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DISCLOSING WITH CARE: EXPLORING A CORPORATE DISCLOSURE REGIME FOR STATELESSNESS

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Approximately 10 million people around the world do not hold any recognized nationality. Significantly more are unable to access any formal documentation to prove their nationality and are thus unable to access fundamental rights and services, such as education, employment, and travel. Public international law initiatives, though critical, have not been able to resolve the most intractable statelessness crises despite decades of treaty-making and other efforts. As a result, more innovative responses are needed to address the severe and ongoing violations of stateless people's rights. This Note explores the potential role for corporate disclosure requirements in addressing the statelessness crisis. Modeling a potential disclosure regime based on the Dodd-Frank Act, California Transparency in Supply Chains Act, and the French Corporate Duty of Vigilance Law and applying it the statelessness situation in Dominican Republic, this Note assesses the potential for corporate involvement in issues impacting vulnerable populations such as stateless individuals. Ultimately, this Note concludes that the risks of a disclosure regime for stateless individuals may outweigh the benefits unless serious care is taken to ensure that reporting is accompanied by the necessary protections. In doing so, the Note sheds light on possible protections that must be included in a regime and highlights the possible risks of due diligence regimes for human rights concerns impacting vulnerable populations more generally.

INTRODUCTION 566
I. BACKGROUND 569
A. *Statelessness Generally* 569
B. *Business and Human Rights Generally* 571
C. *Corporate Disclosure and Human Rights* 574

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1. *Section 1502 of the Dodd Frank Act* 576
2. *California Transparency in Supply Chain* . . . 577
3. *French Duty of Vigilance Law* 579
D. *Corporate Disclosure and Statelessness* 580
II. DOCUMENTATION AND CORPORATIONS IN THE DOMINICAN REPUBLIC 582
A. *History of Migration and Documentation* 582
B. *Existing Documentation Issues* 583
C. *Corporations and Undocumented Populations* . . . 584
III. DISCUSSION 585
A. *The Case for a Statelessness and Documentation Disclosure Regime* 586
B. *Feasibility and Practicalities of a Disclosure Regime for Statelessness* 587
C. *Advantages of a Disclosure Regime* 588
D. *Possible Risks and Unintended Consequences of a Disclosure Regime* 591
E. *Weighing the Costs, Benefits and Potential Opportunities* 593
CONCLUSION 595

INTRODUCTION

Statelessness, defined as the lack of a recognized nationality, was characterized by the late Chief Justice Earl Warren as "a form of punishment more primitive than torture."[1] Famously described by philosopher Hannah Arendt as the "right to have rights," the fundamental right to nationality and identity documentation is a prerequisite for access to state protection and a wide range of other basic rights, including education, healthcare, and freedom of movement.[2] Individuals with-

1. U.N. High Comm'r for Refugees, *A Special Report: Ending Statelessness Within 10 years*, UNHCR, https://www.unhcr.org/protection/statelessness/546217229/special-report-ending-statelessness-10-years.html (last visited May 9, 2022).

2. HANNAH ARENDT, THE ORIGINS OF TOTALITARIANISM 296 (2nd enlarged ed. 1958); U.N. High Comm'r for Hum. Rts., *OHCHR and the Right to a Nationality*, https://www.ohchr.org/en/nationality-and-statelessness (last visited July 28, 2023); David Weissbrodt & Clay Collins, *The Human Rights of Stateless Persons*, 28 Hum. Rts. Q. 245 (2006), https://scholarship.law.umn.edu.faculty_articles/412.

out a nationality are significantly more vulnerable to violence, trafficking, forced displacement, and other forms of abuse.[3]

Although having a nationality is imperative for the realization of a host of basic rights, statelessness remains an ongoing issue. The United Nations High Commissioner for Refugees (UNHCR) estimates that there are approximately 10 million stateless individuals around the world.[4] The urgency and complexity of statelessness issues requires innovative solutions from the global community and may call for participation from actors typically outside of the discussion around solutions to statelessness. Transnational corporations (hereinafter "TNCs") are one such actor. In regions with significant stateless populations, TNCs may employ or exploit stateless individuals in their supply chains.[5] TNCs also possess the power and resources necessary to move the dial on statelessness by putting pressure on governments, raising awareness, and supporting local initiatives to alleviate statelessness.[6]

This Note analyzes the possibility of addressing the problem of statelessness through the corporate reporting requirements. Over the past two decades, a number of initiatives have been introduced both in the United States and in other countries, mandating corporate disclosures on human rights issues ranging from the use of conflict minerals to the use of forced labor in supply chains.[7] These initiatives require corporations to conduct investigations into their operations, assess human rights-related risks, and report both their findings and response measures to regulatory bodies. Some authors have proposed establishing a similar reporting requirement for state-

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3. U.S. Dep't. of State, *Statelessness*, https://www.state.gov/other-policy-issues/statelessness (last visited Apr. 3, 2022).

4. Refugees, *supra* note 1.

5. Mark Brewer & Sue Turner, *Solving Child Statelessness: Disclosure, Reporting, and Corporate Responsibility*, 8 BRITISH JOURNAL OF AMERICAN LEGAL STUDIES 83, 86 (2019).

6. *Id.*

7. *See, e.g.,* Bus. & Human Rts. Res. Ctr., France's Duty of Vigilance Law, https://www.business-humanrights.org/en/latest-news/frances-duty-of-vigilance-law (last visited May 9, 2022); State of Cal. Dep't. of Just., The California Transparency in Supply Chains Act, https://oag.ca.gov/SB657 (last visited May 9, 2022); SEC, *Fact Sheet: Disclosing the Use of Conflict Minerals*, https://www.sec.gov/opa/Article/2012-2012-163htm—related-materials.html (last visited May 9, 2022); Modern Slavery Act 2015 (Eng.), https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted (last visited May 9, 2022).

lessness, which would require companies to report the risk of statelessness in their supply chains and discuss the programs and policies in place to mitigate those risks.[8] At first glance, such a scheme offers a powerful opportunity to bring corporations into the efforts to alleviate statelessness. However, because of the unique vulnerability of stateless persons and their inability to access many state recourse mechanisms when abuse occurs, it is critical to consider potential unintended consequences before introducing or changing a regulatory scheme.

With this in mind, this Note analyzes the feasibility, advantages, and risks of a disclosure regime that targets statelessness. The discussion incorporates examples from the Dominican Republic (DR) to help illustrate the practical implications of a disclosure strategy. While no active proposal currently exists that would require corporations to disclose the risk of statelessness in their supply chains, the conversation is ongoing, and understanding the practical implications of a such a regime can shed light on a corporation's relationship with individuals without a nationality or documents. By exploring an under-researched application of reporting requirements, this Note contributes to a larger debate regarding the efficacy of due diligence requirements in providing solutions to human rights violations.

This Note proceeds as follows: Part I provides a background on statelessness generally, highlighting the challenges in relying solely on public international law to address ongoing statelessness issues. Part II turns to the growing debate on business and human rights, providing a background on disclosure regimes targeted at human rights that have been introduced in the United States, as well as the conversation in the literature around statelessness and corporate disclosure. Part III provides a brief background on corporations and undocumented persons in the DR. Finally, Part IV discusses what a corporate disclosure regime for statelessness might look like, weaving in examples from the DR, and concludes by weighing the benefits and risks of the regime.

8. Brewer & Turner, *supra* note 5.

I.
Background

A. *Statelessness Generally*

When discussing statelessness and relevant solutions, this Note considers both stateless individuals and individuals who lack any form of identity documentation, despite theoretically having access to a recognized nationality.

