

Citizenship and Legal Identity in De Facto States

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Introduction

Following the declaration of the Sustainable Development Goals, most discussions on achieving Goal 16.9 (access to legal identity) have focused on how UN members can improve civil registration, but discussion on access to legal identity outside the effective control of these states has been limited. While the question of legal identity in civil conflict has been covered in policy circles (e.g. Eastern Ukraine, Syria, Sri Lanka), this area has generally been under-researched. Issues of documentation and legal identity have largely been footnotes in (academic) studies on citizenship and nationalism in contested territories. Statehood, nationality, and legal identity are intricately linked, and “legal identity sits at the heart of the citizen-state relationship” (Sosnowski, 2019). Vasiljević (2018) highlights the importance of documents creating social reality and argues that the materiality of the identity document shapes individual personhood, with claims to citizenship being satisfied only through material objects.

This paper will take the *de facto* states subgroup of contested territories and will explore the legal status of individuals living in these territories. Firstly, the paper outlines the concept of legal identity, its link to the Sustainable Development Goals. The paper then discusses its link to nationality and how the recognition of legal identity can change based on where a person is located (territorial jurisdiction). The paper shows that due to the contested nature, local identity (documents) remains largely unrecognised internationally, and thus *de facto* states (and their citizens) must overcome issues of contested legal identity. Following, empirical evidence is presented on how this is and shows that legal identity transforms depending on location and the legal identity constellations that individuals can be associated with. The paper ends with a discussion and provides potential pathways to overcome the precarious legal status of people living in *de facto* states.

Legal Identity and SDG 16.9

Article 6 of the Universal Declaration of Human Rights (UNGA, 1948) states that “everyone has the right to recognition everywhere as a person before the law”. This right has been further enshrined in international legal instruments, including the Convention on the Rights of the Child (1989 Art. 7) and the ICCPR (1966 Art. 16). To fulfil this right, in 2015, the UN adopted the 2030 Sustainable Development Goals, which included Target 16.9 which aims to “provide

legal identity for all, including birth registration” by 2030.¹ Furthermore, legal identity has been recognised as a catalyst for achieving the other SDGs (UN LIEG, 2019).

The UN’s Legal Identity Expert Group (LIEG) defines legal identity as “the basic characteristics of an individual’s identity. e.g. name, sex, place and date of birth conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth. In the absence of birth registration, legal identity may be conferred by a legally recognised identification authority; this system should be linked to the civil registration system² to ensure a holistic approach to legal identity from birth to death. Legal identity is retired by the issuance of a death certificate by the civil registration authority upon registration of death” (UN LIEG, 2019, p. 3; UNDP et al., 2020, p. 58).³ However, despite this operational definition, legal identity is not defined by international law (Manby, 2020a, p. 250; Persoglio, 2019; Sperfeldt, 2021, p. 2).

As the target of 16.9 is to ensure universal access to legal identity, it is important to elaborate on how this is measured. SDG 16.9 uses the “proportion of children under 5 years of age whose births have been registered with a civil authority” (i.e. birth registration) as the only indicator measuring access to legal identity. This is despite, birth registration being cited as only an example of how legal identity can be achieved. Indeed, the LIEG states that universal civil registration should occur in all vital events, including birth, death, marriage, and divorce. However, the LIEG acknowledges that civil registration is not universal and the (minimum) target is linked to SGD 17.19 which envisages achieving “statistical capacity-building in developing countries ... [by achieving] 100 per cent birth registration and 80 per cent death registration”. Also, the UN sees birth registration as the first step in securing an individual’s recognition before the law and safeguarding rights (UNDP et al., 2020, para. 52). Despite the importance of achieving universal birth registration, experts critique the use of only one indicator to measure the achievement of SDG 16.9, and by solely relying on birth registration, children over the age of five and adults lacking a legal identity may continue to be excluded (Manby, 2021; van Waas et al., 2018).⁴

A phenomenon closely tied with legal identity and civil registration are identity management systems which entail the issuance of (biometric) identification credentials (e.g. birth certificates, national ID cards, travel documents) by recognised authorities through which legal identity of a person can be verified (UNDP et al., 2020, pp. 18, 36–37). While formally the right to recognition as a person before the law is independent of possessing identity documents, in practice, the holding of such documents is vital safeguarding individual rights (Manby,

¹ See <https://sdgs.un.org/goals>

² Civil registration is defined as “the continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events pertaining to the population, as provided through decree or regulation in accordance with the legal requirements in each country. Civil registration is carried out primarily for the purpose of establishing the documents provided for by law... The essential purpose of civil registration is to furnish legal instruments of direct interest to individuals” (DESA, 2014, pp. 65–66).

