

REPORT: STATELESSNESS IN MALAYSIA

Prepared by DHRR Malaysia

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STATELESSNESS IN MALAYSIA

1. INTRODUCTION

Citizenship is a fundamental human right guaranteed by Article 15 of the Universal Declaration of Human Rights. Yet, not everyone born in the world is accorded the right. It is estimated that every 10 minutes a stateless child is born somewhere in the world¹. In addition to being forced to carry the tag of a “non-citizen” and the struggles attached to it, often the onus is placed on the children and their families to prove that they possess all the required qualifications to be to be granted the citizenship of a country. Until then, the only recognition they will be entitled to is that of a stateless person, and the only life they are entitled to is a life deprived of all the fundamental rights associated with citizenship including the rights to education, healthcare, employment and mobility.

In recent years, statelessness has emerged as a growing concern throughout the world, perpetuated by increased cross-border migration and massive refugee influx. Malaysia is no exception. Being one of the most developed countries in the ASEAN region, Malaysia has been witnessing a growing number of the stateless population over the years. This increase is often attributed to the transmigration or movement of people facilitated by Malaysia’s porous border with its neighbouring countries. However, the magnitude of statelessness in Malaysia, could not be explained by this reason alone, as doing so will exclude a significant number of people who have been rendered stateless despite never crossing international border, and thousands more who are at risk of statelessness despite being born in the country that has witnessed the birth of their parent, and in some cases, even the birth of their grandparents. The fact that Malaysia has not acceded to international accords pertaining to stateless persons i.e. the 1961 Convention on the Reduction of Statelessness and the 1954 Convention Relating to Status of Stateless Person as well as other international treaties that safe guards vulnerable groups such as the 1951 Convention relating to the Status of Refugees, places other vulnerable populations such as refugees and asylum seekers at high risk of statelessness, and further expands the extent of the statelessness in Malaysia.

DHRRRA Malaysia² (DHRRRA) is the pioneer in bringing to surface the plight of in-situ stateless persons in Malaysia. For more than a decade, the organisation has been striving to resolve statelessness in the country using evidence based approach. DHRRRA’s involvement in the statelessness issue was not planned. It was born out of years of grassroots community development initiatives targeted at addressing the needs of vulnerable communities’ particularly rural Indian-Tamil community in Malaysia. Statelessness emerged as one of the main concerns of the community, with a large number of individuals and families living in compromised conditions due to lack of legal identification documents. Many led their life as stateless persons, deprived of all fundamental human rights, despite possessing all the eligibility to claim Malaysian citizenship. This prompted DHRRRA to intervene by facilitating the acquisition of birth certificate for the rural Indian-Tamil Community, and thus began the organization’s journey towards resolving statelessness in Malaysia.

¹ IBELONG. (2019). *The Urgent Need to End Childhood Statelessness - IBELONG*. [online] Available at: <https://www.unhcr.org/ibelong/the-urgent-need-to-end-childhood-statelessness/> [Accessed 4 Nov. 2019].

² Development of Human Resources for Rural Areas (DHRRRA) Malaysia is a non-governmental organization working towards the social protection of Malaysian community. It has been addressing stateless issues in Malaysia since 2003. Efforts which were initially limited to provision of ad-hoc direct services in facilitating birth registration among the Malaysian Indian community are expanded over the years to include other ethnic groups in Malaysia. More emphasis is placed policy advocacy efforts in addressing the root causes of statelessness.

DHRRRA's intervention exposed the circumstances and plights of thousands of stateless individuals who had remained hidden within the layers of the Malaysian society up to then. Given the gravity of the statelessness issues facing the rural Indian-Tamil community and the challenges faced in assessing the scale of the issue given the absence of accurate baseline data on statelessness in Malaysia, DHRRRA initiated a registration and paralegal aid services in 4 states (Selangor, Perak, Kedah, Negeri Sembilan) in West Malaysia in June 2014 with the technical support provided by UNHCR. The mapping exercise, which successfully identified 12350 stateless people, was a ground-breaking effort in overcoming the hurdle of quantifying statelessness in Malaysia. Though the initiative ended in 2015, DHRRRA continues to assist stateless persons from diverse ethnicities in Malaysia to acquire nationality documentation through its community based paralegal aid services. This exposed the organisation to the modus operandi of the varied government agencies involved in the process particularly the National Registration Department (NRD) and the Ministry of Home Affairs (MOHA).

Over the years, DHRRRA has supported and assisted thousands of individuals to free from the cycle of statelessness entrapping them and their families. Due to DHRRRA's continuous advocacy efforts on the issue, statelessness is no longer a concealed issue in Malaysia. It has gained attention of various stakeholders, especially the Malaysian Government, which prompted them to take the necessary actions to tackle the issue.

This report, provides a grassroots perspective on the issues of statelessness in Malaysia. It encapsulates DHRRRA's experiences and the challenges faced in bringing changes to the lives of the stateless persons in Malaysia by utilizing the participatory approach and involving the stateless community at all the stages of the interventions.

1.1 Defining Stateless Person

Despite hosting one of the largest numbers of stateless people in the ASEAN region, the Malaysian laws do not recognize stateless people as a specific category of people who exist in the country. In April 2015, when probed on the number of stateless children in Sabah and the actions taken by the Government to overcome this problem during a Dewan Negara session, the then Home Minister Ahmad Zahid Hamidi denied the existence of stateless people in Malaysia by stating, "Based on the definition of 'stateless' (which) refers to a person who has no nationality or citizenship in any country in the world, there (are) no stateless people in Malaysia because they are not allowed to enter this country without legal travel documents."³

In the absence of an accepted definition under the Malaysian laws, this report adopts the internationally recognized definition of stateless persons as contained in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons i.e. "a person who is not considered as a national by any State under the operation of its law". In addition, the report also makes reference to persons who are at risk of statelessness. These are individuals who are not stateless but may become stateless if certain factor exists, which include the following categories of people:

- ***Undocumented Persons***

These are individuals who either do not register their birth or their identification information is not recorded by the state registration departments. Though being undocumented alone does not render these individuals stateless, the lack of identity

³ Daily Express (2015) April 20th. No stateless people, says Zahid. [online] Available at: <http://www.dailyexpress.com.my/news.cfm?NewsID=99073> [Accessed 18 Nov. 2019].

documents such as birth certificate that provides proof of where a person is born and parentage, which are the key information needed to establish nationality, can place them at risk of statelessness.

- *Persons of undetermined nationality*

These are individuals who lack proof of possessions of any nationality. They either have links to more than one state (on the basis of birth, decent, marriage or habitual residence) or are perceived and treated by authorities in the state of residence as possessing such links to other states.

1.2 Historical Background of Citizenship Development in Malaysia

Prior to obtaining independence from the British in 1957, the Malaysian citizenship provisions underwent multiple and complicated stages of development towards the process of formation of a multi-ethnic nation. Choo Chin Low in a report entitled *Report on Citizenship Law: Malaysia and Singapore*⁴ identified five phases of citizenship development in Malaysia which is in line with its constitutional developments i.e.: pre-war Malaya, post-1946 following the establishment of the Malayan union, post-1948 following the establishment of the Federation of Malaya, post-1957 following the achievement of Independence and post-1963 after the formation of Malaysia.

The British open-door policy in the beginning of the 19th century resulted in the arrival of Chinese and Indian labourers to toil in the rubber and tin mining industries in Malaya. By 1947, the number of the immigrant population rapidly increased and constituted 50.2% of the total population of Malaya. The British's attempt to grant *jus soli*⁵ for all locally born immigrant children through the liberal Malayan Union citizenship was strongly opposed by the Malay community, which resulted in the subsequent abolishment of the Malayan Union scheme.

On 1st February 1948, the Federation of Malaya was formed, and double *jus soli* replaced the birthright citizenship whereby second generations of immigrants were granted automatic federal citizenship if both of their parents were born and had resided in the Federation for a continuous period of at least fifteen years.

Subsequently, following a constitutional amendment in September 1952 as part of the government's campaign against the communist insurrection, the double *jus soli* was replaced with delayed *jus soli* whereby local-born children became subjects of Malay ruler if one of their parents was born in the Federation of Malaya. These developments, however, had no implication on the Malays and aborigines born in the Federation of Malaya, who were continued to be granted *jus soli* citizenship.