Under international law, a stateless person is defined as a "person who is not considered as a national by any State under the operation of its law."[9] Common causes of statelessness include gaps in nationality laws, lack of birth registration, emergence of new states, or the intentional deprivation of nationality.[10] Obtaining exact global estimates of the number of stateless individuals is challenging given that, by nature of being stateless and not recognized by state governments, individuals are often not registered in government registries or other population censuses.[11] As of 2019, the UNHCR counted 4.2 million stateless individuals worldwide, although the actual number is estimated to exceed 10 million due to severe underreporting.[12]

In addition to the *de jure* stateless individuals discussed above, individuals may also be *de facto* stateless, or effectively stateless, meaning that despite having a claim to citizenship, they lack identity documentation or recognition of their nationality.[13] Administrative issues, costs associated with birth registration, or targeted discrimination may lead individuals to lack proof of their nationality. Without any documentation to prove their nationality, *de facto* stateless individuals encounter many of the same barriers and human rights violations as those who are *de jure* stateless. Individuals lacking identity documentation are also often unable to register their own chil-

9. U.N. High Comm'r. for Refugees, *Convention Relating to the Status of Stateless Persons*, https://www.unhcr.org/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html (last visited Apr. 3, 2022).

10. U.N. High Comm'r. for Refugees, *Ending Statelessness*, https://www.unhcr.org/ending-statelessness.html (last visited Apr. 3, 2022).

11. Institute on Statelessness and Inclusion, Statelessness in Numbers: 2020 (Aug. 2020), https://files.institutesi.org/ISI_statistics_analysis_2020.pdf.

12. U.S. Dep't. of State, *supra* note 3.

13. *Id.*

dren, resulting in statelessness issues that compound over generations. Lack of identity documentation or a recognized nationality impacts the wide range of rights that individuals enjoy vis-á-vis the state, such as the right to education, to marry, to travel freely, and to due process, among many others.[14]

A number of international conventions have laid out protections for the right to nationality. The Universal Declaration on Human Rights, adopted in 1948, recognizes nationality as a fundamental human right. The inherent value of nationality and the risks of statelessness was affirmed by the international community in the 1954 Convention on the Status of Stateless Persons (hereinafter "1954 Convention") and the 1961 Convention on the Reduction of Statelessness (hereinafter "1961 Convention").[15] The 1954 Convention requires that stateless persons be treated no less favorably than aliens with respect to employment, housing, and public education, among other basic rights. The 1961 Convention sets out safeguards against statelessness in several contexts and requires states to commit to reducing statelessness over time. Other U.N. treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the U.N. Convention on the Rights of the Child also guarantee the right to a nationality for children in particular.

Despite international acknowledgement of this issue, the problem of statelessness persists. Given the significant number of individuals impacted by statelessness and the wide range of other basic human rights that are subsequently impacted, it is imperative that the global community continue to find innovative and effective solutions to statelessness and documentation issues.

Recognizing that public international law, while important, has not been sufficient to address statelessness, this paper explores a potential private international law initiative that re-

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14. Brewer & Turner, *supra* note 5, at 87.

15. U.N. Convention Relating to the Status of Stateless Persons (Sept. 28, 1954), https://www.unhcr.org/en-us/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html; U.N. Convention on the Reduction of Statelessness (Aug. 30, 1961), https://www.unhcr.org/en-us/protection/statelessness/3bbb286d8/convention-reduction-statelessness.html; U.N. High Comm'r. for Refugees,*U.N. Conventions on Statelessness*, https://www.unhcr.org/un-conventions-on-statelessness.html (last visited May 6, 2022).

lies on transnational corporations (TNCs) to play a role in alleviating statelessness and access to documentation issues.

B. *Business and Human Rights Generally*

This Section begins by exploring the growing debate around business and human rights, a critical background to contextualize a possible corporate role in addressing statelessness. Historically, the most widely accepted view of a corporation's responsibilities regarding human rights was to say that such responsibilities did not exist—corporations owed a duty to their shareholders to generate profits, and to no one else.[16] However, over the past couple of decades, corporations have become increasingly political actors, and the view that corporations cannot remain on the margins of social and economic issues has become more prevalent. International and private organizations such as the United Nations and the Business Roundtable have recognized the importance of corporate respect for human rights, releasing guidelines and statements on the need for corporations to respect human rights and to provide remedies where corporate abuse has occurred.[17]

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16. Marcia Narine, *Disclosing Disclosure's Defects: Addressing Corporate Irresponsibility for Human Rights Impacts*, 47 COLUM. HUM. RTS. L. REV. 84 (2015); Milton Friedman, *A Friedman doctrine— The Social Responsibility Of Business Is to Increase Its Profits*, N.Y. TIMES (Sept. 30, 1970), https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html; *see also From There to Here: 50 Years of Thinking on the Social Responsibility of Business*, McKinsey & Company (Sept. 11, 2020), https://www.mckinsey.com/featured-insights/corporate-purpose/from-there-to-here-50-years-of-thinking-on-the-social-responsibility-of-business.

17. Int'l Lab. Org. [ILO], TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICY, (2017), https://www.ilo.org/wcmsp5/groups/public/—ed_emp/—emp_ent/—multi/documents/publication/wcms_094386.pdf; U.N. High Comm'r. on Hum.Rts., GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2011), https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf;Int'l Labor Organization [ILO], TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICY (1977), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.volkswagenag.com/presence/nachhaltigkeit/documents/policy-extern/1977%20ILO%20Tripartite%20Declaration%20EN.pdf; *Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans*, https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans (Aug. 19, 2019).

The argument that corporations have an obligation to engage with human rights issues stems from their duties to shareholders as well as from their obligations to *stakeholders*—the individuals that will be impacted by their operations.[18] Corporations' obligation to refrain from engaging in human rights abuses to and provide a remedy where those abuses do occur is abundantly clear when considered from a stakeholder perspective. Duties to stakeholders are often framed under the umbrella of corporate social responsibility, which includes companies' efforts to "meet or exceed stakeholder expectations" through efforts to address social, ethical, and environmental concerns, not just profitability concerns.[19] Under this conception, businesses must integrate human rights compliance and remedy systems into their business strategies in order to ensure that they are not negatively impacting the communities in which they operate.

Although the stakeholder arguments are significant, the duty to prevent and remedy human rights abuses extends beyond a duty to the communities in which corporations operate. From the shareholder perspective, there is a growing argument that boards must consider human rights concerns in order to adequately fulfill their fiduciary duties to shareholders.[20] More and more, consumers and investors are turning away from companies with poor human rights records, suggesting that from a sheer profitability standpoint, firms cannot afford to engage in human rights abuses.[21] Companies have also faced increased legal risks for violating human rights. For instance, plaintiffs in the U.S. have brought claims against corporate defendants for human rights abuses committed abroad under statutes such as the Alien Tort Claims Act (ATCA) and Trafficking Victims Protection Act (TVPA).[22] Ensuring the

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18. Narine, *supra* note 16.

19. Kathleen Wilburn & Ralph Wilburn, *Acheiving a Social License to Operate Using Stakeholder Theory*, 4 J. OF INT'L. BUS. ETHICS 3 (2011).

20. Cynthia A. Williams & John M. Conley, *Is There an Emerging Fiduciary Duty to Consider Human Rights Eighteenth Annual Corporate Law Symposium: Corporate Social Responsibility in the International Context*, 74 U. CIN. L. REV. 75 (2005).

21. *Id.* at 79.