³ The LIEG goes on to define Proof of Legal Identity as “a credential, such as birth certificate, identity card or digital identity credential that are recognised as proof of legal identity under national law” (UNDP et al., 2020, p. 58).

⁴ According to Straaten (2015, p. 18) the Inter-Agency Expert Group formed to identify the SDG indicators also considered using the indicators “registration rate for under 1 children” and National ID coverage for adult population” as proxies for measuring the civil registration coverage.

2020a, p. 252, 2021; UNDP et al., 2020, para. 213).⁵ Thus, in this paper, recognition of legal identity is taken to also include the recognition of identity credentials.

Legal Identity, Nationality and national jurisdictions

A legal status that is closely tied to legal identity, is nationality (citizenship of a state), with the former being a much broader category. Nationality is a basic characteristic of legal identity, thus, is a type of “proof of legal identity” (UNDP et al., 2020, para. 61).⁶ However, nationality is not a necessary condition for possessing legal identity, such as in the cases of formally recognised stateless persons (e.g. Latvian and Estonian non-citizens). Formally access to legal identity and nationality are two different procedures. However, the focus on universal access to legal identity without concurrent access to nationality can result in further marginalization of (at risk) stateless persons, by being discriminated against on the grounds of the type of legal identity (Manby, 2021; Sperfeldt, 2021, p. 2). Another risk is that by creating compulsory registration systems, as in the case of Assam, India, persons with unclear or contested citizenship status, may be excluded from the registration system and thus become stateless (Manby, 2020a, pp. 265–266). Thus, in cases where legal identity is not linked with access to a (recognised) nationality, individuals may end up being further marginalised.

A further point is related to the recognition of legal identity across borders. Different legal traditions put different meanings to civil registration, and while it may already be difficult to ensure access to legal identity within one jurisdiction, the challenges are further increased when state jurisdictions are crossed (Manby, 2020a, p. 257). Different rules related to civil identity documents and their registration can result in the non-recognition of foreign-registered civil status and corresponding documents across borders (Manby, 2020a, p. 257). Generally speaking, UN “Member States also have the responsibility to recognize all individuals present on their territory as a person before the law, without prejudice to nationality (or lack thereof), legal status, gender or duration of stay” (UNDP et al., 2020, para. 85). However, “there is no guidance on the legal and procedural framework for recognition of foreign civil status documents...” (Manby, 2020a, p. 269).⁷ Thus, while individuals may have a legal identity

⁵ A debate exists concerning the equating of legal identity to having a legal ID document. This is legally incorrect, and there is a need to continue to reaffirm that access to rights and services should not be contingent on birth registration or legal ID. However, in practice the two are often conflated. Because of this the UN has adopted a holistic approach to identity management. See UNDP et al. (2020, p. 22) for a visual representation of pillars of identity system. See Hunter (2019) on the phenomenon of undocumented nationals: individuals who are nationals of a state but cannot prove it. See <https://www.statelessness.eu/updates/blog/right-legal-identity-or-right-legal-id> See Art8. HRC resolution 28/L.23 http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_28_L23.doc

⁶ The target for achieving SDG 16.9 may also be linked to the elimination of statelessness (Manby, 2020a, 2021; Sperfeldt, 2021). A consequence of the lack of legal identity is the increased risk of statelessness (van Waas et al., 2018). If individuals do not have access to a legal identity that concurrently grants them a nationality, then they will end up being *de jure* stateless. Therefore, in cases where individuals may have a right to a nationality, but their births are not registered, they may end up in a state of *de facto* statelessness (UNDP et al., 2020, para. 63). See <https://www.statelessness.eu/updates/blog/right-legal-identity-or-right-legal-id>

⁷ The most comprehensive legal arrangement that aims to solve issues related to the recognition of civil registration documents is the 1961 Convention to Abolish the Requirements of Legalisation for Foreign Public Documents (“Apostille Convention”). In other instances, recognition of civil registration documents is dependent on bilateral or regional agreements.

domestically, internationally the legal identity or certain civil acts may be unrecognised.⁸ This thus can create two different legal identities that defer based on where the individual is located.

