RESOLVING STATELESSNESS IN MALAYSIA

STRATEGIC PLAN

DHRRA MALAYSIA

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Cover Image :
A stateless boy and his sibling
in Perak, Malaysia.

Photo by :
Andrew MacKinnon, 2016

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FOREWORD

Development of Human Resources for Rural Areas was established to promote strong and self-reliant communities through people's empowerment initiatives. More than a decade in implementing community development programmes exposed us to the conditions stateless people live in.

Up until 2014, it was officially acknowledged that there were some 40,000 stateless persons mainly within the Indian-Tamil community in West Malaysia - namely persons not considered nationals by Malaysia or any other country. However, in the absence of accurate baseline data, the circumstances of stateless persons remained little understood.

In order for civil society and Government agencies alike to identify effective policy solutions, this limitation needed to be overcome. In mid-2014, we set out to address statelessness in West Malaysia. Understanding the scale of statelessness, its causes and consequences was the obviously necessary step to addressing the problem itself. This was an ambitious goal particularly because identification of statelessness was the major challenge.

Since then, we compiled accurate baseline figures on statelessness in Malaysia through our registration and community based paralegal aid services. More significantly, we identified the necessary administrative or legal measures required to find a solution for them. By the end of 2016, DHRRA registered and provided legal aid support to 12,350 stateless people and more than 1,500 of them acquired nationality documentation. We still have far to go to achieve the goal of ending statelessness in Malaysia.

During one of our our trips to the plantations in Perak before we started the project in June 2014, I met an old man. He was stateless. He was holding a piece of paper in his hands. He unfolded it. His name was written on the top, barely readable. He showed it to me and said, "That is the only thing I will leave for my grandchildren after I die. My name. That piece of paper is the only proof that I once existed." Today, he has documentation. Today, he is one of the 1,500 formerly stateless persons who is a national of Malaysia.

Ending statelessness requires a higher intensity of collaboration between a wide range of actors including the stateless people themselves. The Experience over the last couple of years in Malaysia showed that a lot can be achieved in this area.

Through strong cooperation with the Government and technical advice from United Nations High Commissioner for Refugees (UNHCR – the UN Mandated Agency working both with refugee and stateless people), DHRRA's registration and community based legal aid services established the full scope of this problem and will continue to drive for advocacy efforts to find durable solutions for stateless persons in West Malaysia

Saravanan M. Sinapan,
President of DHRRA Malaysia

WHERE WE WORK

Photo by Ted Adnan, 2015

Yuaraja, 15 years old. Kuala Muda, Kedah.

“I have lived all my life with no documentation to say that I am a Malaysian national. I was so ashamed of this. I have been bullied when people found out. So all my life, I have hidden this, even from my friends. I cannot share this with anyone.

My mother and father divorced when I was very small, and they live with their new families now. My sister and I were left with my grandmother who has taken care of us all our lives.

She is old, but she works to take care of me. I want to get a good job so that I can give a better life for my family.

I am happy that DHRRA has helped me get an identity card. I think my life will change now.

When I had no identity card, I had to hide all the time and take whatever job no matter the pay. Now that I have a Malaysian identity card, I have rights. I can fight for better wages.”

WHO IS STATELESS IN MALAYSIA?

SECOND AND THIRD GENERATION STATELESS GENERATION STATELESS INDIAN-TAMILS IN WEST MALAYSIA

The Malaysian Indian-Tamil community has faced challenges relating to identity documentation and confirmation of Malaysian citizenship for many years. Those without citizenship are commonly referred to as “Stateless Malaysians”. The origins of these challenges are partly historic and partly related to current challenges faced by the community.

During British Colonial rule, a significant number of Indian-Tamils were brought to Malaysia to work in plantations. After Malaysia regained independence, this group and their descendants were entitled to acquire Malaysian citizenship under the Federal Constitution.

However many members of the community were living on remote plantations and did not acquire identity documentation because they remained unaware of its importance. In particular they did not register their children’s birth.

When these communities subsequently moved to urban areas after the plantations were redeveloped, those without identity documentation found that their access to public services was restricted despite their strong links to Malaysia and potential entitlement to Malaysian citizenship.

OTHER MARGINALIZED COMMUNITIES IN EAST MALAYSIA

The information and analysis on the extent of statelessness within mixed migratory and hard to reach communities in East Malaysia is very limited.

There are individuals or groups who may be stateless or at risk of statelessness in East Malaysia, particularly the Bajau Laut (Sama Dilaut) communities on the east coast of Sabah. They are a nomadic population living in boats or in water villages on Malaysian coastal waters.

Many do not have identity documents because their births are not registered and their parents have never obtained identity documentation. There are no estimates available for the overall number of Bajau Laut affected by statelessness in Malaysia, but the number of undocumented children in the community is thought to be high due to their nomadic lifestyle and lack of documentation. This population also resides in the Philippines and Indonesia and there are reports that many still migrate between these three countries.

The Malaysian law allows for universal birth registration of all children born in Malaysia, but the lack of identity documentation among irregular migrant parents acts as a barrier to the birth registration of their children. Complications arise in practice when migrant parents are unable to provide the Malaysian authorities with documentation to prove their identity, their link to a State, or even their connection to the child.

