, K. Southwick, “Ethiopia-Eritrea: Statelessness and State succession”, *Forced Migration Review* 2009, Issue 32.

such contexts, newly independent States (many of which never had a common pre-colonial national identity) have had to deal with borders arbitrarily drawn (often dividing ethnic groups) peoples forcibly migrated (for labour) and the consequences of decades, sometimes centuries, of colonial rule which successfully pitted different ethnic and religious groups against each other, privileging some and marginalising others, as part of a wider divide and rule policy.²⁰

As contemporary States are responsible for protecting the human rights of all people subject to their jurisdiction, they cannot hide behind the veil of “colonisation” to justify or explain away the discriminatory treatment and disenfranchisement of marginalised groups. However, understanding this historical context and its implications for equality and non-discrimination are an essential pre-requisite to addressing them.

Bad administrative practices often enable discrimination and prejudice to be determinative of whether or not a person will be recognised as a citizen in a given country. This is particularly common where individual officers are given broad discretion to determine the outcome of an application for citizenship documentation. In Madagascar for example, Malagasy identity is perceived by many Madagascans as racially determined. In a recent study, individuals reported that discriminatory attitudes based on race held by local officials influenced the rejection of their applications for citizenship or for a national identity card. For example, those who had names which were “not considered Madagascan – such as Arab, Muslim or Comorian sounding names – often encountered problems” and faced officials who felt they were “not really Madagascan”.²¹ The lack of judicial oversight of these individual decisions means that individuals have little recourse to contest administrative decisions. The cumulative impact of such poor administrative practices can be profound. “In Thailand, Lebanon and Kuwait for instance, statelessness became a feature of the landscape many decades – and several generations – ago, when the nationality laws were first being administered by the State.”²² Almost inevitably, it was vulnerable groups who were excluded – those who live in remote areas, have nomadic lifestyles, are from an ethnic minority,

²⁰ Institute on Statelessness and Inclusion, *supra* n7, p. 25.

²¹ Equal Rights Trust, *My Children’s Future*, *supra* n2, pp. 12-13.

²² Institute on Statelessness and Inclusion, *supra* n7, p. 26.

etc. Their statelessness has since been used as the justification for their continued exclusion from society down the generations. A more subtle form of discrimination can also play out. This is where socio-economically disadvantaged groups – most often the rural poor – cannot acquire documentation due to difficulties in accessing centralised administrative offices. The resulting lack of documentation – while not akin to statelessness (many citizens around the world do not have documentation) – can result in statelessness for those who cannot prove place or date of birth, parentage or other information needed to demonstrate eligibility for citizenship.

Finally, the inheritance of statelessness is the biggest cause of statelessness in the world today. The impact of the causes identified above continues because States have not found solutions for stateless populations and new generations are therefore born into statelessness every day. This lack of will to address existing statelessness situations is often linked to discriminatory attitudes and perceptions about belonging.

2.2 The inequalities of stateless persons

Statelessness is the most extreme consequence of the violation of the right to a nationality. As described above, this is often motivated by discrimination on grounds of race, ethnicity, gender, socio-economic disadvantage or even disability.²³ Discrimination which leads to statelessness often continues to affect the life of the stateless person. Indeed, in addition to continuing to face discrimination on the basis of pre-existing characteristics, a person's status as stateless often becomes a basis for further discrimination. This is despite a recent UN Secretary General's report finding that "there is no legal basis upon which States that have arbitrarily deprived a child of his or her nationality can justify the denial of other human rights to the child on grounds of his or her resulting statelessness".²⁴

²³ According to Article 18(1)(a) of the UN Convention on the Rights of Persons with Disabilities, 13 December 2006, entry into force 3 May 2008, 2515 UNTS 3, disabled persons "[h]ave the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability".

²⁴ UN Human Rights Council, Report of the Secretary General on Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they otherwise would be stateless, 16 December 2015, A/HRC/31/29, para. 28.

At the institutional level, discriminating between citizens and non-citizens in the conferral of civic rights and social benefits is standard. The criteria upon which citizenship is granted or withheld and the extent of the benefits of citizenship are widely understood as matters of State sovereignty. And yet this discretion is limited by international law in ways that not all States adhere to.

As noted above, stateless persons face grave disadvantages. They “face challenges in all areas of life, including: entering or completing schooling; accessing healthcare services [...] obtaining a birth certificate [...] falling back on social security [...] obtaining a passport or indeed being issued any form of identity documentation [...] international travel [...] and] free movement”.²⁵ They are also vulnerable to arbitrary and lengthy immigration detention. In the most extreme cases, stateless persons suffer persecution and endure forced displacement.

While there is general consensus that stateless people face barriers in accessing the services central to the enjoyment of their rights, the connection to discrimination and inequality is not always noted. The obligation of the State to ensure equal access to rights for all (although subject to discretion in certain areas as highlighted below) goes beyond the mere legal statement that (for example) all children have the right to an education. The State must ensure that legal, administrative and practical barriers to accessing education are removed and that all children have access to education that meets a certain minimum standard. It must ensure that those whose particular circumstances and vulnerabilities make them less likely to be able to enjoy equal access to education are identified and steps taken to mitigate the barriers they face.

One such barrier that stateless people face in accessing education and various other rights and services, is that they often lack the documentation required for administrative purposes. A simple attitudinal shift that sees those without documentation (including the stateless) not as (variously) at fault, unworthy, a threat, outsiders or disqualified, but rather as people whose equal access to rights and services is being hampered by the non-fulfilment of an administrative step (that for most people can easily be taken) will go a long way to strengthening the equal access to rights and services of stateless persons.

²⁵ Institute on Statelessness and Inclusion, *supra* n7, pp. 29-30.