The concession of the *jus soli* citizenship to the non-Malays only took place on the eve of independence as it was deemed crucial in merging the multi-ethnic community into Malayan citizen for the Malayan nation-building purpose. This was granted in return for the institutionalization of affirmative citizen rights (special rights) for the Malays and aborigines

⁴ Chin Low, C. (2017). *Report on Citizenship Law: Malaysia and Singapore*. [online] Fiesole, Italy: European University Institute. Available at: https://cadmus.eui.eu/bitstream/handle/1814/45371/GLOBALCIT_CR_2017_03.pdf?sequence=1&isAllowed=y [Accessed 18 Nov. 2019].

⁵ According to the principle of *Jus soli*, which means the law of soil in Latin, citizenship of a person is determined by his birth place.

in the 1957 Independence Constitution. However, this birthright principle granted under the Independence Constitution was further altered in Constitution (Amendment) Act 1962.

Effective from 1st October 1962, a child born in the Federation must have genuine ties or links with the Federation, with at least one parent must be either a citizen or a permanent resident. This means unconditional jus soli was only applicable to those born between Merdeka Day and October 1962.

The present nationality law of Malaysia is enshrined in the Federal Constitution and is based on a combination of jus soli and jus sanguinis⁶ principles. It provides three ways by which Malaysian citizenship may be acquired by a person i.e. by operation of law, registration, or naturalization.

2. CIVIL DOCUMENTATION AND REGISTRATION IN MALAYSIA

According to Regulation 3 of the National Registration Regulations 1990 (Amendment 2007) all births, deaths, adoptions, marriages and divorces concerning Malaysians or taking place in Malaysia needs to be registered. The agency responsible for registration of these events is the National Registration Department (NRD) which comes under the purview of the Ministry of Home Affairs. NRD is also responsible for the determination of citizenship status and the subsequent issuance of identification documents to eligible individuals.

2.1 Identity Card

All Malaysian citizens are required to register and obtain identity card upon attaining the age of 127 and above. The identification documents issued by NRD are:

- **MyKad** (commonly known as Blue IC), is an identity document introduced by the National Registration Department of Malaysia on 5 September 2001 (replacing the older version of identity document) and is issued to Malaysian citizens 12 years old or above. The holder of MyKad is required to change to a new identity card upon attaining the age of 18. Citizens who are 16 years and above but have yet to apply for an identity card, can obtain MyKad by making a late application.
- **MyKid** is an identity card issued to children under the age of 12, introduced on 1 January 2003. For registration of new birth, MyKid will be processed during the application for registration of birth.
- **MyPR** (commonly known as Red IC) is an identity card or personal identification document issued to residents of Malaysia with permanent resident status. Amongst the rights accorded to MyPR card holders include the rights to stay and remain in Malaysia without any limit of time, rights to work and conduct business in Malaysia, rights to possess property in any parts of Malaysia and the rights to be exempted from all Visa and Immigration requirements to enter and exit the country. Despite these privileges, an individual with PR status will still be subjected to foreigner charges in accessing treatment and education from government facilities, and are not entitled for

⁶ According to the principle of Jus Sanguinis, which means ‘law of blood’ in Latin, citizenship of a person is determined by the nationality of their parents or ancestors.

⁷ Regulation 3 of the National Registration Regulations 1990 (Amendment 2007)

benefits provided by the Malaysian government. They also do not have the right to vote.

- **MyKAS** (commonly known as Green IC) is a temporary resident identity card issued under Regulation 5 (3) of the National Registration Regulations 1990. It is green with expiry date indicated on the card. Though the holder of MyKAS is not accorded citizenship status, they are permitted to legally register their marriage with the NRD. MyKAS must be renewed within five years of issuance. Until 2011 MyKAS was issued usually to children who were born in Malaysia but did not have information about the parents or details about the parents' nationality or documentation status in their birth certificate⁸, allowing them to reside in Malaysia lawfully. Recipients of MyKAS included foundlings and abandoned children who grew up in government welfare houses, as well as other children who were born in Malaysia but who had not acquired citizenship. Some MyKAS documents identify the holder as being stateless. Even though the Government no longer issues MyKAS documents, those that were issued prior to 2011 are subject to renewal every 5 years. It was reported that 33,957 MyKAS holders were registered with the NRD until 30 Jun 2017. The figure includes a large number of MyKAS holders from East Malaysia i.e. 1507 holders from Sabah, 1137 from Wilayah Persekutuan Labuan and 2417 from Sarawak.⁹

In addition to the above stated identification documents, NRD also issues **MyTentera** for Malaysian Armed Forces personnel, and **MyPolis** for the Royal Malaysia Police personnel.

2.2 *Birth Certificate*

Malaysia does not practice Universal birth registration. The country 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.

The Births and Deaths Registration Act 1957 requires the National Registration Department to register and issue birth certificates to all children born in Malaysia irrespective of the parents' nationality status¹⁰. The Birth certificate will be issued upon registration of the birth of a child, which, in West Malaysia, has to be done within 60 days of the date of birth of the child. Late registration could lead to the possibility of fined being imposed on the applicants and the children's chances of getting automatic citizenship being jeopardized.

According to NRD, a normal registration of birth refers to registration that is made within 14 days of the birth of a child. Applicants will be exempted of paying any application fee for normal registration. While, late registration of birth refers to registration made more than 42 days after the date of birth of a child in Malaysia, and the applicant will be subjected to a penalty of not more than RM50, birth register search fee of RM5, and RM10 for the processing fee for late registration of birth. Parents who fail to register the births of their

⁸ Webmaster, M. (2008) November 19th. Thousands register for green MyKad. [online] Malaysia Today. Available at: <https://www.malaysia-today.net/2008/11/19/thousands-register-for-green-mykad/> [Accessed 4 Nov. 2019].

⁹ Malaysiakini (2018) July 19. 3030,856 pemastautin tetap, sementara setakat 30 Jun. Available at: <https://www.malaysiakini.com/news/434927> (Accessed 23 Mac 2020)

¹⁰ The Star Online. (2014) February 11th. *NRD: Birth certs a must for kids born in Malaysia*. [online] Available at: <https://www.thestar.com.my/news/nation/2014/11/02/nrd-birth-certs-a-must-for-kids-born-in-malaysia> [Accessed 4 Nov. 2019]

children within 60 days of birth could possibly be fined or risk facing issues with getting automatic citizenship for their children¹¹.

Birth Certificate is a crucial document as it is a prerequisite for acquisition of the other identity documents in Malaysia. The lack of birth registration makes it difficult for children to prove that they have the relevant link to Malaysia as nationals. However, based on DHRRRA's experience, not all parents know the significance of the birth certificate. Some put off the registration of their children's birth until their child reach school-going age and are required to provide Birth Certificate to enrol into government schools. In such scenarios, DHRRRA, through its Community-based paralegals, provides assistance in applying for late birth registration of the child. This, however, can prove a challenge as the births which are not registered in time will lead to requirement of more documents to be submitted as proof of authenticity, as reflected by the below scenario:.

"In 2015, DHRRRA's community based paralegal assisted a family of six siblings, between the ages of one to nine, who did not have Birth Certificate despite both their parents were Malaysians. The parents did not register the birth of the siblings, and approached DHRRRA when they could not enrol the eldest child to school as he did not have a Birth Certificate. Further, the children's birth confirmation forms (Borang Pengesahan Kelahiran) were lost when their house caught fire a few years earlier. DHRRRA requested for reissuance of the children's proof of birth from the hospitals where they were born. As the eldest child was born at home, the midwife had to be traced and contacted for reissuance of the Surat Akuan Bidan (Certificate of Home Birth). The whole process of compiling all necessary documents for late birth registration stretches for a period of two to three weeks and the six siblings would not have been able to successfully obtain their BCs without the persistent efforts and commitment of DHRRRA's community paralegals."¹²

However, the possession of Birth Certificate alone does not guarantee the holder Malaysian citizenship. In fact, as a mean to prevent parents from assuming that their children are automatic citizens with the issuance of Malaysian birth certificate¹³, effective from 1st July 2011, the Home Ministry introduced different birth certificates for Malaysian citizens and non-citizens, and consequently the NRD began issuing red birth certificate for children of non-citizens.

