



Recommendation on Statelessness & Documentation Issues

As of 30 Mac 2022

DHRRRA
MALAYSIA

**BUILDING RESILIENT
COMMUNITIES**

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INTRODUCTION


Whilst citizenship is a fundamental human right guaranteed by Article 15 of the Universal Declaration of Human Rights, children continue to be born stateless all around the world, and forced to live a life deprived of all the fundamental rights associated with citizenship including the rights to education, healthcare, employment and mobility. In Malaysia, despite the issue garnering increasing attention from public makers and public alike in recent times, the incidences of childhood statelessness continue to escalate.

For almost two decades, Development of Human Resources for Rural Areas (DHRRA) Malaysia, a voluntary non-profit and non-political organization registered in 2006 under the Societies Act of Malaysia 1966, has been actively working with varied stakeholders, including government agencies in addressing and resolving statelessness in Malaysia. Being the pioneer in bringing to surface the extent of in-situ statelessness issue in Malaysia, through a mapping and registration exercise carried out in 2004, DHRRA have as of now assisted more than 15000 undocumented persons and assisted them to submit their citizenship applications at the relevant government agencies.

Over the years, through DHRRA's continuous interventions, thousands of individuals have been freed from the cycle of statelessness entrapping them and their families. The organization continues to assist stateless persons from diverse ethnicities in Malaysia to acquire nationality documentation through its community based paralegal aid services. However, despite tremendous efforts, the issue remained far from resolved, which is predominantly attributable to the limitations in the existing Malaysian national policy and procedures pertaining to citizenship. The origins of these challenges are partly historic and partly related to current challenges faced by the community, and worsened by prevailing stance of policy and decisions makers of not recognize stateless people as a specific category of people who exist in the country, but instead as foreigners and a threat to national security.

As part of DHRRA's efforts to strengthen evidence-based advocacy on statelessness, we have been constantly engaging various stakeholders including the stateless community and partners CSOs in working towards a holistic solution for the issue. This has resulted in the below detailed 38 recommendations, in the form of realistic law, policy and scenario based measures that could be taken to resolve this issue and prevent its reoccurrence to address statelessness and documentation issues in Malaysia through a multidimensional approach.

Responsible Authority:			
			
No.	Issues (Legal/Procedures)	Challenges	Recommendation
1	Birth Registration (BC) - With Civil Marriage Registration	<p>For first child's birth registration, NRD would request father of the child to be present to allow father's name to be put in Birth Certificate.</p> <p>Challenges present when father is in prison, travel on work purpose, frictions within families, this further discourages families to ensure timely birth registration to further ensure access to citizenship.</p>	<p>Marriage registration and IC copies provided by mother or eyewitness should be sufficient to register children</p>

Authority Responsibility:			
			
No.	Issues (Legal/Procedures)	Challenges	Recommendation
2	Late Birth Registration (BC) - without Civil Marriage Registration	<p>NRD does not allow father's information to be included in the BC without mother being present in NRD. In this cases, Father's detail will only be included as informer. Despite providing DNA test proof and SD, NRD does not include the father's details in BC</p> <p>Child will be classified as "illegitimate" and reference is then made to s17 Part III of 2nd Schedule FC. Under s17 reference to parents means reference to "his mother".</p>	<p>Taking into consideration the best interests of the child, NRD should allow DNA results to be accepted as proof of paternity and allow necessary amendment on the birth certificate should the child not be able to obtain citizenship via his/her mother.</p>

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		This will complicate matters where the mother is a stateless person or a foreigner or her whereabouts cannot be trace. Contrast this with s19B Part III FC - presumed until the contrary is shown to have born there of a mother with PR status. The burden is on NRD to prove and not the Applicant. Safeguard the child.	
3	Late Birth Registration	Unable to provide proof of birth, trace midwife or family members to support claim of individual	<p>NRD should allow legal guardian to stand as known relation to the child (below 21 years old)</p> <p>Statutory Declaration (SD) should be mandatory for adults (above 21 years old)</p> <p>To consider wider use of SDs to facilitate process where information is otherwise lost/unobtainable</p>
4	Late Registration of Identity Card	Unable to provide proof of birth, trace midwife or family members to support claim of individual	<p>NRD should allow legal guardian to stand as known relation to the child (below 21 years old)</p> <p>Statutory Declaration (SD) should be mandatory for adults (above 21 years old)</p> <p>NUPW AFFIDAVIT</p>
5	Search & Extraction for Birth Cert & Identity Card	Each search & extraction application can stretch up to 3 months long	<p>Shorten the time period for NRD searches for previous applications and birth registration records</p> <p>Application forms should be accepted whilst S&E is in process. Taking into consideration the good practice example in the MegaMydaftar campaign where JPN centers (i.e Shah Alam, Klang, Kuala Selangor) accepted application forms without S&E done.</p>