Another barrier is simply one of prejudice by individual officials or members of society: “[m]y neighbours speak badly to me because I am stateless. They tell me I’m not worthy of doing anything.”²⁶ Stateless people have reported being exploited by, for instance, employers who know that it is particularly difficult for them to find work and so they may be more willing to work illegally on a low wage.²⁷

As a result of these (and other) factors, the vulnerability of stateless people is often a complex phenomenon. It is not just that they are stateless. It is also that they are an unwanted ethnic minority and are considered to be outsiders and are poor and have faced marginalisation and disadvantage with cumulative effect for many generations. Simplistic, one dimensional “solutions” that, for example, guarantee the right to education for stateless people without taking into account their historical disadvantage and the other factors that shape their reality are not likely to succeed. Equal access to rights for stateless people cannot be ensured only by focusing on their statelessness. A holistic approach is needed.

3. The legal framework on equality

The legal framework on equality is an important tool for solving statelessness. Since the adoption of the UDHR in 1948 equality has been recognised as a fundamental human right of foundational importance. UDHR Article 1 declares that “all human beings are born free and equal in dignity and rights” and Article 2 goes on to provide that all rights shall be enjoyed without discrimination. Since then, the rights to equality and non-discrimination have been an integral part of key international and regional human rights treaties, including the International Covenants on Civil and Political Rights (ICCPR), Article 26,²⁸ and on Economic Social and Cultural Rights (ICESCR) of 1966 (Article 2(1)).²⁹ The right to non-discrimination has also been

²⁶ Equal Rights Trust, *My Children’s Future*, *supra* n2, p. 23.

²⁷ *Ibid*, p. 26.

²⁸ International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, entry into force 23 March 1976, 999 UNTS 171.

²⁹ International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, entry into force 3 January 1976, 993 UNTS 3. At the regional level the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 4 November 1950, entry into force 3 September 1953, ETS 005, the American Convention on Human Rights, 22

the basis upon which numerous specific international human rights treaties have been adopted.³⁰ Further, most States have constitutional provisions and some form of civil law protection against discrimination and an increasing number are adopting comprehensive equality laws, which include a variety of protections such as freedom from direct discrimination, indirect discrimination and, in some cases, obligations on the State to take positive measures to tackle historical disadvantage.

The legal framework on equality has developed from and comprises the growing body of international human rights treaties set out above, together with relevant regional and national laws and jurisprudence, custom and best practice. In 2009, key elements of the framework were identified in the Declaration of Principles on Equality, a set of principles developed and launched by the Equal Rights Trust following consultations with 128 human rights and equality experts from 47 countries in different regions of the world.³¹ In the analysis which follows, references are made to these various sources, with best practice approaches identified and applied to the issue of solving statelessness.

Two preliminary points are important to note at the outset. First, any consideration of the equality framework in the context of statelessness has to recognise that States have, as a matter of international law and practice, been granted significant latitude to discriminate between citizens and non-citizens in the enjoyment of a large number of rights including, in particular, civic rights and social and economic rights. Hannah Arendt famously said that the right to a nationality is the “right to have rights”.³² Against this backdrop, it is perhaps unsurprising

November 1969, entry into force 18 July 1978, OAS Treaty Series No. 36, the African Charter on Human and People’s Rights, 27 June 1981, entry into force 21 October 1986, CAB/LEG/67/3 rev. 5 and the ASEAN Human Rights Declaration all have non-discrimination provisions.

³⁰ For example, the Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, entry into force 3 September 1981, 1249 UNTS 13; Convention on the Elimination of All forms of Racial Discrimination, 7 March 1966, entry into force 4 January 1969, 660 UNTS 195; Convention on the Rights of Persons with Disabilities, *supra* n23; and Convention on the Rights of the Child (CRC), 20 November 1989, entry into force 2 September 1990, 1577 UNTS 3.

³¹ Equal Rights Trust, Declaration of Principles on Equality, *supra* n4.

³² H. Arendt, *The Origins of Totalitarianism*, 1951. This statement has been widely quoted since as a narrative equating statelessness to lack of rights

that it is often unquestioningly assumed that States are justified in withholding rights from certain non-citizens, including stateless persons. However, the correct starting point as a matter of international human rights law is that, in general, human rights apply to everyone, “irrespective of his or her nationality or statelessness”.³³ Any deviation from this principle is to be seen as an exception. Such exceptions do exist. For example, the principle of progressive realisation allows developing countries to limit the enjoyment of economic rights by non-nationals in certain circumstances.³⁴ Furthermore, international law allows differential treatment between nationals and non-nationals under limited conditions where that treatment is justified by the pursuit of a legitimate aim and is in accordance with the principle of proportionality.³⁵ Political rights, including the right to vote and stand for election, can also be restricted to citizens.³⁶ However, such restrictions “must be construed so as to avoid undermining the basic prohibition of discrimination”,³⁷ and “the ground of nationality should not bar access to [...] rights [...] which] apply to everyone including non-nationals, such as [...] stateless persons”.³⁸ According to the equality framework, any attempt to discriminate between nationals and non-nationals must be strictly scrutinised.

has emerged. See, for example, the judgment of Chief Justice Warren in the landmark case USA Supreme Court, *Trop v. Dulles*, 356 US 86, 31 March 1958, 101-102; See also, C. Batchelor, “Statelessness and the Problem of Resolving Nationality Status”, *International Journal of Refugee Law* 1998, 10(1-2), p. 159; and G.R. de Groot, *A Clarification of the Fundamental Rights Implications of Stateless and Persons Erased from the Register of Residents*, Directorate General Internal Policies of the Union, European Parliament 2007.

³³ Human Rights Committee, General Comment No. 15: The position of aliens under the Covenant, 11 April 1986, HRI/GEN/1/Rev.6. The Committee was referring to the rights set forth in the ICCPR, but the principle applies equally to the rights set forth in other international and regional human rights treaties.

³⁴ ICESCR, *supra* n29, Art. 2(3).

