

## Sustainable Development Goals, Stateless Individuals and Inclusive Education

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### ABSTRACT

*The paper posits that the notion of universal fundamental human rights for all underpins all the Sustainable Development Goals (SDGs) of the United Nations (UN) General Assembly. It provides human dignity moorings for the SDGs as the SDGs are constitutive of universal dignity values in terms of which no human being should be sidelined in human rights matters regardless of such person's circumstances in life. This is the context in which this paper discusses SDG4 through which the UN seeks to ensure inclusive and equitable quality education and promote life-long learning opportunities for everyone. In terms of this discussion, which is based on international law, the paper argues that a reservation made by Zambia, a State Party to the 1954 Statelessness Convention, by which it limits elementary education to its citizens alone and excludes children of stateless persons, undermines the human rights basis of SDG4. It is, also, illegal in international law as it goes against the object and purpose of the Convention, which is to provide certain human rights to stateless individuals to enable them to maintain their human dignity. Hence, the paper contends that the reservation must be withdrawn.*

### 1. INTRODUCTION

The momentum of the human rights' movement, which emerged in the course of World War II (WWII, 1939 – 1945), intensified in the immediate aftermath of this horrendous war in which millions of people lost their lives mainly because of immutable factors. These factors included race, language and religion. Thus, it was no wonder that as the dust of the war settled "...THE PEOPLES OF THE UNITED NATIONS DETERMINED... to reaffirm faith in fundamental

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human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...” in the UN Charter,<sup>1</sup> the foundational treaty of a new international organisation that replaced the League of Nations, which became defunct with the outbreak of WWII.<sup>2</sup> Furthermore, and with this reaffirmation in mind, these “PEOPLES” premised the UN Charter upon certain purposes, including:

“[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>3</sup>

This international co-operation provides the basis for this article’s interrogation of SDG 4, which deals with inclusive, quality education and Zambia’s treaty reservation to a Statelessness Convention related to this Goal. It begins with a discussion of the sources, aims and goals of the SDGs. This is followed by a discussion of the relationship between human rights and the SDGs. This discussion forms the template for an analysis of the following matters: the human right to education and the SDGs; stateless persons, human rights and SDG4; and Zambia’s treaty reservations and SDG4. The article finally ends with concluding remarks and recommendations.

## 2. SUSTAINABLE DEVELOPMENT GOALS

### 2.1 Sources of the SDGs

The primary source of the SDGs is the Declaration titled “Transforming our world: The 2030 Agenda for Sustainable Development,” which the UN General Assembly adopted through a Resolution in September 2015.<sup>4</sup> This Declaration,

1 UN Charter, Preamble, 2<sup>nd</sup> Paragraph; see Note 2, *infra*. [Capitals original]

2 The UN Charter was signed in San Francisco, USA, on 26 June, 1945, at the conclusion of the United Nations Conference on International Organization. It came into force on 24 October, 1945. See UN, *Charter of the United Nations and Statute of the International Court of Justice*, New York, UN (1945), 1 UN *Treaty Series* XVI; available at <http://www.refworld.org/docid/3ae6b3930.html>, accessed 16 August, 2017.

3 Article 1(3) of the UN Charter

4 UN General Assembly, *Transforming Our World: the 2030 Agenda for Sustainable Development*, 21 October, 2015, UN Doc A/RES/70/1; available at <http://www.refworld.org/docid/57b6e3e44.html> accessed 10 July 2017.

which is the pivot of this paper's discussions and is analysed in relation to quality and inclusive education, emanates from secondary sources the main ones of which are highlighted below.

### 2.1.1 Some Secondary Sources of SDGs

Some of the notable international instruments that may be regarded as secondary sources of the SDGs, in the sense that they motivated the adoption of the SDGs Declaration, are the UN Charter, 1945; the Universal Declaration of Human Rights (UDHR), 1948; the two international human rights covenants of 1966; the UN Declaration on the Right to Development, 1986; and the Millennium Development Goals (MDGs), 2000. These instruments emphasize international co-operation, which underpins all the SDGs.

At the end of WWII, the UN organization came into being with the signing of the UN Charter on 26 June 1945.<sup>5</sup> As noted earlier, the purposes of the Charter, resonating with the SDGs, include achievement of international co-operation in the solution of international problems of an economic, social, cultural, or humanitarian character, and promoting and encouraging respect for human rights and fundamental freedoms for all without distinction based on race, sex, language or religion.<sup>6</sup> The UDHR continued this spirit of international co-operation by stressing that UN Member States have pledged to co-operate with the UN for the purpose of achieving the promotion of universal respect for and observance of human rights and fundamental freedoms.<sup>7</sup>

The international human rights' covenants of 1966, i.e., the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), jointly emphasize international co-operation, the principle of mutual benefit and international law and the creation of conditions by which everyone may enjoy economic,

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5 See UN General Assembly, *Transforming Our World: the 2030 Agenda for Sustainable Development*, 21 October, 2015, UN Doc A/RES/70/1.