The colored birth certificate system was introduced by the previous government in 2010 as a part of its National Key Result Area (NKRA) initiative to address children's issues. Prior to 2010, all the birth certificates issued by the NRD were green, regardless of the citizenship status of the holder, with the only indication of a birth certificate belonging to a foreigner was the phrase "Daftar Orang Asing" stamped on the document. The former Home Minister Ahmad Zahid Hamidi endorsed the implementation of the colored birth certificate

¹¹ Says.com. (2017) 9th June. Nandini Balakrishnan. Parents, Register Your Babies Immediately After Birth To Avoid Citizenship Problems. [Online] Available at: <https://says.com/my/news/register-your-newborns-immediately-after-birth-to-avoid-citizenship-problems> [Accessed 23 March 2020]

¹² Adapted from Resolving Statelessness in Malaysia: Strategic Plan. (2017). Petaling Jaya: DHRRRA Malaysia, p.27.

¹³ Malaysia Today. (2011) March 18th. *Different birth certificates for M'sians and non-citizens from July 1*. [online] Available at: <https://www.malaysia-today.net/2011/03/18/different-birth-certificates-for-msians-and-non-citizens-from-july-1/> [Accessed 4 Nov. 2019].

system by stating that, “Having a red-coloured birth certificate is not a free pass for them (foreign children) to obtain MyKad and be recognized as a citizen”¹⁴.

According to the current practice, a child’s nationality status in the red Birth Certificate is stated as either “bukan warganegara” (non-citizen) or “belum ditentukan” (undetermined). Such birth certificates are not only issued to children of foreign nationals born in Malaysia, but also to children born out of wedlock to Malaysian parents as well as to children who could not prove their link to their Malaysian parents. This implies that the holders of the red BC do not have access to citizenship through either one of the parents.

Apart from the non-possession of BC, there are other challenges faced by the grassroots community in relation to the BC, based on DHRRRA’s observation and intervention. This includes the non-acceptance of children to school if their Birth Certificate does not carry the father’s name or if their mother’s detail is incomplete. A father’s name may be omitted from the BC if the father, who is not legally married to the child’s Malaysian mother, goes to the NRD for registration of the child once the mother abandons the child. In such situation, according to the current practice, the NRD will opt to include the father’s name as informer only.

In the past, a confirmation that either one of the parents is a Malaysian is required for a child to be accepted into a government school. In some cases where the father’s details are not available, the child will be accepted to school provided the parents or guardians of the child is able to pay a levy of RM120 for primary school and RM240 for secondary school. The cost of text books and exam fees will be borne by the child’s parents or guardians. Further, there are special procedures to be followed during board examination (UPSR, PT3 and SPM).

The children will only be allowed to enrol in government schools if the parents or guardians have applied or are in the process of applying for the necessary adoption or citizenship documents for their children. The below scenario highlights the plight of a child who has been identified as non- citizen” in his BC to access education:

“Mrs.Padmini (a government servant) sought DHRRRA’s assistance in July 2019, to facilitate citizen application for her 6 years old adopted child, Pharvin. She and her late husband (an Immigration officer) had adopted Pharvin from a welfare home on 22nd November 2012. Subsequently, a new birth certificate was issued in 2014 for the child according to Section 25 (2) Child Adoption Act 1952 with her and her husband’s name stated as the parents of the child. The document however stated the child’s citizenship status as ‘non citizen’. She lost her husband in 2017, and encountered more problems when she enrolled her child in a government school in 2019. The Education Department advised that her child could not continue studying in the government school without a citizenship status. She was requested to apply passport through the Immigration Department to enable the child to continue studying. However, the child’s biological parents were not traceable, which rendered him stateless.”

3. CATEGORIES OF STATELESSNESS IN MALAYSIA

¹⁴ The Rakyat Post. (2014) November 4th. *Red-coloured birth certificate not free pass for Mykad, says Sabah NRD chief.* [online] Available at: <https://www.therakyatpost.com/2014/11/04/red-coloured-birth-certificate-free-pass-mykad-says-sabah-nrd-chief/> [Accessed 4 Nov. 2019].

Statelessness is a widespread phenomenon in Malaysia, which is not restricted to a specific community or area. While ascertaining the exact number of people affected by statelessness in the country remains a challenge, the factors or causes rendering them stateless are similar to a certain extent. Based on DHRRA's mapping and registration exercise, the stateless persons in the country can be classified into the following 7 categories:

- i. Persons who arrived or born before Independence (31 August 1957) or Malaysia Day (16th September 1963)
- ii. Persons rendered stateless by gender unequal provisions in Nationality Law
 - Children born out of legal wedlock to Malaysian father
 - Children born to Malaysian women overseas
- iii. Abandoned children and foundlings
- iv. Stateless adopted children
- v. Mobile and semi nomadic Sama Bajau
- vi. Indigenous people (Orang Asli/Asal)
- vii. Multigenerational migrants and refugees

3.1 Persons who arrived or born before Independence (31 August 1957) or Malaysia Day (16th September 1963)

Article 16 of the Federal Constitution grants citizenships to persons born in the Federation of Malaya before Independence Day in 1957. This includes the vast number of Indian and Chinese migrants who arrived in Malaya pre-independence and their descendants. Though these communities and their descendants were entitled to acquire Malaysian citizenship under the Federal Constitution after independence, due to the lack of awareness of the importance of legal documents many of them failed to register their marriages and the births of their children. Living in remote plantations, they could avail basic welfare without having the necessary legal documents and did not realize the importance of such documents until after their estates were taken over by the government and they were forced to move out.

The scenario of people rendered stateless under this category is more prevalent among the Malaysian Indian community. In 2018, DHRRA Malaysia successfully assisted 99 years old Madam Kuppamah to get her citizenship approval certificate after she submitted her 11th application to NRD. She was born in Malaysia to parents who were brought in from India during British colonization to Malaya in the early 1900s to build railway track. Her marriage was short lived as her husband passed away when she was just 30 years old. She served as a part time educator in Tamil school to sustain her living. DHRRA Malaysia supported in paying for her citizenship approval fee amounting RM200.

Madam Kuppamah's is not an isolated case. Based on DHRRA's experience, there are many others like her who live stateless life despite residing in Malaysia pre-independence. Many are only issued PR identity documents. Those of them who had applied for citizenship were not successful in getting citizenship despite multiple citizenship application and interviews at the NRD. Insufficient evidence to support their application due to displacements of workers from the plantations/estates, low language literacy and petty criminal records from pre-independence period are some of the factors that affect their citizenship application.

On the other hand, DHRRA observed that the stateless Chinese cases are not as deep rooted as cases of stateless Indians in West Malaysia. Only a handful of stateless persons of Chinese origin are those who had arrived pre-independence and remained stateless since then. On the contrary, an increasing number of the younger generations of Malaysian Chinese are facing issue of statelessness. One of the main factors contributing to the increase is the inability of Malaysian Chinese father married to foreign mothers with invalid or expired visas

to confer citizenship to their children. Similar challenges are also faced in obtaining citizenship for children born out of ‘marriage of convenience’ between Malaysian Chinese men and ‘China Dolls’¹⁵. In March 2016, the former Deputy Prime Minister Datuk Seri Dr Ahmad Zahid Hamidi informed the Dewan Rakyat¹⁶ that more than 17,000 marriages between Malaysian men and female China nationals were unregistered between 2011 and 2015, which raises concern on the citizenship status of their children.

This category of individuals are allowed to apply for citizenship under Article 16 (with Birth Certificate) and Article 19 (without Birth Certificate). However, it’s not a straightforward process. There are some with Birth Certificate, who could not apply for citizenship due to inconsistent information on their Birth Certificate and identity card (e.g name spelling). And there are some without Birth Certificate, who could not apply for citizenship, due to proof of arrival or birth has been lost during workers displacement in the plantations/estates. Their application for citizenship may not be successful if they do not perform well in oral Bahasa Malaysia exam, unable to fulfil certificate of good conduct, or unable to pay RM100 approval fee of citizenship.