³⁵ Office of the High Commissioner for Human Rights, *The Rights of non-Citizens*, 2006.

³⁶ ICCPR, *supra* n28, Art. 25.

³⁷ Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination Against Non Citizens, 19 August 2004, CERD/C/64/Misc.11/rev.3, para. 2.

³⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Article 2, Para 2 of the International Covenant on Economic, Social and Cultural Rights), 25 May 2009, E/C.12/GC/20, para. 30.

Second, the equality framework is expansive. The authors cannot, in these few pages, expound upon the full extent of its potential as a tool for solving statelessness. Accordingly, the following analysis seeks to be illustrative rather than exhaustive, with the focus on some of the most interesting potential uses of the equality framework.

3.1 Equality – a developing concept

The scope and content of the rights to equality and to non-discrimination have expanded over time. Initially, the focus was on the formal equality of men and women and different races, meaning that people should be treated the same. At the national level, protection from discrimination was usually restricted to matters such as voting rights rather than being seen as a fundamental principle that is relevant to all areas of life. However, the legal framework has developed and this formalistic approach to equality and non-discrimination has long been seen as inadequate by many. As Khaitan, considering discrimination law, states:

Creative legislators and judges, responding to complex social problems, have crafted increasingly sophisticated tools, recognising concepts such as direct and indirect discrimination, affirmative action, reasonable accommodation, harassment, and positive duties. Various groups, spurred on by identity politics, have successfully obtained protection on grounds such as age, disability, religion and sexual orientation [...]. The contexts in which discrimination law operates have also expanded, albeit in a limited fashion. From relatively humble beginnings (mainly) in the constitutional context, several other areas of human activities, including provisions for goods and services, employment, education, housing and healthcare, now fall within its regulatory remit.³⁹

But what does this mean with respect to the protection that the framework affords to stateless persons?

³⁹ Khaitan, *supra* n4, p. 3.

3.2 Applying the equality framework to statelessness

Many causes of statelessness and the inequalities faced by stateless people violate the rights to equality and non-discrimination in one or multiple respects. What follows are some key, non-exhaustive, examples of why and how the equality framework can be used to defend the rights of stateless people and address statelessness.

3.2.1 Relevant grounds of discrimination

The right to non-discrimination, while not identically formulated in each international human rights treaty, commonly protects people from **all** forms of discrimination including but **not limited to** some of the traditionally identified grounds such as sex, race and religion. As shown in section 2 above, statelessness may be caused by one or more of these grounds. Accordingly, the legal framework on equality can be invoked. However, it is also clear that there are times when stateless people face discrimination because they are stateless or because of circumstances that result from their statelessness, such as poverty. The more difficult question is whether the equality framework protects stateless persons from these forms of discrimination.

As discussed in section 3.1, today people are protected from discrimination on a wider variety of grounds than were initially explicitly identified in human rights treaties. There are two areas of developing jurisprudence which have a particular bearing on how the rights of stateless people can be protected through the equality framework. Firstly, there is the right to be free from discrimination on grounds of nationality, including on grounds of statelessness. We have noted that, since it was enshrined in international law the right to non-discrimination has applied to all people including non-nationals. The Human Rights Committee, in discussing the scope of the ICCPR in 1986, made clear that “[a]liens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof”.⁴⁰ In more recent times it has become clear that this right can be used to protect stateless people from unjustified differential treatment. For example, in 2009, the European Court of Human Rights (ECtHR) handed down its judgment in the case of *Ms Andrejeva*.⁴¹

⁴⁰ UN Human Rights Committee, *supra* n33, para. 2.

⁴¹ European Court of Human Rights, Application No. 55707/00, *Andrejeva*

Ms Andrejeva, who was residing in Latvia, had become stateless upon the dissolution of the USSR in 1991. The application of Latvia's pension laws was such that a Latvian citizen would be entitled to a higher pension than Ms Andrejeva was as a permanently resident non-national. Ms Andrejeva argued that the laws contravened her right to be free from discrimination with respect to her pension rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).⁴² The ECtHR, finding in Ms Andrejeva's favour, made it clear that the ECHR protected her as a permanently resident non-national⁴³ from discrimination in respect of her enjoyment of a State pension. The Court held that differential treatment between permanently resident non-nationals and citizens could only be justified by "very weighty reasons", which had not been demonstrated by the government in this case. This decision provides an important precedent. In reaching its conclusion, the Court did two particularly significant things: (a) it acknowledged that Ms Andrejeva was protected from discrimination as a result of her status as a permanently resident non-national; and (b) it explained that States that are Parties to the ECHR cannot simply invoke a right to differentiate between citizens and non-citizens without the distinction being scrutinised and the State being required to show "very weighty reasons" for drawing such distinctions when determining who benefits from particular rights under national laws. While (a) does not amount to a direct recognition by the Court that the right to non-discrimination provides protection from discrimination on grounds of statelessness, it comes close. Further, it is the authors' view that there is potential for this jurisprudence to be developed so that statelessness is explicitly recognised as a protected ground of discrimination, if the right cases are taken to court.⁴⁴

v. Latvia, 18 February 2009. For a more detailed discussion of the case see Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, 2010, pp. 41-42.

⁴² The rules relating to State pension were considered by the ECtHR to be within the ambit of Ms Andrejeva's right to peaceful enjoyment of her possessions under Article 1 of Protocol 1 to the ECHR and accordingly, her right to non-discrimination under Article 14 of the ECHR applied.

⁴³ This is the term that Latvia uses to describe its stateless population.

⁴⁴ See, L. Bingham and L. Gamboa, "Litigating against statelessness", chapter 5 in this book.