Legal Identity in contested territories and *de facto* states

While acknowledging the potential consequence of armed conflict on the destruction of individuals' identity documents and population registers held by civil registration authorities, most guidelines focus on procedures of ensuring access to legal identity for individuals who have been forcefully displaced (e.g. refugees, asylum seekers, IDPs) (UNDP et al., 2020, paras. 65–70; United Nations, 2018, sec. 184). In the case of refugees, Member States (or internationally mandated institutions) are responsible for issuing proof of legal identity (UN LIEG, 2019; UNDP et al., 2020, paras. 23, 64). However, besides this, the UN and international law is largely silent on issues related to legal identity (documents) issued in contested territories.

While the definition and number of contested territories is much broader than that of *de facto* state, the following section will discuss existing literature on legal identity in contested in general, before focusing on *de facto* states.

A key term in the definition of legal identity is that identification credentials must be issued by an **authorised/recognised authority**. The UN defines recognised identification authorities as “competent authorities for nationality matters in a given country” (UNDP et al., 2020, para. 60), and is based on the “assumption that the recognition of legal identity is a sovereign prerogative of the state” (UNDP et al., 2020, para. 132). This creates a dilemma, where the right to legal identity has been legally codified in the ICCPR (1966, Art. 16) and the CRC (1989, Art. 7) but the legitimacy of non-state authorities providing legal identity documents has been contested. Thus, what this means is that (i) only sovereignty states (UN Member States) can grant/recognise the legal identity of a person (ii) internationally, states may choose to recognise the legal identity or persons associated with a *de facto* state. The best example is that of Taiwan, where the Taiwanese passport is recognised as a legal identity document and a valid travel document in 190 states despite being recognised by less than 20 UN members. In other instances, neither the *de facto* state nor its civil identity documents are recognised.

In cases of contested territories, various institutions compete over jurisdiction over the given territory and its residents. Hoffman and Kirk (2013) find that public authority in conflict zones is constructed and maintained in a multitude of ways, with actors that are involved differing from context to context. This argument can also be applied to citizenship and the creation of legal identity in such territories. Bart Klem (2019)⁹ identified four types of legal identity that exists in contested territories.

1. Short-lived contested territories that never managed to establish and form a legal identity of their own.
2. Contested territories that have a governance system, but never created a legal identity of their own, and continued to use legal identity (documents) of the base state.

⁸ A telling example is the non-recognition of registered partnership or marriages conducted between same-sex couples by most countries in the world.

⁹ Presented at the 2019 World Conference on Statelessness and Inclusion. See <https://files.institutesi.org/T&Cconference2019.pdf>

3. Contested territories that create their own legal identity in the absence of a legal identity issued by the base state.
4. Contested territories that create their own legal identity to displace the identity system of the base state.¹⁰

A *de facto* states is a specific sub-set of contested states, and can be defined as polities that have achieved *de facto* independence through the effective control and self-government over most of the claimed territory for a continuous period; have an organised political leadership that aims to build state structures to demonstrate legitimacy; have demonstrated aspirations for sovereignty (e.g. via a referendum); aspire to be recognised as a sovereign state, but have limited international recognition and thus lacks international legal sovereignty (Caspersen, 2012, p. 11; Florea, 2014, pp. 791–792; Pegg, 1998; Riegl, 2014, pp. 19–22). Despite this definition, there is no exact list of *de facto* states, and experts disagree on which polities can be considered as *de facto* states. This paper takes a more expansive definition and considers the following polities as *de facto* states: Abkhazia, Donetsk PR, Kosovo, Luhansk PR, Nagorno-Karabakh, Northern Cyprus, Palestine, South Ossetia, Somaliland, Taiwan, Transnistria, and Western Sahara (SADR).