6 See Article 1(3) of the UN Charter

7 UDHR, Preamble, paragraph 6. See, also, article 56 of the UN Charter, which states: "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in article 55." One of these purposes, provided for in the Charter's article 55(c), states that "...[t]he United Nations shall promote ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

social and cultural rights as well as civil and political rights.<sup>8</sup> In 1986, the co-operation envisaged by the UN Charter, the ICESCR and the ICCPR led to adoption by the UN General Assembly (UNGA) of the Declaration on the Right to Development (UNDRD).<sup>9</sup> UNGA defined this right in a manner that espouses a holistic conception of human rights, which form the fulcrum of all the SDGs. Article 1(1) of the Declaration defined the right to development in the following manner:

“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”

Though the Declaration imposes the primary responsibility for the creation of national and international conditions for the realization of the right on States,<sup>10</sup> it, also, stipulates that “[s]tates have the duty to cooperate with each other in ensuring development and eliminating obstacles to development.”<sup>11</sup> In this connection, the Declaration imposes a duty on States to take individual and collective steps to formulate international development policies aimed at facilitating the full realization of the right to development. One such policy was the adoption by the international community of the MDGs.<sup>12</sup>

The MDGs are collectively the main or immediate source of motivation for the SDGs. In terms of the international co-operation envisaged by the UNDRD, leaders from an impressive number of 189 countries met in 2000 to deliberate on the situation of the world in respect of the perennial problems of hunger, poverty, drought, inadequate medical care, etc. In confronting these challenges, they created a plan known as the MDGs.<sup>13</sup> By this plan, which had a set of eight goals, it was anticipated that by 2015 some of these problems,

8 ICESCR, Preamble, Paragraph 3, article 1(2), UN Doc A/RES2200 A (XXI), 16 December, 1966; ICCPR, Preamble, Paragraph 3, article 1(2), UN Doc A/RES/2200 A (XXI), 16 December, 1966.

9 UN Doc A/RES41/128, 4 December, 1986.

10 Article 3(1) of the UNDRD

11 Article 3(3) of the UNDRD

12 See Note 13, *infra*

13 These MDGs are, in sum, the following: Goal 1: Eradicate extreme poverty and hunger; Goal 2: Achieve universal primary education; Goal 3: Promote gender equality and empower women; Goal 4: Reduce child mortality; Goal 5: Improve maternal health; Goal 6: Combat HIV/AIDS, malaria and other diseases; Goal 7: Ensure environmental sustainability; Goal 8: Develop a global partnership for development. See UN, The Millennium Development Goals Report 2015, available at <[www.un.org/millenniumgoals/2015\\_MDG\\_Report/pdf/MDG%202015%20Summary%20web\\_english.pdf](http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20Summary%20web_english.pdf)> accessed 15 July, 2017

especially poverty and hunger, would be drastically reduced. The United Nations Development Program (UNDP), which acted as a scorekeeper by helping countries track levels of progress in the attainment of these goals, has given statistical data to back its assessment that a lot of progress has been made by the international community in meeting its aspirations in the MDGs. From this data it is apparent that through international co-operation international problems of the type reflected in the MDGs could be successfully tackled, and there could be greater global respect for human rights and fundamental freedoms for all without distinction as to factors such as race, sex, language, religion, political opinion, social status, and national or social origin.

### 2.1.2 MDGs' Statistics as Motivators of SDGs

The MDGs did not attain all that they set out to achieve, but statistical data over a fifteen-year period (2000 – 2015) gave credence to the belief, reflected in the 2015 UNGA Declaration on SDGs,<sup>14</sup> that pursuit of the MDGs was worthwhile. MDGs were a precursor of the SDGs. Some of the notable achievements in the pursuit of the MDGs are outlined below.

In terms of the eradication of extreme poverty and hunger, the proportion of the world's population in developing countries living on less than \$1.25 a day dropped from 50 per cent to 14 per cent, and the number of people living in extreme poverty dropped from 1.9 billion to 836 million. The achievement of universal primary education witnessed a 91 per cent net enrolment rate in the developing world in 2015, as opposed to 83 per cent in 2000. The promotion of gender equality and empowerment of women, without which development at all levels would be drastically slowed down, has seen the developing regions as a whole achieving the target to eliminate gender disparity in primary, secondary and tertiary education.