The second area of note is the growing, albeit relatively nascent, school of thought supporting the argument that the right to non-discrimination protects people from discrimination on grounds of their socio-economic disadvantage.⁴⁵ Stateless people are often among the poorest, most socio-economically marginalised, members of society and this can be as relevant as their statelessness to their lack of access to rights, including the rights to health and education.⁴⁶ Some adjudicating bodies have shown willingness to recognise that the right to non-discrimination provides this protection. For example, in *Alyne da Silva Pimentel v. Brazil*, the Committee on the Elimination of All Forms of Discrimination against Women noted that a woman who died as a result of poor obstetric care had not only been discriminated against because of her sex and her African descent but also because of her socio-economic background.⁴⁷ This development could assist stateless people who endure socio-economic disadvantage. If this approach were more widely accepted, unpacking the extent to which a person's statelessness is the direct reason for their lack of enjoyment of their rights and the extent to which their socio-economic status is the cause of this lack of rights would become less necessary. This may be particularly important in cases where a person suffers discrimination as a result of multiple characteristics for example, their race and religion as well as their statelessness.⁴⁸

3.2.2 Direct discrimination and causes of statelessness

One of the most widely understood elements of the equality framework is the right to be free from direct discrimination. Direct discrimination is less favourable treatment because of a protected characteristic. It can

⁴⁵ For further discussion of this see, Equal Rights Trust, *Economic and Social Rights in the Courtroom*, 2014, pp. 68-76. Key references include, S. Fredman, "Positive Duties and Socio-Economic Disadvantage: Bringing Disadvantage onto the Equality Agenda", *European Human Rights Law Review* 2010, Issue 3, p. 10.

⁴⁶ See, for example, Institute on Statelessness and Inclusion, *supra* n7.

⁴⁷ Committee on the Elimination of All Forms of Discrimination against Women, Communication No. 17/2008, *Alyne da Silva Pimentel v. Brazil*, 25 July 2011, CEDAW/C/49/D/17/2008, para. 7(7).

⁴⁸ The equality framework recognises that discrimination may occur because of a combination of grounds. Thus, for example, it will be unlawful discrimination to treat a Muslim woman less favourably than you would treat a non-Muslim or a Muslim man where she is being treated less favourably because of the combination of her sex and her religion.

only be justified in very exceptional circumstances.⁴⁹ As with all forms of discrimination, people are protected from direct discrimination on an increasingly wide variety of grounds (i.e. by reference to an increasingly long list of protected characteristics) including gender, race and disability. The equality framework also demands not only that States do not discriminate – including through the introduction of or failure to overturn discriminatory laws – but also that States act to ensure that people do not suffer discrimination by private actors.⁵⁰

Direct discrimination is at the heart of a number of the causes of statelessness outlined in section 2. For example, there can be no justification for distinctions based on gender under the equality framework. A less commonly known and challenged example of direct discrimination is the less favourable treatment of people with disabilities in some nationality laws. For example, the naturalisation criteria of Indonesia require a person to be “sound in health and mind”.⁵¹ This constitutes direct discrimination on grounds of mental disability, something which cannot fall within the “very exceptional” circumstances in which different treatment is permitted by the equality framework.

Further, as also identified in 2.1, nationality laws may be applied by individual State agents in ways which directly discriminate against certain groups. Again in Madagascar there is evidence that an individual’s race or religion will impact whether or not their application for the acquisition of nationality is accepted. Less favourable treatment of minorities such as the Karana community are central to the ongoing fact of that population’s statelessness. The equality framework requires that the State not only prohibit such discriminatory application of nationality laws and punish individuals who breach the right to non-discrimination, but also that it implement protective measures to ensure that individuals are not discriminated against on grounds such

⁴⁹ In some jurisdictions certain forms of direct discrimination can never be justified e.g. under the UK’s Equality Act 2010 only direct discrimination because of age can be justified. However, the best practice approach is that direct discrimination may be permitted but only very exceptionally, see, Equal Rights Trust, Declaration of Principles on Equality, *supra* n4, Principle 5.

⁵⁰ For example, see, Equal Rights Trust, Declaration of Principles on Equality, *supra* n4, Principle 10.

⁵¹ Law of the Republic of Indonesia, Number 12 2006, on Citizenship of The Republic of Indonesia, Art. 9(c).

as their race and religion when interacting with national laws and regulations governing nationality. This includes a requirement that the State ensure that individual officers are adequately trained on their obligation not to discriminate and that individual decisions are subject to sufficient oversight.

3.2.3 Indirect discrimination on grounds of statelessness

The equality framework also helps protect against indirect discrimination. Often less easy to identify than direct discrimination, indirect discrimination occurs when a provision, criterion or practice puts people at a particular disadvantage because of a protected characteristic, in circumstances where the provision, criterion or practice cannot be justified as a proportionate means of achieving a legitimate aim.⁵² As is identified in 2.2 above, in addition to the prejudice and stigma on grounds of their statelessness, race or other characteristics that many stateless people report facing in their day-to-day lives and which limits their ability to enjoy education, work, healthcare and other basic rights (which constitutes direct discrimination), structural and apparently neutral barriers also exist.

A particularly prevalent form of indirect discrimination affecting stateless persons relates to the need for identity documents in order to access services. Many States require individuals to provide identity documents – which stateless people are less likely to have – in order to access their rights. For example, parents of children in Nepal are increasingly being required to show the child's birth certificate in order for the child to be enrolled in school.⁵³ However stateless parents in Nepal have reported being unable to obtain birth certificates for their children.⁵⁴ In addition to the underlying direct discrimination which may have caused their statelessness, this requirement to show

⁵² See, Equal Rights Trust, Declaration of Principles on Equality, *supra* n4, Principle 5. Whether or not the disadvantaged person has to possess the protected characteristic themselves, be associated with someone who possesses that characteristic or simply be disadvantaged by a rule which indirectly discriminates against others, has recently been opened for question by the judgment of the Court of Justice of the European Union in Case C-83/14, *CHEZ Razpredelenie Bulgaria AD v. Komisia za Zashtita ot Diskriminatsia*, 16 July 2015.