3.2 *Persons rendered stateless by gender unequal provisions in Nationality Law*

Gender unequal provisions in Nationality Law serve as one of the key drivers of statelessness in Malaysia. At present, Malaysia has been identified as one of 25 countries in the world that denies women the right to confer nationality on their children on an equal basis with men. The country is also one of 3 countries in the world that denies men equal rights in conferring nationality to their children who are born out of wedlock. Whilst Federal Constitution promotes equality and prohibits gender discrimination through Article 8(1) and 8(2), it is undermined by the prevalence of gender discrimination in the nationality laws. The following are the categories of children affected by gender unequal provisions in Nationality Law.

3.2.1 Children born out of Legal Wedlock to Malaysian Father

The Federal Constitution does not allow men to transfer nationality to their children if the child is born out of a legally recognized marriage (Section 17, Second Schedule, Part II). It is a constitutional provision that states children born to unmarried couples would take on the mother’s nationality. This, however, is only possible if the mother holds a citizenship and is able to pass on the citizenship to the child, as reflected by the following statement of a NRD office, as appeared in The Borneo Post:

“To determine the status of the child, we will also look at the marriage status of the parents. In cases where the marriage is not legally registered and the mother is a non-citizen, the child would not qualify for citizenship, even if the father is a Malaysian...However, if the mother is a permanent resident or Malaysian, the child would automatically be Malaysian, even if the father is not and the marriage is not legally recognized or registered. In

¹⁵ The Star Online. (2014) October 29th. *Zahid: Kids of ‘China dolls’ will face citizenship problems*. [online] Available at: <http://www.thestar.com.my/news/nation/2014/10/29/china-dolls-malaysian-citizenship/> [Accessed 4 Nov. 2019].

¹⁶ New Straits Times Online. (2016) March 21st. *More than 17,000 unregistered marriages between Msian men and China nationals*. [online] Available at: <https://www.nst.com.my/news/2016/03/134241/more-17000-unregistered-marriages-between-msian-men-and-china-nationals> [Accessed 4 Nov. 2019].

other words, the status of the mother would determine the status of the child when there is no marriage certificate...In cases where a marriage certificate is obtained and registered with the NRD after the child was born, the child in question would still not qualify as a Malaysian, because we are bound with the fact that she or he was born before that,” NRD Public Relations Officer, Jainisah Mohd Noor¹⁷

A child is considered to be born out of wedlock when there is no legal marriage registration. This can result in statelessness if the children cannot acquire nationality from their mothers before the birth of the child, as in the following situations:

- i. The birth mother herself is stateless and her marriage cannot be solemnized due to the very fact of her being stateless
- ii. The child is cared for by a Malaysian single father and the whereabouts of the mother is unknown
- iii. The child is cared for by a single mother who is herself without any nationality (e.g. myKas)

The incident of children rendered statelessness due to the said provisions became prevalent when the Law Reform (Marriage & Divorce) Act 1976 came into force on 1st March 1982. This law, which is only applicable to non-Muslims, renders all customary or cultural marriages and other marriages conducted according to Chinese or Hindu rites after 1st March 1982 which is not registered as invalid. Henceforth, Malaysian laws only recognize civil marriages that are registered.

Among the repercussion faced by a non-muslim child born out of wedlock, include the omission of the particular of the father from the BC of the child unless a joint application is made by the mother and the person claiming to be the father of the child, and both of them sign the birth register together. In another word, the presence of the mother of the child at the respective NRD is mandatory in ensuring the child's BC contains the particular of the father.

The following sharing of a mother reflects the plight of stateless children born out of legal wedlock:

“My children cannot go to tadika because there is problem with my documents. I am, still waiting for nationality status, but I am not sure when it will be approved. My husband is a citizen, but cannot do anything. All my children follow me.” A mother, who has not legally registered her marriage to the father of her child due to her undocumented status, commented on DHRRA's Facebook on 1st August 2019

3.2.2 Children born to Malaysian women overseas

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. There was a change in the status quo in April 2010, with the announcement of a new regulation by the then Home Minister Datuk Seri Hishammuddin Tun Hussein, to enable Malaysian women

¹⁷ Morpi, M. (2013) February 22nd. *NRD explains laws, procedures on birth certificate, IC and citizenship* | Borneo Post Online. [online] Borneo Post Online. Available at: <https://www.theborneopost.com/2013/02/22/nrd-explains-laws-procedures-on-birth-certificate-ic-and-citizenship/> [Accessed 4 Nov. 2019]

married to foreigners to register their children born outside the country¹⁸ as a citizen under Article 15 (2) ¹⁹ of the Federal Constitution. The granting of the citizenship, however, is subject to the several conditions including the requirement for both parents to jointly submit the application before the consulate officer within a year of the child's birth.

Despite this purported change in policy, in practice, the process for registration of children born overseas to Malaysian fathers differs significantly from the process for children born overseas to Malaysian mothers. Malaysian fathers can register their children under Article 14 of the Federal Constitution (citizenship via operation of law) and complete Form D for the application of citizenship, a fairly streamlined process which maybe completed in a few days. In contrast, Malaysian mothers must register their children under Article 15 (2) (citizenship through registration) and complete Form B for the application of citizenship. However, despite the availability of the discretionary registration provisions under which Malaysian mothers can register 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. The discriminatory provisions of the nationality law devoid remedy for Malaysian women whose children born overseas to pass on their citizenship to their children.

3.3 *Abandoned children and foundlings*

Section 19 (B), Part II of Second Schedule of the Federal Constitution, provides a safeguard against statelessness for foundling or abandoned children by recognizing them as nationals of Malaysia, which is deemed as the state in which they are found. However, there are no administrative guidelines or procedures regarding the implementation of the relevant constitutional provisions in NRD.

Without any information about their biological parents, the foundlings could not provide the evidence to fulfil requirement for the conferment of citizenship by operation of law. Many have been granted with MyKAS however those who have been issued this cards often face threat as there are no avenue to pursue PR or citizenship application moving forward. There is also no provision to apply for Permanent Residency (PR) for these children.

Foundling or abandoned children who are eventually adopted can only have access to citizenship through their adoptive parents if legal adoption is done before child turns 21 years old and the necessary citizenship application under Article 15A of the Federal Constitution (Special Power to Register Children), is made in NRD.

And therefore, foundling who was born and led her whole life in Malaysia, would have little hope of acquiring citizenship of another country. She would suffer a lifetime of statelessness unless steps are taken to grant her citizenship.

3.4 *Stateless Adopted Children*

There is scope in the Malaysian's nationality law (via article 14(b) of the Federal Constitution for adopted stateless children to acquire the nationality of one of their adoptive

¹⁸ The Star (2010). Malaysian women can register children born abroad. [online] Available at: <https://www.thestar.com.my/news/nation/2010/04/12/malaysian-women-can-register-children-born-abroad> [Accessed 19 Nov. 2019].

¹⁹ Article 15 (2) of the Federal Constitution: "Subject to Article 18, the Federal Government may cause any person under the age of twenty-one years of whose parents one at least is (or was at death) a citizen to be registered as a citizen upon application made to the Federal Government by his parent or guardian."

parents. However, in practice, adoptive parents face significant barriers in conferring citizenship to their stateless children as NRD practices discretionary conferral of citizenship under Article 15A for adopted children.

Whilst the 1952 Adoption Act provides for the transfer of property rights, wealth and birth certificates to the adopted children, it does not provide for transfer of citizenship. This poses a challenge for stateless children adopted from welfare homes in acquiring citizenship. However, Section 9 (1) of the 1952 Adoption Act provides that the adopted child's legal position in the nationality law is identical to the position of a biological child. The Constitution recognizes that a child born within the country is a Malaysian citizen if either parent is a citizen or a permanent resident of Malaysia. And therefore lawfully adopted children, including abandoned or foundling stateless child, should be considered to be born into a lawful wedlock, and thus inherit their nationality from their adoptive parents as children born into lawful wedlock. However, there are no NRD administrative guidelines and procedures to implement these provisions of the law. Instead, according to the common practice, the NRD registers the adoption order of a child with missing parentage, but adopted by Malaysian parents, as "bukan warganegara" (non-citizen).