Other MDG gains include the fact that new HIV infections fell by approximately 40 per cent between 2000 and 2013, from an estimated 3.5 million cases to 2.1 million; globally, 147 countries met the drinking water target; 95 countries met the sanitation target; and 77 countries met both water and sanitation targets. All these were made possible by the development of

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<sup>14</sup> See UN General Assembly, *Transforming Our World: the 2030 Agenda for Sustainable Development*, 21 October, 2015, UN Doc A/RES/70/1.

a global partnership for development that saw official development assistance from developed countries increasing by 66 per cent in real terms between 2000 and 2014 and reaching \$135.2 billion, and the proportion of external debt service to export revenue in developing countries falling from 12 per cent in 2000 to 3 per cent in 2013.<sup>15</sup>

## 2.2 Aims and Goals of SDGs

The MDGs were devised for 189 countries and the SDGs for 191. It was still the expectation that countries would build on progress and successes achieved in the pursuit of the MDGs, tackle and overcome remaining challenges and prepare to deal with new development challenges by the year 2030. The hope was for an intensification of global co-operation in the pursuit of the SDGs.

The SDGs are more ambitious than the MDGs. There are 17 goals as opposed to 8 in respect of the MDGs. In sum, they aim at ending poverty and hunger in all their manifestations everywhere and ensuring healthy lives for all. In respect of quality education, the pivot of this paper, they aim at ensuring inclusive and equitable education and promoting life-long learning opportunities for all. Furthermore, they aim at achieving gender equality; ensuring availability of clean water and sanitation; affordable and clean energy; decent work for all; and the promotion and encouragement of inclusive and sustainable industrialization and innovation. In addition, the SDGs aim at reducing inequality within and among nations; promoting sustainable cities and communities; ensuring responsible consumption and production; taking urgent action to combat global change and its impacts; conserving and sustainably using the oceans, seas, and marine resources; and halting and reversing land degradation and biodiversity loss.

In order to attain these goals, the SDGs are premised upon two aspects of collective or solidarity rights, which are the promotion of peaceful and inclusive societies for sustainable development; and the revitalization of the global partnership for sustainable development.<sup>16</sup>

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<sup>15</sup> UN, *Millennium Development Goals Report*, see Note 13, *supra*

<sup>16</sup> See UN General Assembly, *Transforming Our World: the 2030 Agenda for Sustainable Development*, 21 October, 2015, UN Doc A/RES/70/1.

### 3. HUMAN RIGHTS AS BASIS OF SDGs

The 17 goals of the SDGs are all rooted in human rights. As the Member States of the UN stressed in the SDGs' Declaration:

“We reaffirm the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law. We emphasize the responsibilities of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.”<sup>17</sup>

All the SDGs, individually and collectively, underpin and reinforce those natural attributes of human beings on the basis of which they have human rights. As UNGA defines human rights, “[h]uman rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings.”<sup>18</sup> Further, it states the essence of human rights, as follows:

“Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. *They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.*”<sup>19</sup>

The content of this inherent dignity, the quintessence of human rights, is derivable from universal values such as respect, power (mainly in terms of ability to participate in, contribute to and enjoy development),<sup>20</sup> enlightenment, skill, health, well-being, affection, and rectitude or integrity.<sup>21</sup> Without them, the self-worth and self-respect entailed in this dignity would be lost. As Justice Dingake of Botswana's High Court stated:

“The value of dignity as a core value of our Constitution cannot be overemphasized. Recognizing the right to dignity is an acknowledgment

17 *Ibid*, at Paragraph 19

18 United Nations, *Human Rights: Questions and Answers*, New York, United Nations (1987), p. 4

19 *Ibid* [italics added]

20 See Article 1 (1) of the UN Declaration on the Right to Development, 1986

21 M. N. Shaw, *International Law*, 5<sup>th</sup> ed., Cambridge, Cambridge University Press (2003), p. 249

of the intrinsic worth of a human being ... In the context of an individual, human dignity means having a sense of self-respect and self-worth. It is concerned with physical and psychological integrity ... [and] is harmed by unfair treatment or discrimination based on personal traits or circumstances which have no relationship to individual capacities...  
 ...<sup>22</sup>

In spite of its profuse statements about human rights, the UN Charter did not stipulate what constitutes human rights.<sup>23</sup> It was left to the UDHR, which the UN General Assembly adopted on 10 December, 1948, to outline these rights. The rights include the following: (i) civil and political rights (such as the right to life, liberty and security of person and the right to freedom of movement);<sup>24</sup> (ii) economic, social and cultural rights (such as the right to education, the right to a standard of living adequate for the health and well-being of oneself and one's family, including food, clothing, housing and medical care and necessary social services, and the right freely to participate in the cultural life of the community);<sup>25</sup> and solidarity or collective right (the right to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized).<sup>26</sup>

The UDHR is backed by two international human rights covenants, the ICESCR and the ICCPR, which UNGA adopted in 1966.<sup>27</sup> These covenants acknowledge the inherent dignity of all human beings and the inextricable link between human rights and dignity in the first two paragraphs of preambles which are similarly-worded first two paragraphs, which *inter alia* state that "... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and that "...these rights derive from the inherent dignity of the human person...."