Citizenship policy, issuance of identity documents, and having bureaucratic structures for civil registration are all attributes of statehood/sovereignty. The issuance of civil documents is seen as a symbol of states sovereignty/identity, and thus to create legitimacy and show capacity to function as a state non-state authorities have often issued identity documents, as well as regulate the lives of civilians living in these territories (Sosnowski, 2019, p. 2). This ties to the observation by Klem (2019) mentioned above, and thus only the last two categories of legal identity may be applied to the case of *de facto* states (*see discussion*).

The following sections will discuss the different constellations of legal identity that individuals linked to *de facto* states possess. Each section will be accompanied by examples. When discussing legal identity associated with individuals linked to *de facto* states, it is first important to differentiate legal identity within the *de facto* state and outside of it.

Legal identity within the *de facto* state

Since *de facto* states generally take steps to show that they are functioning political entities, they engage in various acts to display their statehood. Issuance of identity documents and maintenance of detailed civil registration systems is one such attribute. While not all *de facto* states have their own citizenship legislation or passports, the ones that do are considered to show a higher degree of internal sovereignty (Berg & Kuusk, 2010). Thus, in those territories that do maintain detailed civil registration and issue identity documents, we can say that individuals with access to the civil registration system/documents will have a recognised legal identity within the territory under the control of the *de facto* state. It must be noted, however, that in cases where the bureaucratic apparatus of the *de facto* states is weak, certain individuals may not have access to any documentation or be registered, and thus will lack a legal identity domestically. All the *de facto* states have some form of legal identity and associated documents

¹⁰ Also see (Mampilly, 2011).

that are issued to the population. However, as discussed subsequently, these documents have limited international recognition.

Concerning the Sahrawis and Palestinians, their situation is unique compared to the other *de facto* states, due to the widespread recognition that a portion of their territory is under foreign occupation and that they have a recognised right to self-determination. Secondly, depending on where the Sahrawis and Palestinians are located they will have different legal identities issued by different authorities. For example, the Sahrawis living in SADR/Polisario controlled camps in Algeria and the liberated territories will have access to SARD issued documents.¹¹ These documents have limited recognition, including in the Moroccan occupied territories. Thus, those Sahrawis' settling in Moroccan occupied territories may find it difficult to access Moroccan nationality and valid documents (Manby, 2020b, p. 17). Palestinians who live in the West Bank/Gaza, are issued Palestinian ID cards (i.e. permanent residence permits) and Passports by the Palestinian Authority (after approval by Israel) (Qafisheh, 2019, p. 126).¹² These two cases show that not all Sahrawis or Palestinians have access to are eligible for documents issued by their *de facto* state. One reason for this is that they are residing outside the territorial control of the *de facto* state.

Legal identity via base/occupying state

In certain cases, individuals associated with *de facto* states may be ascribed to the legal identity of the base state¹³ (or the occupying state in the case of Western Sahara and Palestine). Base states generally argue that all inhabitants in a *de facto* state are their citizens and thus have the right to a legal identity through the result of residing on their *de jure* territory. This is results in a peculiar state, where even if residents of *de facto* states have the right to acquire a legal identity (document) conferred by a recognised (UN member) state, in practice, they are unable (and in most cases unwilling) to realise this right since the base state has lost effective control of the *de facto* states (Ganohariti, 2020, pp. 186–187). Thus, while the UN states that every member state has to guarantee universal access to civil registration across its territory (UNDP et al., 2020, para. 87), this may not be possible in cases where the state does not have effective control. Furthermore, *de facto* state authorities may outright reject or prohibit the acquisition of identity documents issued by the base state. For example, in Abkhazia and South Ossetia, residents (besides the Georgian minority) may be eligible but are not interested in acquiring identity documents issues by Georgia. Furthermore, some *de facto* state authorities outright prohibit persons from acquiring the citizenship of the base state (Abkhazia, 2005; South Ossetia, 2006).