Further to that, abandoned children in welfare homes and unaccompanied minors or street children are widely reported to be stateless, but the number affected and the extent of statelessness amongst these children is unclear.

CIVIL DOCUMENTATION AND LEGAL FRAMEWORK

DOCUMENTATION

Malaysian law provides that two sorts of birth certificates can be issued for children whose births are registered.

"Green" birth certificates are issued to children who are assessed as fulfilling the criteria for Malaysian citizenship. "Red" birth certificates are issued for children who are non-nationals (bukan warganegara) or whose citizenship is "not yet determined" (belum ditentukan). This categorization can have important consequences for the recognition of a child's citizenship or legal status in Malaysia, particularly as birth certificates act as a gateway to the acquisition of other identity documents.

While MyPR documents allow permanent residency of Malaysia, MyKas documents were issued to some children identified as "stateless" individuals until 2011, allowing them to reside in Malaysia lawfully. Even though the Government no longer issues MyKas documents, those that were issued prior to 2011 are subject to renewal every 5 years.

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".

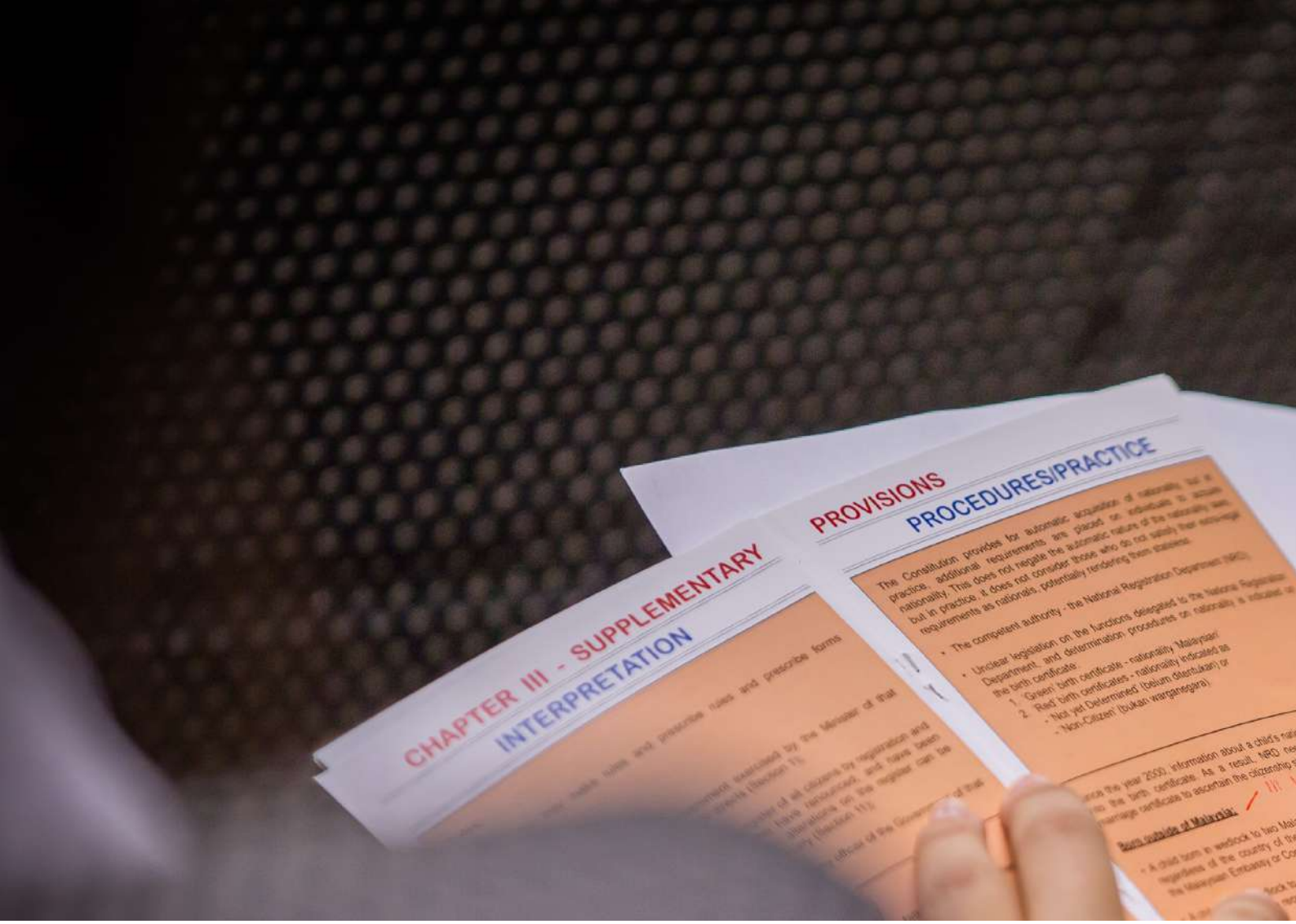
NATIONALITY LAW FRAMEWORK

Malaysia is not a signatory to both Conventions relating to stateless populations and does not have a protection framework for the treatment of stateless populations. Malaysia has made a reservation to to Article 7 of the Convention on the Rights of the Child ("CRC"), which provides for the right of a child to acquire a nationality. Malaysia however still has obligations under Article 8 of the CRC, which calls for states to respect the preservation of a child's identity, including their nationality, as well as the Federal Constitution which serves as a framework for nationality law.

