



**Development of Human Resources in Rural Areas Malaysia,  
Voice of the Children, Yayasan Chow Kit, Global Campaign for  
Equal Nationality Rights, Statelessness Network Asia Pacific and  
Institute on Statelessness and Inclusion**

**Joint Submission to the Human Rights Council  
at the 31<sup>st</sup> Session of the  
Universal Periodic Review**

(Third Cycle, November 2018)

**Malaysia**

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# Development of Human Resources in Rural Areas Malaysia, Voice of the Children, Yayasan Chow Kit, Global Campaign for Equal Nationality Rights, Statelessness Network Asia Pacific and Institute on Statelessness and Inclusion

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### Malaysia

#### Introduction

1. Development of Human Resources in Rural Areas (DHRRA) Malaysia,<sup>1</sup> Voice of the Children (VoC),<sup>2</sup> Yayasan Chow Kit (YCK),<sup>3</sup> the Global Campaign for Equal Nationality Rights (GCENR),<sup>4</sup> the Statelessness Network Asia Pacific (SNAP)<sup>5</sup> and the Institute on Statelessness and Inclusion (the Institute)<sup>6</sup> make this joint submission to the Universal Periodic Review (UPR) on the human rights challenges pertaining to statelessness and gender discrimination in the nationality law and policies of Malaysia.<sup>7</sup>
2. This submission focuses on:
  - I. Malaysia's gender discriminatory laws and policies that prevent both men and women from conferring nationality on their children and spouses;

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<sup>1</sup> DHRRA Malaysia ([www.dhrramalaysia.org.my](http://www.dhrramalaysia.org.my)) is an independent non-profit organization established to promote strong and self-reliant communities through empowerment initiatives. Since 2003, DHRRA Malaysia has been a local catalyst in working to address statelessness in Malaysia. DHRRA Malaysia has collaborated with partners to compile accurate baseline figures on statelessness in west Malaysia through its community-based paralegal project and conducted several community-based trainings in Sabah, east Malaysia on statelessness. DHRRA Malaysia has also initiated several strategic litigation cases with a team of pro-bono lawyers on the application of Malaysia's nationality law with respect to statelessness.

<sup>2</sup> VoC's ([voc.org.my](http://voc.org.my)) was incorporated in 2008 as a child advocacy group to address a gap in children's services. VoC's mission is to advocate for law and policy reform to ensure that the rights of every child in Malaysia are protected and no longer at risk of violation. VoC believes that the welfare and protection of every child in Malaysia can only be realized through the promotion of children's rights and the continued implementation of the Convention of the Rights of the Child in Malaysia.

<sup>3</sup> Yayasan Chow Kit ([www.yck.org.my/](http://www.yck.org.my/)) (YCK) is a non-profit organization that caters to the needs of children in and around Chow Kit. YCK runs two drop-in centres in Chow Kit and one safe home for children who are in need of temporary guardianship. YCK was developed out of Nur Salam and was incorporated on 19 January 2011.

<sup>4</sup> The Global Campaign for Equal Nationality Rights ([www.equalnationalityrights.org](http://www.equalnationalityrights.org)) mobilises international action for the removal of gender discriminatory provisions from all nationality laws through its coalition of national and international organisations and activists.

<sup>5</sup> SNAP (<https://www.statelessnessnetworkasiapacific.org/>) is a civil society network with the goal of promoting collaboration and information sharing on addressing statelessness in Asia and the Pacific. SNAP is driven by a diverse membership and through direct engagement and contribution from its members and stakeholders, particularly formerly stateless persons, stateless persons and persons at risk of statelessness.

<sup>6</sup> The Institute ([www.institutesi.org](http://www.institutesi.org)) is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 30 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23<sup>rd</sup> to the 30<sup>th</sup> UPR Sessions. For more information on the Institute's UPR advocacy, see <http://www.statelessnessandhumanrights.org/upr-universal-periodic-review/resources-database>.

<sup>7</sup> The co-submitting organisations are grateful to the input and contributions Rodziana Mohammed Razali, Helen Brunt and a faculty member at the Faculty of Law, Common Law Section, University of Ottawa.

- II. The denial of the right to a nationality and resultant statelessness and human rights challenges faced by communities in Malaysia, such as the maritime community, the Bajau Laut (also known as Sama-Dilaut) and people of Indian origin;
  - III. The denial of every child's right to a nationality in Malaysia; and
  - IV. The Rohingya and other refugee or populations Malaysia.
3. This submission draws on extensive national and international experience of the co-submitting organisations in research, advocacy, direct service provision and awareness raising on the above issues.