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6	Search & Extraction for Birth Cert	BC S&E is only performed in State office	BC S&E should be performed in District office
7	Search & Extraction for Identity Card	ID S&E application is made in State office and sent to HQ for results	BC S&E should be performed in District, State Office
8	Search & Extraction for Identity Card	Expensive Application Fee, previously charged at RM5 now charged at RM50	Identity card extraction should be reduced to RM5
9	Citizenship Application Borang E (Article 14 (1)(a) & (b))	JPN does not give out forms for Citizenship Application 14 (1)(b) at District, State office, HQ	Forms confirming citizenship under Art 14 (1)(b) should be given out: <i>Pemohonan bagi Perakuan Pendaftaran Kelahiran Orang yang dilahirkan didalam persekutuan yang sekurang kurangnya salah seorang daripada Ibu Bapanya pada masa kelahiran itu sama ada warganegara atau Permastautin tetap di persekutuan</i>
10	Citizenship Application: Children Born out of Wedlock	A child is considered to be born out of wedlock when there is no legal marriage registration before birth of a child. However, there are limitations on 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 where 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) NRD states the following:	Legal: The provisions relating to the acquisition of citizenship contained within Federal Constitution Article 14 (Second Schedule, Part II, 1(a)-(e)) and related legislation could be applied to ensure that these children are not left without Malaysian citizenship. DNA test to prove link between father and child can be made as a prerequisite which will then reduce the processing period.

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		<p>Where a child is born before the parents' marriage is registered, the child's status follows that of the mother as stated in Section 17, Part III of the Second Schedule of the Federal Constitution.</p> <p>If this is to be followed, the number of stateless persons in Malaysia will multiply</p>	
11	Statelessness Safeguard in constitution is not implemented in NRD guideline	<p>The Constitution provides a safeguard for statelessness if the deprivation of citizenship will result in statelessness. However, there are no administrative guidelines or procedures regarding the implementation of the relevant constitutional provisions.</p> <p>Article 14 (1b) – Second Schedule , Part II, Section 1(a) & (e) Provides safeguards for statelessness and states that someone who has not acquired any other nationality within a year of birth is a Malaysian national</p>	<p>("NRD") should issue administrative guidelines and procedures to implement this provisions of Law Article 14 (1b) – Second Schedule , Part II, Section 1(a) & (e)</p>
12	Safeguard for foundling/abandons children as in constitution is not implemented in NRD guideline	<p>The Constitution provides a safeguard for foundling/abandoned children by recognizing them as nationals of Malaysia. However, there are no administrative guidelines or procedures regarding the implementation of the relevant constitutional provisions.</p> <p>Federal Constitution not being implemented: Second</p>	<p>In the event that an applicant wishes to rely on Art 14(1)(b) Second Schedule, Part II 1(e) (child born in Malaysia and not born a citizen anywhere else within 1 year of birth), the burden of proof should be on NRD or MoHA to prove that the child is not a citizen elsewhere.</p> <p>("NRD") should issue administrative guidelines and procedures to implement this provisions of Law: Second</p>

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		Schedule, Part II, Section 19B The Federal Constitution recognizes new-born foundlings as nationals of Malaysia which is the state in which they are found. P.O.B: Location found D.O.B: Date of Finding Parental Linkage: Born to a mother who is a PR	Schedule, Part II, Section 19B. NRD/Jabatan Kebajikan Masyarakat (JKM) (Welfare Department) to consider adopting measures to train JKM officers on registration for foundling children to avoid putting child at risk of being left without any nationality.
13	Citizenship Application: Abandoned Children Holding MyKAS	Abandoned children holding MyKAS do not have access to Malaysian citizenship.	Access to citizenship through naturalization should be enabled for those issued with MyKAS, particularly abandoned children.
14	Citizenship application: Foreign Wife married to Malaysian Citizen	In the instance where the husband is deceased, divorced within 2 years of marriage or not cooperative, application becomes void	Wives of Malaysian citizens should be granted citizenship at the time application provided she meets the requirements of Art 15 (1) - that she has resided in Malaysia for 2 years and she is of good character. Children of the marriage should be taken into account when considering whether wives of Malaysian citizens should be granted nationality. Wives of Malaysian citizens should not be deprived of nationality should their husbands pre-decease them.
15	Citizenship application: Adopted Children	1. NRD often issue the adoption certificate/BC stating that the child as "non-citizen" or 'cannot be determined" 2. Adoptive parents are asked to apply on behalf of the child for citizenship - article 15A. usually are rejected repeatedly. 3. After 18 years old and above there is no avenues to apply under any article even though the form mentions	Legal: No ("NRD") administrative guidelines and procedures to implement this provisions of Law: 1952 Adoption Act, Section 9(1) The adopted child's legal position in 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. Lawfully adopted

