

# Understanding statelessness through an educational lens: Enhancing higher education curricula

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## 1 Introduction

According to the Office of the United Nations High Commissioner for Refugees, a stateless person is defined as a person not having ‘the nationality of any country. Some people are born stateless, but others become stateless.’<sup>1</sup> Essentially, these individuals are not recognised as citizens by any state under its laws.<sup>2</sup> Statelessness can result from a range of legal and political circumstances. Discriminatory nationality laws based on factors such as race, gender, religion, or disability may prevent individuals from acquiring or transmitting citizenship. Children born abroad may become stateless if neither the country of birth nor the parents’ country confers nationality. Political transitions, such as the redrawing of borders or state dissolution, can also leave people without a recognised nationality. In some cases, the absence of birth registration, particularly among children of refugees or mixed-nationality parents, contributes to statelessness. Moreover, individuals may lose their nationality through denationalisation or prolonged residence abroad, and displacement often acts both as a cause and consequence of statelessness.<sup>3</sup>

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1 UNHCR ‘Statelessness’ <https://www.refworld.org/thematic-area/statelessness> (accessed 14 January 2025).

2 Convention relating to the Status of Stateless Persons, 1954, Article 1.

3 In this regard, see A de Chickera & L van Waas ‘Unpacking statelessness’ in T Bloom et al *Understanding statelessness* (2017) 53-69, see also HIAS Organisation, ‘Statelessness’ [https://hias.org/statelessness/#:~:text=Discrimination%20in%20nationality%20laws%20\(including,prejudicial%20226](https://hias.org/statelessness/#:~:text=Discrimination%20in%20nationality%20laws%20(including,prejudicial%20226). See also, Stateless Hub Impacts of State.

Nationality is a key foundation for accessing rights, services, and recognition in society. Without it, stateless individuals are excluded from essentials like education, healthcare, employment, and legal documentation. They are also denied political rights and face systemic discrimination, making them vulnerable to exploitation and abuse. Statelessness both stems from and reinforces exclusion, creating a cycle of marginalisation that can last for generations.<sup>4</sup>

Given that statelessness is a global issue,<sup>5</sup> it is crucial to take proactive steps to develop solutions and frameworks to address the challenges faced by stateless and undocumented individuals. This research primarily aims to raise awareness and prepare graduate students on this topic, as it intersects with various areas of law and other disciplines.<sup>6</sup> It is recommended that the LLB curriculum be designed to be both effective and inclusive, equipping students with the tools to assist stateless and undocumented individuals. The goal in transforming the curriculum is to help students gain a deeper understanding of this marginalised group, beyond the misconception that statelessness and being undocumented are issues limited to foreign countries. In reality, people can also be stateless or undocumented within their own country.<sup>7</sup> By suggesting that the curriculum takes into account the social reality of stateless and undocumented people – a problem that impacts both immigrants and South Africans – this study aims to analyse the knowledge gap regarding

4 D Passarelli 'Realising the rights of stateless persons: Fiduciary duties and stateless persons' in Bloom et al (n 3) 210-226. See also, Stateless Hub, 'Impacts of Statelessness' <https://www.statelesshub.org/theme/impacts-statelessness#:~:text=Stateless%20people%20are%20often%20a,root%20cause%20of%20forced%20displacement>. (accessed 15 May 2025).

5 European Union Agency for Asylum 2024 '1.4. Global developments on statelessness' <https://euaa.europa.eu/asylum-report-2024/14-global-developments-statelessness> (accessed 28 January 2025).

6 For example, in education see, Equal Education Law Centre 'Undocumented learners: Your right to education' <https://eelawcentre.org.za/wp-content/uploads/undocumented-learners-web.pdf> (accessed 28 January 2025); in labour, see Department of Employment and Labour 'Employment of undocumented foreign nationals is an offense that is punishable by law' March 2024 <https://www.labour.gov.za/employment-of-undocumented-foreign-nationals-is-an-offense-that-is-punishable-by-law> (accessed 28 January 2025) and E Alimohammadi & G Muller 'The illegal eviction of undocumented foreigners from South Africa' (2019) 19 *African Human Rights Law Journal* 793.

7 YND Mahleza 'The interplay of citizenship, nationality and statelessness: interrogating South Africa's Legal Framework in light of its international obligations' LLD thesis, University of South Africa, 2022 51.

citizenship rights in relation to the higher education curriculum and how it would benefit university graduates.

Since South Africa adheres to the principle of constitutionalism, the curriculum must encompass all societal aspects to align with the South African Constitution's (the Constitution) provisions. Statelessness intersects various legal fields and other disciplines, necessitating that the curriculum covers its foundational concepts and impacts on individuals' rights. Exclusion from the curriculum results in a lack of understanding by graduates of the concept and lack of proper representation for this group, as most legal practitioners will be ill-prepared to address these issues effectively in practice.<sup>8</sup> This predicament extends beyond legal practitioners to other professionals, including social workers, healthcare providers, bankers, and educators, who also encounter undocumented and stateless individuals.<sup>9</sup>

The Constitution as the highest law in the country, upholds values and rights that should protect and apply to all individuals, regardless of their legal status. These rights include equality and dignity.<sup>10</sup> These are rights that marginalised groups do not exercise or limitedly exercise as they are not protected. For stateless persons, dignity is stripped from the very beginning as no country recognises their existence. Promoting human rights must be firmly integrated into the curriculum, meaning universities must play a role in supporting the constitutional goals of advancing human rights, particularly for marginalised groups. This research explores how universities can enhance the human rights of

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8 Training done by organisations such as Lawyers for Human Rights (n 16), see Centre for Human Rights, University of Pretoria 'Statelessness and Migration in Southern Africa Regional Legal Training' November 2022 <https://www.chr.up.ac.za/latest-news/3170-statelessness-and-migration-in-southern-africa-regional-legal-training> (accessed 28 January 2025).

9 Training is also done for communications practitioners, see Lawyers for Human Rights 'CONCEPT NOTE | Training for media and communications practitioners: Reporting on Statelessness and Citizenship Rights in Southern Africa' November 2024 <https://www.lhr.org.za/lhr-resources/concept-note-training-for-media-and-communications-practitioners-reporting-on-statelessness-and-citizenship-rights-in-southern-africa/> (accessed 28 January 2025). Other disciplines that encounter stateless and undocumented persons can be seen in the following links: in education see, Equal Education Law Centre) in labour see Department of Employment and Labour and E Alimohammadi & G Muller.

10 See the Preamble of the Constitution of the Republic of South Africa, 1996 and section 1 (The Constitution).

stateless, undocumented individuals, and those facing nationality challenges, through their curriculum. These individuals experience higher levels of exclusion compared to others, and it is argued that transforming the curriculum to include issues related to statelessness, as a development in law, will better prepare graduates to contribute to the advancement of human rights. By addressing statelessness and undocumented issues in the curriculum, students will be equipped to properly represent these groups in professional settings, ensuring that they are treated with the understanding and respect they deserve and not taken advantage of as in other cases.<sup>11</sup> Furthermore, social cohesion must be a key component of the curriculum, encouraging students to grasp the implications of statelessness and being undocumented, and to use their knowledge and skills to help improve the situation for this vulnerable population.