The children are allowed to apply for citizenship under Article 15A of the Federal Constitution (Special Power to Register Children). However, NRD often issues the adoption certificate or Birth Certificate stating the child as "non-citizen" or "cannot be determined". Adoptive parents are asked to apply on behalf of the child for citizenship-Article 15A, usually are rejected repeatedly. After the child turns 18 years old and above there is no avenue for him or her to apply under any article even though the form mentions that it is applicable to children 21 years and below. To remain in the country, they are asked to produce passport instead.

Problems also arise when parents adopt children without knowing the legal adoption procedures. When there is no trace of biological parents, the child will be considered stateless. Apart from giving the child new life, the parents are made to pay foreigner fees for education and healthcare. They never wanted the child to know that she was adopted by they had to tell her because she wanted an explanation of why she could not have a Blue IC just like her other siblings.

3.5 *Mobile and Semi Nomadic Sama Bajau*

The Bajau Laut (Sama Dilaut) is a nomadic population living in boats or in water villages on Malaysian coastal waters. Many of them have abandoned traditional marine-based income as a result of increased security and environmental restrictions in established fishing areas. They now live in stilt houses on coastal areas in Sabah in search of better lives for their families. Many do not have identity documents because their births are not registered and their parents have never obtained identity documentation. With no legal documents to prove their identity or status, their children roam the streets and remain vulnerable to arrest, abuse and exploitation. This population also resides in the Philippines and Indonesia, and have been reported as still migrating between these three countries. However, as they are not legally recognized by Malaysia, they are often lumped together with other vulnerable groups and collectively referred to and treated as "illegal immigrants".

3.6 *At High Risk of Becoming Stateless*

In addition to the above categories, Malaysia is also home to a large number of people who are not stateless but are at high risk of becoming stateless if certain factors exist. Two major groups of vulnerable communities who fall into this category include:

3.6.1 Indigenous (Orang Asli/Asal)

Many of the indigenous communities in Malaysia live in rural areas. Though the NRD has a great intuitive with mobile registration, a lot of the members of the Orang Asli community are not documented in time and sometime face problems in late birth or identity card registration. As most indigenous persons live in remote areas, they also face obstacles in accessing urban registration centres due to the cost or geographical reasons. This also poses a challenge for them in accessing public healthcare or education.

3.6.2 Multigenerational Migrants and Refugees

Malaysia, specifically the state of Sabah, is home to a large number of migrant populations. Children of Filipino and Indonesian descent, whose family members have lived in Sabah for generations, will be a risk of statelessness if they lack the documentation to prove their link to the country of origin of their parents. The absence of a permanent consular presence for the Philippines in Sabah, further hampers the registration of birth of children of Filipino descent. In November 2016, former Home Minister Datuk Seri Dr Ahmad Zahid Hamidi revealed that there were more than 290000²⁰ stateless children in the country, a majority of whom may be housed by Sabah.

They are not recognized as citizens of any country. Although, it is likely that many children in Sabah who are often described as stateless or not recognized as citizens of any country may in fact have a pathway to citizenship of the Philippines or Indonesia, where there are mechanisms for determining their status and legal identity.

²⁰ <https://www.nst.com.my/news/2016/10/184708/no-malaysian-citizenship-more-290000-children-born-here>

4. SAFEGUARD AGAINST STATELESSNESS & GAPS IN ADMINISTRATIVE PROCEDURES OF AUTHORISING AGENCIES

Although Malaysia is not a signatory of the two pertinent international treaties on statelessness i.e. the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, the Malaysian Federal Constitution contains safeguards to prevent and reduce statelessness in Malaysia through the following provisions:

- Article 14(1)(b), Second Schedule, Part II, Section 1(e) provides that a child who is born in Malaysia and has not acquired nationality from any other state within 1 year of birth is a Malaysian citizen by operation of law.
- Article 14(1)(b), Second Schedule, Part II, Section 19B of the Federal Constitution recognizes new-born foundlings as nationals of Malaysia which is the state in which they are found. He or she is presumed to be born to a mother who is a PR in Malaysia, and the location where they are found is presumed as their birth place, and the date of finding will be considered as their date of birth.

The 1952 Adoption Act provides further safeguard to prevent statelessness in Malaysia. According to Section 9(1) of the Act, the adopted child's legal position in nationality law is identical to the position of a biological child. Since the Federal Constitution recognizes that a child born within the country is a Malaysian citizen if either parent is a citizen or a permanent resident of Malaysia, lawfully adopted children are considered to be born into a lawful wedlock. Therefore, the child should be considered as a Malaysian citizen.

However, the effectiveness of the safeguards in preventing statelessness is restricted by the absence of administrative guidelines or procedures regarding the implementation of the relevant safeguarding provisions. Detailed below are some of the glaring gaps in the administrative procedures of the NRD, as identified by DHRR while assisting stateless persons to acquire legal documentations through its community based paralegal initiative.

4.1 Long Processing Period for citizenship application

Each application for citizenship under Article 14 (1)(a) & (b), Article 15 & 15A, 15(1), 15(2), Article 16, 169a), Article 19 involve a long processing period with an average of 2 to 3 years, with some applications exceeding 4 years. Until recently, there was no fixed duration for a decision on a citizenship to be made. The processing period varies on case-by-case basis²¹.

Over the years, DHRR has been advocating for the reduction of the processing period to less than 1 year. The efforts paid off with the decision of the MOHA to shorten the time taken to process every application from three years to a maximum of one year as announced by the Home Minister Tan Sri Muhyiddin Yassin in July 2019.²² DHRR is monitoring the enforcement of the same, which will put an end to the strain of long waiting period on the

²¹ Penyata Rasmi Parlimen, Kamar Khas, Parlimen Keempat Belas, Penggal Kedua, Mesyuarat Pertama, Bil 11, 2 April 2019 Available at parlimen.gov.my/files/hindex/pdf/KKDR-02042019.pdf

²² Tawie, S. (2019) July 29th. *Home Ministry to review citizenship application steps, cut processing time to a year* / Malay Mail. [online] Malaymail.com. Available at: <https://www.malaymail.com/news/malaysia/2019/07/29/home-ministry-to-review-citizenship-application-steps-cut-processing-time-t/1775665> [Accessed 12 Nov. 2019].

stateless persons and their families as shared by David, the son of a 78 years old red-IC holder (permanent resident),

“My mum’s IC is still red. Though your team tried helping, still never get even after she applied few times. Imagine a 78-years-old, going up and down Wisma Taiping (NRD office), but still they never give. After new government (came to power), she went again, and was interviewed. We are still waiting. I told her to give up, but she just want to take blue IC before her days ends...”

(Source: FB Comments, July 5, 2019)

4.2 No Reasons for Rejections

Based on the numerous cases of stateless persons handled by DHRRA, the NRD does not provide reasons for its decisions (rejections) on nationality applications in writing. The following are extracts of typical notifications of rejection received by citizenship applicants:

“Please be informed that your application for Malaysian citizenship status by registration under Article 15A of the Federal Constitution has been reviewed by this Ministry and YB. Home Minister has determined that your application is NOT SUCCESSFUL. However, any new requests may be made to any branch or State Headquarters of the National Registration Department (NRD) near your residence.”²³

“We regret to inform that your application for Malaysian citizenship status under Article 15A of the Federal Constitution is unsuccessful.”²⁴

The lack of transparency on the approval and non-approval of citizenship further add on to the distress and agony faced by the stateless persons in Malaysia, and leaves families who have been waiting for a decision on citizenship application in limbo. While the applicants are encouraged to resubmit their citizenship application, there is also no certainty of the appeal mechanism for them. Repeated rejections and re-applications also means that children applying under Article 15A will reach 21 years of age, and eventually will be ineligible for citizenship application under Article 15A.