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		that it is applicable to 21 years and below (asked to produce passport)	<p>children 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.</p> <p>The Ministry of Home Affairs and NRD could ensure that adopted children who one or other adoptive parents are Malaysian citizens or permanent residents are recognized as Malaysian citizens without undue delay.</p> <p>Ensure administrative guidelines and procedures to implement this provisions.</p>
16	Citizenship application: Children born overseas (Overseas citizenship)	<p>Malaysian father neglected to register child within 1 year of birth in Malaysian consulate overseas. Upon return to Malaysia, child faces difficulties in obtaining citizenship although entitled under Art 14(1)(b) Second Schedule, Pt 2, 1 (b).</p> <ol style="list-style-type: none"> 1. Repeated rejections of applications made to NRD. 2. Once the individual turns 18 years old, father cannot apply on behalf. 3. After the individual turns 21 years old, will not qualify to fulfil criteria for application. 4. Individual is requested to leave the country and return birth country. 	Reduce time for processing and NRD to provide citizenship at the interest of child to be Malaysian and refer to citizenship status of siblings.
17	Citizenship application: Children born overseas (Registered with Malaysian Consulate)	Malaysian parents living overseas unaware of the nationality law/policy implications of marrying or giving birth overseas and the requirement to register at the Malaysian consulate in the relevant country.	Embassies to provide uniformed birth and marriage registration information and adequately facilitate the process.

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18	15a forms are not issued to individuals with age between 18 to 20 years old	15a forms are to be issued to applicants age below 21 years old, however officers do not issue the forms if the applicants already turn 18 years old and above. Therefore, Individuals between the age 18 to 20 are unable to make any applications for citizenship due to lack of administrative procedures.	To enable applications to be made by this group of individuals as per the form guidelines. In line with Federal Constitution provisions, 15A forms to be provided to applicants aged 18-21 for application under government's "special powers" to consider citizenship for children under 21, provided persons aged 18-21 take the oath as specified in First Schedule of Federal Constitution (see Art 18).
19	NRD procedures	Inconsistent procedures at District and State level e.g. 1. Late Birth Registration application in District Level needs to be attached with cover letter. Where else State and HQ does not require such formality 2. Some District and State level offices requires "Penyokong" to be physically present during the application, however some District, State Level and HQ does not require presence of "Penyokong".	To identify good practices at district and state NRD branches for streamlining at all levels. To standardize administrative procedures in all NRD offices, both district and state levels
20	Citizenship Application: Oral and Written Bahasa Malaysia Language	There is no standard approach to assessing proficiency in Malay to the required levels.	Standard Malay Language tests could be established where applicants must show an “elementary knowledge” of the Malay language to acquire citizenship by registration or “adequate knowledge” of the Malay language to acquire citizenship by naturalization
21	Implementation of Court Precedence	No Court Precedence has been set for cases of similar nature to seek justice.	Effective implementation of Court precedence and announcement to the public of the same to ensure cases with similar nature is immediately addressed.

22	Formation of Task Force to eradicate childhood statelessness	Cases of childhood statelessness are being lumped together and assessed in similar manner without taking into consideration the unique nature of the different categories of childhood statelessness.	To form a Task Form to assess and address cases unique in nature to eradicate childhood statelessness.
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Responsible Authority:



Cabinet of Malaysia

No.	Issues (Legal/Procedures)	Challenges	Recommendation
23	Born Before Merdeka	<p>With Birth Certificates</p> <ul style="list-style-type: none"> - Inconsistent information on Birth Certificate and Identity card (name spelling) - Do not perform well in Oral Bahasa Malaysia Exam - Unable to fulfil certificate of Good Conduct - Unable to pay approval fee of citizenship : RM100 <p>Without Birth Certificate</p> <ul style="list-style-type: none"> - Inconsistent information on Birth Certificate - Do not perform well in Oral & Written Bahasa Malaysia Exam - Unable to fulfil certificate of Good Conduct - Unable to pay approval fee of citizenship : RM200 	To unconditionally grant citizenship for applicants who were born in Malaysia BEFORE Independence as they are elderly applicants, have no other citizenship or links to any other country, never left the country, and usually have siblings, parents and children who are Malaysian.