Transforming the curriculum is an ongoing process, not a one-time change. It should be continuously updated to reflect new legal developments and the current realities experienced by communities, as these shape the types of support needed and how best to develop those aspects through education. If the curriculum is not adapted accordingly, it may lead to violations of constitutional rights, hinder the

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11 The abuse of court process and failure to properly represent clients was seen in the events that unfolded in court in the case/s of *Lembore and Others v Minister of Home Affairs and Others* [2024] ZAGPJHC 102; [2024] 2 All SA 113 (GJ)/ *Lembore and Others v Minister of Home Affairs And Others* [2024] ZAGPJHC 502, (*Lembore* case) in this regard see, T Broughton 'Judge slams law firm for misleading court with "cut-and-paste" applications targeting refugees' October 2024 <https://www.news24.com/news24/southafrica/news/judge-slams-law-firm-for-misleading-court-with-cut-and-paste-applications-targeting-refugees-20240819> (accessed 28 January 2025). It is imperative to note that the main argument made in this research is about the abuse of process and failure to properly represent clients. However, for ease of reference and context, the *Lembore* case concerned six foreign nationals (four Ethiopian, two Somali) detained for unlawful entry and stay in South Africa. The applicants sought to prevent their detention, prosecution, or deportation pending the final determination of their asylum claims, arguing that merely expressing an intention to seek asylum should trigger protection under section 2 (non-refoulement) of the Refugees Act 130 of 1998. The court held that detention for illegal entry under section 49(1)(a) of the Immigration Act 13 of 2002 is lawful and does not violate section 2 of the Refugees Act. The protections of section 2 are only triggered once a formal asylum application is lodged and good cause for illegal entry is shown, as required by section 21(1B) of the Refugees Act and regulation 8(3). The court reaffirmed the binding authority of *Ashebo v Minister of Home Affairs* [2023] ZACC 16; 2023 (5) SA 382 (CC); 2024 (2) BCLR 217 (CC), rejecting the argument that mere intention to seek asylum grants immediate immunity from detention or deportation.

advancement of human rights, and prevent individuals from receiving proper representation or professional services, as will be discussed in this research, depending on the discipline engaging with stateless and undocumented persons.

Universities have a responsibility to produce graduates who uphold the values of the Constitution, ensuring that no group is discriminated against.<sup>12</sup> When discrimination persists, and when professionals fail to provide ethical services – as highlighted in the case referred to in this research,<sup>13</sup> people's rights are violated. By incorporating issues related to statelessness into the curriculum, universities can ensure that graduates are well-informed on the topic, reducing the risk of these individuals being exploited or underrepresented. In addition, universities can ensure producing graduates who can contribute to developing the law related to statelessness, as South Africa does not have specific regulations on statelessness determination.<sup>14</sup> By informing laws that guide the determination procedure, the curriculum will contribute to the development of jurisprudence, as this research argues that a country that upholds the values in the Constitution is only capable of protecting the people it recognises. This means that South Africa is not fully upholding the values in the Constitution, as it has no law that recognises stateless persons.

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12 In this regard, this research considered a few of the universities' statutes or constitutions that contain clauses providing for the values of the South African Constitution to be upheld. These clauses suggest that the university constitutions are either subordinate to the South African Constitution or that, despite measures addressing constitutional values not being reproduced in the constitutions, they nevertheless affect the universities directly or indirectly. See University of Pretoria, 'University of Pretoria Constitution for Student Governance (CSG)' Chapter 2 Bill of Student Rights <https://www.up.ac.za/media/shared/452/csg-amended-by-the-src-and-approved-by-council-june-2020.zp193372.pdf> (accessed 9 May 2025). See also University of Cape Town, 'Institutional Statute Institutional Rules as at 7 June 2024' at 1 <https://uct.ac.za/sites/default/files/media/documents/uct-statute-7-june-2024.pdf> (accessed 9 May 2025).

13 The *Lembore* case (n 11). See also, Broughton (n 11).

14 E Omotunde (2023) 'Proposed statelessness determination procedure approach for South Africa, based on the United Kingdom and Côte d'Ivoire practices. University of Pretoria' <https://doi.org/10.25403/UPresearchdata.23393381.v1> (1 February 2025).

## 2 The significance of statelessness in law

Justice should be guaranteed for everyone, especially considering the values enshrined in our Constitution.<sup>15</sup> However, this is not the case for stateless, undocumented, or individuals with nationality issues, as they encounter barriers when they attempt to exercise the rights provided by the Constitution.<sup>16</sup> This group of people is prejudiced in many ways compared to an ordinary person. For instance, besides being unable to exercise rights provided for in the Constitution, some legal practitioners take advantage of them as shown in this research's argument.<sup>17</sup> Moreover, despite statelessness being a prevalent legal issue affecting various multidisciplinary fields,<sup>18</sup> it is not adequately addressed in university curricula. Consequently, graduates enter practice without a comprehensive understanding of statelessness, undocumented individuals, and nationality issues. Additionally, even textbooks allocate minimal coverage to statelessness, failing to provide a clear understanding.<sup>19</sup> This means that lecturers will not fully cover the topic because of the minimum coverage and because they, themselves are not knowledgeable on the topic.<sup>20</sup> Therefore, there is a need to transform the

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15 In this regard, the concept of justice goes beyond 'a narrow definition that refers to access to legal services and other state services (access to the courts or tribunals that adjudicate or mediate) to a broader one that includes social justice, economic justice and environmental justice', therefore see M Nyenti 'Access to justice in the South African social security system: Towards a conceptual approach' 2013 *De Jure Law Journal* 901 902. See also J Kollapen 'Access to justice within the South African context' Keynote Address to *Access to Justice Round-Table Discussion 5* as discussed in Mathias Nyenti. 901 902.

16 See United Nations Human Right, Office of the High Commissioner 'OHCHR and the right to a nationality' <https://www.ohchr.org/en/nationality-and-statelessness> (accessed 28 January 2025) and Lawyers for Human Rights 'Statelessness and Nationality in South Africa' March 2021 [https://static.pmg.org.za/210309Presentation\\_by\\_LHR\\_on\\_Statelessness.pdf](https://static.pmg.org.za/210309Presentation_by_LHR_on_Statelessness.pdf) (accessed 28 January 2025).

17 The *Lembore* cases. See also, Broughton (n 11).

18 Lawyers for Human Rights (n 16). Other disciplines that encounter stateless and undocumented person can be seen in the following links: in education see, Equal Education Law Centre; in labour see Department of Employment and Labour and E Alimohammadi and G Muller.

19 For example, B Bekink *Principles of South African Constitutional Law* (2016) (2nd ed) Chapter 6, 6.2.

20 Lawyers for Human Rights 'Promoting Citizenship and Preventing Statelessness in South Africa: A PRACTITIONERS GUIDE' [https://citizenshiprightsafrika.org/wp-content/uploads/2016/05/LHR\\_PractitionersGuide-Statelessness\\_2014.pdf](https://citizenshiprightsafrika.org/wp-content/uploads/2016/05/LHR_PractitionersGuide-Statelessness_2014.pdf) 2 (accessed 31 January 2025).

curriculum to equip graduates with the necessary skills to ensure that this group can access justice as provided by the Constitution and have their best interests represented.