4.3 Guidance on Good Character Requirements

According to the Home Ministry, prior security checks are carried out on the background of the applicants to ensure the genuineness of every application²⁵. And therefore, fulfilling certificate of good conduct is one of the prerequisite for citizenship application. However, in

²³ Original quote: “Adalah dimaklumkan bahawa permohonan taraf kewarganegaraan Malaysia anak tuan/puan secara daftaran di bawah Perkara 15A Perlembagaan Persekutuan telah diteliti oleh Kementerian ini dan Yb. Menteri Dalam Negeri telah memutuskan bahawa permohonan tuan/puan adalah TIDAK BERJAYA. Walau bagaimanapun, sebarang permohonan baru boleh dikemukakan di mana-mana cawangan atau Ibu Pejabat Negeri Jabatan Pendaftaran Negera (JPN) yang berhampiran tempat tinggal tuan/puan.”

²⁴ Original quote: “Dukacita dimaklumkan bahawa permohonan taraf kewarganegaraan Malaysia anak tuan/puan di bawah Perkara 15A Perlembagaan Persekutuan adalah tidak berjaya.”

²⁵ Tawie, S. (2019) July 29th. *Home Ministry to review citizenship application steps, cut processing time to a year* / Malay Mail. [online] Malaymail.com. Available at: <https://www.malaymail.com/news/malaysia/2019/07/29/home-ministry-to-review-citizenship-application-steps-cut-processing-time-t/1775665> [Accessed 12 Nov. 2019].

the absence of the definition of “good character” in the Federal Constitution, all applicants with crime records is rejected, no matter how petty the crime is or how many years have lapsed since the crime was committed.

In 2014, The Star reported the case of a senior citizen, R.Kolandavaloo who filed and won a judicial review application against the Home Minister, the NRD director general and the Malaysian Government for refusing him citizenship for being “not good of character”. The 71-year old former plumber was jailed by the Klang Magistrate’s court on two occasions i.e. in 1965 and 1966 for theft and minor offence, including for stealing chicken. Though he was not a habitual offender and fulfilled all the other conditions under Article 16 of the Federal Constitution, he was not granted citizenship. In passing the judgement in his favour, Justice Zaleha had this to say to support her stand,

“Do not be too technical. You are dealing with a human being. He is an old man. That (offence) is more than 40 years ago. You have written to the police, who said he had not committed anything else. Is that not enough for good character?”²⁶

4.4 No Standard Approach to Assess Language Proficiency

The current NRD procedure makes an adequate knowledge of Bahasa Melayu as one of the main requirements which qualifies a person for acquisition of citizenship. All applicants must undergo a Bahasa Melayu proficiency test conducted by NRD for citizenship application under Section 16 (citizenship by registration) and Section 19 (citizenship by naturalization). The Bahasa Melayu test is carried by a panel of 3 members, who will assess the level of knowledge on current issues and basics of nationality (berkisar tentang isu-isu semasa serta asas-asas kenegaraan).²⁷ However, there is no standard approach or guideline on assessing proficiency in Bahasa Melayu. DHRRRA Malaysia has been advocating for NRD to outline the minimum language proficiency standards to ensure transparency in the language assessment.

4.5 Inconsistent Procedures at District and State level NRD

At present, there are no standardized administrative procedures for the different levels of NRD offices to ensure that all persons are treated equally. Inconsistent procedures were observed by DHRRRA Malaysia through its engagement with NRD offices at the different levels. This includes, among others, the requirement for a cover letter for late birth registration application at district level, whereas the State and HQ do not require such formality. Some district and state level offices also require “penyokong” (supporter) to be physically present during the application; however the same requirement is not enforced by other district, state level and HQ NRD.

4.6 Long Search and Extraction (S&E) processes

The NRD’s initial procedure of looking through the database for duplicates before accepting an application alone can take four to eight weeks. These long search and extraction (S&E)

²⁶ M, M. (2014) March 19th. Senior Citizen Triumphs In Malaysian Citizenship Quest After Being Rejected For Being A Bad Hat. [online] Available at: <http://Thestar.Com.My/News/Nation/2014/03/19/Senior-Citizen-Wins-Citizenship-Appeal/> [Accessed 12 Nov. 2019].

²⁷ Amalina Che Omar (Nd) Prosedur Permohonan Taraf Kewarganegaraan Malaysia: Kajian Di Jabatan Pendaftaran Negara Petaling Jaya, Availabe at: Academia.Edu/7942470/Prosedur-Permohonan-Taraf_Kewarganegaraan_Malaysia_Kajian_Di-Jabatan_Pendaftaran_Negara_Petaling_Jaya?

processes that delays citizenship application submission processes. Each search and extraction of Birth Certificate and Identity Card can stretch up to 3 months long. The Search and extraction of Birth Certificate is only performed in the respective state office. The search and extraction of Identity Card is made in state office and sent to HQ for results. The process also involved extensive application fee, previously charged at RM5 now charged at RM50.

4.7 Issuance of Forms at NRD

Article 15A of the Federal Constitution grants special power to the Federal Government to register children under the age of twenty-one years as a citizen of Malaysia. This provision is not applicable to individual above 21 years old. However, based on DHRRRA's experience, in some occasions the NRD officers do not issue 15A forms to applicants who have already turn 18 years old and above. Therefore, individuals between the ages 18 to 20 are unable to make any applications for citizenship due to the lack of administrative procedures. NRD also does not give out forms for Citizenship Application 14(1)(b) (Citizenship by operation of law) at District, State office and HQ for confirmation of citizenship.

4.8 DNA Testing

Cases where DNA test is requested by JPN, applicants are to bear the cost for testing at Jabatan Kimia, which amounts to RM1500 for two persons. Every additional person will be charged RM200. Blood sampling cost RM50 per person. Prior to 2016, should JPN instruct the DNA testing, most of the cost will be absorbed by JPN itself, where applicant only need to pay RM60.

5. RESOLVING STATELESSNESS IN MALAYSIA: DHRRA'S EXPERIENCE

DHRRA first came across individuals without identity documents while carrying out community development initiatives targeting rural Indian-Tamil community in West Malaysia in 2003. The stateless persons were living a life of non-existence in the midst of the larger Malaysian society. Many ended up passing their statelessness status to the next generation, and thus continuing the cycle of statelessness.

The following sheds light on the agony and distress suffered by the thousands of stateless individuals encountered by DHRRA:

“I am already 29 years old...living without nationality is really an agony. Hard to get a job. Even if I get a job, the employer will take advantage. If I fall sick, the cost of treatment in the government hospital is expensive for non-citizen. My father has red IC. My mother has no documents. All my siblings have blue IC. I only have a pink birth certificate.” Gajjar Hassan Emlan, a stateless person, commented on DHRRA's Facebook on July 5th 2019²⁸

Spurred by the gravity of the issue among the rural Indian-Tamil community, DHRRA started working on identity documentation issues in West Malaysia in 2004. However, the extent of assistance and support rendered to the community were limited to ad hoc basis as DHRRA did not have the capacity to set up the required services to identify, register and provide legal aid to the stateless persons on a larger scale.

5.1 *Registration and Legal Aid Model*

DHRRA began to work extensively in addressing statelessness in Malaysia in 2014 by carrying out a comprehensive mapping, registration and community based legal assistance project across the Peninsular region. The registration and paralegal aid services in West Malaysia were made possible by the technical support provided by UNHCR. It began in 2014 in Kedah and Perak, moving on to Negeri Sembilan and Selangor in 2015. Based on this mapping, a total of 12,341 cases of individuals lacking birth certificates, identity cards, or citizenship were identified.

Mapping phase of the project in 4 all states was completed at the end of 2015 and provided the basic demographic profiles of stateless persons, and overview of legislation and procedures governing the recognition of their status, and their employment of rights. Through these efforts, 12350 stateless people who are not considered as nationals in Malaysia or any other country, registered with the paralegals, 9918 of them are of Indian-Tamil origin.

An essential part of the initiating this effort to address statelessness was built on DHRRA's experience on community engagement and grassroots mobilization, mainly within the Indian-Tamil community, through vocational training, youth and women empowerment projects. This enabled DHRRA to reach out to and consult with the affected populations so that their needs were understood and views were duly incorporated into the planning and solution delivery process.

²⁸ DHRRA Malaysia (2019). Available at: <https://www.facebook.com/DHRRA/>

Most community members live in remote areas of the palm oil plantation sites where they work and cannot afford to travel to town. While the mapping project continued between June 2014 and the end of 2015, DHRRA had 64 volunteers to carry out registration activities—travelling town to town, from one rubber plantation to the next, to reach out to communities who would otherwise not be able to benefit from DHRRA’s services. DHRRA mobile teams consisted of 11 volunteers in each district, further divided into smaller groups to map the settlements that are scattered across the vast palm oil plantations and to register stateless persons.