## Malaysia's Universal Periodic Review under the Second Cycle

4. In its State Report before its previous UPR in 2013,<sup>8</sup> Malaysia only provided one example of action taken to protect stateless persons. Paragraph 63 of the State Report set out as follows:

*"For vulnerable and at-risk inner-city adolescents and young persons, the Government in collaboration with civil society established the 'Kuala Lumpur Krash Pad' (KLKP) in the Chow Kit area in March 2009. KLKP reaches out to all teens and youth including the stateless, refugees and the undocumented. KLKP offers alternatives to risk behaviour that may expose them to gangs, violence, crime, substance abuse and risk of HIV infection".*

5. Malaysia also focused on its cooperation with the Malaysia country offices of the United Nations High Commissioner for Refugees and the International Organisation for Migration, stating at paragraph 124 that:

*"Malaysia continues to be a transit and destination country for refugees, asylum seekers, stateless persons, and undocumented persons. During the period under review, and while not being party to the 1951 Convention on Refugees, Malaysia continues to cooperate with relevant international organisations including UNHCR Office in Kuala Lumpur and the International Organisation for Migration (IOM) on a case-by-case basis to manage the situation of such persons in the country".*

6. Additionally, despite the prevalence of statelessness, gender discriminatory nationality laws and related human rights challenges in the country, these issues were not addressed under the review process. For example, there is no reference in Malaysia's previous UPR to its gender discriminatory nationality laws and policies, or any reference the need to address statelessness amongst the various affected populations.
7. Only two State Parties, made recommendations as to the need to address statelessness and uphold the right to a nationality in Malaysia.
8. Norway recommended that Malaysia

*"Take concrete measures to prevent children from becoming stateless and guarantee universal access to free primary education, irrespective of citizenship and immigration status".<sup>9</sup>*

This recommendation was noted by Malaysia.

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<sup>8</sup> A/HRC/WG.6/17/MYS/1, 2013

<sup>9</sup> UPR Info responses to recommendations [https://www.upr-info.org/sites/default/files/document/malaysia/session\\_17\\_-\\_october\\_2013/recommendations\\_and\\_pledges\\_malaysia\\_2014.pdf](https://www.upr-info.org/sites/default/files/document/malaysia/session_17_-_october_2013/recommendations_and_pledges_malaysia_2014.pdf)

9. Belgium recommended that Malaysia

*“Withdraw reservations to articles 2 and 7 of the CRC to ensure to everyone the right to a name and nationality through universal birth registration”.*<sup>10</sup>

This recommendation which was noted by Malaysia

## Malaysia’s International Obligations

10. Malaysia is a party to only three of the core human rights instruments: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and Convention on the Rights of Persons with Disabilities (CRPD).
11. Many of Malaysia’s obligations as enshrined in the CEDAW, CRC and CRPD are provided for by existing domestic legislation. However, these are usually not applied in practice.
12. Malaysia has not yet acceded to other important international human rights instruments. For example, Malaysia is not a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture (CAT), the 1951 Convention relating to the Status of Refugees (Refugee Convention), the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the ILO Convention No. 169 on Indigenous and Tribal Peoples, among others.
13. The human rights instruments to which Malaysia has acceded – CEDAW, CRC and CRPD – provide for the right to a nationality and equal nationality rights between women and men. However, the State has placed reservations on relevant provisions of these instruments as follows:
  - I. CRC: Article 2 (non-discrimination); Article 7 (name and nationality); Article 14 (freedom of thought, conscience and religion); Article 28(1)(a) (free and compulsory education at the primary level); and Article 37 (freedom from torture or other cruel, inhuman or degrading treatment or punishment and arbitrary detention). Malaysia has also stated that the application of the CRC at national level is subject to its compatibility with the Federal Constitution of Malaysia (Federal Constitution).<sup>11</sup>
  - II. CEDAW: Article 9(2) (nationality of children); Article 16(1)(a) (right to enter into marriage); Article 16(1)(c) (rights during marriage and dissolution); Article 16(1)(f) (guardianship); Article 16(1)(g) (same personal rights between spouses); and Article 16(1)(h) (same property rights for spouses). Malaysia has also stated that the application of CEDAW in Malaysia is subject to compatibility with the Federal Constitution and Syariah (Islamic) law.
  - III. CRPD: Article 15 (freedom from torture, or cruel, inhuman or degrading treatment or punishment) and Article 18 (freedom of movement and nationality).
14. At its previous UPR in 2013, Malaysia rejected recommendations to remove the abovementioned reservations to the CRC, CEDAW and CRPD, and to accede to the remaining core human rights instruments, including the ICCPR, ICESCR, CAT and ICERD.<sup>12</sup>