The historical context of black South Africans, particularly the implementation of the Black Homeland Citizenship Act 26 of 1970, resulted in the revocation of their citizenship status.<sup>21</sup> This legislation mandated the relocation of all black individuals to their designated homelands, where they were granted homeland citizenship in addition to their pre-existing South African citizenship, ultimately leading to the loss of their citizenship.<sup>22</sup> This serves as a pertinent illustration of the experiences faced by stateless and undocumented individuals. Additionally, the past should be acknowledged for the necessity of teaching students how to comprehend this issue in the context of current events and the effects that nationality concerns have on individuals. The existing narrative that statelessness, being undocumented, and nationality concerns are problems that exclusively affect foreigners – thus the unpleasant experiences and repercussions they encounter – should also be dispelled in the curriculum. South Africans can also face these issues<sup>23</sup> and there are no statistics on how many people are stateless in South Africa or a process in which they can be identified.<sup>24</sup> Therefore, there is a need for a legal framework, for that purpose, which can be informed by graduates as they would have been taught about statelessness and related matters.

21 South African History online: Towards a People's History 'The Homelands' <https://www.sahistory.org.za/article/homelands> (accessed 28 January 2025).

22 Mahleza (n 7) 98-99, see also South African History online: Towards a People's History 'The Homelands' <https://www.sahistory.org.za/article/homelands> (accessed 28 January 2025).

23 Mahleza (n 7) 51, see also B Dratwa 'Xenophobia: A pervasive crisis in post-apartheid South Africa' May 2024 <https://gjia.georgetown.edu/2024/05/26/xenophobia-a-pervasive-crisis-in-post-apartheid-south-africa/> (accessed 29 January 2025).

24 Lawyers for Human Rights 'Statelessness and nationality in South Africa' March 2021 [https://static.pmg.org.za/210309Presentation\\_by\\_LHR\\_on\\_Statelessness.pdf](https://static.pmg.org.za/210309Presentation_by_LHR_on_Statelessness.pdf) (accessed 28 January 2025), see also Stateless Hub: Global and reliable information on statelessness, 'South Africa' <https://www.statelesshub.org/country/south-africa#:~:text=The%20country%20has%20no%20dedicated,Africans%20and%20non%2Dnationals> (accessed 9 May 2025).

Stateless individuals face significant barriers in accessing basic education and exercising their rights due to their lack of legal status.<sup>25</sup> Without identification, they are also unable to access further education.<sup>26</sup> While this chapter does not focus on these challenges specifically, it emphasises how we can better prepare law graduates to represent stateless and undocumented individuals and inform the law related to this issue. The goal is to help graduates apply existing laws to benefit this group, ensuring they can fully exercise all the rights guaranteed by the Constitution and to train students to be critical and to contribute to the knowledge of nationality issues. Beyond legal representation, stateless and undocumented persons are encountered across various disciplines, making it crucial to include this topic in the curriculum.<sup>27</sup> This would allow students from different faculties who interact with these individuals to be trained and equipped to handle issues related to this group of people appropriately. By providing students with knowledge in this area, graduates will be able to apply the law in ways that enable stateless and undocumented people to access higher education, enter the formal workforce as the law evolves and exercise the rights in the Constitution. In essence, graduates will contribute to shaping the law and advancing human rights, using the skills and insights they gain during their education.

If graduates are not properly equipped with the knowledge and skills to address issues of statelessness and being undocumented, this group becomes further marginalised. This means that universities would have failed to prepare students to confront the challenges present in society. Beyond the inadequacy of the curriculum in providing essential knowledge and skills, which disadvantages stateless and undocumented individuals, this group is already excluded in numerous ways, as demonstrated throughout this research. Not only will graduates be

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25 United Nations Human Right, Office of the High Commissioner and Lawyers for Human Rights (n 16).

26 See section 29 (1) of the Constitution, which provides as follows:

29. (1) Everyone has the right –  
 (a) to a basic education, including adult basic education; and  
 (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

27 These disciplines include but are not limited to Law (Public International Law, Constitutional Law, Administrative Law, Immigration and Nationality Law), Political Science (Citizenship Studies, State-building and Governance and Policy Studies), Education (Access and Barriers) and Public Health (Healthcare Access).

prepared to be legal representatives on the issue but law researchers and policy makers who will assist in developing the law on statelessness, undocumentation and nationality issues. Further, graduates will be able to assist in developing the law that regulates the determination of stateless people because currently South Africa has no such law specific for that purpose. This aspect has not been addressed in the White Paper on Citizenship, Immigration and Refugee Protection: Towards a Complete Overhaul of the Migration System in South Africa 2024.<sup>28</sup>

### 3 Current understanding and knowledge gaps

Some scholars argue that '[w]ithout a more practical approach to law modules, fully underscored by constitutional values, graduates will not develop a sense of how the law can promote social and procedural justice to improve people's lives,'<sup>29</sup> and this research supports this line of argument. Social justice, in terms of improving the lives of stateless persons has not sufficiently been covered, nor the procedural aspect. This is evident and calls for attention considering that the majority of professionals in practice lack knowledge regarding statelessness.<sup>30</sup> Furthermore, this research advocates for a practical approach by transforming the curriculum to incorporate community struggles alongside traditional content.<sup>31</sup> This approach emphasises African solutions to African problems while maintaining the traditional curriculum.<sup>32</sup> Consequently,

28 Lawyers for Human Rights 'Lawyers For Human Rights Submission On The White Paper On Citizenship, Immigration And Refugee Protection: Towards a complete overhaul of the migration system In South Africa' 23 and 35 <https://lawyersforhumanrights.b-cdn.net/wp-content/uploads/2024/02/LHR-Submission-on-DHA-White-Paper-2024-01-31.pdf> (accessed 9 May 2025).

29 M Welgemoed & D Erasmus 'The importance of graduate attributes in preparing law students for legal practice' (2023) *Obiter* 709 732.

30 Lawyers for Human Rights (n 16) 2.

31 In this research what is referred to as the traditional curriculum is what J Modiri describe as "Traditional legal education or "black-letter legal education" can be identified by its emphasis on "law cramming" – that is, by its focus on rule-learning without any or sufficient reference to the wider social context in which legal rules operate' in J Modiri 'Transformation, tension and transgression: Reflections on the culture and ideology of South African legal education' *Stellenbosch Law Review* 455 459.

32 J Modiri 'Curriculum Transformation at/and South African Law Schools/Faculties' [https://www.academia.edu/28630349/Curriculum\\_Transformation\\_at\\_and\\_South\\_African\\_Law\\_Schools\\_Faculties?auto=download](https://www.academia.edu/28630349/Curriculum_Transformation_at_and_South_African_Law_Schools_Faculties?auto=download) (accessed 27 January 2024).

graduates will not only learn about these realities in practice but will also be well-prepared and skilled to effectively execute their duties.