"…...I came across a quotation by George Orwell who spent much of his career writing about gloomy prophecies of authoritarianism in the world and he said this 'I think I exist. Rarely. I am conscious of my own identity. I was born and I shall die. I have arms and legs. I occupy a particular point in space. No other solid object can occupy the same point simultaneously.'

I thought that was an interesting statement of self-identity, but of course what is missing from that quote is the recognition from others that, that person exists. There can be no more important symbol of the state of existence than a certificate or recognition through birth registration. That is the primary fundamental purpose of registration; is a statement that somebody exists. As we are responsible for tens of millions of refugees and displaced people around the world, that statement by somebody else that you exist in this world, that you have a place, an entitlement to exist, is not a statement of nationality, is not a statement of citizenship, but a statement that you are a human being and you are entitled to be counted. It is of tremendous importance to people, who, in their daily lives are confronted with the invisibility of movement in the communities in which they live. I think this is the fundamental building block and we put it as a question of right. It is not a confrontational statement towards states or communities. It is a statement about ourselves as human beings and it affects all of us…."

Richard Towle
Representative, UNHCR Malaysia
Closing Remarks, Conference to Strengthen Birth Registration Systems,
27 May 2014.

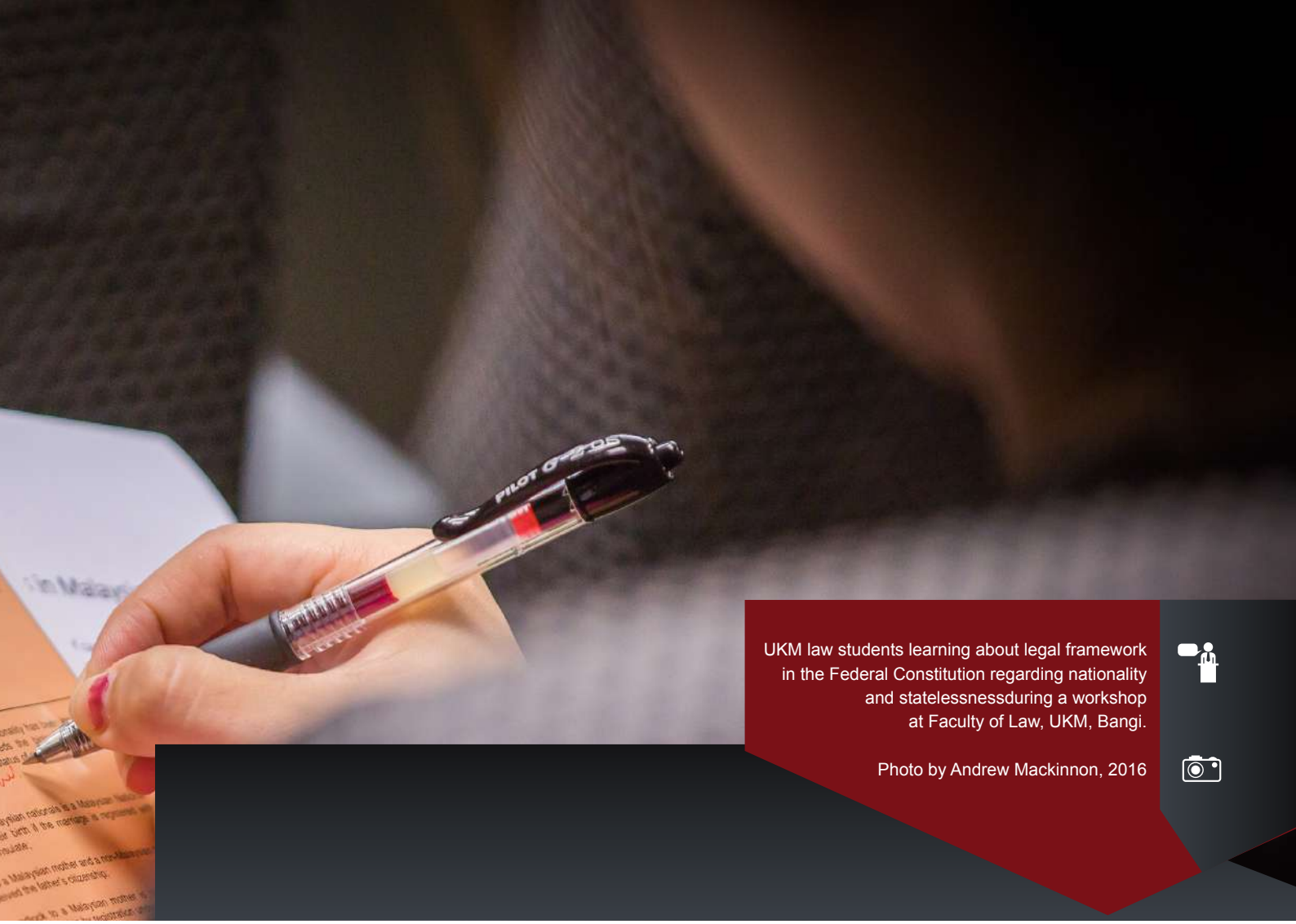


Statelessness in Malaysia can be addressed without the immediate need for law reform, but a number of gaps in the nationality legislation remain. A number of cases involving the following provisions of the Constitution had been filed at the Malaysian Courts, but judgments have not shown a consistent interpretation:

- Article 14 of the Federal Constitution provides safeguards for statelessness and states that someone who has not acquired any other nationality within a year of birth is a Malaysian national. However, there are no National Registration Department ("NRD") administrative guidelines and procedures to implement this provision.