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<sup>10</sup> UPR Info responses to recommendations [https://www.upr-info.org/sites/default/files/document/malaysia/session\\_17\\_-\\_october\\_2013/recommendations\\_and\\_pledges\\_malaysia\\_2014.pdf](https://www.upr-info.org/sites/default/files/document/malaysia/session_17_-_october_2013/recommendations_and_pledges_malaysia_2014.pdf)

<sup>11</sup> Federal Constitution of Malaysia, 31 August, 1957, available at <http://www.refworld.org/docid/3ae6b5e40.html>

<sup>12</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review of Malaysia – Addendum, UN Doc. A/HRC/25/10/Add.1, Paras 8-10.

15. However, it must be noted that in addition to treaty obligations, as a member State of the United Nations, Malaysia is obligated by the UN Charter to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.<sup>13</sup> These human rights and fundamental freedoms are specified in the Universal Declaration of Human Rights (UDHR), many of which are also recognised as principles of customary international law.<sup>14</sup>
16. Furthermore, as a member State of the Association of South East Asian Nations (ASEAN), Malaysia is a signatory to the 2012 ASEAN Human Rights Declaration. Although this declaration is a non-binding document, it nonetheless reflects consensus as to the importance of human rights in the region.
17. The combined effect of Malaysia’s lack of implementation of its domestic legislation that incorporates its international obligations, reservations to CEDAW, CRC and CRPD, and the lack accession to other relevant human rights instruments is of great concern in the context of gender discriminatory nationality laws and statelessness in Malaysia, as it implies that the State does not view the right to a nationality of paramount importance.

## **Gender Discrimination in Malaysia’s Nationality Law**

18. The Federal Constitution provides the primary legal framework for the acquisition, confirmation and loss of Malaysian nationality. Citizenship can be acquired by birth, registration or naturalisation.
19. The Federal Constitution contains a number of gender discriminatory provisions with respect to the ability of women and men to transfer their nationality to their children (see Part II of the Second Schedule to the Federal Constitution). That is, the Federal Constitution does not allow “legally” married mothers to transfer nationality to their children born outside Malaysia on the same basis as “legally” married fathers. Even though there are discretionary registration provisions in which parents can register the child born abroad as Malaysian citizens, children born in such situations may be stateless or at risk of statelessness if they are unable to acquire the nationality of their father.
20. Additionally, the Federal Constitution does not allow men to transfer their nationality to their children if the child is born out of a legally recognised marriage.<sup>15</sup> This can result in statelessness where children cannot acquire nationality from their mothers. For example, where the mother is stateless; where the laws of the mother’s country of citizenship do not permit her to confer nationality in certain circumstances; or where the mother’s identity is unknown or she is undocumented.
21. Unfortunately, during its previous UPR in 2013, no State Parties made recommendations to Malaysia in relation it’s gender discriminatory nationality laws and policies and the impact these may have on individuals and families with respect to statelessness and the related enjoyment human rights.

## **The Bajau Laut in Sabah, East Malaysia**

22. In east Malaysia, there are individuals and groups who are denied the right to a nationality and may be stateless or at risk of statelessness. Of particular concern are the Bajau Laut (Sama Dilaut) who reside predominantly around the coast of Sabah. The Bajau Laut are a collective of various semi-nomadic

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<sup>13</sup> Article 55(c) of the Charter of the United Nations. According to Article 56 of the Charter, it is the obligation of all member states of the UN to take “joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”.

<sup>14</sup> International Law Commission, “Draft Articles on Diplomatic Protection with Commentaries”, 58th session, Yearbook of the International Law Commission, Vol. II, Part Two, 2006, p. 49.