⁵³ Equal Rights Trust, My Children's Future, *supra* n2, p. 33.

⁵⁴ *Ibid.*

a birth certificate for enrolment is a practice which applies equally to all children, but puts stateless children at a particular disadvantage. The result is that many stateless children in Nepal are unable to enjoy their right to education. Under the equality framework, in order to be lawful, this practice, which puts some children at a particular disadvantage, must be justified. Schools may be pursuing a legitimate aim in ensuring that they can identify their students, but whether an inflexible requirement to show a birth certificate is proportionate to this aim is questionable. While the underlying (direct) discrimination is commonly challenged (e.g. nationality laws which do not allow women to pass their nationality to their children), the equality framework is not used often enough to challenge whether such indirectly discriminatory practices can be justified. The right to protection from indirect discrimination requires that such measures are scrutinised and that authorities are required to adequately explain how they are justified.

3.2.4 Failure to take positive action for stateless people

The flurry of progress in the development of the legal framework on equality, outlined in 3.1 above, has brought us to a point where the majority of academics and lawmakers recognise that *substantive* equality is necessary, meaning that steps must be taken to correct disadvantages faced by individuals as a result of living in a society which structurally favours some over others, and that the rights to equality and non-discrimination are to be interpreted in this vein.⁵⁵ The implications of this element of the equality framework for stateless people have been little considered or tested.

One area in which this approach has potential is in considering protections provided within the international framework on statelessness as matters requiring positive action to advance the equality of stateless people. Under Article 32 of the 1954 Convention relating to the Status of Stateless Persons, (1954 Convention)⁵⁶ States commit to facilitating the assimilation and naturalisation of stateless persons. Under Article 25 States are required to afford administrative

⁵⁵ For a detailed discussion of the developments in equality jurisprudence, with a focus on the development in the UK legal framework see, B. Hepple, *supra* n4, pp. 17-29.

⁵⁶ Convention relating to the Status of Stateless Persons, 28 September 1954, entry into force 6 June 1960, 360 UNTS 117.

assistance to stateless persons. These are specific obligations which are not explicitly contained in the international human rights framework. The 1954 Convention does not articulate these obligations as a matter of equality, but, with the benefit of a more advanced and comprehensive approach to human rights and equality law, both can be seen as aspects of the State's obligation to take positive action to accelerate progress towards equality.⁵⁷ This is an argument which, to the authors' knowledge, has to date not been made to States. It is an important argument to explore further because this type of cross fertilisation between the 1954 Convention and equality law, by which the latter is applied to and enriches the former, is essential if we are to bring the protection of stateless persons (and ultimately the solving of statelessness) in line with 21st century standards. Furthermore, the equality framework is enriched by being confronted with the 1954 Convention, as an example of how the stateless – who for too long have remained on the very margins (at best) of the equality discourse – can very tangibly benefit from the targeted application of positive action. As *all States* have obligations to not discriminate and to treat all persons with equality, there is an argument to be made for even States which are not party to the 1954 Convention to take these and other positive measures to address the structural discrimination and disadvantage faced by stateless persons.

Positive action demands not only that States acknowledge the disadvantages faced by certain groups, but also that they take action to correct those. Accordingly, it can be argued that, in tackling some of the disadvantages faced by stateless people in accessing other rights (as identified in section 2), States also have the opportunity and indeed obligation to go further and institute positive measures for longer term equality by solving statelessness. For example, while the State obligation to tackle the indirect discrimination faced by undocumented stateless children seeking to access education by removing the requirement for identity documents to have this access is obvious, it can also be argued that the State should treat this point of contact between stateless people and the administrative system as an opportunity to step in and provide stateless people with documents, which would often strengthen their claim to nationality. Such a form of targeted documentation would be an appropriate positive action measure.

⁵⁷ See, T. Molnár, "A fresh examination of facilitated naturalisation as a solution for stateless persons", chapter 8 in this book.

Finally, positive action to address structural disadvantage should continue even after statelessness has been “solved”. Studies conducted in Sri Lanka show that the hill country Tamils of Indian origin – a group whose statelessness has largely been resolved over the past decade – are still the most disadvantaged group in the country.⁵⁸ Such studies are evidence that solving statelessness and ensuring equality are two different things, and that while the former certainly helps with the latter, it does not guarantee it. Therefore, the positive action obligation should endure beyond “solving statelessness” and should serve to promote real equality, inclusion and the enjoyment of rights.

In summary, the effective application of the equality framework is an important solution to statelessness and its effects. Grounded in international human rights obligations, its relevance is clear; the framework not only requires States not to discriminate against individuals in ways which may lead to statelessness, but also imposes certain positive duties on them to identify and tackle discrimination by individuals against stateless persons. In addition, in order to ensure the full equality of stateless persons, States must take positive action to rectify the disadvantage they suffer by identifying the particular needs of the stateless population and taking measures to meet them.

4. Practical applications of the legal framework on equality

As indicated above, the legal framework on equality provides important protection both for the prevention of statelessness and against some of the impacts of statelessness. In this section, we look at the use of litigation and of international mechanisms as fora through which the legal framework on equality can be applied to protect stateless persons and even solve statelessness. These two examples are merely a snapshot of some of the possibilities, and should not be seen in isolation. Indeed, it is comprehensive and integrated strategies which attack the issue from many perspectives and using multiple frameworks that are most likely to succeed in bringing about change. So, for example, while advocacy for law and policy change, which is grounded in principles of equality and non-discrimination, or awareness raising and sensitisation to break down prejudices and

⁵⁸ A.H. Ilyas, “Estate Tamils of Sri Lanka a socio-economic review”, *International Journal of Sociology and Anthropology* 2014, vol 6(6), pp.184-191.

negative stereotypes are not addressed in this section, these are also important strategies which might be pursued.

