



CITIZENSHIP AND STATELESSNESS

FACT SHEET 2, JANUARY 2015

HIGHLIGHTS

<p>5,480</p> <p>Total population registered by DHRRA in West Malaysia</p>	<p>3,398</p> <p>Applicants provided with paralegal assistance by DHRRA</p>	<p>950</p> <p>Applications submitted to the National Registration Department</p>	<p>41</p> <p>Applicants provided with legal assistance by pro bono lawyers</p>	<p>53</p> <p>Applicants who have acquired identity documentation</p>
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Perak



Kedah



DHRRA Presence

Staff:

- 10 team leaders
- 62 volunteers
- 26 paralegals

Offices:

- Headquarters, Petaling Jaya, Selangor State
- State Office, Sungkai District, Perak State
- State Office, Sungai Petani District, Kedah State

WEST MALAYSIA UPDATE

Where we work

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**Sungkai, Perak
Community Centre**

**Hulu Selangor, Selangor
Community Centre**

**Segamat, Selangor
Community Centre**

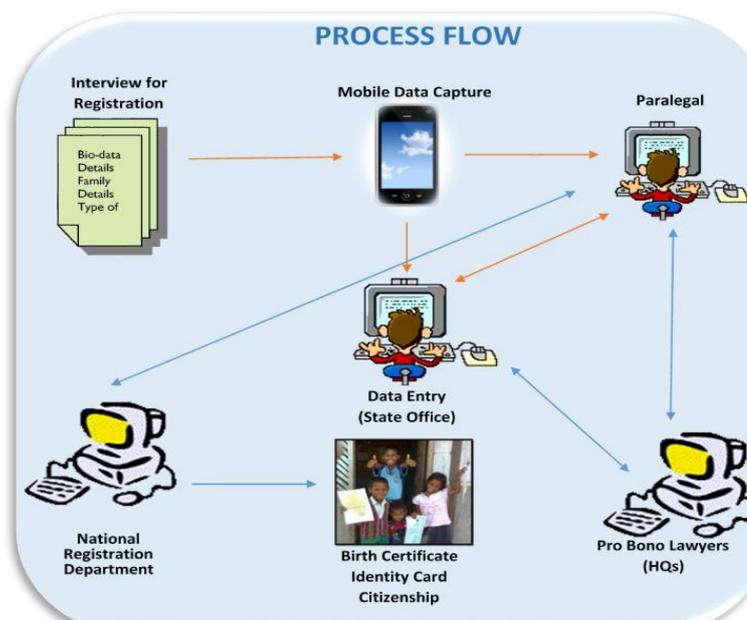
**Petaling Jaya, Selangor
HQ**

MAPPING AND REGISTRATION

- A large number of ethnic Indian Tamils that were brought to Malaysia from India several generations ago under the British rule. Many lack identity documents which is an indication that the authorities do not consider them to be Malaysian citizens. They are often known as “Stateless Malaysians”. DHRRA Malaysia, with technical advice from UNHCR, is implementing a project which seeks to address this and other statelessness and citizenship issues in Malaysia.
- In the past, the number of persons affected has been highly contested with estimates varying from 9,000 to 300,000. UNHCR has published an estimate of **40,000** persons based on reports by various sources since 2011. A mapping, registration and community legal assistance project implemented by Development of Human Resources in Rural Areas (DHRRA), aims to establish a more accurate figure of statelessness populations with a focus on the Indian community living in West Malaysia. DHRRA plans to complete the mapping of West Malaysia states by the end of 2015.
- In 2014 registration began in Kedah and Perak and, in 2015, it will move on to Negeri Sembilan and Selangor. By 31 December 2014, **5,480** stateless persons or at risk of being stateless were identified and registered in Kedah and Perak States. This figure is lower than initial projection of **15,000** people. Based on the results from 2014, it is expected that the total registered will be significantly lower than **25,000** originally estimated for this second phase of the project in Negeri Sembilan and Selangor States, with the final number of registered persons in West Malaysia likely to be between **15,000** and **23,000** by the end of 2015.
- The Malaysian Constitution sets out a number of criteria by which persons born in Malaysia acquire of citizenship at birth. This is distinguished from acquisition of citizenship by naturalization or registration. In practice additional requirements are placed on applicants preventing them from automatically acquiring citizenship at birth. Out of **5,480** persons, **1355** persons have not had their births registered by the National Registration Department (NRD) and lack the birth certificates that could confirm that they acquired Malaysian citizenship at birth. Of those registered so far, **3815** will have to apply for citizenship through the discretionary procedures of registration or naturalization even though they may have been entitled to acquire citizenship automatically at birth under the law if it was not for the additional requirements.
- By the end of 2015, the project aims to register as many of the affected community as possible in the West Malaysian states where ethnic Indian Tamils predominantly live and provide accurate baseline data on the number of persons of concern under its statelessness mandate in West Malaysia.