During the registration process, stateless applicants were interviewed by the volunteers of mobile registration teams and provided key details about their family situation and history, citizenship and documentation issues. Volunteers captured the key details of the stateless applicants using an application on mobile device, and the data was then uploaded and synced into a central, secure database instantly. Volunteers would then refer the applicants to community based paralegals to further initiate legal assistance in submitting nationality applications to the Government. The online system developed with technical support from UNHCR is a critical component of this process which allows access to the registration records of stateless people for those authorized, including community-based paralegals.

As a result of the progress made through the registration and paralegal aid services in West Malaysia and building on links established in 2014, DHRRA was able to play a catalytic role to encourage efforts to replicate and devise a solutions project for stateless Bajau Laut communities in East Malaysia. In 2015, DHRRA started lending its technical support to the grassroots community organizations in the State of Sabah in East Malaysia.

5.2 *The Community Based Paralegal Model*

The registration and mapping exercise comprised of a legal assistance component which was delivered by employing the Community paralegal model. A team of community based paralegals were identified and trained on providing legal assistance in addressing the specific needs of the stateless persons registered during the mapping exercise, and assisting them to make applications for the relevant identity documents at the respective NRD offices. A detailed, training programme and case management system was devised to ensure the quality of any advice and assistance provided by the paralegals and that more complex cases (such as those requiring resolution by the court) were referred to the much smaller team of pro bono lawyers. As such, community members were able to deliver the required assistance, overcame the language barrier and literacy issues and also promoted stronger beneficiary acceptance of legal assistance.

In addition to assisting individual applicants, community based paralegals form an essential component of the project as they undertake door to door community outreach, community meetings, and educate their own community about nationality law and application procedures. The work of paralegals is not limited to assisting individual applicants in obtaining documentation, but their work concerns empowering communities to have confidence as citizens. All throughout the mapping process until the end of 2015, paralegals continues to facilitate community meetings to educate the community about Malaysia’s citizenship law, citizenship and birth registration application procedures.

The paralegals guide the children through the enrolment procedures in Government schools and help them to catch up with their peers. They assist the children in filing out the required forms at the State Education Department, and obtain a verification letter from the village head. Whether inheriting their statelessness from a stateless mother, being a foundling, adopted child or first to experience statelessness within the family, there are over

47303 stateless children registered with DHRRRA. By the end of 2016, DHRRRA paralegals assisted 264 stateless children in enrolling into primary and secondary school.

Legal empowerment through community-based paralegals proved an immediate way for communities to acquire or confirm their nationality. The mapping component project ended at the end of 2015, but paralegals continue to serve as the link between the community and government institutions, acting as a flexible and accessible way to access justice. They use their knowledge of law, mediation, education, planning and advocacy skills to seek concrete solutions for stateless applicants.

5.3 Database

As an integral part of the registration process, an online system was developed by DHRRRA with technical support from UNHCR to record baseline data on births, deaths and marriages and related documentation, disaggregated by key factors such as age, gender, ethnicity, education levels, employment, nationality status, nationality status of parents, documentation of parents and residence/location. The data collected by the paralegals is essential for tracking the progress of applications and in monitoring the NRD's decisions. The data management helped to reveal patterns in civil registration which may highlight particular issues and their potential causes such as high prevalence of low birth registration, likelihood of unregistered children, and why the population of concern do not have their births, marriages and deaths registered. DHRRRA's statelessness database was designed to continue its evidence based advocacy and corporation with the government, and used to simplify and speed-up NRD's application and processing procedures.

5.4 Strategic Litigation

Strategic litigation is an important pillar of DHRRRA's initiative. Litigation presents a dual opportunity to draw awareness to statelessness and to build jurisprudence on statelessness references to the existing provisions in the Federal Constitution. There are a number of provisions within the Malaysian Federal Constitution that if implemented fully and consistently, could result in the resolution of many cases of statelessness in West Malaysia. Therefore, legal action with the aim to set legal precedent and reform policy is one way to reduce and eventually eradicate statelessness.

DHRRRA holds a regular dialogue with its Lawyer's Committee, which continues to litigate to enforce constitutional provisions relating to nationality and statelessness. DHRRRA pro bono lawyers provide much needed legal support for stateless applicants who require remedy at the courts in order to acquire or confirm nationality. These are cases that cannot be resolved at the NRD level by community-based paralegals are taken to court by pro-bono lawyers. The cases handled by the pro bono lawyers mainly fall under the following four categories:

- i. Adoption – In cases concerning adopted children who are not able to inherit citizenship from their Malaysian parents who adopt them either formally or informally, DHRRRA's pro bono lawyers will provide the necessary legal support to formalize the adoption process, and argue in favour of the right of the adopted child to inherit the citizenship of their adoptive parents.
- ii. Children born out of wedlock- According to Malaysian nationality law, children who are born in Malaysian territory but out of wedlock inherit citizenship from their

mother only. DHRRA has encountered many situations in which a child is born to a Malaysian man and non-Malaysian woman who can no longer be located (due to, for example, having returned to their country of origin) rendering the child with undetermined nationality. DHRRA's position is that in these circumstances, it is best in the interest of the child to inherit Malaysian citizenship through his/her father

- iii. **Safeguard against statelessness**—The Constitution states that a child born in Malaysia who is not the citizen of another country and who cannot register to acquire citizenship of another country within 12 months is a Malaysian citizen. However, while this provision theoretically provides a powerful safeguard against statelessness, it has not been implemented in practice by the Malaysian government. Cases filed on behalf of foundling children aim to test this provision.
- iv. **MyPR/MyKas Holders:** Article 14 of the Federal Constitution states that every person born on or before Malaysia Day (Independence Day) is a citizen by operation of law. People who meet these qualifications, but who are unable to produce the documentary evidence to prove their presence in the Federation prior to 1957, are often given temporary or permanent residence status. Due to their inability to satisfy the administrative requirements set out by the NRD, they face rejection despite the fact that most have lived their entire lives in Malaysia. DHRRA advocates for a reform of NRD's administrative procedures in the interest of establishing a more flexible approach to applying the nationality law. Another common scenario that falls under this category concerns foundling who are raised in welfare homes. Because their parents cannot be located, they are given temporary residence status (MyKas), renewable every five years.

5.5 Advocacy and awareness

As part of its effort to resolve statelessness in Malaysia, DHRRA continues to play an active role in creating better understanding and awareness among the policy makers and the general public on statelessness. In addition to organizing briefing aiming to sensitize individual policymakers on the issue, DHRRA has been working closely with local MPs by providing free consultations at the ADUN offices for the stateless community in the respective constituent. Invitations are also extended to government officers, CSOs and other stakeholders to participate in workshops aiming to create awareness and understanding statelessness

In order to reach out and engage and engage a wider part of the Malaysian population in the effort to resolve statelessness in the country, Statelessness Awareness Campaigns are organized by DHRRA, targeting University and college students specifically. In line with this, "I pledge my Action to address statelessness" was launched at the Cyberjaya University on 12th February 2020, to reach out, expose and increase the awareness of the students on the statelessness issue in Malaysia.

Two infographic handbooks namely, were developed and distributed to create awareness on the issue of statelessness in the country. To ensure the information is understood by a larger segment of the society, the handbooks were translated into local languages including Bahasa Malaysia, Tamil and Chinese.

6. PROGRESS TOWARDS ADDRESSING STATELESSNESS IN MALAYSIA

Apart from successfully assisting stateless person to acquire citizenship on individual basis, the organization has achieved progressive development towards resolving statelessness by systematically and consistently raising statelessness issues with government authorities and other stakeholders in varied platforms including workshops and dialogue sessions. A multidimensional advocacy network on stateless is created through collaboration with other civil society organisations and academic institutions.