22 *Lemo v Northern Air Maintenance*, 2004 (2) BLR 317 (IC), at pp. 320 - 321. In the case, Lemo, the applicant, was dismissed from his job a day after disclosing his HIV status to his employer, the respondent. The applicant's allegation of unfair dismissal was upheld by the Industrial Court (of High Court status).

23 Apart from its Preamble's 2<sup>nd</sup> Paragraph, the UN Charter mentions human rights in the following articles: 1(3); 13(1)(b); 55(c); 62(2); and 76(c).

24 Civil and political rights are in the UDHR's articles 3 to 21.

25 Economic, social and cultural rights are in the UDHR's articles 22 to 27.

26 Article 28 of the UDHR states this general solidarity or collective right.

27 The ICESCR is one of the instruments known as the International Bill of Human Rights. These instruments are, as follows: (i) The UDHR, 1948; (ii) the ICESCR, 1966, and its Optional Protocol; and (iii) the ICCPR, 1966, and its two Optional Protocols.



Furthermore, Article 10 of the ICCPR, in describing dignity, states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. This inherent dignity is the pivot upon which the right to education, which underpins SDG4, is discussed.

#### 4. THE RIGHT TO EDUCATION AND SDG4

Apart from specifically providing for the right to education as one of the universally declared human rights in Article 26, the UDHR stressed the pivotal role education plays in matters of human rights in the last paragraph of its Preamble. It states:

“The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that *every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms...*”<sup>28</sup>

This paragraph of the UDHR is a clear testimony to the universality of human rights, which is discussed below and by which the right to education, like all human rights, belongs to all individuals, including stateless persons, in an inclusive manner.

##### 4.1 Meaning of Inclusive Education

The UN Committee on the Rights of the Disabled, which oversees the implementation of the provisions of the UN Convention on the Rights of Persons with Disabilities, 2006,<sup>29</sup> has, in its General Comment No. 4,<sup>30</sup> dealt extensively with the philosophy and human rights underpinnings of inclusive education. This General Comment is quite apposite to the discussion and should be quoted *in extenso*. Paragraph 10, which states the understanding to be placed on the expression “inclusive education” states:

<sup>28</sup> Italics added.

<sup>29</sup> UN Convention on the Rights of Persons with Disabilities, 2006, UN *Treaty Series* vol. 2515, p. 3, A/RES/61/106, 13 December, 2006

<sup>30</sup> UN Committee on the Rights of Persons with Disabilities (CRPD), General Comment No. 4(2016), Article 24: Right to inclusive education, 2 September, 2016, CRPD/C/GC/4, available at <<http://www.refworld.org/docid/57c977e34.html>> [Accessed 9 August, 2017]

“Inclusive education is to be understood as:

- (a) A fundamental human right of all learners. Notably, education is the right of the individual learner, and not, in the case of children, the right of a parent or caregiver. Parental responsibilities in this regard are subordinate to the rights of the child.
- (b) A principle that values the well-being of all students, respect their inherent dignity and autonomy, acknowledges individual requirements and ability to effectively be included in and contribute to society.
- (c) A means of realizing other human rights. It is the primary means by which persons with disabilities [read stateless children] can lift themselves out of poverty, obtain the means to participate fully in their communities, and be safeguarded from exploitation. It is, also, the primary means through which to achieve inclusive societies.
- (d) The result of a process of continuing and pro-active commitment to eliminate barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students.”<sup>31</sup>

These stipulations of inclusive education support the basic thrust of this paper, that stateless children should have their right to education respected, protected and fulfilled by states in which they reside. The essence of the right makes this imperative.

## 4.2 Essence of the Right to Education

In noting the essence of education, Article 26 (2) of the UDHR stated thus:

“Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”

This provision emphasizes the positive role that education plays in concretizing the 17 goals of the SDGs. Thus, it is no wonder that the UDHR

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<sup>31</sup> *Ibid.*

stresses teaching and education in the promotion of respect for human rights, which these goals uphold, worldwide.

The ICESCR expatiates upon the essence of education as outlined by the UDHR. In Article 13(1) it obligates State Parties to recognize the right of everyone to education. It follows this up, in the same article, with a stipulation as to what education shall be directed to achieve. These is (i) the full development of the human personality and the sense of its dignity; (ii) the strengthening of respect for human rights and fundamental freedoms; (iii) the enabling of all persons to effectively participate in a free society; (iv) the promotion of understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups; and (v) the furthering of UN activities for the maintenance of peace.

It is worth mentioning here the UNESCO Convention against Discrimination in Education, 1960,<sup>32</sup> the first international instrument on education with a binding effect in international law. This is because it served as an inspiration for the ICESCR whose article 13, as just noted, states the essence of the right to education. Just as the ICESCR, the Convention expresses fundamental human rights principles of equality and non-discrimination by virtue of which education must be availed to all persons equally regardless of their circumstances in life. In support of this principle, the Convention in Article 3(b) obligates State Parties “[t]o ensure, by legislation if necessary, that there is no discrimination in the admission of pupils to educational institutions.”