<sup>15</sup> (Section 17, Second Schedule, Part II

populations living in boats or in stilt houses in coastal areas or on islands. Many do not have identity documents and their births are often not registered. There are no estimates available as to the overall number of Bajau Laut affected by statelessness in Malaysia, but the number of children affected is thought to be high due to their high birth rates, migratory lifestyle and lack of documentation. Other populations of Bajau Laut people also reside in parts of the Philippines and Indonesia. Some groups still migrate between these three countries, which comprise their historical domain.<sup>16</sup>

## People of Indian Origin

23. In west Malaysia, there are at least 11,500 stateless persons. The majority of this population are of Tamil ethnicity and whose ancestors were brought from India to Malaysia through a labour recruitment system (“kanganys”) in the 19th and early 20th centuries, when the territory now known as Malaysia (then Malaya) was under British colonial rule. In 1957, when Malaysia declared its independence, many ethnic Indian Tamils did not obtain Malaysian citizenship due to illiteracy and lack of awareness of the importance of obtaining citizenship. Currently, a significant proportion of communities of Indian Tamil origin in Malaysia lack the necessary documentation that would allow them to prove their intergenerational links to Malaysia and their Malaysian citizenship.<sup>17</sup> This is often because they have historically faced significant barriers in accessing civil documentation due to the discriminatory application of laws and policies and their isolation.
24. Importantly, the Government of Malaysia has taken several steps to address some of the documentation and statelessness challenges faced by this community. In 2011 and 2017 the Malaysian Government carried out identification and registration programmes for populations of Indian origin in West Malaysia, through the respective MyDaftar and MegaMydaftar campaigns.<sup>18</sup> The campaigns were developed in collaboration with political parties and Indian community-based, non-governmental organisations.
25. In April 2017, the Malaysian Prime Minister launched the Malaysian Indian Blueprint (MIB). The first of its kind, the MIB is a national strategy for resolving various human rights issues faced by the Indian community including access to education, housing, employment, and documentation. The MIB also provides entrepreneurial, trade and social development opportunities to the Indian community. Significantly, the MIB commits the Malaysian Government to resolving statelessness and documentation issues within five years of implementation. However, to date, there has been limited progress in addressing historical cases of statelessness in Malaysia<sup>19</sup>
26. In August 2017, based on DHRRA’s advocacy and assistance to stateless populations in Malaysia over the last decade (primarily with persons of Indian origin), DHRRA Malaysia submitted recommendations for resolving statelessness in Malaysia to Representatives of the Prime Minister’s Office and the Minister of Health (who was appointed to oversee the implementation of the MIB). The recommendations focus on improving administrative procedures to ensure that individuals can more easily acquire or confirm citizenship; resolving statelessness amongst children in Malaysia; promoting reform of Malaysia’s nationality laws and policies that discriminate on the basis of gender; and resolving the status of individuals who are permanent residents in Malaysia, but do not have Malaysian citizenship or citizenship of any other country (this is the largest registered cohort registered with DHRRA Malaysia).

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<sup>16</sup> DHRRA’s Strategic Plan: Resolving Statelessness