On the other hand, in places like Northern Cyprus and Transnistria, many residents are eligible for and willing to acquire the citizenship of their base state, Cyprus and Moldova respectively. Furthermore, the *de facto* state authorities do not prohibit this. However, in practice, *de facto*

¹¹ Though not a *de facto* state, a similar situation exists among Tibetans in-exile in India (McConnell, 2012, 2013).

¹² In certain instances West Bankers may lose / be revoked of their residency status, which in the absence of other citizenships/documents may result in them becoming stateless and/or lose their legal identity (Qafisheh, 2019).

¹³ The base state refers to the polity from which the *de facto* states is trying to seceded from (e.g. Somalia in the case of Somaliland).

state residents may be faced with numerous obstacles when they engage in the process of acquiring the citizenship of the base state, such as the situation in Northern Cyprus (Hopman et al., 2018).

In the case of Western Sahara and Palestine, the forceful ascription of legal identity is conducted by the occupying power Morocco and Israel respectively. In the case of Palestine, there is a group of Palestinians who live in East Jerusalem who have Israeli issued identity cards and can acquire an Israeli travel document (*laissez passe*) for international travel (Qafisheh, 2019, p. 138).¹⁴ Thus, their legal identity is confirmed locally through the ID card, and internationally through the passport. That said, in certain instances according to Qafisheh (2019) East Jerusalemites may lose/be revoked of their residency status, which in the absence of other citizenships/documents may result in them losing their legal identity. Manby (2020b) explores the legal status of the Sahrawis. Those residing in Moroccan occupied Western Sahara are forcefully conferred Moroccan nationality, which according to Manby, should not be recognised.

Legal identity abroad

Having discussed the status of legal identity domestically, this section will look outwards and discuss the recognition of the legal identity of *de facto* state residents outside of the *de facto* states and its base state.

Similar to the local context, there are different level of recognition of legal identity. First is the outright recognition of the legal identity of the *de facto* state. While the logic that one consequence of state recognition is that legal acts and documents of the *de facto* states become recognised by recognising state. Thus, in certain cases citizenship can be divorced from state recognition (Grossman, 2001, p. 860). Similarly, legal identity documents issued by *de facto* states may be recognised by states that are yet to recognise the *de facto* states as sovereign (see Table below).¹⁵

De Facto State	Recognitions by UN members	Recognition of Identity Documents by UN members
Palestine	138	190
Taiwan	14	190
Kosovo	98	176
Western Sahara (SADR)	39	39
Somaliland	0	15
Northern Cyprus	1	10
Abkhazia	5	5
South Ossetia	5	5
Donetsk PR	0	1
Luhansk PR	0	1
Nagorno-Karabakh	0	1
Transnistria	0	1

¹⁴ Palestinians of East Jerusalem are also eligible to apply for Israeli citizenship.

¹⁵ Retrieved from https://en.wikipedia.org/wiki/List_of_citizenships_refused_entry_to_foreign_states

The table above illustrates that most *de facto* states' (travel) documents remain internationally unrecognised. Thus, due to the lack of international recognition of the citizenship/passport, *de facto* states and their citizens have had to adapt to their precarious nature. One scenario is that *de facto* states can adopt liberal dual citizenship policies and even actively encourage the acquisition of foreign citizenship (Ganohariti, 2020, 2021). This becomes a strategic reason for acquiring a second citizenship (Harpaz, 2019; Harpaz & Mateos, 2019). For example, this is the case for Abkhazia, South Ossetia, and to an extent Transnistria, where an internationally recognised legal identity is achieved via the acquisition of citizenship of their patron state, namely Russia (Ganohariti, 2021). Similarly, citizens of Nagorno-Karabakh have access to Armenian citizenship and Northern Cypriots can acquire Turkish citizenship.