In the context of children specifically, the UN Convention on the Rights of the Child, 1989 (UNCRC),<sup>33</sup> states in Article 28(1)(a) that State Parties “... recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory and available free to all.”

It is clear from these attributes of education that all human beings should be availed the opportunity of not only enjoying the human right to education but enjoying it fully. This is an obligation that States have in respect of all human rights. It is an obligation to respect, protect and fulfil human rights. Stateless

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32 UN Educational, Scientific and Cultural Organization (UNESCO), Convention against Discrimination in Education, 14 December, 1960, available at <<http://www.refworld.org/docid/3ae6b3880.html>> accessed 11 August, 2017

33 UN Doc A/RES/44/25, 20 November, 1989

persons, the focus of this paper, are also human beings and must have their human rights, including that of education, respected, protected and fulfilled. This respect for human rights means that the State must not interfere with the enjoyment of these rights. In terms of protection, the State must take steps to prevent third parties from interfering with these rights. Finally, the State must fulfil human rights by taking steps necessary for progressive realization of these rights.

Without a State meeting this obligation, the insertion of human rights provisions in legal instruments, including the constitution, which is usually held as the supreme law, amounts to nothing more than lip-service to the values underpinning human dignity.

### 4.3 Human Rights' Principles Underpinning the Right to Education

Like all human rights, the right to education is underpinned by principles of human rights, including equality and non-discrimination, universality and inalienability, and participation and inclusion.

The principle of equality and non-discrimination advances the proposition that human beings must enjoy human rights equally without discrimination by virtue of their common humanity. As the UDHR stipulates, in its article 1: "All human beings are born free and equal in dignity and rights..." In article 2(1), the UDHR underlies this stipulation with its enunciation of this principle as follows: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Similarly, the ICESCR and the ICCPR provide for this principle in preambles *inter alia* stating that "...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"; and that "...these rights derive from the inherent dignity of the human person..." The substantive provisions thereafter elaborate on enjoyment of human rights in the same manner and terms as the UDHR.<sup>34</sup>

<sup>34</sup> Article 2 (2) of ICESCR and Article 2(1) 0 of ICCPR. See Note 8, *supra*. The UN Charter, the foundation of these instruments, limited these grounds to only race, sex, language or religion. See Note 2, *supra*

The equality principle provides a template for the enjoyment of all human rights. For this reason Szabo has posited that ‘...the universal equality of all constitutes the central institution of human rights...’ and that ‘...by virtue of its importance among human rights, equality is regarded as a virtue to be protected before any other.’<sup>35</sup> The principle has, thus, been considered to belong to the *jus cogens* (or peremptory norms) of international law. The Inter-American Court of Human Rights made such an observation when it stated that it “...considers that the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws.”<sup>36</sup>

The principle of universality and inalienability postulates that human rights are universal and inalienable; hence, the whole of humanity is entitled to them. Furthermore, the human person in whom these rights inhere cannot voluntarily surrender the rights or have them forfeited. As stressed by Boutros Boutros-Ghali, former UN Secretary-General, at the World Conference on Human Rights held in Vienna, Austria, in 1993:

“Universality is inherent in human rights. The Charter [UN Charter] is categorical on this score. Article 55 states that the United Nations shall promote ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.’ The title of the 1948 Declaration – UNIVERSAL, NOT INTERNATIONAL – reinforces this perspective.”<sup>37</sup>

The principle of participation and inclusion posits that every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of all human rights. Thus, no one should be side-lined or confined to the periphery in matters of human rights. This is the philosophical underpinning of the UN definition of the holistic human right to development in a way that assures human rights’ enjoyment to “every human person and all peoples.”<sup>38</sup>

These fundamental principles, which should facilitate the enjoyment of

35 I. Szabo, “Historical Foundations of Human Rights and Subsequent Developments,” in K. Vasak (Gen. ed.), *The International Dimensions of Human Rights*, Paris, Greenwood Press (1982), p. 38

36 Inter-American Court of Human Rights, Advisory Opinion, OC-18/03 of 17 September, 2003

37 UN, *Address by Secretary-General Boutros Boutros-Ghali, delivered at the opening of the World Conference on Human Rights, Vienna, 14 June 1993*, UN Doc. A/CONF.157/22, 12 July, 1993. [Capitals added]

38 See Note 9, *supra*

human rights by all human beings *qua* human beings, are, generally, subject to severe limitations in respect enjoyment of these rights by stateless persons.

## 5. STATELESSNESS, HUMAN RIGHTS AND SDG4

### 5.1 The State of Statelessness

The international instruments dealing with the state of statelessness are the 1954 Convention relating to the Status of Stateless Persons, (1954 Convention),<sup>39</sup> and the 1961 Convention on the Reduction of Statelessness, (1961 Convention).<sup>40</sup> Article 1(1) of the 1954 Convention, the only international treaty specifically regulating the manner in which stateless persons should be treated, provides that for “the purpose of this Convention, the term ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law.”