22. *Id.* at 81. Lindsey Robertson & Johanna Lee, *The Road to Recovery After Nestlé: Exploring TVPA as a Promising Tool for Corporate Accountability*, COLUM. HUM. RTS. L. REV. The U.S. Supreme Court has severely limited the ability for plaintiffs to bring claims against corporate defendants under the ATCA

protection of basic human rights also promotes predictability and stability in business operations, preventing social and political disruption that could adversely impact a firm's long-term stability.[23]

In light of these financial, legal, and reputational risks, shareholders have increasingly leveraged the power of shareholder proposals in asking corporate boards to consider corporate human rights performance in their decisions.[24] In the United States, for example, under Securities and Exchange Commission (SEC) regulations, shareholders holding at least $2,000 of stock for at least one year may file a shareholder proposal to be included in a company's proxy statement and votes by all shareholders. These proposals, whether binding or not, are being used more and more frequently by shareholders to hold companies accountable for human rights abuses.[25] In 2021, at least 435 shareholder resolutions were filed at the federal level on economic, social, and governance issues.[26]

These shareholder initiatives have been supported by organizations such as the Investor Alliance for Human Rights, an organization whose mandate is to help investors, particularly large institutional investors, understand *their* fiduciary duties to maintain a portfolio of companies that respects human rights. Large investors such as State Street have also released statements articulating their commitment to human rights and noting that, where investee companies are not adequately managing human rights risks, they will consider taking action by voting down directors and voting for or against relevant

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in recent years, and claims have largely only succeeded on the most egregious human rights violations, such as genocide or slavery. However, jurisprudence under alternative avenues, such as the TVPA, and other legal regimes outside of the U.S. offer increasingly promising avenues to hold corporate defendants accountable for abuse.

23. U.N. High Comm'r. for Hum. Rts., *Business and Human Rights: A Progress Report* (Jan. 1, 2000), https://www.ohchr.org/sites/default/files/Documents/Publications/BusinessHRen.pdf.

24. Adam Kanzer, *Putting Human Rights on the Agenda: The Use of Shareholder Proposals to Address Corporate Human Rights Performance* (2009), https://www.domini.com/uploads/legacy/Finance_for_a_Better_World_Kanzer.pdf.

25. *U.S. Shareholder Proposals Jump to a New Record in 2023,* ISS CORPORATE SOLUTIONS (May 24, 2023), https://www.isscorporatesolutions.com/.

26. Report, PROXY PREVIEW, https://www.proxypreview.org/2021/report (last visited May 9, 2022).

shareholder proposals.[27] These movements and others suggest that it is becoming increasingly infeasible for boards to avoid engaging with human rights issues.

Corporate reporting on human rights and social issues has emerged as one critical way that stakeholders and shareholders are pushing companies to fulfill their human rights-related obligations. Transparency reports and other disclosures on human rights offer investors, consumers, regulators, and human rights advocates a means to monitor corporate behavior and hold companies accountable when they engage in human rights violations.[28] The power of information and the business risks of ignoring this information motivates interest in a disclosure and reporting regime for statelessness. With this in mind, the following Section explores corporate disclosure generally and examples of human rights focused regimes, with the goal of outlining the way that possible disclosure strategies might be applied to statelessness.

C. *Corporate Disclosure and Human Rights*

Approaches to corporate disclosure around the world have varied. Within the United States, corporate disclosure is primarily regulated by the SEC, the principal regulatory agency for publicly traded companies. Established through the Securities Act of 1933 and the Securities Exchange Act of 1934, the SEC's modern disclosure regime requires regular disclosure of material information, defined by the Supreme Court as any information that would be viewed by the "reasonable investor as having significantly altered the 'total mix' of information made available."[29] There is no bright-line rule for materiality, but it essentially refers to "what is important to investors, nothing more, nothing less."[30]

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27. Benjamin Colton et al, *Human Rights: Disclosures, Practices & Insights*, Harv. L. School F. on Corp. Gov., https://corpgov.law.harvard.edu/2022/02/17/human-rights-disclosures-practices-insights (last visited May 9, 2022).

28. Kishnathi Parella, *Investors as International Law Intermediaries: Using Shareholder Proposals to Enforce Human Rights*, 45 Seattle U. L. Rev. 41 (2021), https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=2769&context=sulr.

29. *TSC Indus. v. Northway, Inc.*, 42 U.S. 438, 449 (1976).

30. Donald C. Langevoort, *Basic at Twenty: Rethinking Fraud on the Market*, 2009 WIS. L. REV. 151, 152 (2009).

Although it was initially used almost entirely for regulating the disclosure of financial information, the materiality requirement has expanded in scope over the past decades to include nonfinancial information, including information about subjects ranging from business relationships to human rights. The Global Reporting Initiative, which focuses on best practices for sustainability reporting, has suggested that material information should cover aspects that "reflect the significant economic, environmental, and social impacts; or substantially influence the assessments and decisions of stakeholders."[31]

Outside of the United States, the extent and form of disclosure regimes varies.[32] The European Union and its member states have proposed various legislative schemes that impose varying levels of accountability for failure to report and for engaging in abuse. The growing trend towards disclosure regimes demonstrates the myriad of ways that disclosure is being looked to as a strategy to incentivize corporate accountability and positive action on human rights.

Throughout the remainder of this Section, I provide an overview of three recent disclosure schemes that provide relevant examples for a potential scheme for addressing statelessness. The first two are drawn from Mark Brewer and Sue Turner's piece, *Solving Child Statelessness: Disclosure, Reporting, and Corporate Responsibility* (hereinafter "Solving Child Statelessness"), which outlines the United States' Dodd Frank Act and California Transparency in Supply Chains Act as possible examples of disclosure regimes to draw from in formulating a similar regime for child statelessness. I outline a brief analysis of the advantages and drawbacks of these two examples and then analyze the French Corporate Duty of Vigilance Law, which offers a powerful third example of the ways in which private and public factors can be leveraged to incentivize corporate action on human rights.

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31. Mert Demir, Maung K. Min & Louis D. Coppola, *Discrepancies in Reporting on Human Rights: A Materiality Perspective*, 64 THUNDERBIRD INT'L BUS. REV. 169, 171 (2022); GRI 101: Foundation 2016, GLOBAL REPORTING INITIATIVE (2016), https://www.globalreporting.org/standards/media/1036/gri-101-foundation-2016.pdf.

32. Kerstin Lopatta et al., *The Current State of Corporate Human Rights Disclosure of the Global Top 500 Business Enterprises: Measurement and Determinants*, CRITICAL PERSP. ON ACCT. (Sep. 4, 2022), https://doi.org/10.1016/j.cpa.2022.102512.

1. *Section 1502 of the Dodd Frank Act*

Section 1502 of the Dodd-Frank Act aims to mitigate the use of minerals that are known to be used to finance conflict and human rights abuses in the Democratic Republic of the Congo (DRC). The provision requires companies to disclose whether the minerals used in the production of a company's manufactured goods originated in the DRC or another country covered by the provision. If the minerals did originate in the DRC or another covered country, companies are required to submit a report to the SEC detailing 1) the due diligence process implemented with respect to the mineral supply chain and 2) a description of the products that are found to be connected to financing of conflict or human rights abuses. For a product to be "DRC Conflict Free," it must not contain any minerals that finance, either directly or indirectly, any armed groups in the DRC or neighboring countries.[33] Issuers are subject to liability primarily based on Rule 10b-5, which affords a private right of action to shareholders injured due to a false or misleading statements made by corporate insiders.[34]

Proponents of the conflict minerals provisions argue that the successful reduction in revenues from mining and consequent reduction in financing for armed groups demonstrates the success of the legislation and that short-term negative impacts are necessary to address the long-term impacts of violence in the region.[35] According to advocates of the initiative, the provisions necessarily introduce a paradigm shift within companies' supply chains. The reporting requirements force them to scrutinize their supply chains more thoroughly, bear the full cost of the negative impacts of their business, and consider alternative means of doing business where their business activities fuel conflict.[36] The potential name-and-shame effects of the legislation are also potentially significant. In *The Real*

33. 15 U.S.C. § 78m(p)(1)(A)(ii).