4.1 Litigation

The courts are often a valuable tool in vindicating the equal rights of stateless people, including their right to a nationality. Since governments are often unwilling to engage with this issue, the courts are particularly important and there is much that can be done by lawyers adopting the equality framework in litigation. In addition to holding governments to account for their failure to uphold the rights of stateless people, courts can provide remedies to victims of discrimination. In some jurisdictions, the powers of courts are not insignificant. The Declaration of Principles on Equality requires that sanctions for breach of the right to equality be “effective, proportionate and dissuasive” (Principle 22). In numerous States, courts are able to award remedies not only to compensate the victim but also to address the systemic problem which may have contributed to the violation.⁵⁹

It is important to note, before extolling the virtues of the court as a tool for solving statelessness, that individual access to justice for the vindication of rights is a critical component of the State’s obligation to respect, protect and fulfil the rights to equality and non-discrimination of the individual. If, as is often the case, stateless people do not have recourse to the courts, either due to their own financial limitations, the lack of an adequate judicial system or even questions regarding their standing before the courts, it is clear that there will be difficulties in ensuring that this tool is available. In such situations lawyers might argue that unequal access to justice is itself a matter of unlawful discrimination against stateless people. The ICCPR obligation to protect equality before the law (Article 14) is an obligation to ensure access to justice for all people, including the stateless.

4.1.1. Using equality law to ensure socio-economic rights

While international human rights law protects the rights of all people to enjoyment of socio-economic rights through the International Covenant on Economic, Social and Cultural Rights, these rights have

⁵⁹ For a more in depth discussion see, Equal Rights Trust, *Economic and Social Rights in the Courtroom*, 2012, p. 94.

a few limitations. Of critical importance, while 164 States are party to the ICESCR and thus have agreed to be bound by its obligations, few States have enshrined the rights it contains within their constitutions or provided adequate protection in their national laws. This is in stark contrast to the widespread inclusion of the rights to non-discrimination and equality before the law in national constitutions and laws. Accordingly, the rights to equality and non-discrimination have an important role to play when litigating for the enjoyment of the socio-economic rights of stateless people. Understood to its fullest extent, the right to equality applies to all areas of activity regulated by law,⁶⁰ meaning that people have a right to equality in their enjoyment of health, education, housing, shelter, food and social security among other socio-economic rights.

As noted above, stateless people often struggle to access education on an equal basis with others, including due to difficulties in showing identity documents for enrolment. Since stateless people are disproportionately represented among the poor, they are likely to be unable to access adequate healthcare in States where only rudimentary emergency care is available for those without an income or where citizenship is a pre-requisite for free healthcare. It is also common for States to limit any State support for housing and other social security to citizens. But in all of these instances, there may be a discrimination claim under the relevant equality framework.

States often assume they are fully entitled to restrict the provision of socio-economic rights to their citizens. This is particularly common with respect to various forms of social security. However, there are limits to this discretion, depending in part on what treaties a State is party to. As the European Court of Human Rights' decision in *Andrejeva v. Latvia*, discussed above indicates, under certain circumstances it will only be possible for Parties to the ECHR to differentiate on the basis of citizenship with respect to benefit entitlement if there are "very weighty reasons" for doing so. In fact, the Equal Rights Trust has identified a large number of cases in which the rights to equality and non-discrimination have been applied by courts to ensure the rights of the most marginalised to key socio-economic provisions.⁶¹ Courts are increasingly willing to consider equality arguments when adjudicating

⁶⁰ Equal Rights Trust, Declaration of Principles on Equality, *supra* n4, Principle 8.

⁶¹ Equal Rights Trust, Economic and Social Rights in the Courtroom, 2014.

cases on matters of service provision, for example. In order for this to benefit stateless people, lawyers need to bring these arguments before the courts. Given the unequivocal relevance of discrimination to the lived experience of stateless persons, these may prove powerful arguments.

4.1.2. Promoting equality in statelessness determination

Stateless migrants often face complex and multiple forms of discrimination, both direct and indirect, in violation of State obligations under international (and often national) law. The obligation to protect stateless migrants from discrimination is impossible to achieve if States fail to identify stateless persons on their territory to begin with. Indeed, the UNHCR ‘Handbook on Protection of Stateless Persons’ clarifies that the State duty to identify stateless persons in their territory is implicit in the 1954 Convention if the State is to “provide them appropriate treatment in order to comply with their Convention commitments”.⁶²

The “hidden” nature of statelessness in migration contexts makes it easier to directly discriminate and more difficult to identify indirect discrimination against stateless persons. This discrimination plays out in all areas (education, access to livelihoods, etc.) but none more starkly and devastatingly than in the context of immigration detention. One of the paradoxes of the modern world is that as international travel and migration becomes more common, those who do not or cannot meet increasingly stringent entry and stay requirements are dealt with more harshly, often by detaining them while measures are taken to remove them to whence they came (or anywhere that will accept them). One of the implications of these inequalities is the growth of the immigration detention industry and with it the arbitrary and discriminatory detention of stateless persons.⁶³ As stated by the UN Special Rapporteur on the human rights of migrants:

The immigration detention of stateless persons is one of the silent tragedies of our globalised world that plays out behind closed doors, away from the gaze of the media, but

⁶² UNHCR, Handbook on Protection of Stateless Persons, 2014, para. 8.

⁶³ For more information on this area see, European Network on Statelessness, Protecting stateless persons from arbitrary detention: a regional toolkit for practitioners, 2015; and Equal Rights Trust, Guidelines to Protect Stateless Persons from Arbitrary detention, 2012.

traditional) international human rights mechanisms and the scope for using the new Sustainable Development Agenda to address inequalities and discrimination faced by stateless persons.