In other cases, the option may be the acquisition of a travel document (not citizenship) of a recognised state, which then can be used for international travel. For example, Saharawi's living in Algeria can access Algerian passports which are considered to be only travel documents and do not confer citizenship (Manby, 2020b, p. 19). Similarly, since Jordan withdrew its sovereignty over the West Bank/Jerusalem in 1988 and stripped Jordanian citizenship, West-Bank and East Jerusalem Palestinians can acquire five-year-long temporary Jordanian passports (without national ID number), which can be used for international travel (Qafisheh, 2019, p. 120). Gaza strip Palestinian refugees, who never acquired Jordanian citizenship, and continue to reside in Jordan have access to temporary two-year passports (Ramahi, 2015, p. 8).¹⁶ Palestinians living in countries under the mandate of UNRWA (e.g. Syria, Lebanon) are regarded as refugees and are provided with refugee identity cards by UNRWA or the host state (but not access to citizenship).¹⁷

A final dimension is the recognition of the legal identity of the individuals outside the territory of the document issuing authority. In other words, how are individuals who have *de facto* state citizenship and nationality/identity documents of another state treated outside these territories? For those individuals who acquire citizenship of a recognised state, it would be logical to assume that internationally, the legal identity derived from the nationality would be recognised state. However, in certain instances, this may not be recognised. Georgia and Ukraine argue for the non-recognition of Russian passports issued to residents of the "occupied territories" as the issuance has not been authorised by the authorities in Tbilisi and Kyiv respectively (Ganohariti, 2021; Norwegian Refugee Council, 2018).¹⁸ Thus, even if an individual acquired a legal identity of a recognised state, it may not be universally recognised.¹⁹

Lastly, is the case of those who acquire only travel documents of a recognised state (e.g. Sahrawis with Algerian passports). Because individuals do not have the citizenship of a recognised state, and thus a Nationality, they may be treated as stateless persons. As a result,

¹⁶ Palestinians who had acquired Jordanian citizenship and lived outside the West Bank continued to maintain Jordanian citizenship. However, Jordan has engaged in a campaign of arbitrarily stripping some Jordanian citizens of Palestinian origin, forcing them to acquire alternate identity documentation such as temporary residency permits or passports (Ramahi, 2015).

¹⁷ <https://www.un.org/unispal/document/auto-insert-180988/>

<http://www.syrianationality.org/pdf/nationality-documentation-statelessness-syria.pdf>

¹⁸ <https://sputnik-abkhazia.ru/Abkhazia/20170203/1020355582/zakryto-otkrytaya-evropa-dlya-grazhdan-abxazii.html>

<https://mfa.gov.ua/en/news/72086-zajava-mzs-ukrajini-shhodo-provokativnogo-ta-zlochinnogo-rishennya-kremlya-pro-vidachu-rosijsykih-pasportiv-gromadyanam-ukrajini-na-okupovanih-teritorijah>

¹⁹ This may be akin to the situation of Israeli citizens who are refused admittance to several countries due to the Arab League boycott.

they can be afforded the accompanying protections, be eligible refugees/statelessness identity documents, and may have simplified access to the citizenship of a third state. For example, some Sahrawis can be eligible to acquire Spanish nationality (Manby, 2020b, p. 20). In Spain, Germany, France, and the UK, Sahrawis originating from the non-occupied territories are considered stateless and can be issued relevant documents (Manby, 2020b, pp. 25–28).

Discussion and Conclusion

This paper has illustrated that due to the contested nature of *de facto* states, and competing claims of jurisdiction, individual, similar to citizenship (Bauböck, 2010), may be tied to several polities, and may have multiple legal identities whose recognition will depend based on place. Thus, this results in a constellation of legal identities.²⁰ Secondly, this paper has shown that it is first important to differentiate between the domestic/local level and the international level. Lastly, it is important to differentiate between the types of legal identity, and whether it is derived from citizenship. Legal identity gained through identity documents (ID cards, passports) of a recognised state is more precarious as it may be withdrawn or not renewed by the issuing authority – an act much easier than citizenship stripping. The table below summarises the findings of this paper.

Types of Legal Identity	Level	Case examples
“Legal identity” within the territory under <i>de facto</i> state control	Domestic	Legal identity within Abkhazia, Taiwan, South Ossetia,
Bilateral recognition of Legal Identity	Domestic	Transnistria-Moldova (2001; 2003); Kosovo-Serbia (2011; 2016)
Recognition of legal identity despite non-recognition of statehood	International	Palestine, Kosovo, Taiwan
Legal identity via travel documents of a recognised state	International	Sahrawis in Algeria, certain Palestinians in Jordan, certain TRNC citizens
Legal identity of recognised state via nationality (while maintaining local citizenship ²¹)	International	Abkhazia, South Ossetia, Donetsk, Luhansk, Transnistria, Sahrawis under Moroccan occupation

²⁰ See case study of Syria by Sosnowski (2020). The same can occur for citizenship in *de facto* states (Ganohariti, 2020; Krasniqi, 2018, 2019).