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24	<p>Citizenship application: Born After Merdeka</p>	<p>With Birth Certificates - Do not perform well in Oral Bahasa Malaysia Exam - Unable to fulfil certificate of Good Conduct - Unable to pay approval fee of citizenship : RM100</p> <p>Without Birth Cert - Do not perform well in Oral & Written Bahasa Malaysia Exam - Unable to fulfil certificate of Good Conduct - Unable to pay approval fee of citizenship : RM300</p>	<p>To unconditionally grant citizenship for applicants who were born in Malaysia AFTER Independence and can prove long term residency and links to Malaysia; as they do not belong to any other country other than Malaysia. (Stateless)</p>
25	<p>Citizenship Application Article 14 (1)(a) & (b) Article 15 &15A, 15(1), 15(2) Article 16, 16(a) Article 19</p>	<p>Long processing period for each application (2-3 years)</p>	<p>Reduce processing period within 1 year. Especially for children applying under Article 15A, repeated rejections and re-applications will mean that children applying under Art 15A will reach 21 years of age and eventually be excluded from 15A provision.</p> <p>To appoint native language speaking officer, in decision making position, in all NRD offices throughout West Malaysia</p>
26	<p>Citizenship Application: Guidance on good character requirements</p>	<p>Individuals with crime records are rejected.</p>	<p>The Ministry of Home Affairs/NRD could develop publish administrative guidance on the meaning and correct interpretation of “good character” in the Federal Constitution to ensure consistency. The nature of criminal records should be taken into account when assessing "good character". Criminal records should not be taken into consideration during</p>

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			the decision making of citizenship application especially those entitled to Malaysian citizenship under Art 14 of the Federal Constitution.
27	Temporary Residence (MyKas)	There are no administrative procedure to apply for citizenship or Permanent Residency	<p>The provisions relating to the acquisition of citizenship contained within Federal Constitution of the following can be applied:</p> <ol style="list-style-type: none"> 1. The Federal Constitution provides a special power for State to register those under the age of 21 years old as Malaysian citizens (Article 15A). 2. For example if they had been abandoned by their parents when they were newly born they could benefit from the protections offered in the Federal Constitution allowing them to acquire a nationality (Article 19B) or; Entitled to citizenship by operation of law if they did not acquire another nationality within one year of birth; <p>The Ministry of Home Affairs and NRD could exercise the following:</p> <ol style="list-style-type: none"> 1. Discretion to register MyKas holders under the age of 21. 2. Those over the age of 21 Be entitled to citizenship by operation of law. <p>Able to prove through statutory declaration (SD) or other means that they are otherwise entitled to acquire Malaysian citizenship by operation of law</p>

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28	<p>Citizenship Application Article 14 (1)(a) & (b) Article 15 &15A, 15(1), 15(2) Article 16, 16(a) Article 19</p>	<p>NRD does not provide the reasons for its decisions (REJECTIONS) on nationality applications in writing</p>	<p>The Ministry of Home Affairs and NRD should provide greater transparency in decision making for nationality applications where required documentation or information is lacking.</p> <p>In the event that an applicaiton is rejected, MoHA/NRD should consider listing the reasons or missing documentation/evidence to enable applicant to improve their next nationality submisison.</p> <p>Establish Tribunal for cases which are unable to progress under the current administrative practices. The Tribunal shall consist of representative from NRD/Home Ministry, Welfare Department and NGO/Civil Society and have power to call for witnesses and hear evidence on the applicant's status.</p>
29	<p>Birth Certificate and Identity Card Cases in JPN Investigation</p>	<p>Cases where DNA test is requested by JPN, applicants are to bare the cost for testing at Jabatan Kimia (RM1,600) for two person. Every additional person will be charged at RM200. Blood sampling cost RM50 per person.</p> <p>Previously (2016 and before) should JPN instruct the DNA testing, most of the cost will be absorbed by JPN itself, where applicant only needs to pay RM60.</p>	<p>Should DNA test be instructed by JPN, cost should be absorbed/subsidized by JPN.</p> <p>Majority of stateless applicants are from lower-income households and are unable to pay for the full cost of DNA tests.</p>