34. Karen E. Woody, *Conflict Minerals Legislation: The SEC's New Role as Diplomatic and Humanitarian Watchdog*, 81 FORDHAM L. REV. 1315, 1338 (2013).

35. Nik Stoop, Marijke Verpoorten & Peter van der Windt, *More Legislation, More Violence? The Impact of Dodd-Frank in the DRC*, PLOS ONE (Aug. 9, 2018), https://doi.org/10.1371/journal.pone.0201783.

36. Melvin Ayogu & Zenia Lewis, *Conflict Minerals: An Assessment of the Dodd-Frank Act*, BROOKINGS (Oct. 3, 2011), https://www.brookings.edu/opinions/conflict-minerals-an-assessment-of-the-dodd-frank-act.

Effects of Conflict Minerals Disclosures, Baik et al., find that the reporting requirements result in an increase in a company's public commitment to responsible sourcing, possibly leading to other positive impacts within their supply chains.

However, others have critiqued the significant costs of compliance, the provision's vagueness, the inability to accurately track mineral origins, and the onus it places on the SEC to regulate and eradicate human rights abuses, a realm the SEC was not designed to regulate.[37] Section 1502 has also been subject to legal questions and critiques. Some argue that information regarding human rights issues does not fall into the materiality provision and likely would not affect a reasonable investor's decision to invest.[38] Others argue that Congress has exercised too much extraterritorial jurisdiction by regulating non-U.S. companies whose supply chains feed into companies that are listed on U.S. stock exchanges. A further critique is that the provision indirectly operates as a trade embargo, encouraging investors to either flee U.S. markets or leave the Congolese mineral industry, opening up the Congolese market to other international companies that are subject to much less stringent home-state regulation.[39] This flight from the Congolese market has real negative outcomes for the individuals at the center of legislation, with research demonstrating that the implementation of the provision has been linked to negative effects on the living conditions of miners relying on the mines for employment.[40] On the whole, the conflicting opinions around the Dodd-Frank Act demonstrate the need to consider the nuanced impacts of disclosure and the impacts on individuals at the center of the regime.

2. *California Transparency in Supply Chain*

Another example of a human rights-focused disclosure regime is the California Transparency in Supply Chains Act (hereinafter the "California Act"). The California legislature enacted the bill in 2010, with the goal of "ensur[ing] that

37. Woody, *supra* note 34, at 1332–42.

38. David A. Katz & Laura A. McIntosh, *Corporate Governance Update: "Materiality" in America and Abroad*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (May 1, 2021), https://corpgov.law.harvard.edu/2021/05/01/corporate-governance-update-materiality-in-america-and-abroad/.

39. Woody, *supra* note 34, at 1346.

40. Stoop et al., *supra* note 35.

[firms] provide consumers information regarding their efforts to eradicate slavery and human trafficking from their supply chain" and educating consumers on how to purchase responsibly produced goods, "thereby, improv[ing] the lives of victims of slavery and human trafficking."[41]

The bill covers retail sellers and manufacturers doing business in California that have annual worldwide gross receipts in excess of $100 million. Companies must disclose on their websites whether they 1) engage in verification of supply chains to evaluate trafficking risks, 2) conduct audits of suppliers, 3) require direct suppliers to certify that materials used in the company's product comply with slavery and trafficking laws in the country in which direct suppliers are operating, 4) maintain any internal accountability standards for employees or contractors that do not meet their standards, and 5) provide training for employees and management about mitigating risks of trafficking and slavery.[42]

Unlike the Dodd-Frank Act, the California Act does not regulate disclosures to investors, but instead regulates disclosures to the public that are made via the companies' websites, allowing them to reach a distinct audience. The goal of the California Act is to give consumers sufficient information to make informed, socially beneficial decisions.[43] The California Act encourages companies to scrutinize their supply chains and offers an important opportunity to bridge the information gap between companies and consumers.[44] However, the regime has been criticized for operating as a primarily symbolic gesture, inability to drive significant change due to a lack of enforcement mechanisms, unclear standards for different companies, and the average consumer's inability to actually incorporate the new information in their decision-making process. Despite these challenges, the California Act offers an example of a strategy for making human rights information avail-

41. S.B. 657, § 2, subd. (j).

42. *Id.*; Rachel N. Birkey et al., *Mandated Social Disclosure: An Analysis of the Response to the California Transparency in Supply Chains Act of 2010*, 152 J. Bus. Ethics 827, 830 (2018).

43. Alexandra Prokopets, *Trafficking in Information: Evaluating the Efficacy of the California Transparency in Supply Chains Act of 2010*, 37 Hastings Int'l & Compar. L. Rev. 351, 357 (2014).

44. *Id.*

able to the public and possibly shaping consumer and company behavior.

3. *French Duty of Vigilance Law*

Yet another powerful example of a relevant disclosure regime, the French Duty of Vigilance Law, was adopted in 2017 and imposes responsibilities on companies to report on human rights risks and to act on those risks under certain conditions. The law applies to French companies with more than 5000 employees in direct and indirect French-based subsidiaries or more than 10,000 employees in direct and indirect subsidiaries globally. Under the law, companies must identify human rights risks in their activities and the activities of the companies they control and develop measures to prevent risks.[45] Companies must make their "vigilance plan" in response to these risks' public. The law also allows for interested parties, including NGOs and trade unions, to request a judge to order the company to comply with the law and to request compensation under civil liability in cases where the company's failure to act vigilantly has caused a harm. With no specific issue focus, unlike the Dodd Frank Act and the California Act, the law implicates a much broader range of human rights risks.[46]

The French Duty of Vigilance law addresses many of the practical failings of the Dodd Frank and California Acts by introducing binding obligations on companies to act in response to the risks that they identify.[47] However, the law is still not without critics or shortcomings. Because of some vagueness regarding which companies are covered, some companies can avoid reporting requirements, and some companies have treated the law as a mere reporting exercise without taking on any positive obligations.[48]

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45. BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, *supra* note 7.

46. Almut Schilling-Vacaflor, *Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?*, 22 HUM. RTS. REV. 109, 115-23 (2021).

47. Sandra Cossart & Lucie Chatelain, *What Lessons Does France's Duty of Vigilance Law Have for Other National Initiatives?*, BUS. & HUM. RTS. RES. CTR. (June 27, 2019), https://www.business-humanrights.org/en/blog/what-lessons-does-frances-duty-of-vigilance-law-have-for-other-national-initiatives.

48. *Id.*

D. *Corporate Disclosure and Statelessness*

The Dodd-Frank Act, the California Act, and the French Duty of Vigilance Law provide three options for human rights-focused disclosure regimes. One is investor-driven, another is public-driven, and the third combines public reporting with increased avenues for private enforcement. Each focuses on human rights issues that pose unique challenges and pushes the boundaries of what corporations have been historically asked to consider. A disclosure regime for statelessness might be informed by these three pieces of legislation.