In the *Nottebohm Case*,<sup>41</sup> the International Court of Justice stated that in terms of state practice nationality is “a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”<sup>42</sup> The Inter-American Court of Human Rights emphasized this bond when it *inter alia* stated that “Nationality can be deemed to be the political and legal bond that links a person to a given state and binds him to it with ties of loyalty and fidelity, entitling him to diplomatic protection from that state....”<sup>43</sup>

In terms of this bond the two main legal principles propping up nationality are the *jus sanguinis*<sup>44</sup> and the *jus soli*.<sup>45</sup> By the *jus sanguinis*, nationality is based upon descent from parents who are nationals of a State while with regard to the *jus soli* nationality is premised upon birth within the territorial boundaries of a State. Apart from these two principles, there is, also,

39 This Convention has the same roots as the 1951 Convention relating to the Status of Refugees. See UN, *Treaty Series*, Vol. 360, 111; Registration: 6 June, 1960, No. 5158. As at 4 June, 2017, the Convention has 23 Signatories and 89 States Parties.

40 UN, *Treaty Series*, Vol. 989, 175, 30 August, 1961.

41 *Nottebohm Case (Liechtenstein v Guatemala)*, Second Phase, ICJ Reports 1955, at p. 4

42 *Ibid*, pp. 20 – 21

43 Inter-American Court of Human Rights, *Advisory Opinion on Proposed Amendments to the Naturalisation Provision of the Constitution of Costa Rica*, OC-4/84, para. 35, 19 January, 1984

44 This is a Latin expression meaning law relating to blood.

45 This is a Latin expression meaning law relating to the soil.

the *jus domicilii*<sup>46</sup> by which nationality is determined by the laws of the State in which an individual has her/his permanent home or domicile. A stateless person falls under none of these principles and is, thus, denied the protection of a State. The lack of such protection means the stateless person's inherent dignity is undermined as s/he has no State to respect, protect and fulfil her/his human rights. This is what the 1954 Convention seeks to avoid by enabling stateless persons to acquire the nationality of a state which chooses to be a State Party to the Convention.

## 5.2 Statelessness and Human Rights

The definition of a person as stateless is incongruous with Article 15 of the UDHR, which stipulates that “[e]veryone has the right to a nationality” and that “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” The Inter-American Court of Human Rights affirmed this international human rights’ understanding when it stated that “[i]t is generally accepted today that nationality is an inherent right of all human beings.”<sup>47</sup> This standpoint defies the traditional idea that the determination of nationality is an absolute preserve of the State. Today, this determination is conditioned upon international human rights law, which subjects the right of the State to determine who its nationals are to human rights considerations on account of which the State becomes obligated to extend nationality to otherwise stateless people through treaty law and customary international law. As article 1 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws<sup>48</sup> stipulates: “It is for each state to determine under its own law who are its nationals. This law shall be recognised by other states in so far as it is consistent with international conventions, international custom and the principles of law generally recognised with regard to nationality.”

This modern perception of nationality forms the basis for the 1954 Convention's objective of extending the State's protection of human rights to

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46 It is also referred to as the *lex domicilii*, which is a Latin expression meaning the law of domicile.

47 Inter-American Court of Human Rights, *Advisory Opinion on Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, OC-4/84, paragraphs 32 and 33, 19 January, 1984

48 League of Nations, *Treaty Series*, Vol. 179, 89, Reg. No. 4137; Paragraph 3 of the Convention's Preamble states: “Recognising accordingly that the ideal towards which the efforts of humanity should be directed in this domain is the abolition of all cases both of statelessness and of double nationality.”

stateless people. In this regard, the Contracting Parties to the Convention set out in the Preamble the following issues considered as pertinent in the task of protecting stateless people: (i) the affirmation by both the UN Charter and the UDHR of the principle that human beings shall enjoy fundamental rights and freedoms without discrimination; (ii) the United Nations' manifestation, on various occasions, of its profound concern for stateless persons and its endeavour to assure stateless persons the widest possible exercise of these fundamental rights and freedoms; (iii) the fact that the 1951 Convention relating to the Status of Refugees covers only stateless persons who are, also, refugees and that there are many stateless persons who are not covered by the 1951 Convention; and, finally, (iv) that it is desirable to regulate and improve the status of stateless persons by an international agreement.