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30	Admission to School of a Stateless/Bukan Warganegara child	<p>Situation 1: If the birth certificate does not carry the father's name and mother's detail is incomplete then the child will not be accepted into the school. Ministry of Education states that since the birth certificate does not provide confirmation that either one parent is Malaysian, the children will not be accepted in the school.</p> <p>This situation is present in cases where the father goes to NRD for birth registration of the child once the mother abandons the child. NRD opts to include father's name as informer only.</p> <p>Situation 2: In some cases where father details is present the child will be accepted to school, provided the child is able to pay yearly: RM120 - Primary School , RM240 - Secondary School, Text book to be bought on their own and exam fees. Further, there is special procedures to be followed during board examinations (UPSR, PT3, SPM)</p>	<p>Child should be allowed to have access to education</p> <p>Child with at least one Malaysian parent should be allowed to have access to Malaysian schooling indefinitely, and waive the foreigner fees imposed to the child.</p>
31	Access to Healthcare	<p>Stateless/undocumented persons are treated as foreigners- their medical expenses are charged at foreigners rate e.g. Child Delivery of a stateless mother Deposit: RM2,500 Normal Delivery charges: RM2,593 Excluding charges of other complication may arise</p>	<p>Special consideration should be provided to Stateless children who were marginalized due to the legal procedures. - if they can show that they are in the process of obtaining nationality.</p> <p>E.g. those with UN card are charged half the price of foreigners rate. Similar procedures should be allowed to stateless children</p>
32	Access to Healthcare	<p>Payment to medical institution could not be completed due to financial constraints especially for child delivery</p>	<p>Medical institution must not withhold proof of births for incomplete payments.</p>

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33	Stateless Determination Procedure (SDP)	There is no SDP to identify stateless people among people who are present without any legal identification documents in Malaysia.	To establish Statelessness Determination Procedure (SDP) to identify and fast track access to citizenship to qualified stateless individuals.
34	Prevention Strategies	There is a lack effort targeted at increasing the awareness of the public including the migrant population on the importance of proper registration of birth, marriage and death with the relevant government agencies and on the dire implications of failing to do so.	Awareness on the importance of birth, marriage and death registration to be channeled to the public through national mass media and other platforms.
35	Citizenship Application: Former Refugees Holding MyKAS	There is no avenue for former refugees holding MyKAS to access or apply for Malaysian citizenship.	Former refugees who have been accepted resettlement in Malaysia and have been issued MyKAS should be given the pathway to Malaysian citizenship through Naturalization, particularly if it has been established they are stateless (population of concern- for eg. Cambodian Refugees 1985)
36	Universal Birth Registration	Malaysia does not practice Universal birth registration. There is no 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.	To ensure full implementation of Universal Birth Registration in Malaysia , as a tool for protecting the right to nationality, preventing statelessness as well as a mechanism to collect data on statelessness.

Responsible Authority:



No.	Issues (Legal/Procedures)	Challenges	Recommendation
37	Law Reform: Men inability to transfer nationality to children	(Section 17, Second Schedule, Part II) do not allow men to transfer nationality to their children if the child is born out of a legally recognized marriage. It is a constitutional provision that states children born to unmarried couples would take on the mother's nationality. This is only possible if the mother holds a citizenship and is able present to pass on citizenship to the child.	<p>Men should be allowed to transfer nationality to their children if the child is born out of a legally recognized marriage if the following can be proven (i) where the mother is stateless; (ii) where the laws of the mother's country do not permit her to confer nationality in certain circumstances or (iii) where the mother's identity is unknown/remain untraceable</p> <p>In the above situations, reference could be made to operation of law.</p>
38	Law Reform: Women inability to transfer nationality to children	<p>The Constitution does not allow mothers to transfer nationality to their children born outside Malaysia on the same basis as fathers.</p> <p>Despite recent breakthrough citizenship cases at the High Courts, Malaysian mothers continue to face inconsistencies while submitting citizenship application at JPN. While Malaysian mothers are being allowed to register their children under Article 14 of the Federal Constitution by completing Form D for the application of citizenship, JPN does not apply the same process for Malaysian mothers and Malaysian fathers of overseas born</p>	<p>Mothers should be allowed to transfer nationality to their children born outside of Malaysia on an equal basis with fathers under Article 14 of the Federal Constitution</p>

		children, despite the court judgement.	
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CONCLUSION

The recommendations set out above offer realistic and practical solutions within the current legal framework to resolve the citizenship and documentation issues in Malaysia. If adopted and implemented these could help all eligible individuals to realize their legal identity as Malaysian citizens and facilitate their sustainable and inclusive development, ensuring that they are not left behind in Malaysia’s continued development. DHRR would welcome the opportunity to work with relevant Government to implement these recommendations. The proactive and collective intervention by government agencies, civil societies and community leaders are much needed to resolve this issue at its core. Moreover, through this intervention, continuous administrative and policy recommendation will be identified to ensuring the social protection of the Malaysian society as a whole.

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