Existing human rights disclosure regimes do not address statelessness or documentation issues. There has been a limited movement in the literature to explore the role that multinationals can play in alleviating statelessness, but the idea of using corporate governance standards to incentivize companies to examine documentation in their supply chain is not novel.[49]

In *Solving Child Statelessness*, Brewer and Turner propose a disclosure regime for statelessness modeled after the conflict minerals provisions of the Dodd-Frank Act. Their proposed regime would require companies to disclose the risks of child statelessness in their supply chain.[50] The legislation would require companies to file disclosures with the SEC that cover whether any company employees are stateless, describe the company's due diligence policies concerning the citizenship of company employees and their children, and outline policies that the company is implementing to reduce the number of stateless children.[51] Brewer and Turner propose that TNCs be required to conduct annual investigations to determine whether individuals "affected by statelessness are connected to that [TNC], whether directly or via a supply chain."[52] Corporations would also be required to take steps to ensure that their employees and their children are registered with the proper authorities and to engage with governments and other stakeholders to reduce the number of stateless children. A com-

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49. Mark K. Brewer, *Beyond International Law: The Role of Multinational Corporations in Reducing the Number of Stateless Children*, 19 TILBURG L. REV. 64, 70 (2014).

50. Brewer & Turner, *supra* note 5, at 99.

51. *Id.* at 98-99.

52. *Id.* at 99.

pany that complies with these requirements can then declare that they are "Supporting Stateless Children."[53]

Brewer and Turner argue TNCs can supplement the protections offered by international law by pressuring weak or disinterested governments to act.[54] The potential reputational gains of being able to say that they are "Supporting Stateless Children" may incentivize TNCs to be more positively involved in initiatives combating statelessness. Further, requiring companies to report and take action on statelessness may incentivize them to pressure foreign governments to make documentation processes for citizenship more accessible and straightforward, allowing the company to more easily determine whether statelessness is affecting individuals in its supply chain. By virtue of their proximity to the communities in which they operate, corporations are well-situated to drive more tailored solutions.[55] Finally, corporations have the resources and influence to push for legislative solutions and solutions for specific stateless employees by providing support throughout the documentation process.[56]

This Note extends Brewer and Turner's analysis by considering how a disclosure regime for statelessness might work in practice, weaving in examples from the statelessness crisis in the DR. Through these practical examples, this Note offers an analysis of the opportunities and the risks associated with this proposal. Although there is no current proposal for a corporate disclosure regime related to statelessness, it is critical to consider the potential effects of such a regime. First, as demonstrated through the various reporting requirements described throughout this Note, disclosure regimes are increasingly being looked to as a strategy to incorporate human rights into corporate decision-making. Continuously evaluating the advantages and disadvantages of varying applications of disclosure will be critical to ensure that such regimes are actually effective. Second, whether or not a disclosure regime is implemented, there may be other roles for TNCs to play in alleviating statelessness. Exploring the various consequences that may result from disclosure requirements can shed light on the po-

53. *Id.*
54. *Id.* at 99–100.
55. *Id.* at 100.
56. *Id.*

tential risks or comparative advantages of other proposals involving TNCs. Finally, although statelessness implicates unique issues, many of the challenges that stateless people face may be similar to those faced by other populations—such as migrant workers, minorities, or children—that are marginalized by state systems or unable to assert their rights against the state. Understanding the ways that stateless individuals interact with corporations will also contribute to an understanding of challenges and opportunities that similarly vulnerable populations face.

II.
DOCUMENTATION AND CORPORATIONS IN THE DOMINICAN REPUBLIC

A. *History of Migration and Documentation*

Before turning to an analysis of a potential statelessness disclosure regime in the DR, it is important to outline the historical context and specific issues facing stateless individuals in the country. As of the most recent estimates, the DR is home to the largest population of stateless individuals in the Americas.[57] This population, combined with the significant population of individuals currently unable to access any form of proof of their nationality, represent a substantial group of individuals interacting within the labor market without any form of documentation. The vast majority of individuals impacted by laws that restrict access to nationality and by discrimination in documentation processes are of Haitian descent. Haitians and Dominicans of Haitian descent have experienced severe race and class-based discrimination in the DR since the country's colonial past, extending through and exacerbated by U.S. occupation from 1916–1934 and a brutal dictatorship in the mid-1900s.[58] Various waves of Haitian migration to the DR oc-

57. INSTITUTE ON STATELESSNESS AND INCLUSION, *The World's Stateless: Deprivation of Nationality* 56 (2020), https://files.institutesi.org/WORLD's_STATELESS_2020.pdf. The United Nations High Commissioner for Refugees, the United Nations agency tasked with addressing statelessness, stopped reporting the amount of stateless individuals in the DR in 2015, but the situation remains unresolved and advocates report that numbers are still significant.

58. Lorgia García Peña, *One Hundred Years After the Occupation*, NORTH AMERICAN CONGRESS ON LATINA AMERICA (May 25, 2016), https://nacla.org/news/2016/05/25/one-hundred-years-after-occupation.

curred throughout the 19th century, through both formal recruitment agreements and informal recruitment by sugar industry organizations.[59] Many of these individuals went to sugar cane plantations, known as *bateyes*, where many had their identity documentation confiscated by companies or the Dominican government, effectively forcing them to either stay on the *bateyes* or risk deportation.[60]

B. *Existing Documentation Issues*

As a result of this significant history of migration and exploitation in the sugar industry, as well as other historical and ongoing factors, a large population in the DR lacks access to nationality or documentation. The issue has significantly worsened in recent decades, as a result of changes to Dominican nationality laws, Dominican Constitution, and a Constitutional Court decision in 2013 that stripped Dominican-born individuals of their citizenship if they were born to parents without legal residency in the country.[61] The decisions rendered over 200,000 Dominicans of Haitian descent stateless and have been denounced by the international community, human rights observatories, and the Inter-American Court of Human Rights.[62]

The Dominican government maintains that there are no stateless individuals in the country.[63] Since 2013, the Dominican government has issued various regulations to provide a pathway back to citizenship for individuals impacted by the

59. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, SITUATION OF HUMAN RIGHTS IN THE DOMINICAN REPUBLIC 54–55 (2015).

60. *Id.* at 54-57; DOMINICAN REPUBLIC 2022 HUMAN RIGHTS REPORT, U.S. DEPARTMENT OF STATE (2022), https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/dominican-republic.

61. Sentencia TC/0168/13 [Sentencia] [Constitutional Court], Sept. 23, 2013, Expediente núm. TC-2012-0077 (Dom. Rep.); Ediberto Román & Ernesto Sagás, *Birthright Citizenship Under Attack: How Dominican Nationality Laws May be the Future of U.S. Exclusion*, 66 Am. U. L. Rev. 1383 (2017), https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/dominican-republic.

62. Amelia Hintzen, *Historical Forgetting and the Dominican Constitutional Tribunal*, 20(1) J. OF HAITIAN STUD. 108 (2014); INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *supra* note 59, at 42.

63. Sentencia, *supra* note 61, at 75–76; Matt Chandler, *Stateless in the Dominican Republic,* ALJAZEERA, Dec. 28, 2015, https://www.aljazeera.com/features/2015/12/28/stateless-in-the-dominican-republic.

2013 ruling. These plans, while offering some constructive solutions for individuals impacted, have been criticized for their costliness, inaccessibility, significant delays, and failure to provide a solution for certain categories of affected individuals. As a result, many individuals impacted by the Constitutional Court rulings remain unable to access any form of identity documentation.

In addition to individuals impacted by the court rulings, there is another significant population of individuals that, despite being legally entitled to Dominican nationality, have been unable to access formal documentation. The Dominican "En Hogar" ("In Home") survey conducted in 2017 found that 4.8% of the DR's rural population did not have a birth certificate.[64] Lack of documentation often stems from complications or discrimination in birth registry processes, which becomes expensive and complex if individuals do not register their children within three months of birth. Parents that do not have identity documentation themselves face additional hurdles in registering their children, as they must first go through the extensive and often costly process themselves.