The curriculum ought to function as a stepping stone and a basis of knowledge on the practical and theoretical experiences that graduates will have.<sup>33</sup> Social responsibility should be promoted and attained through the curriculum's design.<sup>34</sup> For graduates to be socially responsible, they must be aware of the people they are presenting and the ramifications the clients experience. In the case of statelessness, undocumented, and nationality concerns, this is challenging because our graduates lack the necessary knowledge and skills to fully comprehend the topic in the manner that it is covered in their curriculum. Graduates thus face difficulties in practice.<sup>35</sup> Given the fields the issue touches on, it is challenging for those in practice to train graduates on this issue because not all of them, in practice, grasp the notion, yet there is a likelihood that they may encounter statelessness as it cuts across various disciplines. For this reason, adding this subject to the curriculum along with seminars and workshops would benefit students, lecturers and professionals from different fields.

One way that tertiary education seeks to support the economy is by '... producing skilled graduates.'<sup>36</sup> This research argues that there needs to be a balance between the traditional, theoretical curriculum taught at universities and its practical application to societal realities. In other words, does the university curriculum effectively prepare students by laying the foundation to develop the skills needed to represent clients in real-world situations? The research explores statelessness as an example of a development that should be included in the curriculum, highlighting its importance and relevance across various disciplines, as explained

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33 In this regard, see CF Swanepoel, M Karels & I Buzuidenhout 'Integrating theory and practice in the LLB curriculum: Some reflections' (2008) *Journal for Juridical Science Special* 99 and MA du Plessis 'The role of clinical legal education in developing ethical legal professionals' (2021) *De Jure Law Journal* 278, in general.

34 See Du Plessis (n 33) 288-290 and 293.

35 Clinical legal training prepares graduates to handle difficult legal issues for example, migration issues. Hence, it is argued that there is a need for better education of legal professionals to address nationality laws and statelessness issues effectively and graduates can be prepared through clinical legal education (or any form of practical training depending on the field in question since the issue cuts across different fields) to understand the social responsibilities of professionals in the field. In this regard, see Du Plessis (n 33) in general.

36 Welgemoed & Erasmus (n 29) 710.

earlier. This analysis is based on the current reports about persons who are undocumented and stateless that have not been addressed by our government. The government blames this group for its lack of service delivery and makes citizens believe this instead of finding solutions to this issue.<sup>37</sup>

It is argued that, by not addressing statelessness and nationality issues, in the form of regulating legislation that recognises stateless persons and providing documentation for those who are undocumented, it is another form of showcasing how stateless and undocumented persons suffer from deprivation, vulnerability, suspicion, and exclusion. On the basis that there is no legal framework that is specifically aimed at regulating statelessness, meaning there is no way we can determine how and when a person is stateless, it is significant enough to be included in the curriculum. This is because there is still a significant amount of development that still needs to happen and if our students have the basic knowledge and acquire the skill, they will inform the law.

Lawyering is a communal practice that requires an understanding and connection to the community and its challenges. If university students remain detached from community issues and these problems are not addressed in their academic years, universities fail in their educational role. Issues of statelessness, undocumented individuals, and the associated legal frameworks are pervasive, affecting nearly all legal fields. Moreover, because these issues are multidisciplinary, impacting areas such as healthcare, law, social work, and banking, among others, they ought to be included in the curriculum.<sup>38</sup> Therefore, the research advocates for students to be taught both theoretical knowledge and practical training, fostering a connection to the community and addressing the issues that impact it.

University curricula must stay current with evolving laws and practices. This is important as ‘... there is a need to have up-to-date knowledge of the law and ... insight into the broader environment in which the

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37 See J Vearey et al ‘Scapegoating migrants in SA undermines progress on healthcare for all’ <https://www.dailymaverick.co.za/author/jo-vearey-et-al2/> (accessed 10 February 2025) and A Agbor ‘Language as a tool of divisive politics: perspectives on foreign nationals in South Africa’ *PER / PELJ* 2024(27) 1 DOI <http://dx.doi.org/10.17159/1727-3781/2024/v27i0a15552>.

38 Lawyers for Human Rights (n 16).

legal practice is conducted.<sup>39</sup> Statelessness, being undocumented and nationality issues are prime examples of current legal changes and debates in South Africa.<sup>40</sup> Including these topics in the curriculum is crucial to ensure students are well-prepared to address critical issues. By tackling these matters, universities can equip graduates to confront real-world challenges and make meaningful contributions to societal progress and justice.

This chapter argues that when academics advocate for an epistemology that is not solely centred on the Global North but reflects the problems faced in the Global South and solutions thereto – emphasis is placed on the fact that Global South problems are more suitable to be addressed by people from the Global South<sup>41</sup> through epistemology that is central to the Global South – issues like those discussed in this research are prime examples. The solution lies in developing a curriculum that specifically addresses our local challenges, rather than adhering to the traditional curriculum that was designed more broadly and is not tailored to the unique experiences of South Africa and the wider African context. Our students should be equipped with the knowledge and skills necessary to address issues that are directly relevant to the society they serve ‘and proffer solutions that are home grown and suitable for Afrikan contexts.’<sup>42</sup> This is not to suggest that the traditional curriculum should be completely overhauled, but rather that it should be blended with content that addresses the issues faced by our societies and the solutions thereto.

A legal practitioner must provide services in the client’s best interest because ‘it is the legal expertise that clients purchase from the firm and

39 T Harban ‘The need for effective training programs in law firms’ <https://www.derebus.org.za/the-need-for-effective-training-programs-in-law-firms/> (accessed 16 January 2025).

40 B Dratwa, SABC ‘SA schools to enrol undocumented learners for 2025 academic year’ <http://web.sabc.co.za/sabc/home/channelafrica/news/details?id=6b243d31-2eca-4667-a5f0-b3f1c768c732&title=SA%20schools%20to%20enrol%20undocumented%20learners%20for%202025%20academic%20year> (accessed 29 January 2025) and BJ Machaka ‘Protecting the right to basic education of undocumented immigrant children’ November 2024 <https://www.dailymaverick.co.za/article/2024-11-18-protecting-the-right-to-education-of-undocumented-immigrant-children/> (accessed 29 January 2025).

41 Afrikan Peer Growth Network ‘Towards Afrikan-centred participatory knowledge production’ <https://www.apgron.co.za/> (accessed 29 January 2025).

42 Afrikan Peer Growth Network (n 41).

the legal practice does not operate in a vacuum.<sup>43</sup> Failure to do so is an injustice to the client. For graduates to meet this expectation, they must be taught the foundational aspects of what they will encounter in practice, gaining a preliminary understanding at university that will be further refined in practice. This research emphasises that not everything should be taught after tertiary education; the university curriculum's role is to impart the basics. Furthermore, by educating graduates on the fundamental issues faced by society alongside the traditional curriculum, unethical<sup>44</sup> or inexperienced practitioners will be less likely to take shortcuts when dealing with societal issues such as statelessness and undocumented status.

As this research suggests, the curriculum should be revised to reflect recent advancements in the law, just as legal practitioners are expected to stay current on these developments. This study contends that issues about nationality, statelessness, and undocumented status are not a field that is isolated in the sense that it is not only a speciality but also a multidisciplinary one that requires lawyers to know of it even if they are not specialists in that field. Since tertiary education teaches the fundamentals, it must be included in the curriculum and that gap is filled.

Some academics are of the view that there is a '... need for regular training of legal practitioners to remain relevant, impart specialist advice and to compete in the increasingly competitive legal services market.'<sup>45</sup> This is true, however, this research further suggests that before specialist advice is given by our graduates when in practice, an area of law such as issues related to nationality is unique in its way, in that it cuts across several disciplines while also factoring in that it involves a marginalised group not being able to exercise their rights, therefore, it should be taught at tertiary level to give a foundation of what they will encounter in practice.