<sup>17</sup> <http://www.unhcr.org/ibelong/imvisible-malaysia/>

<sup>18</sup> <http://sedic.my/mib/2017/09/18/mega-mydaftar-campaign-2017/>

<sup>19</sup> Malaysian Indian Blueprint, 2017

## Every Child's Right to a Nationality

27. The Federal Constitution contains a number of important safeguards against statelessness. In particular, a child born in Malaysia who would otherwise be stateless is a Malaysian citizen by operation of the law, if the child is unable to acquire another nationality within 12 months of their birth through registration.<sup>20</sup> Additionally, article 15A of the Federal Constitution provides that the "Federal Government may, in such special circumstances as it thinks fit, cause any person under the age of twenty-one years to be registered as a citizen". However, these safeguards are rarely applied in practice.
28. Thus, despite there being a strong legal framework for the conferral Malaysian nationality to children who would otherwise be stateless, there are significant challenges with implementation.
29. Generally, at a practical level, the correct application forms are not always provided to stateless persons by the Malaysian Government's National Registration Department; applications for citizenship are usually not decided on a timely basis, with some stateless persons waiting for two or more years for a decision. Additionally, contrary to principles of natural justice, reasons for negative decisions are not provided to applicants, resulting in stateless persons being uninformed as to the reasons why their applications are denied and hindering their ability to review such decisions. Judicial review of negative decisions is costly and time consuming.
30. With respect stateless adopted children, there is scope in Malaysia's nationality law for adopted stateless children to acquire the nationality of one of their adoptive parents. However, in practice, adoptive parents face significant barriers in conferring citizenship on their stateless children:
  - I. Despite providing a clear legal basis for the conferral of nationality to adopted stateless children via Article 14(b) of the Federal Constitution, this provision is usually not applied to adopted stateless children. Therefore, adoptive parents are required to submit an application for the discretionary conferral of citizenship under Article 15A of the Federal Constitution. However, applications usually take about 2 to 3 years to be processed and citizenship is also usually not conferred to adopted stateless children pursuant to Article 15A. Adoptive parents have reported lodging numerous subsequent applications, which are often also rejected. Reasons for the refusal are often not provided to the applicants. Some adopted parents have resorted to applying for Court Declarations, which is not only costly, but also time-consuming and contrary to the best interests of the child
  - II. There are two separate statutory regimes which govern adoption by Muslim parents (the De Facto Adoption Act 253) and non-Muslim parents (the Court Adoption Act 257). Conferral provisions for Muslim adoptive parents and parents who are not "legally married" are more restrictive as these do not allow the adopted child to inherit their adoptive parents names or for the adoptive parents to name the child. Both statutory regimes undermine the right of adoptive parents to confer their nationality to their adopted children.
31. Additionally, Malaysia does not have a free-at-all-stages birth registration system and registration is not automatic at birth. Instead, an applicant must register a birth with the Malaysian Government's National Registration Department to receive a birth certificate. Without birth registration and a birth certificate it can be difficult for children to prove who they and their parents are. Lack of birth registration can therefore also provide a barrier for parents in conferring citizenship on their children.
32. With respect to foundlings, Article 19B of the Federal Constitution provides that:

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<sup>20</sup> Article 14 (1) (b), Part II Second Schedule section 1(e) and section 2(3) – Federal Constitution.

*“Any new born found exposed in any place shall be presumed to have been born at the location in which the child is found, to a mother who is a permanent resident of Malaysia and the date of the finding shall be taken to be the date of the birth”.*

Accordingly, while new born foundlings are clearly entitled to Malaysian nationality by virtue of this provision, older foundlings are excluded.

33. As a result of the above, there are numerous cases of childhood statelessness amongst children born in Malaysia. However, the extent of statelessness amongst these populations remains unmapped and is therefore unclear.<sup>21</sup> Some of these populations include:
- I. Children of migrant workers, asylum seekers and refugees whose births are often not registered because their parents are undocumented and therefore are likely to fear approaching authorities to register births for fear of arrest, detention and deportation;
  - II. Children born to parents with mixed nationality who are not married and where the mother is not a Malaysian citizen;
  - III. Adopted stateless children;
  - IV. Children born in welfare homes, foundlings and street children who often lack documentation due to discriminatory policies and poverty;
  - V. Indigenous children throughout Malaysia who often face difficulties in obtaining documentation due to their migratory lifestyles, poverty, lack of awareness of the importance of obtaining documentation and isolation from government authorities; and
  - VI. Foundlings who are no longer considered “new born”.

## **Stateless Rohingya Refugees and Other Refugee Populations**

34. Malaysia is home to tens of thousands of Rohingya asylum seekers and refugees. However, Malaysian immigration law does not recognise the protections afforded by the Refugee Convention. Therefore, asylum seekers and refugees in Malaysia are considered to be “illegal migrants” and are at risk of arrest and detention on this basis.
35. In May 2015, Malaysia, with Thailand and Indonesia pushed back boats of Rohingya asylum seekers, in clear violation of the principle of *non refoulement*. This caused an international crisis and placed hundreds of lives at risk.<sup>22</sup> Also, in 2015, mass graves and death camps used by traffickers were found on the Malaysia-Thailand border, revealing the pathway that thousands of Rohingya asylum seekers and other victims of trafficking have been forced to take to seek asylum in Malaysia. Various actors in Malaysia, including the Malaysian Bar Association have accused the Malaysian Government of failing to adequately investigate and prosecute the perpetrators of these crimes.<sup>23</sup>

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<sup>21</sup> Rodziana Razali, Addressing Statelessness in Malaysia: New Hope and Remaining Challenges, SI Statelessness Working Paper Series No 2017/9, 2017 [http://www.institutesi.org/WP2017\\_09.pdf](http://www.institutesi.org/WP2017_09.pdf)

<sup>22</sup> See Institute on Statelessness and Inclusion, *Spotlight: Rohingya on the High Seas*, Monthly Bulletin, May 2015, available at: [http://www.institutesi.org/stateless\\_bulletin\\_2015-05.pdf](http://www.institutesi.org/stateless_bulletin_2015-05.pdf)

<sup>23</sup> See Bede Hong, *Malaysian Bar Association calls for RCI into death camps in Perlis*, The Malaysian Insight, 17 March 2018, available at: <https://www.themalaysianinsight.com/s/43522/>.