- The Federal Constitution recognizes newborn foundlings as nationals of Malaysia which is the state in which they are found (Second Schedule, Part II, Section 19B). However, there are no NRD administrative procedures to establish if a child is legally in a vulnerable situation as a foundling and thus should acquire a genuine link to Malaysia as a national or be protected against being left without a nationality within one year of their birth.

- 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 children are considered to be born into a lawful wedlock based on the 1952 Adoption Act, Section 9(1). Therefore, the adopted child born in Malaysia on or after Malaysia Day (16 September 1963 when Malaya, Sabah, Sarawak, and Singapore) should be considered as a Malaysian national if either of the adoptive parents is a permanent resident or Malaysian citizen.



UKM law students learning about legal framework in the Federal Constitution regarding nationality and statelessnessduring a workshop at Faculty of Law, UKM, Bangi.

Photo by Andrew Mackinnon, 2016

- Foundlings, abandoned children, and children born out of a legally recognized marriage who are unable to acquire nationality through the mother have the option to apply for citizenship by registration under article 15A of the Federal Constitution. This situation renders the children in such vulnerable circumstances stateless whilst any application for registration is made and considered by NRD at the discretion of the Home Ministry.

- 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.

There are some provisions in the constitution that would require law reform with regards to gender regards to gender inequality:

- The Constitution does not allow mothers to transfer nationality to their children born outside Malaysia on the same basis as fathers. Even though there are discretionary registration provisions that the parents can use to register the child as a Malaysian citizen and this is not one of the primary causes of statelessness in Malaysia, this may render the child stateless if the child is unable to acquire nationality through the father.

- Some provisions in the constitution do 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). This can create statelessness where children cannot acquire nationality from their mothers, for example (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.

HOW DO WE MAKE A CHANGE?

Sasitharan, a community based paralegal, fills out documents for three stateless siblings

Photo by Andrew Mackinnon, 2016

COMMUNITY BASED PARALEGAL SERVICES

DHRRA started working on identity documentation issues in West Malaysia in 2004, but has not had the capacity to set up the required services to identify, register and provide legal aid to stateless persons.

DHRRA was initially established to promote strong and self-reliant communities through poverty alleviation and empowerment initiatives. Nanthini, the Executive Director of DHRRA said, “When we first realized that there was a need to open an office in Perak so that we could reach out to undocumented persons, we did not have any funding.” Yet DHRRA knew that the need was urgent for an office to be opened in that state as the cases needing help were numerous. Nanthini recalls a 57 year old man in Perak with serious medical conditions who came to their attention over a year ago, as he had been trying unsuccessfully for years to obtain national documentation in order to benefit from national healthcare services. DHRRA helped to resolve his nationality status with NRD. “When I called his house to give him the good news, it was too late,” said Nanthini. “He had passed away a week before that. This was before we opened the State Office in Sungkai.” The DHRRA Perak State Office was finally able to be set up through some creative social entrepreneurship thinking. When they saw that there was no fitness center in the Sungkai District, DHRRA opened one as a business, and the profit from the fitness centre went towards setting up the DHRRA office. Now a year later, the income generated from the only fitness center in Sungkai helps to cover all the expenses of the DHRRA State Office.

With technical support provided by UNHCR, DHRRA started the registration and paralegal aid services in West Malaysia in June 2014. An essential part of 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.