In the name of human rights, which underpin all these issues, the 1961 Convention states its objectives in a preamble that underlies the international quest to abate or permanently eliminate statelessness. In this context, it recalls UN General Assembly Resolution 896(IX) of 4 December 1954, which was appropriately titled "Elimination or reduction of future statelessness." In furtherance of this objective, the preamble's second paragraph considers it desirable to reduce statelessness by international agreement. That agreement is the Convention on the Reduction of Statelessness, which is symbiotically linked to the 1954 Convention.<sup>49</sup> These two Conventions (1954 Convention and 1961 Convention) deal with the human rights ramifications of issues arising out of the reasons advanced as the causes of statelessness. In this context it is worth noting that the UNHCR, the guardian of these Conventions and stateless persons that it seeks to protect, has identified these causes as follows: discrimination; marriage laws; birth-registration laws; administrative practices; transfer of territory; nationality based upon the *jus sanguinis* principle; denationalisation; conflict of laws; citizenship renunciation; and the automatic loss of citizenship *ex lege*.<sup>50</sup> All these reasons have the potential of adversely affecting human rights'

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49 The UNHCR is the body charged, in terms of Articles 11 and 20 of the 1961 Convention, with assisting a person claiming the benefit of the Convention and the presentation of her/his claim to the appropriate authority.

50 See UNHCR, "Information and accession package: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness", quoted in C. Collins and D. Weissbrodt, "The Human Rights of a Stateless Person", *Human Rights Quarterly*, vol. 1, num. 28, (February 2006), p. 253.



enjoyment. The Conventions also provide the treaty template for the linkage of SDG4 to the concept of human rights.

### 5.3 SDG4 and Human Rights

As stated above,<sup>51</sup> the UDHR provided, in Article 26(2), for the right to education as a human right. This article provides a direct human rights linkage between the right to education and SDG4, which aims at ensuring inclusive and equitable quality education for all. The gravamen of this paper is the provision, to children of stateless persons in Zambia, of the right to elementary education at the same level as is provided by Zambia to its own nationals. In this context, it is apposite to outline some of the directly relevant modalities for ensuring inclusive education as provided for by SDG4. They are, as follows:

“Goal 4: *Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.*

4.1 By 2030, ensure that ALL girls and boys have access to free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.

4.2 By 2030, ensure that ALL girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education.”<sup>52</sup>

The human rights’ instruments referred to above as underpinning the human right to education, i.e. the UDHR, ICESCR, ICCPR, UNESCO Convention against Discrimination in Education, UNCRC, and the UN Convention on the Rights of Persons with Disabilities (and its General Comment on the right to inclusive education), fully affirm these modalities for giving practical effect to the right to education, generally, and the right to inclusive education, specifically.

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51 See Paragraph “4.2 Essence of the right to education”, *supra*

52 See Note 4, *supra* [italics and capitals added]

## 6. TREATY RESERVATIONS AND SDG4

### 6.1 The Nature of Treaty Reservations

Article 2(1)(a) of the Vienna Convention on the Law of Treaties, 1969 (VCLT),<sup>53</sup> defines the term “treaty” as follows:

“For the purposes of the present Convention:

‘Treaty’ means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

The 1954 Convention and the 1961 Convention are treaties and, hence, are regulated by treaty law. In terms of this law reservations may be made by State Parties to international instruments. These reservations are not, *per se*, prohibited by international law; in fact, they are allowed by this law. They do not totally eviscerate the obligations assumed by such parties under these instruments. This is the context in which Article 19 of the VCLT states, in part, that “A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation...” Further, article 2(1)(d) of the Convention defines a reservation as:

“A unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”<sup>54</sup>

However, the making of reservations is qualified by Article 19, stating that the practice is permissible unless

- “(a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.”<sup>55</sup>

53 United Nations, *Vienna Convention on the Law of Treaties*, 23 May, 1969, United Nations Treaty Series, vol. 1155, p. 331; available at <<http://www.refworld.org/docid/3ae6b3a10.html>>accessed 11 July, 2017

54 See Note 53, *ibid*.

55 *Ibid*.

If a treaty reservation falls foul of this stipulation, it is deemed to be illegal in international law. The course of action open to a State deemed to have made an illegal treaty reservation is for it to withdraw the reservation with notification to the other State Parties to the treaty through the authority designated by the treaty to be the recipient of such withdrawals.

## **6.2 Treaty Reservations and the 1954 and 1961 Conventions**

As treaties, the 1954 and 1961 Conventions are regulated by the VCLT. Hence, any reservation made to any of their provisions must accord with the VCLT. These Conventions have specified reservations that may not be made to certain provisions. The 1954 Convention stipulates that the following matters do not admit of any reservation<sup>56</sup> whatsoever: (i) the definition of stateless person; (ii) the fundamental human rights' principle of non-discrimination; (iii) religious freedom; (iv) access to courts; (v) information on national legislation adopted by States Parties to the Convention to ensure the Convention's application; and (vi) the settlement of disputes between States Parties.<sup>57</sup>

As acknowledged by the 1954 Convention, the fundamental human rights principle of non-discrimination applies to human rights enjoyment by all persons. Hence, the Convention permits no reservation whatsoever to the principle. On account of this principle, any reservation made to any of the provisions of the Conventions in respect of the rights of stateless persons, including those emanating from the SDGs, deserve to be subjected to a critical human rights review for an assessment of its justifiability to be made.

