

16 PEACE, JUSTICE AND STRONG INSTITUTIONS



Making SDG16.9 work for the wider Sustainable Development Agenda

*Lessons from the citizenship,
statelessness and legal identity
community*

POLICY BRIEF



Providing a “legal identity” for all

While identification initiatives propelled by the push to “provide legal identity for all” are being rolled out all over the world, the lack of a (common approach to the) definition of legal identity leads to diverging programmatic priorities among key actors, who are free to interpret Target 16.9 to fit their own agendas. For example, governments may approach SDG 16.9 through a national security lens, prioritising control over certain groups that are seen as unwanted. Through such an approach, providing “legal identity for all” may actually become a tool to legitimise discrimination, reinforcing exclusionary practices already in place.

The current situation in **Assam**, India, where millions of people risk being rendered stateless as a result of an identification exercise, serves as a caution. The administrative review of the legal identity of Assam’s population is fuelled in part by a genuine attempt to identify irregular immigrants in order to better allocate resources, but it is also driven by nationalism and discriminatory practice endorsed by the province’s authority. As a result, a bureaucratic process – seeking to ‘verify’ identity – is actually changing people’s legal identity, generating exclusion and leaving already marginalised groups even further behind. The birth-registration-focused SDG 16.9 indicator also does not allow for monitoring of a context such as Assam, where people of all ages are being deprived of an integral part of their legal identity – their citizenship.

Furthermore, despite the underlying principle to leave no one behind, the SDG 16.9 indicator is not sufficiently nuanced to account for the impact of poor birth registration that disproportionately affects minorities, like in the case of Roma community in Serbia. There, “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.

*While the Roma community constitutes only about 2-3% of the total population of Serbia, half of all unregistered children under the age of 5 in the country is Romani.**

*Based on the data from the UNICEF MICS 2014 Serbia, UNICEF MICS 2014 Serbia (Roma Settlements), The World Bank and Serbia 2011 Census of Population.

“Even if the SDG 16.9 has reached 99% of the population affected, let us remember that the 1% that remain are some of the most vulnerable and most discriminated communities”

Yasah Kimei,
Nubian Rights Forum

Speaking at the ISI World Conference on Statelessness in The Hague in June 2019, Yasah Kimei issued a warning about Sustainable Development Goal 16.9, which promises to provide legal identity for all, including birth registration. Sharing his reflections on the Kenyan context, Kimei reminds us that this goal can only serve its stated purpose of promoting peaceful and inclusive societies (SDG16), or facilitate progress towards other SDG targets, if priority is given in its implementation to leaving no-one behind. Otherwise, there is a real risk that structural exclusion will not be addressed. Those who were already the most marginalised will not be reached or will even see their marginalisation become further entrenched as the legal identity they are provided fails to guarantee full and equal access to rights and services.

Kimei’s concerns resonate among minority groups in other countries across all regions of the world, including India, Serbia and the Dominican Republic. Their experiences shed important light on the broader challenges in the push for legal identity for all. As billions of dollars of investment are poured into “Identification for Development” (ID4D) initiatives and the promise of digital identity solutions creates a buzz of excitement, we must take this warning seriously. We should not lose sight of the driving purpose behind SDG16.9 as serving inclusiveness and reducing inequality.

This policy brief draws on the experience of actors working on citizenship, statelessness and legal identity across different sectors and geographic contexts to set out why scrutinising the law and policy structures which determine legal identity is absolutely critical to making SDG16.9 work for the wider Sustainable Development Agenda.

The rhetoric vs. the reality

“The goal of the ID4D is for all people to be able to access services and exercise their rights, enabled by digital identification. ID4D directly supports countries to achieve Sustainable Development Target 16.9 and in making progress towards dozens of other targets such as poverty elimination, reduced inequalities, gender equality and women’s empowerment, safe and orderly migration, universal health coverage, and financial inclusion, among others.”

The World Bank

Situated within the wider Sustainable Development Agenda, the provision of legal identity is understood as offering a gateway to rights and services. This rhetoric largely bypasses the issue of nationality, which is both an integral part of a person’s legal identity and through its function as a regulatory mechanism defining obligations and commitments between citizens and their state, often serves as the primary condition to full civil participation and access to the rights and services.