The need for legal practitioners to 'remain reasonably abreast of legal developments, applicable laws and regulations, legal theory and the common law, and legal practice in the fields in which they practice'<sup>46</sup> is

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<sup>43</sup> Harban (n 39).

<sup>44</sup> The *Lembore* case (n 11). See also, Broughton (n 11).

<sup>45</sup> Harban (n 39).

<sup>46</sup> Legal Practice Council: Notice 198 of 2019, Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities para 3.13, see also Harban (n 39)

provided for in paragraph 3.13 of the Code of Conduct for all Legal Practitioners. Universities should adapt their curricula to reflect the most recent changes to prepare graduates to adhere to these regulations and to ensure that they are prepared for life beyond graduation. Understandably, law firms might provide regular training 'to ensure that they comply with their professional standards of ethics'<sup>47</sup> however, not all law firms do this and some of them portray unethical standards at clients' expense.<sup>48</sup> When unethical behaviour occurs towards individuals facing statelessness or undocumented status, they often struggle to seek justice due to fear of arrest,<sup>49</sup> which contradicts the principles of social justice. Instances of unethical practices related to nationality issues have been observed in courts.<sup>50</sup> This research highlights how statelessness intersects with other topics already covered extensively in university curricula, such as ethics, while statelessness and undocumented status are scarcely addressed in textbooks prescribed at universities.<sup>51</sup> Given the multidisciplinary nature of these issues, universities must fulfil their duty to impart knowledge by ensuring students understand and are prepared to represent stateless and undocumented individuals effectively in practice.

If graduates are taught of statelessness as a foundation at the university level and later trained more in practice, there is a lesser chance of complaints to the Legal Practice Council (LPC)<sup>52</sup> against practitioners who are unable to fully assist stateless or undocumented persons based on being unethical<sup>53</sup> or having less knowledge on the issues because they do not fully understand the concept due to the foundation not being laid during undergraduate studies.

It is well understood that graduate students must be thoroughly equipped with knowledge of the law and how to apply it correctly.<sup>54</sup> It is generally presumed that 'a duly admitted lawyer is competent'.<sup>55</sup>

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47 Harban (n 39).

48 The *Lembore* case (n 11). See also, Broughton (n 11).

49 Shapesea 'The Rights of Non-Citizens: Refugees and the Stateless' <https://shapesea.com/wp-content/uploads/2016/02/HR-Textbook-Ch-6-Refugees-and-Stateless-Ed-1.pdf> 151 (accessed 29 January 2025).

50 The *Lembore* case (n 11). See also, Broughton (n 11).

51 Bekink (n 19).

52 Harban (n 39).

53 The *Lembore* case (n 11 above). See also, Broughton (n 11).

54 *Mlenzana v Goodrick and Franklin Inc* [2011] ZAFSHC 111; 2012 (2) SA 433 (FB) paragraph 92.

55 *S v Halgryn* [2002] ZASCA 59 para 12.

This presumption underpins the principle that clients have the right to 'proper, effective or competent' legal representation, whether in civil or criminal matters.<sup>56</sup> When a legal practitioner lacks competence or sufficient knowledge, it can result in a miscarriage of justice, depriving clients of fair trials and adequate representation. In essence, a legal representative's 'incompetence, bad advice and obstructive conduct' constitutes a violation of the client's rights, including the right to a fair trial<sup>57</sup> and fair representation.<sup>58</sup> Therefore, it is essential that law graduates are thoroughly trained in both legal knowledge and its correct application.<sup>59</sup>

Without proper knowledge of the law or knowledge on how to apply it, students will be unable to fulfil their duties effectively, potentially bringing the LPC into disrepute. While it is generally agreed that adequate knowledge includes a solid understanding of substantive procedural law,<sup>60</sup> as acknowledged in this research, the argument here is that more needs to be done to ensure the curriculum reflects current developments. The curriculum should not only cover traditional legal principles but also address the realities faced by society, preparing graduates for practice. In other words, the scope of what graduates should know should include a basic understanding of the legal issues currently affecting the community. This extends to producing students who do not 'lack a substantive commitment to the eradication of marginalisation and subordination'<sup>61</sup> when it comes to being committed to social justice issues like the one discussed in this chapter.

The gap identified in this research is demonstrated by the limited coverage of statelessness in textbooks,<sup>62</sup> despite it being a legal development that requires greater attention. The curriculum should be assessed to ensure it goes beyond traditional topics and incorporates

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56 *S v Halgryn* (above).

57 *S v Tandwa and Others* [2007] ZASCA 34 para 9.

58 *S v Mafu and Others* [2008] ZAGPHC 38 para 30.

59 Although the cases mentioned in this paragraph do not specifically address issues of nationality, undocumented status, or statelessness – as seen in the *Lembore* case – the central point remains that a legal practitioner's incompetence can infringe upon a client's right to fair trial and proper legal representation. This underscores the importance of ensuring that law graduates are adequately prepared with foundational knowledge for the realities they will face in practice.

60 Harban (n 39).

61 Modiri (n 31) 463.

62 For example, Bekink (n 19).

issues that reflect the real-world challenges facing the community. By examining the curriculum transformation drivers that shape the vision of transformation at the University of Pretoria, we can align these with the proposals put forward in this research. The following points illustrate this alignment:<sup>63</sup>

### 3.1 Responsiveness to social context

According to the university's framework '[a] transforming curriculum is one that registers and is attuned to local and global contexts, histories, realities and problems' Statelessness and undocumented are not issues confined to a local context; they are global challenges. Historically, black South Africans have been particularly affected by these issues,<sup>64</sup> yet they are not taught to students at a time when they continue to persist and impact people in various aspects of their lives. Despite the significance of statelessness, which spans multiple disciplines, the curriculum has yet to incorporate this issue, leaving a crucial gap in the education of students. This exclusion is argued to be a lack of prioritisation on the part of the university to not '... [focus] on the ways in which disciplines can contribute to the development of society and realisation of a dignified and sustainable life for all South Africans.'<sup>65</sup> How else can students '... be encouraged to participate in positively transforming society at all levels'<sup>66</sup> when the curriculum itself is not structured in a manner that encourages the development of society through legal developments that may or may not be addressed by our legal frameworks such as the fact that statelessness has no specific legislation addressing it in South Africa.<sup>67</sup> It is therefore argued that universities must build the capacity within their curriculum to equip students to respond to social issues like statelessness and undocumented as it intersects with several fields

63 University of Pretoria 'work Document: Reimagining Curricula for a Just University in a Vibrant Democracy: Work stream on curriculum transformation at the University of Pretoria' [https://www.up.ac.za/media/shared/5/ZP\\_Files/2016/2015-06-02up-curriculum-transformation-framework-final-draft\\_25-5-16.zp90390.pdf](https://www.up.ac.za/media/shared/5/ZP_Files/2016/2015-06-02up-curriculum-transformation-framework-final-draft_25-5-16.zp90390.pdf) (accessed 29 January 2025) 2.