For the purposes of this Note, I consider both *de jure* and *de facto* stateless persons given the similar challenges that they may encounter in interacting with the labor market. Both populations face a higher risk of exploitation due to their inability to hold corporations accountable and their risk of erasure from any official reporting. Thus, it is essential to recognize the effects a regulatory scheme of corporate disclosure may have on both *de jure* stateless persons and individuals that are *de facto* stateless due to their lack of legal documentation.

C. *Corporations and Undocumented Populations*

There are few widely available statistics on the number of workers that are working for corporations in the DR and do not possess identity documents. Sugarcane plantations have historically employed significant numbers of undocumented

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64. OFICINA NACIONAL DE ESTADÍSTICA, ENCUESTA NACIONAL DE HOGARES DE PROPÓSITOS MÚLTIPLES (2017); WITHOUT PAPERS, I AM NO ONE:' STATELESS PEOPLE IN THE DOMINICAN REPUBLIC, AMNESTY INTERNATIONAL (May 2015), amnesty.org/en/wp-content/uploads/2021/05/AMR2727552015ENGLISH.pdf; Wendy Hunter & Francesca Reece, *Denationalization in the Dominican Republic: Trapping Victims in the State's Administrative Maze*, 57 LATIN AMERICAN RESEARCH REVIEW 590 (2022).

individuals.[65] Many of these individuals and their descendants were forced to remain on sugar cane plantations for generations due to company and governmental deprivals of identity documents and extreme poverty.[66] The ongoing nature of these abuses is highlighted in a lawsuit filed in 2020 in U.S. district court against the Central Romana Corporation, one of the largest sugar companies in the DR, and its parent company, the Fanjul Corporation, for the company's forcible and violent eviction of over sixty families.[67] The lawsuit is just one particularly salient instance of abuse perpetrated by sugar companies; reports of hazardous working conditions, deprivation of pay and benefits, and unfree labor are rampant.[68] Major U.S. companies such as Domino Sugar and Hershey have been linked to companies with a record of poor treatment of workers in the DR.[69] As the sugar industry has declined, increasing numbers of migrants and undocumented individuals have shifted into construction and other informal industries, but sugar remains an important industry.

III.
Discussion

This Section explores a statelessness-focused disclosure regime that could be potentially applied to the statelessness situation in the DR, which has been marked by both documentation issues and historical abuse of undocumented workers by corporations. Various public international initiatives have

65. Verité, Research on Indicators of Forced Labor in the Supply Chain of Sugar in the Dominican Republic, (2016), https://www.verite.org/wp-content/uploads/2016/11/Research-on-Indicators-of-Forced-Labor-in-the-Dominican-Republic-Sugar-Sector_9.18.pdf.

66. Verité, Research on Indicators of Forced Labor in the Supply Chain of Sugar in the Dominican Republic, (2016), https://www.verite.org/wp-content/uploads/2016/11/Research-on-Indicators-of-Forced-Labor-in-the-Dominican-Republic-Sugar-Sector_9.18.pdf.

67. *Victims of Forceful Eviction in Dominican Republic File Suit Against Fanjul in USA*, Bus. & Hum. Rts Res. Ctr. (Feb. 6, 2020), https://www.business-humanrights.org/en/latest-news/victims-of-forceful-eviction-in-dominican-republic-file-suit-against-fanjul-in-usa (last visited May 9, 2022).

68. U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., 2021 Country Reports on Human Rights Practices: Dominican Republic (2021).

69. *The Bitter Work Behind Sugar*, Reveal (Feb. 26, 2022), http://revealnews.org/podcast/the-bitter-work-behind-sugar-2022 (last visited Apr. 23, 2022).

sought to pressure the Dominican government to address ongoing statelessness and documentation crises. In 2005, in *Girls Yean and Bosico v. Dominican Republic*, the Inter-American Court of Human Rights ordered the Dominican government to adopt legislation that facilitates birth registration and does not impose excessive or discriminatory obligations on Dominican-Haitian children.[70] The Organisation of American States has denounced the standards and judicial decisions leading to denationalization in the DR and called for the state to conform its laws with its international human rights obligations.[71] Other powerful civil society movements continue to pressure the Dominican government, yet the issues of statelessness persist, suggesting the need to continuously leverage all resources and actors possible to identify solutions to the stateless crisis. Without discounting the central importance and power of these civil society and international legal strategies, this Note analyzes another possible avenue for change.

A. *The Case for a Statelessness and Documentation Disclosure Regime*

Disclosure regimes thus far have largely focused on trafficking, environmental issues, forced labor, and child labor, among other issues. Although a disclosure regime has not yet been instituted that focuses on statelessness, considering the regime and a corporate role in addressing statelessness generally is not a futile exercise.

Individuals that lack documentation are much more vulnerable to the very issues that other human rights disclosure regimes have been intended to address. Because of their invisibility to the state, stateless individuals are less able to report slavery, unfair working conditions, and illegal recruitment procedures to the police.[72] Without a formal government record of their existence, these individuals face significant risks of being trafficked and are less able to hold the state accountable

70. Inter-Am. Ct. H.R. (ser. C) No. 130.

71. *Denationalization and Statelessness in the Dominican Republic*, ORG. OF AM. STATES., http://www.oas.org/en/iachr/multimedia/2016/DominicanRepublic/dominican-republic.html (last visited Feb. 4, 2023).

72. *See* JAMES FERGUSON, *Migration in the Caribbean: Haiti, the Dominican Republic and Beyond*, (2003), https://www.refworld.org/pdfid/469cbfaf0.pdf; NIMRUJI JAMMULAMADAKA, WORKERS AND MARGINS: GRASPING ERASURES AND OPPORTUNITIES (2019).

for violations or failures to prevent corporate abuses. Identity documentation and a nationality are crucial to an individual's abilities to access an extensive range of other fundamental rights, many of which have themselves been the target of human rights-focused disclosure regimes, such as the California Act. While not presuming the possible success of such a reason, this analysis does suggest that if we accept that those other regimes are worth consideration, then it is not unreasonable to imagine that a disclosure regime for stateless individuals—or similarly situated vulnerable individuals—merits consideration as well.

B. *Feasibility and Practicalities of a Disclosure Regime for Statelessness*

This Section begins with a discussion of what a possible corporate disclosure regime for statelessness would look like: What companies would be affected? What would they be required to report? Who would they be required to report to? Understanding these questions can help to understand the relevant advantages and disadvantages.

Because many U.S.-based companies may not be directly involved with stateless workers in the United States, U.S. legislation targeting statelessness would have to be able to regulate company activity extraterritorially. The regime could take the form of a securities regulation, such as the Dodd-Frank Act, a regulation requiring companies to provide information publicly, such as the California Act, or a reporting regime tied to legal accountability, similar to the French Duty of Vigilance Law. Each option has benefits and drawbacks. Working within securities regulation offers an opportunity to work within companies' existing legal and operational structures for reporting risks to the SEC and investors. Moreover, the consequences of failing to comply with SEC requirements are clear and well-known, such as shareholder suits for false and misleading statements made by the company.[73] Existing regimes of information disclosure, such as the California Act, carry less significant sanctions for failure to report. Under the current California Act, the only possible sanction for violations or failure to report is an action from the California Attorney General for in-

73. *See* Galit A. Sarfaty, *Human Rights Meets Securities Regulation*, 54 VA. J. INT'L L. 97, 117 (2013).

junctive relief.[74] But securities regulations may be more prone to legal challenges, due to the ongoing debate regarding whether human rights information is sufficiently material to be regulated under the '34 Act. A regime following the basic structure of the French Duty of Vigilance Law would likely have the greatest chance at enacting change, due to the requirement that companies take action and the option for affected individuals to pursue recourse in the judicial system if companies fail to act.