## **6.3 Zambia's Treaty Reservation and Inclusive Education**

In line with the principle of equality and non-discrimination, the 1954 Convention obligates State Parties to assure stateless persons of the right to freedom from discrimination on account of race, religion or country of origin in the application of the provisions of the Convention to stateless persons.<sup>58</sup>

In furtherance of the principle, the Convention stipulates that the State

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56 See Note 54 for the definition of a treaty reservation.

57 See Articles 1, 3, 4, 16(1), 33 and 42 of the Convention.

58 Article 3 of the 1954 Convention relating to the Status of Stateless Persons.

must guarantee stateless persons certain rights in a manner as favourable as possible and, in any event, not less favourable than that accorded to aliens or non-nationals generally in the same circumstances. They include the right to acquire movable and immovable property and to take out leases and enter into contracts pertaining to such property,<sup>59</sup> the right to housing,<sup>60</sup> and the right to freedom of movement without which most of the other rights would be severely curtailed or made redundant.<sup>61</sup>

Furthermore, and more legally profound, the Convention obligates State Parties to permit the enjoyment of some rights by stateless persons at the level accorded by the State to its own nationals. These rights include the following: the right to religious freedom and freedom as regards the religious education of their children;<sup>62</sup> the right to public education at the elementary level;<sup>63</sup> and the right to family allowance and social security.<sup>64</sup>

In the light of these provisions of the 1954 Convention, it is contended that any reservation as to inclusive education, especially as primary or elementary level, is at odds with the object and purpose of the Convention and, hence, illegal in terms of Article 19 of the VCLT. The Republic of Zambia has made such a reservation to Article 22(1) of the Convention by which State Parties are required to accord stateless persons the right to elementary education at the level accorded by the State to its own nationals. In its reservation to the article, the Republic of Zambia stated:

“Article 22(1): The Government of the Republic of Zambia considers paragraph 1 of article 22 to be a recommendation only, and not a binding obligation to accord to stateless persons national treatment with respect to elementary education.”<sup>65</sup>

This treaty reservation offends the binding obligation assumed by Zambia under the Convention to permit stateless persons to enjoy the right to elementary education at the same level it accords to its own nationals. Article 22(1), titled “Public Education”, clearly stipulates that Contracting States “shall accord to stateless persons the same treatment as is accorded to nationals with

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59 Article 13 of the 1954 Convention

60 *Ibid*, Article 21

61 *Ibid*, Article 26

62 *Ibid*, Article 4

63 *Ibid*, Article 22

64 *Ibid*, Article 24

65 See Note 39, *supra*

respect to elementary education.”<sup>66</sup> This is peremptory or obligatory and not directory or hortatory. Zambia should comply with it fully. The reservation stands to be invalidated in terms of Article 19 of the VCLT, under which treaty reservations contrary to the object(s) and purpose(s) of a treaty of illegal.

The net effect of Zambia’s reservation is that it undermines SDG4 by which quality and inclusive education must be provided to all persons and, *in tandem*, lacerates the fundamental human rights principle of non-discrimination, which is not subject to reservation under the Convention. Thus, the reservation is illegal in treaty law, as discussed above. It also, effectively destroyed the human right to elementary education of stateless people in Zambia. In the process the right of stateless persons to inclusive education is jettisoned, and human dignity, the end of the enterprise of human rights, is impaired.

## 7. CONCLUSION

Nationality, and statelessness that it extinguishes, are matters of human rights which, in terms of the principle of the universality of human rights, concern all human beings and the international community at large and not States alone. This concern has, in the case of stateless persons, been transformed into treaty law through the 1954 and 1961 Conventions on Statelessness. Through this law states, such as Zambia, have assumed international law obligations to respect, protect and fulfil the human rights of stateless persons within their territories. Though these states may make certain reservations in respect of these treaty obligations, treaty law prevents them from making reservations with the effect of defeating the object(s) and purpose(s) and purposes of the Treaty. Zambia’s reservation to article 22(1) of the 1954 Convention relating to the Status of Stateless Persons denies stateless persons in Zambia the right to benefit from SDG4 in respect of elementary education for their children. It negates the fundamental human rights principles discussed in this paper, viz., equality and non-discrimination, universality of human rights, and participation and inclusion. Thereby, the benefits of education, as highlighted by numerous human rights instruments referred to in this paper, are denied to children of stateless persons in Zambia. Ultimately, the provisions of SDG4 would, in the

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66 See Note 39, *supra*

face of this reservation, remain in the realm of sanctimonious exhortations totally bereft of any legal effect so far as stateless persons in Zambia are concerned. Treaty law, as manifested by the VCLT and the Conventions on Statelessness discussed in this paper, requires Zambia to withdraw this reservation forthwith, and unequivocally too. The integrity of international human rights law demands nothing less.