36. As of 31 January 2018, there were 153,480 refugees and asylum seekers registered with UNHCR in Malaysia.<sup>24</sup> Of these, 67,300 were identified as being Rohingya. A further 9,820 were recognised as ‘Myanmar Muslims’.<sup>25</sup>
37. Over 40,000 of the registered refugee population are children, with close to half, likely to be from the Rohingya community. The majority of Rohingya asylum seekers and refugees in Malaysia are likely to be stateless.
38. In addition to the registered refugee population, there is a significant population of asylum seekers who are yet to be registered with UNHCR. Indeed, asylum seekers are often required to wait up to three years to be registered and to receive documentation confirming registration with UNHCR.<sup>26</sup> In 2014, UNHCR estimated that there were approximately 35,000 unregistered asylum seekers in Malaysia, of which approximately 15,000 were Rohingya. However, community-based organisations, Rohingya leaders and activists believe that this population is likely to be much larger.<sup>27</sup>
39. Registration with UNHCR and associated documentation can assist asylum seekers and refugees to access subsidised medical care and avoid arrest and detention on account of their immigration status in Malaysia. Even though Malaysia treats all refugees as “illegal immigrants”, in practice, Malaysian police and immigration officers are known to recognise the protection afforded by a UNHCR registration document. Such documentation can sometimes assist an asylum seeker or refugee to avoid arrest and detention if intercepted by Malaysian police and/or immigration officers.
40. The main population of stateless asylum seekers and refugees are Rohingya. However, there are also other populations that are likely to be stateless such as Palestinian refugees and asylum seekers. The majority of Rohingya who seek asylum in Malaysia are men, although women and children are increasingly seeking asylum in the country. While in Malaysia Rohingya men, typically marry with Rohingya women, Indonesian migrant workers and sometimes Malaysian women.
41. Children born to such unions may be stateless or at risk of statelessness, if one or both of their parents are stateless, their parents are unable to confer their citizenship on their children and/or they are unable to register their births with either Malaysian authorities or relevant consulates. Despite the fact that the Federal Constitution entitles stateless children born in Malaysia to Malaysian nationality, there are no known cases where stateless Rohingya children have been conferred Malaysian citizenship through the application of this safeguard.
42. Another issue for refugee children born in Malaysia is access to birth registration. Even if they are registered with UNHCR, some Rohingya asylum seeker and refugee parents do not report their children’s birth for fear of arrest or detention when approaching the authorities to register their children’s births. Additionally, the cost of accessing health services in Malaysia often discourages Rohingya parents from giving birth at health clinics, resulting in their children being without birth notification letters that are often required for birth registration. However, some Rohingya community-based organisations and community leaders through *ad hoc* paralegal projects have overcome some of these barriers to assist groups of Rohingya children born in Malaysia to have their births registered.<sup>28</sup>

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<sup>24</sup> UNHCR, *Figures at a glance in Malaysia*, January 2018, available at: <http://www.unhcr.org/uk/figures-at-a-glance-in-malaysia.html>

<sup>25</sup> The category “Myanmar Muslim” includes Muslims from all regions of Myanmar of various ethnic backgrounds, who identify as such. Within this group there are likely to be those who share the same ethnicity as “Rohingya” but who do not identify as “Rohingya”.

<sup>26</sup> Caitlin Wake and Tania Cheung, ‘Livelihood Strategies of Rohingya Refugees in Malaysia’, June 2016, *Overseas Development Institute* <<https://www.odi.org/publications/10449-livelihood-strategies-rohingya-refugees-malaysia>>.

<sup>27</sup> See Equal Rights Trust, *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*, 2014, available at: <http://www.equalrightstrust.org/ertdocumentbank//Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

<sup>28</sup> Interviews with Rohingya leaders in Kuala Lumpur, November and December 2016.