64 Mahleza (n 7) 98-99, see also South African History online (above).

65 University of Pretoria (n 63) 3.

66 University of Pretoria (n 63) 2.

67 Omotunde (n 14).

in which students will enter and encounter this group of people either directly or indirectly.

### 3.2 Epistemological diversity

For the university to diversify epistemology, it means that it should bring ‘... marginalised groups, experiences, knowledges and worldviews emanating from Africa and the Global South to the centre of the curriculum.’<sup>68</sup> This research argues that for South African and African problems to be effectively addressed, the solutions must come from those who are directly facing these challenges. This means that a curriculum based on the Global North cannot fully equip our students with the skills and experience needed for practical application after graduation to solve Global South problems. It is proposed that the curriculum be transformed to include African-based solutions, particularly on issues like statelessness and undocumented status. In this regard, it is contended that an African-based solution curriculum would be rooted in the specific legal, historical, and social contexts of Africa, equipping students with the tools to address issues like statelessness and undocumented status through locally relevant approaches. This includes integrating customary law, regional legal instruments, and comparative African citizenship laws, while promoting practical engagement through legal clinics and community-based research. Emphasising decolonial perspectives, intersectionality, and policy reform. Such a curriculum would foster critical thinking and equip graduates to develop homegrown, justice-oriented responses to the challenges faced by undocumented and stateless populations in South Africa and across the continent. By incorporating diversity into the curriculum, students will gain the skills and confidence necessary to critically question and analyse situations, grounded in an understanding of the historical context of issues currently evolving in society,<sup>69</sup> as they would have been taught this at university.

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68 University of Pretoria (n 63) 3-4.

69 An example can be understanding that losing nationality can happen to citizens and it is not new as Blacks experienced it in the past. In this regard, see the Black Homeland Citizenship Act 26 of 1970 which came to force and withdrew the citizenship status of blacks.

### 3.3 Renewal of pedagogy and classroom practices

The university aims to ‘... [re-evaluate] the ways in which we learn and teach. This includes responsiveness to and training in new pedagogical methodologies and approaches within disciplines.’<sup>70</sup> This research suggests that transforming the curriculum should involve seminars and workshops by organisations to educate students on the realities and consequences of being stateless and undocumented. Additionally, students should engage in vocational work (with credits attached to these initiatives) at institutions that serve this population. By doing so, universities enforce the aspect of rethinking pedagogy and responding effectively to societal needs.

### 3.4 An institutional culture of openness and critical reflection

According to the University of Pretoria, ‘A transforming curriculum exhibits understanding that a “hidden curriculum” can be found in the spaces, symbols, narratives and embedded practices that constitute the university and, in the diversity, or lack thereof, of the staff and student cohort.’<sup>71</sup> In the context of this research, it is essential for teaching staff to impart knowledge in an unbiased and original manner. The university culture must evolve to support transformation without being influenced by its historical biases. Institutional hierarchies, where senior colleagues may resist transformation and the inclusion of current developments, need to be addressed to prevent divisions among the staff. The presence of hierarchies could jeopardise the transformation process and affect student performance.

Through collaboration, universities, law firms, and organisations can identify new legal developments that enhance practical skills while serving society’s best interests. When universities work with other parties who are policymakers and activists, the curriculum can be broadened in such a way that can make lecturers and students understand the implications brought on by being stateless. This approach ensures that the curriculum aligns with graduates’ post-graduation experiences.

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70 University of Pretoria (n 63) 4.

71 University of Pretoria (n 63) 5.

Additionally, the university curriculum should be consistent with the provisions of the Legal Practice Act (LPA).<sup>72</sup> For instance, the LPA calls for the ‘creation of a framework for the “development of adequate training programmes for legal practitioners and candidate legal practitioners” (s 3(g)(iii)) and the objects of the LPC include the promotion of “high standards of legal education and training, and compulsory post-qualification professional development” (s 5(h))’. University of Pretoria’s vision and mission calls for ‘... pursuing recognition and excellence in its core functions of research, teaching and learning, and integrating engagement with society and communities into these, the University of Pretoria will use quality, relevance, diversity and sustainability as its navigational markers,’<sup>73</sup> which can be interpreted to mean more or less the same as what is called for in the LPA. High standards of legal education and the use of quality, relevant and sustainable navigational markers are attributes that universities should aspire to and seek to provide. If the curriculum aligns with the university’s vision and mission and what the LPA calls for, the university will ensure the production of quality graduates and contribute to the success of students. Conversely, if universities fail to align the curriculum with their vision, mission, and societal realities, they should be held accountable for not producing fully equipped and skilled graduates.

If the University of Pretoria’s vision and mission are aligned with current developments, then the curriculum should reflect this alignment. This research argues that for graduates to effectively understand the legal aspects of issues like statelessness in practice, it would be beneficial for them to have a foundational understanding of these issues from their university education. This is particularly important since even in professional practice, many legal professionals are not well-versed in this area,<sup>74</sup> which is why organisations like Lawyers for Human Rights and Centre for Child Law offer training workshops.<sup>75</sup> To achieve this vision, the university must transform its curriculum to include seminars on legal developments, especially on issues like statelessness, which span

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72 Act 28 of 2014.

73 University of Pretoria ‘Vision, Mission and Values’ <https://www.up.ac.za/article/2749453/vision-mission-and-values> (accessed 6 February 2025).

74 Lawyers for Human Rights (n 16) 2.

75 Training is also done for communications practitioners, see Lawyers for Human Rights (n 16).

multiple disciplines as suggested above. Additionally, students should participate in vocational work at institutions that engage with stateless and undocumented individuals, allowing them to see how these issues are addressed. Ultimately, this means transforming the curriculum beyond the classroom – training students to recognise the problems in their own societies and develop solutions, rather than adhering to a curriculum focused on Western-centric issues that cannot adequately guide them toward the solutions needed in their context.<sup>76</sup>

The goal of educating students about new legal developments is to ensure they have adequate knowledge, or at least the basics, when they enter practice, enabling them to fully represent their clients. This is crucial to prevent failures in representation, as unpreparedness can lead to costly mistakes for clients. These costs are not only financial but also include the loss of the right to be recognised and to exercise constitutional rights. Stateless persons, in particular, suffer greatly as they cannot exercise their constitutional rights like recognised individuals, nor are they able to freely report when there is unethical behaviour.<sup>77</sup> Thus, they are disproportionately affected by unskilled graduates, losing much more in the process.

Therefore, if the aim is for our graduates to acquire the necessary skills in new legal developments, the curriculum should reflect these developments. Instead of the curriculum only just reflecting ‘... legal theory, practical skills and an appreciation of constitutional values, legal ethics and professionalism...’<sup>78</sup> such aspects must be linked to the realities of society to give the community tailor-made assistance. It is contended that if universities are successful in the ongoing transformation of the curriculum, it showcases their intent to take proactive steps to develop solutions to a global problem.

The process of curriculum transformation for the LLB emphasises that:

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76 University of Pretoria ‘Curriculum transformation should extend beyond the classroom’: World-renowned African Philosophy expert delivers public lecture at UP’ 25 October 2019 [https://www.up.ac.za/news/post\\_2852217-curriculum-transformation-should-extend-beyond-the-classroom-world-renowned-african-philosophy-expert-delivers-public-lecture-at-up](https://www.up.ac.za/news/post_2852217-curriculum-transformation-should-extend-beyond-the-classroom-world-renowned-african-philosophy-expert-delivers-public-lecture-at-up) (accessed 28 January 2024).