Whether implemented through securities regulation or information disclosure, a disclosure regime would require companies to conduct diligence on their supply chains and identify any risks of statelessness or individuals without any form of identity documentation, as Brewer and Turner propose. U.S.-based companies subject to the regulation would be required to work with their suppliers, NGOs, and other stakeholders to identify groups or individuals in their supply chain that may be at risk of statelessness. These companies would also be required to report on the steps that they are taking to address statelessness and documentation issues for groups of interest.

The regime would require companies to be aware of documentation and statelessness issues in their supply chain. The remainder of this Note considers the advantages and disadvantages of such a regime.

C. *Advantages of a Disclosure Regime*

A disclosure regime for statelessness offers a way to engage TNCs in efforts to combat statelessness.[75] As previously discussed, public law initiatives to alleviate statelessness, while critical, have not been sufficient.[76] Public law, which is designed to regulate state behavior, is a difficult tool to wield particularly in cases where statelessness and documentation issues stem from state inaction or state initiatives that directly withhold nationality or documentation from certain groups, as is often the case. Although intended to regulate state behavior, public law lacks the teeth to force states to comply. Many of the public law initiatives that have been implemented in the

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74. *Id.*
75. Brewer & Turner, *supra* note 5, at 99.
76. *Id.* at 99.

past lack the necessary monitoring, implementation, or enforcement mechanisms to be effective.[77]

On the other hand, TNCs have significant sources of cash flow and investment and may thus be able to more quickly and effectively push states to implement measures to alleviate statelessness. For governments that rely on TNCs for cash flow and domestic investment there may be more of an incentive to respond to pressure from corporations to fix discriminatory or inaccessible documentation and nationality laws than similar pressure from international organizations that often lack the necessary enforcement measures. TNCs could use their resources to provide guidance and support to stateless employees throughout the documentation process.[78] Companies could be more effectively pressured to undertake these measures given that securities regulation comes with the teeth that public international law does not, such as sanctions imposed on the company for not reporting or for not addressing risks outlined in their disclosures. Whether these sanctions are actually applied and produce this incentivizing effect depends on the design of the regime. However, where reporting requirements are accompanied by judicial recourse mechanisms for affected individuals, there may be an opportunity for to implement a distinct form of regulation on statelessness that has accountability structures and incentives for change that public law initiatives do not.[79]

Furthermore, compared to the government, corporations are often in the position to interact with statelessness and undocumented workers on a more intimate level.[80] This puts TNCs in a uniquely powerful position to assist in alleviating statelessness. In the DR, for example, a 2016 study found that 43% of Haitian-born sugarcane workers at three major sugarcane companies did not have any form of identity documentation.[81] Of the Dominican-born workers, 35% did not possess any documentation.[82] These studies would suggest that on average, a third of a sugarcane company's workforce in the DR is undocumented and possibly stateless. These same individuals

77. Sarfaty, *supra* note 73.
78. Brewer & Turner, *supra* note 5, at 100.
79. Cossart, *supra* note 47.
80. Brewer & Turner, *supra* note 5, at 99–100.
81. VERITÉ, *supra* note 66.
82. *Id.*

are often confined to sugar plantations and face restrictions on their freedom of movement because of the guards that patrol the plantations and the risks of traveling through the country without documentation.[83] Widespread deportations of individuals who "look Haitian" and are unable to present identity documents are common, leaving individuals in a precarious position when they travel.[84] Given the isolated position of stateless individuals, companies may be the most significant institution that such individuals interact with on a daily basis. A disclosure regime that incentivizes TNCs to identify documentation issues, provide support, and lobby governments to respond could offer an extremely powerful way to leverage this close relationship.

Finally, implementing a disclosure regime for statelessness provides an opportunity for increased access to education about statelessness. Human rights advocates and civil society groups can use information released by companies to pressure the governments perpetrating statelessness and better support undocumented and stateless persons, particularly those living on company plantations or in other isolated areas. The information made available via disclosures would also offer the opportunity to raise awareness about issues of statelessness. Mandating disclosure of statelessness-related risks will bring these issues to the attention of consumers who will then have the necessary knowledge to select companies that do not abuse stateless workers. Knowing that their supply-chain practices are up for public scrutiny, corporations are likelier to ensure that statelessness-related risks are properly addressed. Authors who have written about the Dodd-Frank Act have argued that leveraging securities law for a given human rights issue increases the visibility of human-rights related issues.[85] Placing human rights risks alongside financial risks sends the message that human rights, including statelessness, are an issue that companies must prioritize. The issue of statelessness is often overlooked due to the challenges in finding statistics and affected

83. *See* INTER-AM. COMM'N ON HUM. RTS, *supra* note 59; Sandy Tolan & Euclides Cordero Nuel, *Paramilitary-Style Guards Instill Fear in Workers in Dominican Cane Fields*, THE INTERCEPT (Oct. 14, 2022), https://theintercept.com/2022/10/14/dominican-sugar-central-romana-fanjul-domino/ (last visited Feb. 23, 2023).

84. *See Id.*

85. Sarfaty, *supra* note 73.

individuals, but a disclosure regime presents an opportunity to make this information more accessible.

D. *Possible Risks and Unintended Consequences of a Disclosure Regime*

Although the opportunities of a disclosure regime appear exciting, there are special risks that must be considered because of the vulnerability of stateless and undocumented individuals. A disclosure regime that fails to account for and meaningfully address these serious risks would do more harm than good. Individuals without any formal documentation already experience significant difficulties in accessing formal labor markets, and they face a risk of abuse and exploitation when they manage to actually enter the labor market. If a disclosure regime exacerbates these risks such that harm outweighs the possible benefits, then disclosure is not the appropriate solution.

Requiring TNCs to conduct due diligence on the citizenship status of their workers could raise the risks of deportation or dislocation for individuals who are already at risk as a result of government policies regarding persons who lack identity documents. In the DR, for example, the arbitrary deportation of Dominican-born individuals is a serious ongoing issue.[86] Requiring companies to flag the workers who lack identity documents raises a serious risk of those individuals just being passed on to immigration enforcement, even in cases where an individual was born in the DR, has never migrated, and merely lacks documentation of their nationality or residency in the DR. The DR also requires that contractors of temporary workers repatriate workers upon the expiration of their temporary work permit.[87] In theory, this policy does not impact undocumented and stateless workers, but in practice, this policy offers companies the cop-out of simply having the government de-

86. *See* INTER-AM. COMM'N ON HUM. RTS, *supra* note 59; Allison Petrozziello, *(Re)producing Statelessness via Indirect Gender Discrimination: Descendants of Haitian Migrants in the Dominican Republic*, 57 INT'L MIGRATION 213, 220 (2018).

87. Ley General de Migración, Art. 58. *Republica Dominicana* (2004), available at: https://www.comillas.edu/images/institutos/migraciones/Documentaci%C3%B3n/legislacion/Republica%20Dominicana/Ley%20General%20de%20Migraci%C3%B3n_No.285-04.pdf.

port undocumented persons who are unable to prove that they are not in fact migrants.