Amina Mohammed, UN Deputy Secretary General and member of the ID4D High Level Advisory Council has emphasised the devastating effects of statelessness (lack of any nationality) for the Sustainable Development Goals: *“Statelessness makes people invisible. When people are unable to prove their identity, they may be unable to access basic services like education and health care. Statelessness can deny people and communities their identity and sense of self, contributing to the breakdown of family and social relationships and creating legal problems for generations. And stateless people are voiceless people. Prevented from voting or participating in public life, they are without representation anywhere.”*

The situation in the **Dominican Republic** clearly demonstrates how birth registration alone does not always equate to full – or even improved – civil participation or access to welfare and other services. The birth registration system was adapted to enable a process of locking thousands of people out of access to citizenship and the protections and rights that come with it. In a context of mass denial and deprivation of citizenship from Dominicans of Haitian descent, a new ‘Foreign’ registry book was introduced. Many people saw their birth record transferred to this Foreign register, which meant that while they still had a ‘legal identity’ in the narrow sense of birth registration, they were no longer treated as citizens. This disqualified them from accessing education, employment and social welfare on equal terms with others.

Providing legal identity without paying due attention to citizenship will undermine the inclusion that SDG16.9 actually seeks to facilitate. It seems that this important message has been lost from the legal identity for all agenda, overshadowed by the push to roll out sophisticated technological solutions. Nationality (and statelessness) must claim a place in the development discourse if SDG16.9 is to contribute to the wider ambitions to leave no one behind and to reach the furthest behind first.

Digital solutions to legal identity?

The evolution of the discourse around SDG 16.9 makes it clear that the main priority of the key players is to invest in digital technologies. However, there are two important considerations that need to be addressed before digitalisation can be implemented in a way that is compatible with the guiding principle of the SDG Agenda to leave no one behind.

First, it is important to ensure that the underlying legislative and policy structures that determine legal identity are not discriminatory or arbitrary. Otherwise, even a well-designed digital solution will replicate exclusionary practices already in place, not only leaving those unable to obtain documentation even further behind but effectively locking them out from the system for good.

Serious concerns were raised on this question at the ISI World Conference on Statelessness in June 2019. Melanie Khanna, the Chief of UNHCR’s Statelessness Section, noted that *“There is a risk that people who have been blending in in a setting where ID coverage is weak may effectively become more differentiated [...] There is a legitimate protection concern there.”*

A Single Source of Truth (SSoT) approach means that access to a multitude of rights and services is preconditioned by participation in one and only one digital ID database. Errors in that database percolate through the entire system and are usually hard to correct. If you are unable to access the database or are (erroneously) logged as 'foreign', the trickle-down effect for socio-economic and political participation is vast and difficult to correct.

The risk is that SSoT-based digital ID systems will not only lock out already excluded populations but also expose and lock out vulnerable groups who were able to use some forms of legal identity to access rights and services on the margins of analogue systems. As Bronwen Manby (LSE), an expert on human rights and statelessness explained: *"Identification is not fundamentally a technological problem."* This notion is shared by many experts in the field who see rushed digitalisation, without scrutinising the underlying identification mechanisms first, as one of the key threats in the push to provide legal identity for all.

Second, the technology space providing digital solutions is itself problematic. It is filled by virtually unsupervised private sector vendors, has no defined normative structure, appropriate legal framework, centralised supervisory body and no civil society participation. At the same time, the capacity of governments to scrutinise and supervise identity 'solutions' offered by the private sector is weak. The risk is that without a comprehensive legal framework for and supervisory mechanisms to oversee the technology, poorly designed ID systems may and will (un)intentionally lock people out of civil participation and development programming, rendering them invisible to the government and leaving them behind.

This is already happening on the ground, in **Kenya**, where civil society is leading a legal battle against the government over a controversial biometric database called the National Integrated Identity Management System (NIIMS). NIIMS is intended to become a Single Source of Truth about Kenyan citizens and NIIMS registration will be required to access universal healthcare, get a passport, register as a voter, apply for a driving licence, register a mobile phone number, pay taxes, open a bank account and more. But on the ground, communities warn that the system could have devastating effects on groups that have historically struggled to secure identity documents and be recognised as Kenyan citizens. There is even a risk that Kenyan citizens will be registered as foreigners if they cannot produce the required documentation to demonstrate citizenship and some have been turned away from the registration process altogether due to lack of documents. This shows that not every digital solution will generate a legal identity for those who did not previously have documents or it will produce a legal identity that is problematic and incomplete.

Should we celebrate, and replicate, Aadhaar?

India's Aadhaar platform is the largest SSoT, biometrics-based identification system in the world and has rapidly become the main prototype digital 'solution' to legal identity for other countries to emulate. Data from the 2019 'State of Aadhaar' report by Dalberg and the Omidyar Network helps to unpack the impact Aadhaar is having in terms of inclusive development.