77 D Passarelli (above) 26, 212 and 214, see also A Edwards & L van Waas *Nationality and Statelessness under International Law* (2014) 50.

78 Welgemoed & Erasmus (n 29) 735.

Every law module of the LLB curriculum will alert students to the fact that the Constitution is the supreme law of the country and that all other sources of law are subservient to it; that the Constitution and the values it embodies and the spirit it exudes demand that law (whether common law, statutory law, customary law or international law) be an active agent for change; and that all law must be measured against the demand that law must be interpreted and applied in light of the values that underlie an open and democratic society based on human dignity, equality and freedom.<sup>79</sup>

In line with the contentions made in this research, the above quote entails that the LLB curriculum should address the transformative values that the Constitution of South Africa calls for. The curriculum must be responsive to social justice issues. In other words, ‘to teach and to study law “constitutionally”, means a completely different way of teaching and studying law than previously’.<sup>80</sup> This means creating a curriculum that fosters an environment where students do not only learn theory but are also taught practice and engage in the real issues experienced in society to better equip them for practice, enabling them to empathise with the community and the issues the community faces, such as understanding statelessness. Ultimately, this means that the LLB Standard calls for law faculties to have a solid grasp of ‘transformative constitutionalism’ and its fundamental values, to incorporate these principles throughout all stages of the LLB curriculum, and to ensure that law students internalise them.<sup>81</sup> This forms the core argument of this research.

#### **4 Proposed curriculum changes**

In the case of legal education, some academics contend that ‘[t]he gap between university legal education and legal practice significantly contributes to the view that most law graduates are substantially underprepared for entry into legal practice.’<sup>82</sup> Nonetheless, this study contends that despite efforts to bridge this gap, the majority of the attention is directed toward topics pertaining to the conventional

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79 Council on Higher Education ‘The State of the Provision of the Bachelor of Laws (LLB) Qualification in South Africa Report’ November 2018 <https://www.ch.ac.za/publications/reports/state-provision-bachelor-laws-llb-qualification-south-africa> (accessed 14 May 2025) 18.

80 Council on Higher Education (above).

81 Council on Higher Education (above).

82 Welgemoed & Erasmus (n 29) 709.

curriculum outputs, such as understanding of criminal law and the law of evidence, for example. Legal advances, such as statelessness issues, which are seen to be crucial since they span several disciplines, are not given enough attention. Statelessness is not a recent problem, despite what some people may believe. The problems associated with statelessness are growing such that they should be studied and taught at universities so that practitioners and graduates can deal with them appropriately when they encounter stateless and undocumented people. By transforming the curriculum to cover topics like statelessness, undocumentedation, and nationality concerns, this study contends that graduates will have the knowledge and abilities necessary to tackle such issues in practice. Such qualities will make graduates most equipped to deal with contemporary societal concerns that are in line with the goals the university has set forth.

In order to fully transform the curriculum, the transformation must be ‘... a complete change both in form and substance.’<sup>83</sup> Universities should commit to developing a curriculum that not only reflects the provisions of the Constitution but also addresses the realities of the current era, aligning with the ongoing curriculum transformation. In other words, the focus should not be solely on the traditional curriculum, which primarily covers principles of criminal law, civil procedure, and similar areas, but should also take into account emerging issues. In the case of this research, these emerging issues include statelessness and undocumentedation, which intersect with various aspects of the traditional curriculum. For instance, when considering statelessness and identification, topics like the burden of proof and criminal law (such as the rights of individuals in detention) come into play, demonstrating how statelessness impacts multiple areas of law that students will encounter in practice. Furthermore, for students to genuinely grasp the impact of statelessness and its intersectional nature, this research argues that it should be thoroughly integrated into modules such as International Law, Law of Persons, and Jurisprudence. This approach also creates opportunities for interdisciplinary collaboration among lecturers from different departments.

This research argues that curriculum transformation should reflect the ‘social and natural reality’ of the people in South Africa and across

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83 L Dzedze ‘Time on their side? A review of the four-year LLB as a tool for the transformation of the legal profession’ (2017) *Speculum Juris* 107 110.

Africa.<sup>84</sup> What benefit is it to South Africans if graduates are not trained to meet their specific needs? More importantly, what value is there in a curriculum that addresses the realities of others, but not that of South Africans? A curriculum not tailored to the South African context cannot offer solutions to the problems faced by society. This is evident in the persistence of issues like statelessness and undocumented status, not only in South Africa but globally. Many university curricula are not structured to provide solutions for South Africans, as they fail to address the issues South Africans face in their daily lives – issues that are more relevant and contextualised for them.<sup>85</sup> This problem can be seen through the accusation that undocumented persons (migrants to be specific) are taking space in schools at the beginning of each year, while undocumented persons also include citizens and both are at risk of becoming stateless.<sup>86</sup> As a result, graduates struggle to relate to real-world practice and apply the law to situations they do not fully understand or have background knowledge of, issues such as statelessness. Unfortunately, statelessness is an issue that spans across various disciplines, further complicating the matter.

For the proposed curriculum transformation to be effective, universities and organisations dealing with statelessness and undocumented individuals must collaborate to organise workshops for students and legal practitioners. These workshops will provide insights into addressing such issues when they arise. By doing so, graduates will be fully equipped to handle statelessness and undocumented matters, not only in the legal profession but also in other sectors. The workshops should be accessible to people from other faculties, such as health and social services. The aim is ‘to produce graduates who have a systematic and coherent body of knowledge and an understanding of the relevant concepts and principles ...’<sup>87</sup> The research contends that by developing a curriculum that addresses nationality issues and incorporates the key aspects of statelessness and undocumented status within the traditional

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84 Modiri (n 31).

85 Modiri (n 31).

86 L Sidimba ‘Operation Dudula wants SA kids prioritised at schools’ January 2025 <https://www.iol.co.za/news/operation-dudula-wants-sa-kids-prioritised-at-schools-128bc0c3-62ae-4b53-b766-f2ab523e8671> (accessed 6 February 2025).

87 South African Qualifications Authority ‘Registered Qualification: Bachelor of Laws’ <http://regqs.sqa.org.za/viewQualification.php?id=22993> (accessed 15 January 2024).

framework, students and legal practitioners will be better equipped to provide the necessary services in reality.