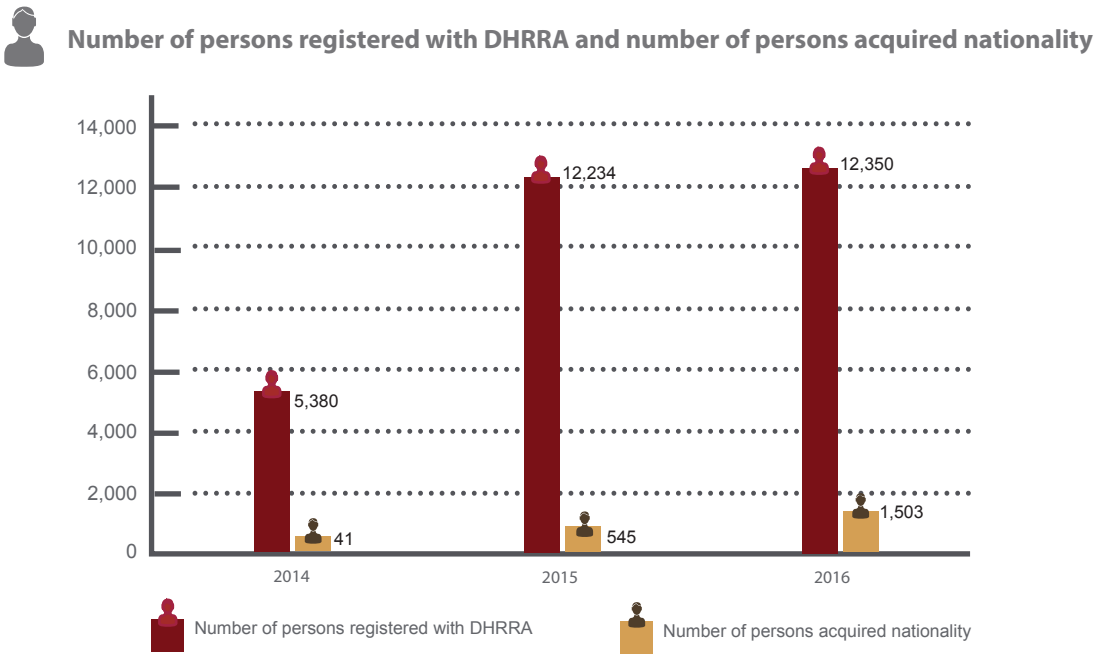
Most community members live in remote areas of the palm oil plantation sites where they work and cannot afford to travel to town. While the mapping project continued between June 2014 and the end of 2015, DHRRA had 64 volunteers to carry out registration activities – travelling town to town, from one 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 stateless applicants using an application on a 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.

Community paralegal aid model was developed as a means of implementation to deliver much of the legal assistance required. 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.

Brightly dressed in orange shirts, DHRRA volunteers went door to door in neighbourhoods, with the aim of locating and registering stateless people until the end of 2015. It was particularly challenging for them, as the resumption of the project in June 2014 had coincided with the beginning of the monsoon season. Volunteers had to brave torrential rainstorms on most afternoons and movement was limited. According to Manivannan, the Project Coordinator in Kedah, it was not only the weather conditions that hindered progress at the time of mapping, but also the slow process of gaining the community's trust. "People here have endured the invisibility of existing with no documentation their entire lives. They may not see the point in registering with our project unless there is an immediate outcome,"
says Mani, as he is known.

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.



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 the 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.

DHRRA's Registration and Legal Aid Model Targeting Stateless Populations in West Malaysia

DHRRA's statelessness database is designed for possible data partnership with the NRD which could simplify and speed-up case referrals between the NRD and DHRRA.

COOPERATION WITH LOCAL NRD OFFICE AND THE GOVERNMENT

NRD state offices shorten the time period for NRD searches for previous applications and birth registration records for case referrals.

As a first step in the application process, NRD searches its database to look for duplicate matches and searches for the birth details of the applicant (reflected in the extract from the record of birth registration).

If the applicant is born before Merdeka Day (31 August 1957 when the Federation of Malaysia became independent), the process often takes longer because the local NRD office will forward the request to NRD Headquarters in Putrajaya, as all of those birth certificates are archived there.

NRD state offices shorten the processing times for cases referred by DHRRA and expedite the searches.

NRD provides greater transparency in decision making and cooperation to expedite the application process

In the absence of information on the reasons for rejection issued by NRD or incomplete submissions, the applicants are often not able to compile the required documentation and remedy their situation until they receive assistance from DHRRA paralegals.

The NRD state offices contact DHRRA paralegals if required supplementary documentation or information for the application is missing. DHRRA paralegals then follow up with the applicants as required and liaise with NRD on the outcome of the submission.

The Ministry of Home Affairs and NRD exercise a flexible approach and discretion to register children born out of a legally recognized marriage and MyKas holders under the age of 21.

MyKas holders, including those over the age of 21, could in some circumstances also be entitled to citizenship by operation of law. For example they could benefit from the protections offered in the Federal Constitution allowing them to acquire a nationality (Second Schedule, Article 19B) if they had been abandoned by their parents when they were newly born.

They may be able to show that they are entitled to citizenship by operation of law if they did not acquire another nationality within one year of birth or they are able to prove through statutory declaration or other means that they are otherwise entitled to acquire Malaysian citizenship by operation of law.

COMMUNITY OUTREACH AND AWARENESS

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.

Therefore, 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 continued to facilitate community meetings to educate the community about Malaysia's citizenship law, citizenship and birth registration application procedures.

What is apparent is how many people on the ground so deeply believe in, and support this cause. Sometimes their generosity is completely unexpected. For instance, an old man had shown up at a Hindu Temple while volunteers were distributing flyers, and said "Here, take the keys to my office. Use it as a registration centre for as long as it takes until every single person in these plantations has an identity card."

Vicky is a volunteer from Kuala Lumpur who is self-funded so that she can commit her time to helping with the project. She sees how important this work is, especially in reaching out to the communities who have so often been let down by the national processes and systems, and have suffered indignities because of being undocumented, till they have given up.

"Sometimes they did not want to come out of the house. We visited their houses to register people," said Vicky. "We explained to them why it is important, that we know what they have gone through to be able to figure out the best ways to resolve the issue with the government. I don't expect any payment, only a better life for my community."