The study shows that just **8%** of the population remains without Aadhaar, but that some of the most marginalised populations had lower Aadhaar enrolment levels than others.

In Assam, where a citizenship verification exercise has cast 2 million people's legal identity into doubt, **90%** of the population do not have Aadhaar. **30%** of India's homeless are also without Aadhaar.

Since Aadhaar also functions as a SSoT, errors in the data may have a significant impact. **20%** of people who tried to correct an error in their Aadhaar data were not able to do it.

The report concludes that Aadhaar has supported inclusion, with **49%** of people using Aadhaar to access one or more services for the very first time.

Yet, **0.8%** of people experienced exclusion due to Aadhaar-related reasons from a key welfare service which they had earlier received.

More than half of all people who produced Aadhaar to get a SIM card or bank account, said their provider accepted only Aadhaar, even after the Supreme Court ruling indicating that Aadhaar is not mandatory.

This and the belief among **65%** of those included in the study that Aadhaar is required to access services, shows how a database of this kind can have greater influence on inclusion/exclusion from rights and benefits than it is officially deemed to have, leaving those without Aadhaar potentially more vulnerable.

Key takeaways: what are the main opportunities and threats?

Unless we find ways to reduce existing inequalities, tear down existing structures of exclusion and systemic discrimination, sustainable development for all will remain elusive. Here are some key takeaways in relation to SDG 16.9 in light of the aims of the wider Sustainable Development Agenda.

Threats

Despite its clear ambition, the SDG framework is ill-equipped to address systemic discrimination and exclusion, which disproportionately affects those furthest behind: by design, the SDG 16.9 indicator is not nuanced enough to reward governments that commit to reaching furthest behind first. As a result, the political will and financial incentives needed to address the most challenging problems is lost.

The strong push for digitalisation of the registration and documentation systems further diverges the flow of investment from strengthening the underlying legal frameworks and CRVS towards sophisticated technological solutions, which can actually serve as a vehicle for further exclusion.

Weak civil society engagement in the technological space at the crucial stages of the design of digital solutions to provide legal identity for all mean that private sector vendors, unaware of the far-reaching consequences of their work, are shaping the legal identity landscape and determining the livelihood of minorities and vulnerable populations for the generations to come.

Rushing digital solutions without appropriate scrutiny of the underlying identification mechanisms produces poorly designed ID systems that (un)intentionally lock vulnerable groups out from the development programming, rendering them invisible to the government and leaving them further behind.

Opportunities

Leave no one behind as the guiding principle in the largest global development effort creates an unprecedented opportunity for efforts and investments to be directed at tackling systemic discrimination and exclusion.

The development objectives behind legal identity for all as a way to serve more peaceful and inclusive societies are clearly positive and are an opportunity to advocate for universal birth registration and strong CRVS systems. The ambiguity of the notion of 'legal identity' also provides an entry point for discussion about deeper discriminatory practices that drive exclusion and a way to frame a constructive conversation about citizenship, belonging and statelessness that may be politically charged issues.

The SSoT property of digital solutions to providing legal identity for all, should serve as a strong incentive to address systemic discrimination and exclusionary practices if SDG 16.9 is to be achieved in a way that serves the wider ambition of the SDG Agenda to leave no one behind.

ID4D and other digitalisation initiatives to provide legal identity for all create an opportunity for civil society to engage in dialogue with a wide array of public and private-sector stakeholders, helping to shape the legal foundations and accountability frameworks to ensure that technological solutions do not harm, exclude and discriminate against vulnerable populations. Multi-sectoral cooperation is necessary to ensure that digitalisation can be implemented in a way that is non-discriminatory, cost-efficient and compatible with the guiding principle of the SDG Agenda to leave no one behind.

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This **policy brief** draws on information shared by experts and practitioners during the ISI World Conference on Statelessness from 27-29 June 2019, in particular Grand Challenge session 2 on “SDG 16.9 and ‘legal identity for all’: opportunity or threat?” and Grand Challenge session 8 on “The development legacy of statelessness”. It also draws from discussions in a closed-door meeting convened by ISI, the Knowledge Platform Security and Rule of Law, and Open Society Justice Initiative in the margins of the ISI World Conference to discuss how to move citizenship up the SDG ‘legal identity’ agenda. Some of the information is also drawn from previous ISI tools and publications, including the *Paperless People Podcast* and *Statelessness Essentials* booklet on SDG16.9. Visit <https://www.institutesi.org/focus-areas/legal-identity> to access these materials.



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