43. The Immigration detention of asylum seekers and refugees – including Rohingya – is a serious concern. Detention conditions are regularly reported to be inhumane, and between 2015 and 2017, the UN recorded at least 22 deaths in custody.<sup>29</sup>

## Consequences of Statelessness in Malaysia

44. There are significant consequences for individuals and communities that are stateless or at risk of statelessness in Malaysia. For example, they face heightened risk of exploitation, human trafficking, arrest and arbitrary detention because they have difficulty proving who they are or links to a country of origin. Statelessness populations and populations at risk of statelessness also face barriers in accessing education, housing, secure and safe employment and health services.<sup>30</sup> Typically, such populations also face barriers in obtaining identity documentation (further entrenching difficulties faced in providing evidence of their identity and links to a State); increased risk of arbitrary arrest and indefinite detention; deportation; barriers to accessing affordable healthcare including sexual and reproductive healthcare; discrimination, marginality and xenophobia; displacement; and barriers to accessing natural resources, traditional livelihoods and justice.
45. In January 2018, at the beginning of the school year, stateless persons claimed that the Immigration Department in Malaysia started requesting all students to submit a passport of any nationality in order to enrol in public schools.<sup>31</sup> Also in 2018, the Malaysian Government enacted a policy which enables stateless children to enrol in Government funded schooling if their citizenship application is under consideration and, at least one of their parents is a Malaysian citizen.<sup>32</sup>
46. However, there are serious challenges regarding access to education for other populations of stateless children who do not have pending citizenship applications. For example, abandoned children and foundlings often do not have information as to their parent's citizenship status and are typically undocumented. Therefore, abandoned children and foundlings are not likely to access education through these abovementioned policy changes.

## Recommendations

47. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Malaysia:
- I. Withdraw all reservations to the CRC, CEDAW and CRPD, particularly in relation to the right to a nationality, and accede to all relevant human rights, refugee and statelessness instruments.
  - II. Repeal gender discriminatory nationality laws and policies. In particular, amend the Federal Constitution to allow for:
    - a. a child born to a Malaysian citizen to automatically acquire Malaysian citizenship, irrespective of the gender of the Malaysian citizen parent and whether the child is born in or outside of Malaysia; and

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<sup>29</sup> The Guardian, *Refugees describe death and despair in Malaysian detention centres*, 16 May 2017, available at:

<https://www.theguardian.com/world/2017/may/16/dozens-of-refugees-have-died-in-malaysian-detention-centres-un-reveals>

<sup>30</sup> <http://www.unhcr.org/ibelong/imvisible-malaysia/>

<sup>31</sup> See for example: <http://www.themalaymailonline.com/malaysia/article/in-selangor-another-stateless-child-awaits-citizenship-to-attend-school>; <http://www.freemalaysiatoday.com/category/nation/2018/01/12/more-stateless-children-turned-away-from-school/>; <https://www.nst.com.my/news/nation/2018/01/324090/stateless-children-can-attend-government-schools-if-citizenship>

<sup>32</sup> <http://www.thesundaily.my/news/2018/01/10/govt-red-tape-stops-stateless-children-attending-school-updated>

- b. Malaysian citizens to confer nationality on foreign spouses on an equal basis irrespective of the citizen spouse's gender.
- III. Ensure the comprehensive application of existing safeguards provided by the Federal Constitution to ensure that every child born in Malaysia, who will otherwise be stateless, is granted Malaysian nationality, regardless of the gender, ethnicity, documentation or immigration status of the parents.
- IV. Ensure that all children who are stateless or at risk of statelessness, including foundlings and adopted children, are granted nationality without discrimination and in compliance with Malaysia's constitutional safeguards against statelessness.
- V. Ensure universal birth registration in Malaysia, as a tool for protecting the right to a nationality and preventing statelessness.
- VI. Ensure all children in Malaysia have immediate access to public education.
- VII. Ensure applicants' access to the correct citizenship application forms and timely decision making on citizenship matters.
- VIII. In accordance with natural justice, provide applicants for citizenship with full reasons for negative decisions.
- IX. Protect all refugees – including those who are stateless and at risk of statelessness - in Malaysia, by registering them as refugees and stateless persons, providing them with legal status and ensuring their access to basic human rights.
- X. Ensure that no refugees, asylum seekers or stateless persons are subject to arbitrary immigration detention in Malaysia and implement comprehensive, community-based alternatives to detention.
- XI. Fully investigate cases of human trafficking and bonded labour, and evidence of mass graves. Pursue prosecutions following such investigations.
- XII. Develop and implement paralegal projects that support people who are stateless or at risk of statelessness to acquire and confirm citizenship. This includes supporting and extending existing paralegal projects working with these communities.