²¹ *De facto* state citizenship is not available to Palestinians living under Israel occupation outside the West Bank/Gaza and Sahrawis living in Moroccan controlled territories.

As shown in the above table (individuals in) *de facto* states have adapted to their precarious situation of not having a universally recognised legal identity. However, access to legal identity may remain problematic.

Furthermore, it is also not only important to identify whether individuals have access to a legal identity, but also take note that the quality of legal identity may defer.²² Furthermore, the lack of a strong, recognised, and permanent legal identity hinders the achievement of the SDG1.9 and more broadly other related SDGs. Based, on the above discussion, this paper proposes several (non-mutually exclusive) solution that may be adopted.

1. Recognition of legal identity conferred by *de facto* state authorities

One avenue may be divorcing the recognition of legal identity from the recognition of the *de facto* state (Persoglio, 2019), as has been most prominently observed in relation to Taiwanese and Kosovar identity documents. Also, on a domestic or bi-lateral level initiatives may be taken by the conflicting sides to mutually recognise documents issued by each other's civil registration authorities. This is the case of Moldova-Transnistria (Transnistria, 2001, 2003) and Kosovo-Serbia (Government of the Republic of Serbia - Office for Kosovo and Metohija, 2011, 2016). Similarly, between China (PRC) and Taiwan, a travel regime exists where individuals can be issued a "Mainland Travel Permit for Taiwan residents".²³ If such an initiative is accepted by the conflicting parties, then steps should be taken to transpose this internationally, and argue for the recognition of the *de facto* state legal identity since the base state already recognises it. However, this avenue may not be accepted by the base states (and their allies) since they may consider as an encroachment to their sovereignty.

2. Recognition of legal identity without recognition of issuing authority (in case of occupied states)

Several legal precedents argue for the recognition of the legal identity produced because of the enforced nationality. The Advisory Opinion on Namibia stated that "while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory" (International Court of Justice, 1971, para. 125). Similarly, in the case of Cyprus v. Turkey (European Court of Human Rights, 2001, paras. 93–98) the judgement concluded that "the obligation to disregard acts of *de facto* entities is far from absolute ... [and] the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions... To hold otherwise would amount to stripping the inhabitants of the territory of all their rights whenever they are discussed in an international context". These judgments show that "international law there is at least limited recognition for certain bureaucratic actions done by non-state actors during civil war" (Sosnowski, 2019, p. 5). Thus, the above seems to suggest that even if forced attribution of nationality (or legal identity) is illegal, the documents issued as a result of it should be (internationally) accepted.

²² This follows the argument presented by Kochenov and Lindeboom (2017), who argue that nationality is not equal, but rather is of different quality (See [Quality of Nationality Index](#)).

²³ https://en.wikipedia.org/wiki/Mainland_Travel_Permit_for_Taiwan_Residents

3. Status/state neutral legal identity

A ‘foundational’ identity later, similar to the ‘Aadhaar’ identity number in India, may be another avenue, where individuals are issued an identity document based on biometric information regardless of legal/Nationality status (Manby, 2021). In the case of *de facto* states, these could be status/state neutral identity documents issued by an international organisation, like the UNMIK travel document issued in Kosovo (2000-2008). However, due to the desire to achieve sovereign status, *de facto* states may reject such a policy, since they may consider it a downgrade from the current system, where they have the sovereignty power to issue identity documents.

The final point is that regardless of the solution that may be proposed, any solution must be framed in a human security and human rights framework and separate it from the recognition/non-recognition of the political status of the *de facto* state. Thus, a radical shift in thought is necessary to ensure that truly all individuals living in *de facto* states (and contested states by extension) have a universally recognised legal identity.

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