LEGAL ASSISTANCE

- The mapping project has a legal assistance component that aims to ensure that the stateless and persons of undetermined nationality either acquire or are confirmed as citizens of Malaysia through paralegal assistance based on their strong links to Malaysia as their place of birth and long term residence. DHRRA paralegals have prioritized providing legal assistance to a proportion of those registered who have specific needs, assisting them to make applications for relevant identity documents to the NRD local offices.
- The application process is complicated. First, the NRD searches its database to look for duplicate matches before any application can be submitted, along with supporting documents for identity documentation. On average the NRD took between 4 to 8 weeks to issue initial database search results. As at 31 December 2014, **1003** applicants out of the **3,398** applicants provided with paralegal assistance have received the search results and there were **404** persons awaiting search results from NRD. By 31 December 2014, **53** applicants assisted by DHRRA paralegals successfully obtained identity documentation confirming that they are Malaysian citizens during 2014.
- By the end of 2014, just over **60%** of the population registered will have been provided with legal assistance but the delays caused by NRD search procedure are likely to delay the submission of the relevant applications.
- It is very difficult to obtain information about the NRD's practice in nationality applications, partly because the NRD does not communicate the reasons for its decisions in writing and there are limited possibilities of administrative and judicial appeal. The data collected by the paralegals in providing legal assistance is essential for tracking the progress of applications and in monitoring the NRD's decisions. The information gained from community legal assistance may provide a key way of influencing the Government of Malaysia's policies and the NRD's practice through the identification of systemic problems.
- At present, **41** cases are being prepared by pro bono lawyers to lodge court applications with all the referrals relating to the need to establish guardianship in cases of children who have been adopted, which is a prerequisite for the acquisition of citizenship by registration for orphans. As a result of comparatively limited level of pro bono or public interest legal practice in Malaysia, primarily resulting from funding gaps, it has proven difficult to test some of the Constitutional provisions that form the basis of Malaysia's Citizenship law. For example, the Constitution provides that a child born who is not born the citizen of another country and who cannot register to acquire citizenship of another country within 12 months is a Malaysian citizen. In addition, the Constitution provides that foundlings born in Malaysia should acquire citizenship as of right, even though this protection appears to be limited to newborns. Furthermore, the citizenship of a child born to a Malaysian father and a non-Malaysian mother out of wedlock can only be resolved through court application and with DNA tests to prove parentage.
- By the end of 2015, it is estimated that 10,000 potential applicants will be provided with paralegal assistance (with 7,000 applications made to NRD) out of the target of 23,000 persons that the implementing partner aims to register. DHRRA's capacity to provide paralegal assistance may be limited if larger than expected numbers of the affected community require registration. This could increase the risk that the project loses credibility with the community it is aims to help if those registered face long delays in receiving legal assistance. DHRRA will further engage with Prime Minister's Office (PMO) to further encourage data partnership with NRD under the Ministry of Home affairs for enhanced case management referrals and to start considering solutions at policy level. Through this initiative, the information from DHRRA's database can be used to simplify and speed-up NRD's application and processing procedures. In 2015, DHRRA plans to continue to share the findings of the mapping survey through workshops at state level mainly for the purpose of awareness raising amongst different government stakeholders.



- There are many provisions contained in Malaysia’s citizenship law that, if fully applied, could help to resolve the nationality status of many individuals within this population in West Malaysia. Addressing this issue at a policy level may be one of the ways to resolve citizenship and documentation problems faced by communities in West Malaysia as a whole.

DOCUMENTING LIVES

Brightly dressed in orange shirts, DHRRA volunteers go door to door in neighbourhoods in Kedah, with the aim of locating and registering those with no documentation. It has been particularly challenging for them, as the resumption of the project has coincided with the beginning of the monsoon season. Volunteers have had to brave torrential rainstorms on most afternoons and movement has been limited.