Dimple, the Project Coordinator in Perak in 2014, literally lived out of her suitcase as she traveled back and forth from Sungkai to all the seven districts that DHRRA covered at the time. She called her suitcase her 'mobile home office', but feels it is a choice worth making for the work that she can do to change people's lives. "People need security and peace, acquiring identity documentation gives people that sense of security and peace, and that is what we will work for," said Dimple.

"We work to ensure the community at large live in dignity. We aim to finish registering all the stateless people in this state. There may be many, but we remember each and every story we hear, each and every face we see."

HOW FAR DID WE ACHIEVE OUR GOALS?

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, an overview of legislation and procedures governing the recognition of their status, and their enjoyment of rights.

Through these efforts, 12,350 stateless people, who are not considered as nationals in Malaysia or in any other country, registered with the paralegals. 9,918 of them are of Indian-Tamil origin.

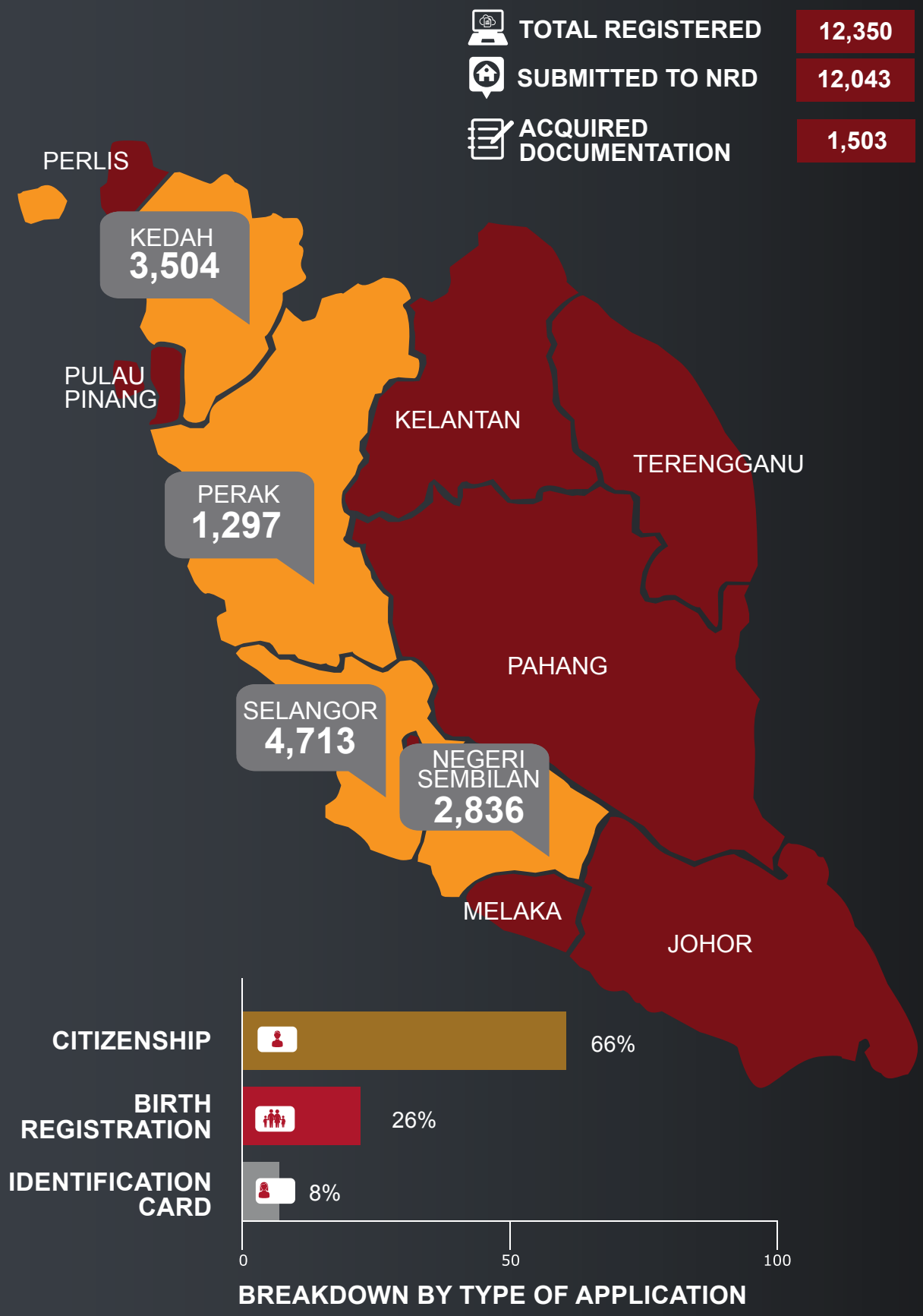
"Often the applicants might not be able to take time off from work. Nanthini recalls her frustration when a mother of three did not show up for appointments with the NRD despite having been living in a destitute situation with no identity. She was the sole breadwinner of her household - often earning a meagre income of RM15 a day – couldn't afford to lose a day of wage, or worse yet, to lose her job.