4.2.1. International human rights mechanisms

As stated above, the core international human rights treaties, all of which are relevant to statelessness contain strong prohibitions against discrimination. State compliance with each of these treaties is monitored by treaty bodies, which also hear individual complaints.⁶⁵ Through these mechanisms, activists and other actors can engage directly with the treaty bodies to raise issues faced by stateless people in the enjoyment of their rights. Engaging with these monitoring mechanisms provides an opportunity to put direct pressure on States, draw public attention to the issue of statelessness and address individual violations. The principles of equality and non-discrimination provide a strong framework through which the relevance of statelessness can be articulated to these mechanisms. There are a variety of different mechanisms and, while they are not all identical, there are similarities in the ways in which they may be engaged.⁶⁶

The Convention on the Rights of the Child (CRC) and its Committee are a case in point. The CRC has been ratified by all States except the United States of America. Compliance with its obligations is monitored by the Committee on the Rights of the Child. The Committee's monitoring mechanism is a strong forum through which to bring concerns relating to discriminatory causes of statelessness and indeed the inequalities faced by stateless children in relation to their enjoyment of other rights protected by the CRC.⁶⁷

⁶⁵ Individual complaints can only be heard in relation to States which have explicitly recognised the competence of the relevant Committee to hear such complaints.

⁶⁶ M. Khanna and P. Brett, "Making effective use of UN human rights mechanisms to solve statelessness", chapter 1 in this book.

⁶⁷ For a detailed analysis and overview of the jurisprudence of the Committee on the Rights of the Child and how practitioners can engage with it see, Institute on Statelessness and Inclusion, Addressing the right to a nationality through the Convention on the Rights of the Child: A Toolkit for Civil Society (CRC Toolkit), 2016, <http://www.statelessnessandhumanrights.org>.

Article 2 of the CRC, which is one of its Guiding Principles, prohibits all forms of discrimination against the child on the basis of the child's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Importantly, it also obliges States to "ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's **parents, legal guardians, or family members**".⁶⁸ The scope of Article 2, in prohibiting discrimination but also protecting the child against discrimination on the basis of their carer's characteristics or actions makes it an extensive tool to address statelessness, particularly when combined with the principle that the best interests of the child should be a primary consideration in all decisions concerning the child (Article 3).⁶⁹

Article 7 of the CRC obliges States to ensure the child's right to birth registration, a name and to acquire a nationality. "States Parties shall ensure the implementation of these rights [...] in particular where the child would otherwise be stateless."⁷⁰ An analysis of recommendations made under CRC Article 7 by the Institute on Statelessness and Inclusion has shown that the Committee on the Rights of the Child has made recommendations on addressing gender discriminatory nationality laws; discrimination against children on the basis of their parents' legal or residence status; discrimination against the child on the basis of the child's religion, ethnicity, race, social origin, opinions or activities; and discrimination arising from lack of documentation.⁷¹

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a detailed and widely ratified treaty with the aim of addressing discrimination against women. Accordingly, it is an important part of the equality framework. Furthermore, CEDAW prohibits discrimination against women in their ability to acquire, change, retain and confer their nationality (Article 9),

⁶⁸ CRC, *supra* n30 Art. 2(2) (emphasis added).

⁶⁹ According to the principle of the best interests of the child, the child's best interests must be assessed and taken into account as a primary consideration in all actions or decisions that concern him or her. The principle must be respected and implemented by States in legislative and administrative acts. For more on information, see, Institute on Statelessness and Inclusion, CRC Toolkit, *supra* n67, p. 9.

⁷⁰ CRC, *supra* n30, Art. 7(2).

⁷¹ Institute on Statelessness and Inclusion, CRC Toolkit, *supra* n67.

making it particularly relevant in addressing concerns regarding the discriminatory causes and consequences of statelessness. State compliance with CEDAW is monitored by the Committee on the Elimination of Discrimination against Women. NGOs can engage directly with the treaty bodies responsible for monitoring CRC and CEDAW by submitting alternative reports on States' implementation of the relevant Convention. These reports can be used to draw attention to discriminatory causes of statelessness and the discriminatory treatment of stateless persons who fall within the remit of each Convention, and secure relevant recommendations by the treaty bodies to States under review. Litigators who have represented stateless persons at the national level may also consider bringing individual complaints of discriminatory treatment to the treaty bodies.⁷² Other treaties including the Convention on the Rights of Persons with Disabilities, ICCPR and ICESCR are also relevant in this regard.

The final key international mechanism through which the inequalities of stateless persons can be raised is the Universal Periodic Review (UPR) – a Human Rights Council mechanism through which the human rights performance of every State is scrutinised by the international community in four and a half year cycles. The use of this mechanism, if coupled with sustained national level follow-up, can be a strong avenue for promoting and protecting the rights of stateless persons and raising awareness of their inequality.

As there is no single treaty against which States are scrutinised by this mechanism (all human rights obligations are considered relevant), the UPR process affords more flexibility and comprehensiveness than the treaty bodies. However, this can also mean that the information that is presented to the Human Rights Council and which forms the primary basis for recommendations that follow lacks focus. NGOs have a role to play in ensuring that strong evidence and information, which draws on the universally accepted norms of equality and non-discrimination, is submitted to the process.