Through DHRRA Malaysia's evidence based advocacy and awareness campaigns, the organization has encouraged the Government of Malaysia to be more open and transparent addressing statelessness. DHRRA Malaysia has also fostered close cooperation with local NRD offices and the government which has resulted in:

- NRD state offices shortening the duration for NRD searches for previous applications and birth registration records for cases referred by DHRRA Malaysia and expedite the searches
- NRD state offices also works closely with DHRRA paralegals in processing the nationality application and provides greater transparency in decision making and cooperation to expedite the application process
- Flexible approach and discretion is practiced by the Ministry of Home Affairs and NRD to register children born out of a legally recognized marriage and MyKas holders under the age of 21

Between 2016 and 2017, DHRRA submitted recommendations for resolving statelessness in Malaysia to the representative for the Prime Minister's Office and the Minister of Health, who was appointed to oversee the implementation of the Malaysian Indian Blueprint (MIB). The MIB, which was launched in 2017, is a national blueprint for resolving various human rights issues faced by the Indian Community. It commits the Malaysian Government to resolving statelessness and documentation issues within five years of implementation. Among the areas of concerns of the recommendations include the improvement of administrative procedures to ensure that individuals can more easily acquire or confirm citizenship, resolving statelessness among children in Malaysia, promoting the reformation of Malaysia's gender unequal nationality law and policies and resolving the status of individuals who are permanent residents in Malaysia.

DHRRA's advocacy initiatives have also led to the Government taking several steps to address the documentation and statelessness challenges faced by the community. The NRD has increased accessibility to its services and community reach to the rural areas through JPN Walkout programs. In 2017, the Malaysian Government carried out identification and registration programmes for people of Indian origin in West Malaysia known as Megadaftar campaign, a follow up to the MyDaftar campaign conducted in 2011. The campaigns were developed in collaboration with political parties, community based non-governmental organizations and individuals.

In May 2018, the newly elected Pakatan Harapan government announced that addressing statelessness will be one of its key priorities upon 100 days of it administrating the Federal Government.

DHRRA Malaysia's extensive policy advocacy has also resulted in progress at policy level which is evident through a series of recent changes in policies. This includes the former Malaysian Prime Minister's announcement in August 2018 that stateless senior permanent

residents will become Malaysian citizens if they fulfil relevant conditions. Dr Mahathir further elaborated on the conditions by stating, “There are certain conditions that are required for those who apply for citizenship...If he is a red card holder, 60-years-old and above, he will be given a blue card (MyKad). He has to fill a form at the NRD....Nothing is easy with the government...The Bahasa Malaysia competency test will only touch on simple use of the language. If they pass, then we will accept them (as citizen). There will also be a requirement for them to be based in Malaysia for at least 12 years, in which they have actually resided in the country for 10 years, according to the Federal Constitution”. The former prime minister further added that citizenship will be granted to those under the age of 60 only if one of their parents is a Malaysian, and they are born in Malaysia.²⁹

Following the Prime Minister’s announcement, DHRRRA observed that the NRD has progressively given approval to the pre-independence stateless people holding BC issued in Malaysia as proof of birth. To date, 1641 persons out of 3853 senior permanent residents who have submitted applications have been granted citizenship

Subsequently, in December 2018, the Government increased access to public education for stateless and undocumented children as part of the Education Ministry’s “Zero Reject Policy”, to ensure that all children in the country, including stateless and undocumented children, have access to education subject to certain conditions. In 2019, the Government launched a pilot project to assist stateless and undocumented children to enrol in Government schools in Perak state. Since the beginning of 2019, 2635³⁰ children without valid documents were enrolled in Government schools under the “Zero Reject Policy”, without providing proof of existing citizenship application.

The Malaysian Government’s increased response was also evident through the closed-door dialogue held by the former Home Minister, Tan Sri Muhyiddin Yassin with a group of stateless people and their families in July 2019. The dialogue, in which DHRRRA was also present, provided an opportunity for the stateless community in Malaysia to share the difficulties they faced leading a stateless life in the country they had lived all their lives. The dialogue also provided the community to share bring their concerns to the attention of the Minister.³¹

Further progress was witnessed in July 2019, when the former Home Minister announced about the reviewing of the current standard operating procedures (SOP) for citizenship applications. The new SOP is expected to cut the processing time for each application to one year. It is also expected to ensure that reasons will be provided for rejections of applications to enable successful resubmission of the application³².

In a more recent development, on 7 October 2019, Malaysia expressed its first international commitment of addressing statelessness in Malaysia as shared by the former Malaysian Minister of Home Affairs, Tan Sri Muhyiddin Yassin, who represented Malaysia during the special session of UNHCR’s Executive Committee High-Level Segment Meeting

²⁹ New Straits Times (2018) 14th August. 3,407 Indian red IC holders to receive MyKad. Available at: <https://www.nst.com.my/news/nation/2018/08/401216/3407-indian-red-ic-holders-receive-mykad> [Accessed: 23rd March 2020]

³⁰ MalayMail (2019)30th April. School for stateless kids, inclusive policy among Pakatan successes in first year, education minister says. Available at: <https://www.malaymail.com/news/malaysia/2019/04/30/school-for-stateless-kids-inclusive-policy-among-pakatan-successes-in-first/1748229> [Accessed: 23rd March 2020]

³¹ Malaysiakini (2019) July 11th. Zikri Kamarulzaman. Stateless people have heart-to-heart with Muhyiddin. Available at: <https://www.malaysiakini.com/news/483414> [Accessed : 23rd March 2020]

³² New Straits Times (2019) 29th July. Bernama. Home Ministry reviews SOP for citizenship applications, says Muhyiddin. Available at: <https://www.nst.com.my/news/government-public-policy/2019/07/508191/home-ministry-reviews-sop-citizenship-applications-says> [Accessed 23rd March 2020]

on Statelessness in Geneva. The ministerial representation was highly commendable as Malaysia expressed its continued commitment to encourage civil registration, especially through its National Registration Departments' reach-out programmes in rural and remote areas, with the aim of facilitating access to social services for vulnerable communities in line with the Sustainable Development Goals' principle of "leaving no one behind".

On 21st October 2019, Malaysia witnessed another milestone in addressing statelessness in the country with the unprecedented ruling by the Kuala Lumpur High Court to grant 24-years-old Wong Kueng Hui Malaysian citizenship. It is the first time a stateless person is granted Malaysian citizenship by operation of law under Article 14 (1)(b) of the Federal Constitution, and the first time the decision of granting of citizenship is made at the High Court level. The ruling by Justice Datuk Nordin Hassan not only brought to an end the stateless life led by Wong Kueng Hui since birth, it also brings hopes to many other stateless persons above 21 years old, who are often denied all avenues to acquire Malaysian citizenship status from their parents, including under Article 15(A) of the Federal Constitution which provides discretionary power to the Federal Government to register any person under the age of twenty-one years as a citizen, to obtain Malaysian citizenship.³³

In brief, as of January 2020, based on DHRRRA's continuous monitoring of the Home Ministry's announcements and its intention to take proactive measures to resolve problems involving citizenship applications, the following changes were observed in the process and practice of the NRD:

1. Pre-Independence applications with birth certificates are processed faster
2. Pre-Independence applications without birth certificates have slow approval rate.
3. New requirement for Checklist of required documents for late birth registration and all new citizenship applications
4. More approvals are observed of citizenship applications of adopted children
5. Citizenship application of children born to either one Malaysian parent remains slow with low approval.
6. Reasons are now provided for rejection of Birth certificate applications

However, despite the encouraging progresses in addressing statelessness in Malaysia, DHRRRA's work is far from ending. At the end of February 2020, an unforeseen and drastic change in the political front of the country brought to an end the rule of the Pakatan Harapan government within barely 3 years of coming into power. The impact of the shift in the efforts and progress paved towards resolving statelessness in the country is yet to be seen. DHRRRA pledges to continue advocating and working hand in hand with the government agencies, and other relevant stakeholders towards resolving statelessness, particularly in the wake of COVID-19 pandemic, which places the stateless community in Malaysia in the most vulnerable position ever.

³³ The Star (2019) 22nd October Chen Yih Wen. Stateless man from Sabah finally granted citizenship. Available at: <https://www.thestar.com.my/news/nation/2019/10/22/stateless-man-from-sabah-finally-granted-citizenship> [Accessed 23rd March 2020]

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