Due diligence on employee citizenship status also raises risks for other vulnerable populations. As in the case of the DR, stateless workers frequently work in industries alongside undocumented migrants who are at risk of deportation and have no meaningful pathway to documentation.[88] Conducting due diligence on the citizenship of all workers, without providing any form of support for workers to navigate documentation processes, risks exposing other migrant workers to harm. A database or document of the citizenship of all workers compiled by a corporation may enable the government to summarily deport other migrant workers without the due process those workers are entitled to under law. Instead of contributing to a solution, such reporting would risk adding to severe existing issues of arbitrary deportations.[89]

Requiring companies to provide support to individuals who do not have documents could also result in firings of those workers if the company does not want to provide that support. For example, reports of companies firing undocumented workers in the DR at whim, sometimes right before payday, are already rampant.[90] This risk is exacerbated by the prevalence of informal labor and verbal work contracts, leaving workers unable to prove their terms of employment and seek recourse.[91] In the context of widespread under-employment, companies can simply fire any individuals that they may be required to support and find individuals willing to do the work who do have documents. Authors noted similar concerns with the Section 1502 requirements, noting that strict mineral disclosure requirements could simply push companies to leave the Congolese market, leaving the market to "black-market" operators that are subject to far less regulation.[92] The Dodd-Frank Act pushed companies away from the mineral market. Requirements for statelessness could push companies away

88. VERITÉ, *supra* note 66.

89. INTER-AM. COMM'N ON HUM. RTS, *supra* note 59; Petrozziello, *supra* note 86.

90. Effie Smith, *Livelihoods in the Balance: Haitians, Haitian-Dominicans and Precarious Work in the Dominican Republic* (2020), https://etda.libraries.psu.edu/catalog/18182ees238 (last visited Apr. 24, 2022).

91. *Id.*

92. Sarfaty, *supra* note 73.

from the *human capital* market, leaving stateless and undocumented workers without work and forced into even more abusive situations in order to survive.

E. *Weighing the Costs, Benefits and Potential Opportunities*

This Note has presented a range of benefits and costs associated with a possible disclosure regime for statelessness. Possible advantages include increased governmental attention and resources towards statelessness, as well as increased public awareness of the issue. Disadvantages include the severe risks to individuals' status within their country of residence, as well as corporate abuse of the provisions to threaten workers' employment. Given the severe risks, I propose that a disclosure regime should only be considered as a solution for statelessness if at least three central elements are included: 1) enforcement; 2) reporting mechanisms for employees; and 3) stakeholder involvement. If designed with these indispensable protections, a disclosure regime might be able to leverage the power of corporations to address the crisis of statelessness.

Enforcement is necessary to ensure that a reporting regime results in support and aid for stateless persons, not merely exposure and increased vulnerability. Given the serious risks involved, a successful enforcement regime would require companies to pair their due diligence investigations with adequate support mechanisms for addressing issues of statelessness that may be uncovered. A disclosure regime without strong enforcement measures to ensure that corporations actually support stateless persons erroneously assumes that corporations will use the information that they obtain from their due diligence for good. If reporting is not accompanied with clear avenues through which corporations are required to provide support along with information they are reporting, there is a risk that the information will at best merely serve as a symbolic gesture, and at worse, cause severe, life-altering harm to stateless individuals.[93] For *de facto* stateless individuals who are eligible for citizenship but have been unable to access proof of that nationality possible support mechanisms could include linking individuals with funding and non-profits that support

93. Rachel Chambers & Anil Vastardis, *Human Rights Disclosure and Due Diligence Laws: The Role of Regulatory Oversight in Ensuring Corporate Accountability*, 21 CHI. J. OF INT'L L. 323 (2021).

individuals to navigate the documentation process. For *de jure* stateless individuals who have no pathway to citizenship under established laws, support mechanisms could include lobbying governments to take action to address gaps and discrimination in nationality laws that result in statelessness. These enforcement and support mechanisms are both challenging and critical. Past disclosure regimes, such as the California Act, have demonstrated the difficulty of designing mechanisms that actually respond to the human rights abuses that are disclosed.

Reporting mechanisms go hand-in-hand with enforcement. As the many instances of abuse and exploitation in the DR show, corporations have immense power to control, exploit, or fire stateless and undocumented employees. Stateless and undocumented persons have few forms of recourse if they are fired or deported without cause. To ensure that corporations do not abuse reporting requirements or simply fire or further exploit their undocumented workers, a disclosure regime should include realistic methods for employees to report abuse of the provisions, such as WhatsApp hotlines or repeated visits from monitoring bodies that are free from corporate interference.[94] If it is deemed that these avenues do not realistically exist, this should weigh against the consideration of a disclosure regime.

Finally, a successful regime must involve participation from all stakeholders. Stakeholder engagement is crucial for pushing businesses to comply with their human rights responsibilities and implement human rights-focused programs.[95] Because combatting statelessness often involves difficult issues such as discrimination and inaccessible bureaucracies, stakeholder engagement in designing and maintaining the priorities of a reporting scheme is particularly important.[96] Stakeholders would also be able to more aptly identify exactly what

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94. WhatsApp can offer a free, accessible reporting mechanism. For an example of possible WhatsApp hotlines for reporting abuse by vulnerable individuals, see e.g. Warnings about risks of human trafficking, UNHCR NORWAY, https://help.unhcr.org/norway/warnings-about-risks-of-human-trafficking (last visited Feb. 4, 2023).

95. BRINGING A HUMAN RIGHTS LENS TO STAKEHOLDER ENGAGEMENT (2013), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/Shift-Workshop-Report-3-Bringing-a-Human-Rights-Lens-to-Stakeholder-Engagement.pdf.

96. *See* Refugees, *supra* note 1, at 22.

should be reported and what other elements would be necessary to include in a disclosure regime to ensure that the regime is helpful rather than harmful. Local advocates and community members will be critical for monitoring possible unintended consequences and risks and can flag issues much earlier and faster than an international regulatory body can. To incorporate stakeholders, any advocates proposing a statelessness disclosure regime must work extensively with a range of affected communities before bringing forward any possible regime. If a regime is considered, the SEC would be required to receive public comments about the regime, which should incorporate analysis from advocates and stateless populations.

Given the challenges outlined above, the French Duty of Vigilance offers the most powerful existing example to look to for the possible design of a statelessness disclosure regime, although the regime would need to be adapted and strengthened with the protections explained above. The law's design allows for much more stringent enforcement and would enable the kind individual complaint or reporting mechanisms that are necessary to ensure that stateless and undocumented individuals have an avenue to report if they are harmed by reporting requirements. Through the individual complaint mechanism, individuals can hold companies accountable for preventing abuse of stateless and undocumented individuals and supporting programs that alleviate statelessness. There may be some challenges in showing that statelessness and documentation issues are caused by a company's failure to monitor, which would be required to bring it under the purview of the law. However, where a company is engaging in the abuse of stateless workers or benefitting from stateless workers' lack of legal status in any way, there is a very strong argument that harms are in part due to a company's failure to vigilantly respond to human rights abuses.

Conclusion

The various advantages of a disclosure regime may make it a powerful and enticing opportunity to address ongoing statelessness crises. The growing success of Economic, Social & Governance campaigns suggests that a disclosure requirement targeting statelessness could draw corporate attention and resources to a dire human rights issue. However, stateless indi-

viduals occupy an immensely vulnerable position within supply chains. Given the risks that stateless individuals face, it is critical to understand these risks when crafting a disclosure regime, as well as any other strategy to leverage corporate power to address statelessness.

As this Note demonstrates, such relationships must be pursued with extreme care. Without the necessary enforcement and reporting mechanisms, and stakeholders who can help facilitate a responsive and evolving regime, a disclosure regime risks bringing more harm than good.