In the case of *Lembore*,<sup>88</sup> where the legal practitioner exploited immigrants, it clearly goes against the ethical standards expected of legal professionals, as well as what they were taught about ethical conduct. Additionally, being unable to fully represent a client because of unfamiliarity with a concept, due to a lack of proper training or education, is a significant concern. This issue could be addressed by incorporating topics like statelessness into the curriculum, as argued in this research. It is suggested that the curriculum should provide a foundation in all key aspects of reality that individuals face, rather than simply focusing on traditional concepts that do not account for current social realities. By transforming legal education in this way, universities would be fostering graduates who are not just skilled professionals, but individuals who are committed to serving humanity, promoting social and economic justice, and improving the lives of all South Africans. This would be in stark contrast to what transpired in the *Lembore* case, where a lack of understanding and ethical awareness led to exploitation.<sup>89</sup>

It is argued that the role of curriculum transformation should include issues such as statelessness, undocumented, and nationality problems, moving beyond a basic understanding of constitutional or human rights law related to nationality acquisition. The basis of this argument goes beyond what is immediately apparent. The curriculum needs to explore complex realities – for instance, although the Constitution extends rights to everyone and does not limit them to citizens alone, in practice, ‘for stateless persons the fundamental rights that most people take for granted like education and healthcare, become impossible to access.’<sup>90</sup> Additionally, the right to access justice is effectively out of reach for many, as they often fear engaging with authorities.<sup>91</sup>

Therefore, graduates should be equipped with a deeper understanding of the consequences of being stateless or undocumented, so

88 The *Lembore* Cases (n 11 above). See also, Broughton (n 11).

89 The *Lembore* Cases (n 11 above). See also, Broughton (n 11).

90 J Lambert ‘The emerging role of the EU in eradicating childhood statelessness’ 8 December <https://www.statelessness.eu/updates/blog/emerging-role-eu-eradicating-childhood-statelessness> (accessed 15 May 2025).

91 D Passarelli ‘Realising the rights of stateless persons: Fiduciary duties and stateless persons’ in T Bloom et al *Understanding Statelessness* (2017) 212.

they are better prepared to represent this vulnerable group. Given how intertwined these issues are with various aspects of law, it is crucial to teach them in greater depth, yet they are not as thoroughly covered as topics like criminal law, which are part of the traditional curriculum. Criminal law, being well-established in the curriculum, often results in issues like statelessness falling through the cracks, leaving graduates and professionals with little knowledge or background when encountering such cases. This is reflected in the limited coverage of statelessness in textbooks prescribed by some universities, making it likely to be rushed through or even overlooked, as many lecturers are not well-versed in this area.<sup>92</sup>

Lawyers for Human Rights has also highlighted the lack of understanding of the concept of statelessness by authorities when it reiterated that '[t]here is a marked lack of understanding of the problem of statelessness amongst the state authorities who are best positioned to prevent or reduce it. Statelessness is a little-known concept even in the human rights field.'<sup>93</sup> The same can be said about other professionals who encounter stateless persons, they do not fully understand the concept or how to apply laws relating to it. The fact that textbooks devote so little attention to such an important issue underscores the need for them to be updated, particularly as statelessness is a growing global concern.<sup>94</sup>

This research suggests that to create a balanced curriculum between traditional modules, such as the law of evidence and criminal law, and a new curriculum addressing recent legal developments, a gap analysis is needed to identify pressing societal legal issues. Statelessness, undocumentation, and nationality issues have been highlighted as urgent matters requiring attention. These issues are often misunderstood and misinterpreted as being solely experienced by foreign nationals, a narrative furthered by politicians deflecting their failures onto foreign nationals as the reason for service shortages. Given the multidisciplinary nature of these issues, it is crucial to incorporate them into the curriculum. Legal professionals will need to address these matters, even if they arise from other disciplines or legal fields.

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92 Bekink (n 19).

93 Lawyers for Human Rights (n 16) 2.

94 European Union Agency for Asylum 2024 (n 5).

Workshops and educational seminars hosted by organisations such as the Centre for Child Law and Lawyers for Human Rights, which focus on issues of statelessness and undocumented status, would also be beneficial. For the University of Pretoria, which already has the Centre for Child Law and the Centre for Human Rights within its Faculty of Law, it would be easier to incorporate statelessness into the curriculum with the support of the centre. This collaboration could help bridge the knowledge gap and provide students with practical insights into these critical issues.

By researching current legal developments and integrating them into the curriculum – while acknowledging constitutional principles and ensuring inclusivity for minority groups – universities will produce graduates who are well-informed and equipped to address contemporary issues. In addition to creating an up-to-date curriculum, universities should teach students how to apply their knowledge and skills across various contextual and conceptual frameworks. In this case, the focus would be on applying knowledge and skills related to statelessness, undocumented status, and nationality issues, which are crucial as they span multiple disciplines.

For the curriculum transformation to successfully include aspects of statelessness and undocumented status, it must consider their impact on various disciplines. Given that social justice is connected to societal experiences, and statelessness and undocumented status are pressing issues lacking adequate solutions, these topics should be integrated into the curriculum to enhance students' understanding. While ordinary citizens face social exclusion, poverty, and other challenges, students must grasp that stateless individuals are not recognised by any state and cannot exercise constitutional rights, rendering them legally non-existent and experiencing more exclusion compared to an ordinary citizen. Therefore, the curriculum must impart skills and teach students to critically examine the inequalities experienced by marginalised groups such as stateless and undocumented individuals and bring about change in that regard.

In summary, curriculum transformation must ensure that the curriculum addresses the needs of those who require legal representation in society, helping to produce skilled graduates who can ethically apply what they have learned to real-world situations and promote social

justice.<sup>95</sup> The curriculum should not focus solely on theory but balance theoretical knowledge, practical experience, traditional subjects, and new developments in the field.

## 5 Conclusion

In conclusion, transforming the curriculum to include new developments, such as the prevalent issues of statelessness, undocumented status, and nationality, helps graduates understand the socio-economic realities of society. This enables students to acquire skills closely aligned with society's needs, which is crucial when providing services to clients. Integrating these aspects into the traditional curriculum ensures that graduates are both skilled and society-oriented. Successful curriculum transformation means the university has aligned its vision and mission with the drivers of curriculum transformation and the call from the LPA as discussed in this research.

A successful transformation helps graduates adequately represent society, particularly concerning statelessness and undocumented status, which span various disciplines. By incorporating current legal developments into the curriculum, a solid foundation is established, ensuring clients are represented by well-trained graduates. This also helps prevent future issues where lawyers may fail to represent clients properly or act unethically, especially toward vulnerable individuals, as seen in the *Lembore* case.<sup>96</sup> The responsibility of properly representing clients rests with their legal representatives, who assist them in accessing justice when they '... need legal problems to be resolved by the involvement of the courts.'<sup>97</sup>

Universities must design their curriculum to produce graduates who are well-skilled and knowledgeable in utilising their degrees for the community's benefit, without being compromised by unprofessional and unethical conduct.<sup>98</sup> As the research suggests, the curriculum must be transformed to further focus on the reality faced by society. The duty to bring this change should not only lay with the LPA or in practice where the two are expected to 'bring change not only to the legal profession but

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95 Welgemoed & Erasmus (n 29) 717.

96 The *Lembore* case (n 11). See also, Broughton (n 11).

97 Welgemoed & Erasmus (n 29) 717.

98 Welgemoed & Erasmus (n 29) 735.

also to how the legal profession provides legal services to beneficiaries of the system (members of the public).<sup>99</sup> Considering the *Lembore* case,<sup>100</sup> it is concluded that universities must use their curriculum to teach students how to provide ethical and well-equipped services to society. By transforming the curriculum to include current legal developments, and ensuring this is an ongoing process, universities must aim to produce skilled graduates who are ethically driven and prepared to serve the needs of society.

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99 Welgemoed & Erasmus (n 29) 734.

100 The *Lembore* case (n 11). See also, Broughton (n 11).