As she said to us, 'When it is a choice between feeding my children and getting documentation, food comes first. I have applied so many times to NRD. So this time it better work'," said Nanthini.

The processing timeline at the NRD can take up to 3 years. Thus, by the end of 2016, 1,500 persons (12%) of those registered acquired nationality. NRD rejected 240 applications and requested additional documents from 63 applicants requiring further assistance by the paralegals in 2017. It is predicted that 50% of the applicants whose applications have been submitted to the Government will acquire nationality by the end of 2017 and complete nationality acquisition will take place by the end of 2018.

DHRRA's database provides 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. Data management can help reveal patterns in civil registration which may highlight particular issues and their potential causes including 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.

10,847 STATELESS IN WEST MALAYSIA



"Stateless Malaysians" who hold permanent residence in Malaysia represent the largest single group of those registered with DHRRA in West Malaysia. By the end of 2016, 47% of the total registered population had permanent residency but were not considered to be Malaysian citizens.

They were born in Malaysia and have close links to the country as second or third generation Indian-Tamil. Permanent residency holders (some permanent residency documents identify the holder as being "stateless") must generally apply for citizenship by registration or by naturalization. Many would have been entitled to acquire citizenship by operation of law under the Federal Constitution but are unable to provide the required documents, such as their parents' marriage or if deceased, death certificate, to prove their entitlements.

In addition, some birth certificates, particularly those issued before 1957, are incomplete and do not include key details such as the identity of the registered individual's parents. 3,225 number of those registered hold red birth certificates stating their status as "non-citizens" or "undetermined" and 2,825 number of applicants lacked birth registration certificates. 70 of them have MyKas documents.

Within the remaining 53% of the registered stateless persons, a number of groups that are largely made up of children, risk possible marginalization. This is mainly due to social and procedural challenges related to civil registration of abandoned children and foundlings, registration of marriages and documentation for legal and informal adoption.

The process of obtaining some kind of documentation is long and tedious, and sometimes, completely unpredictable. A 97 year old woman has only known Malaysia as her country her entire life, yet does not have any documentation. Neither does her children.DHRRA volunteers visited her house to record her details and fast track her application to NRD, which can take anywhere between two weeks to three years. As DHRRA volunteers helped her collect all the supporting documents needed to acquire nationality documentation, they received good news about another applicant they had assisted at the early days of the mapping and registration project. It is always heartening when success is achieved. An 8 year old boy had just been issued a green birth certificate which states his nationality as "Malaysian". Now he can go to school.

By the end 2016, 68 stateless MyKas holders were registered by DHRRA. 4 of them were children and lived in government social welfare houses along with a total of 1,766 children with no documentation or 2,718 children with red birth certificates.

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Photos taken by stateless youth, 2015

In addition, lawfully adopted children had not been issued with “green” birth certificates. This is in spite of legal protections of the 1952 Adoption Act and the relevant Constitutional provisions which indicate that they should be recognized as Malaysian citizens when one or both of the parents were Malaysian citizens or permanent residents.

The parents were therefore compelled to apply for the discretionary registration of their adopted children, which can take a long time to decide. 30 children registered by DHRRA are waiting to be legally adopted and 78 legally adopted stateless children have not yet acquired citizenship status.

Finally, 4,326 children born out of a legally recognized marriage who had not acquired Malaysian citizenship were registered by DHRRA by 30 June 2015. Where the child’s mother in not a Malaysian citizen it appears that NRD offices take the view that the child should acquire the mother’s nationality and therefore issues a “red” birth certificate stating the child’s nationality status as “non-national” or “not yet determined”.

This has occurred where:

(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 single father and where the whereabouts of the mother is unknown (198 cases registered with DHRRA), and;

(iii) the child is cared for by a single mother who is herself without any nationality (209 cases registered with DHRRA).

Since the legal aid services commenced in June 2014, DHRRA has shared policy recommendations with the Government covering three areas:

- Recommendations for general improvements to administrative procedures;
- Recommendations which would help resolve the citizenship status of “stateless Malaysians” who currently hold permanent residence in Malaysia, which represents the largest single group of those registered;
- Recommendations which would help to resolve the citizenship of children and youth, including many cases of vulnerable children.

Any progressive policy changes adopted by the government based on these recommendations could potentially deliver solutions more speedily in 2017 and beyond for stateless applicants registered with DHRRA in West Malaysia.

Shanvin, at DHRRA HQ in Petaling Jaya, carefully uploads the details of a stateless person into the DHRRA database. He is one of the many DHRRA staff committed to helping stateless applicants acquire nationality.

Photo by Andrew Mackinnon, 2016

A DAY IN THE LIFE OF A COMMUNITY BASED PARALEGAL...

Ragubalan, who has worked with DHRRA since 2011 on various other projects, is one of the DHRRA paralegals in Kedah State. He is based in the Kuala Muda district. "I have come across several people in my community who have never had a name in the eyes of the authorities," he said. "They have never obtained any documentation for various reasons. I am now excited to be a part of this project because I can educate my own community on their right to become recognized as citizens." His passion was apparent as he spoke of his daily routine. "I would normally start my day at 9am and follow up on applicants whom I had previously counselled.