According to Manivannan, the Project Coordinator in Kedah, it is not only the weather conditions that have hindered progress, but also the slow process of gaining the community’s trust.

“People here have endured the invisibility of existing with no documentation their entire lives. They may not see the point in registering with our project unless there is an immediate outcome,” says Mani, as he is known.

In contrast to Perak state where DHRRA began the first phase of the mapping project, Kedah state is less urbanized. Most community members live in remote areas of the palm oil plantation sites where they work and cannot afford to travel to town. Each DHRRA mobile team consists of 11 volunteers in each district, further divided into smaller groups to be able to map the settlements that are scattered across the vast palm oil plantations of Kedah.



DHRRA volunteers registering children without birth certificates.



DHRRA volunteers in bright orange t-shirts conducting door by door registration in the estate area.

Legal empowerment through community-based paralegals is an immediate way for communities to acquire or confirm their nationality. Paralegals serve as the link between the community and government institutions, acting as a flexible, accessible, and cost effective way to access justice.

Ragubalan, who has worked with DHRRA since 2011 on various other projects, is one of the 12 paralegals currently employed in Kedah State. He is based in the Kuala Muda district with one other paralegal.

“I have come across several people in my community who have never had a name in the eyes of the authorities,” he said. “They have never obtained any documentation for various reasons. I am now excited to be a part of this project because I can educate my own community on their right to become recognized as citizens.”

His passion was apparent as he spoke of his daily routine.

“I would normally start my day at 9.00 a.m and follow up on applicants whom I had previously counselled. Today, for example, I will be collecting information on a case that was referred to me by the volunteers few weeks ago,” he said.

His case involves six siblings, between the ages of one to nine years, who have never been issued with birth certificates.

“They all lost their *Borang Pengesahan Kelahiran* (birth notifications) when their house caught on fire a few years ago. I would say this is a straightforward application as both their parents are Malaysian and both have national identity cards. However, unaware of the procedures, the parents did not know the significance of birth certificates, until the eldest reached school age,” said Ragubalan.

Ragubalan will ask for the re-issuance of the children’s proof of birth from the hospitals where they were born. It will take approximately two to three weeks before all necessary documents can be compiled to apply for late birth registration. But he sees some complications with the case of the eldest child.

“He was born at home. I need to get in contact with the midwife to re-issue the *Surat Akuan Bidan* (certificate of home birth),” said Ragubalan.

In addition to assisting individual applicants, community-based paralegals also undertake door to door visits in every town together with volunteers, and hold community meetings to educate the community about Malaysia’s citizenship law and citizenship application procedures.

Ragubalan joined the volunteers later that afternoon. The last visit of the day was the home of a 60 year old woman. She was a new applicant that was referred to him by the volunteers of the mobile registration team. She lives alone with no immediate family support, and suffering from asthma. The closest town to where she lives is Sungai Petani, 40 km away or an hour’s drive during the rainy season.

She earns only RM500 a month and spends more than half of it on rent. Traveling to town was a costly affair for her. She was born in Taman Lembah village, and has lived in Kedah all her life. According to the Malaysian constitution, she would be considered a Malaysian national by birth as her father was a Malaysian national. However the details on her birth certificate that was issued before 1957, are illegible. Unable to prove her father’s nationality, she has remained only as a permanent resident in Malaysia.

She is entitled to apply for citizenship by registration under Article 16 of the Federal Constitution, which is aimed at persons born in the Federation before Independence Day in 1957. As she was born before the Independence, she is also entitled to receive social support from the government.

“I have never known I could apply for citizenship and receive financial support from the government. I have been living on my own, no one has told me about this before, and it is such a relief knowing that I can get support from the government. Thank you so much for this information,” said the 60 year old woman after Ragubalan had counselled her. The work of paralegals like Ragubalan is not limited to assisting individual applicants in obtaining documentation but their work also concerns empowering communities to have confidence as citizens.

Ragubalan finished his day at 9 o’clock in the evening and traveled back to his home town in Kedah.



A DHRRA volunteer during a house visit in Kedah State.



A storm brewing above an estate area in Kuala Muda district, Kedah.