The 23rd, 24th and 25th UPR Sessions (November 2015 – May 2016) in which over 40 States were reviewed saw over 110 recommendations

⁷² See, See, L. Bingham and L. Gamboa, "Litigating against statelessness", chapter 5 in this book.

related to statelessness or the right to a nationality being made.⁷³ Many of these recommendations related to discriminatory causes of statelessness and the inequalities endured by stateless persons. For example, Slovenia recommended that Myanmar “[r]epeal all discriminatory legal provisions such as granting citizenship on the basis of ethnicity or race and providing for different citizenship categories”⁷⁴ and Portugal recommended that Austria “[a]ddress the limitations for children born out of wedlock in accessing Austrian nationality and ensure non-discrimination”.⁷⁵

4.2.2. The international development framework

The Sustainable Development Goals (SDGs), which were adopted in September 2015 and which will enter into force in 2016, offer an extra-legal but nonetheless useful avenue to address discriminatory causes of statelessness and the inequalities faced by stateless persons.⁷⁶ In particular, Goal 10 aims to “reduce inequality within and among countries”. Under this heading Goal 10.2 sets the target “by 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status”, and Goal 10.3 is to “[e]nsure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard”.⁷⁷ These Goals cannot be achieved without using the equality framework, and indeed promoting the universal creation and implementation of equality legislation. In other words, they give impetus to the equality field and are a testament to the fact that development for all cannot be achieved unless it is underpinned by strong equality law. Therefore, equality and non-discrimination actors and statelessness actors alike have a role to play in ensuring that the stateless are not forgotten in the implementation of these goals.

⁷³ See, Institute on Statelessness and Inclusion, Human Rights Engagement, <http://www.institutesi.org/ourwork/humanrights.php>.

⁷⁴ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Myanmar, 20 November 2015, A/HRC/31/13, para. 145.58.

⁷⁵ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Austria, 20 November 2015, A/HRC/31/12, para. 139.5.

⁷⁶ See, R. Govil, “The Sustainable Development Goals and solutions to statelessness”, chapter 2 in this book.

⁷⁷ For the full list of Sustainable Development Goals and related literature see, UN Department of Economic and Social Affairs, Sustainable Development Goals, <https://sustainabledevelopment.un.org/?menu=1300>.

Furthermore, Goal 16.9 commits States to “by 2030, provide legal identity for all, including birth registration”. This Goal cannot be achieved unless bad administrative practices, which are a discriminatory cause of statelessness, are addressed. The role of equality actors in challenging such discriminatory practices before the courts and advocating for their change is therefore extremely important.

The other aspect of the development agenda to consider is the various facets of life which are part of the agenda and which stateless people face tremendous inequalities and barriers to accessing. These include ending poverty in all its forms everywhere (Goal 1), ending hunger (Goal 2), ensuring healthy lives (Goal 3), ensuring inclusive and equitable quality education (Goal 4) and achieving gender equality (Goal 5) among others. The mantra of the SDGs that no one should be left behind obliges development actors to address the inequalities faced by stateless people or, at the very outset, accept failure. The SDGs are not justiciable, but the rights to equality and non-discrimination are. Challenging inequality in access to the benefits of development through the courts is thus one way in which the application of the equality framework can assist in achieving the SDGs. Indeed, it is only through a coming together of equality, statelessness and development actors that any real and sustainable progress is likely to be made in this regard.

5. Conclusion

This chapter has advocated for and given examples of the use of the equality framework as an important tool to promote solutions to statelessness. As has been shown, there are many avenues, fora and strategies that can be used within this general approach and a holistic approach to the equality framework is likely to be the most sustainable and successful. Such an approach would use the equality framework at all levels (local, national, regional and international) across all grounds (sex, race, socio-economic disadvantage, etc.) and in ways that influence other fields (such as development).

As an example, efforts in Nepal to challenge gender discriminatory nationality laws and secure citizenship for those negatively affected by the law have included widespread advocacy campaigns at the national level, underpinned by the principle of equality for all and successful litigation before the Supreme Court to challenge the discriminatory

non-provision of citizenship certificates to individuals.⁷⁸ At the international level, this work has been supported by the Global Campaign for Equal Nationality Rights and others, who have raised the issue in international fora and made equality and non-discrimination based submissions to the UPR and CRC.⁷⁹ There is also the possibility of bringing individual cases under CEDAW. While these efforts have not yet resulted in full legal reform, they have been partially successful (both in securing rights for individuals and in achieving partial legal reform). Furthermore, they have ensured that the issue remains on the table both nationally and internationally, building towards the possibility of more comprehensive reform in the future.

While it is important to look at the individual grounds of discrimination which cause statelessness (gender, race, etc.), it is equally important to take a more comprehensive “unified” approach which acknowledges the interactions between different grounds of discrimination and the impact of multiple forms of discrimination, and that addresses all forms of discrimination without prioritising one over the other.

Finally, it is worth reiterating that legal interventions alone will not end discrimination and inequality. Minds and attitudes must be engaged in longer-term efforts which challenge prejudice and encourage inclusion. Both encouragement and caution can be taken from the successes of other equality movements such as the civil rights movement in the United States, women’s rights movements across the world and, increasingly, the LGBTI movement. These struggles show us both how much has changed over time, and how much resistance there continues to be to change which requires people to recognise the inherent equality of all and the consequent duty to not discriminate and exclude.

⁷⁸ See, for example, Supreme Court of Nepal, *Forum for Protection of Public Interests v. HMG Nepal*, 2005; Supreme Court of Nepal, Writ no. 0035, *Ranjeet Thapa v. Government of Nepal*, 26 June 2009; Supreme Court of Nepal, Writ no. 0089, *Nakkile Maharjan v. Government of Nepal*, decision 2064/1/4; Supreme Court of Nepal, Writ no 06/0703, *Sabina Damai and FWLD v. Government of Nepal*, 27 February 2011; Supreme Court of Nepal, Writ No. 0880, *Shanti Nagarkoti and Bhola Nagarkoti v. Government of Nepal*, 24, March 2014; and Supreme Court of Nepal, Writ no. 34, *Lily Thapa v. Government of Nepal*, N.K.P. 2062, vol. 9, p. 1054, decision no.7588, 15 December 2005.

⁷⁹ See, for example, Nepal Civil Society Network of Citizenship Rights, the Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion, Joint Submission to the Human Rights Council at the 23rd Session of the Universal Periodic Review Nepal, 2015.