Today, for example, I will be collecting information on a case that was referred to me by the volunteers few weeks ago. His case involves six siblings, between the ages of one to nine years, who have never been issued with birth certificates" said Ragubalan.

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

Ragubalan will ask for the re-issuance of the children's proof of birth from the hospitals where they were born. It will take approximately two to three weeks before all necessary documents can be compiled to apply for late birth registration. But he sees some complications with the case of the eldest child. "He was born at home. I need to get in contact with the midwife to re-issue the Surat Akuan Bidan (certificate of home birth)," said Ragubalan.

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

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

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

"I have never known I could apply for citizenship and receive financial support from the government. I have been living on my own, no one has told me about this before, and it is such a relief knowing that I can get support from the government. Thank you so much for this information," said the 60 year old woman after Ragubalan had counselled her. Ragubalan finished his day at 9 o'clock in the evening and traveled back to his home town in Kedah.

JURISPURIDENCE ON NATIONALITY AND STATELESSNESS

DHRRA pro bono lawyers provide much needed legal support for stateless applicants who require remedy at the courts in order to acquire or confirm nationality.

Statelessness can be prevented through better implementation of existing domestic laws. The current framework for the acquisition of citizenship contained in Malaysia's Constitution can resolve statelessness through legal remedy at the courts for cases that cannot be resolved at NRD level.

A number of cases involving nationality had been filed at the Malaysian courts, but judgments have not shown consistent interpretation.

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. DHRRA holds a regular dialogue with its Lawyers' Committee, which continues to litigate to enforce constitutional provisions relating to nationality and statelessness.

The lawyers provide pro bono legal assistance for stateless applicants who cannot acquire nationality documentation through the existing NRD procedures. By the end of 2016, the Lawyers' Committee filed 83 cases at the courts out of 307 cases that required pro bono legal assistance.

EDUCATION

Subject to further approval of the State Education Department, undocumented children are able to enroll in government schools by paying a foreigners' fee.

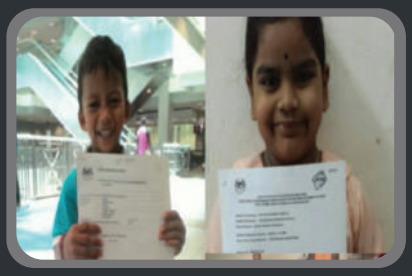
Lack of birth registration makes it difficult for children to prove that they have the relevant link to Malaysia as nationals. Legal identification is a child's link to the exercise and enjoyment of his or her human rights, including the right to education. The ages of the children registered with DHRRA range between a few weeks to 17 years.

They have limited access to social benefits, and are not eligible for government welfare assistance and education loans. They are also required to pay fees as non-nationals to enroll in government schools and to benefit from medical services. 42 (1%) of children aged 5-16 years are engaged in child labour and only 697 (18%) are enrolled in schools.

The Government expedites the issuance of birth registration and nationality documentation for children of schooling age that are registered with DHRRA. In the meantime, the paralegals guide the children through the enrolment procedures in Government schools and help them catch up with their peers.

They assist the children in filling 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 the first to experience statelessness within the family, there are over 4,703 stateless children registered with DHRRA. By the end of 2016, DHRRA paralegals assisted 264 stateless children in enrolling into primary and secondary school.

Kirtiga and Kirtana with PM
Kirtiga and Kirtana both 9 years old, receiving birth certificates from the Honorable Prime Minister. Mr. Ragubalan, a DHRRA paralegal from Sungai Petani, assisted with Kirtiga and Kirtana's application with the NRD.



Children with birth cert (1) and children with birth cert (2)
Children showing their birth certificates, newly-received thanks to efforts of DHRRA paralegal assistance services. A lack of nationality documentation means obstacles in accessing higher education for children. 81% percent of the registered population over the age 15 have never attended school, and 11% have only had primary education.

DHRRA has engaged in a key advocacy initiative to integrate one or more units on statelessness into an existing course curriculum at primary school level.

The effects of exclusion and stigma can create an invisible burden for stateless children. This makes it very difficult for them to be healthy and live up to their academic potential. With an aim to break down the barriers between statelessness and social services, UNHCR developed the "Elementary School Teacher's Guide to Teaching on Statelessness for Children" and then partnered with DHRRA for its roll out.

The toolkit engages primary school level students between the ages of 9 and 13 in a dialogue on statelessness and the issues related to it in Malaysia. Youth volunteers developed an online webinar to accompany the toolkit which can be, through further cooperation with the Ministry of Education, introduced at national schools, and ultimately incorporated into the national curriculum.

SOCIO-ECONOMIC INTEGRATION FOR STATELESS AND FORMERLY STATELESS PERSONS

A number of social issues faced by the community have created additional challenges, including lack of marriage registration, abandoned children and documentation related to legal and informal adoption. They have aggravated the historic problem. Children and youth who lack documentation confirming their legal identity, including Malaysian citizenship, are particularly affected. They can face significant challenges in accessing primary and secondary education, sitting public exams and in relation to the costs of healthcare. Their lack of documentation can limit their opportunities in life and be detrimental to community cohesion, well-being, and development.

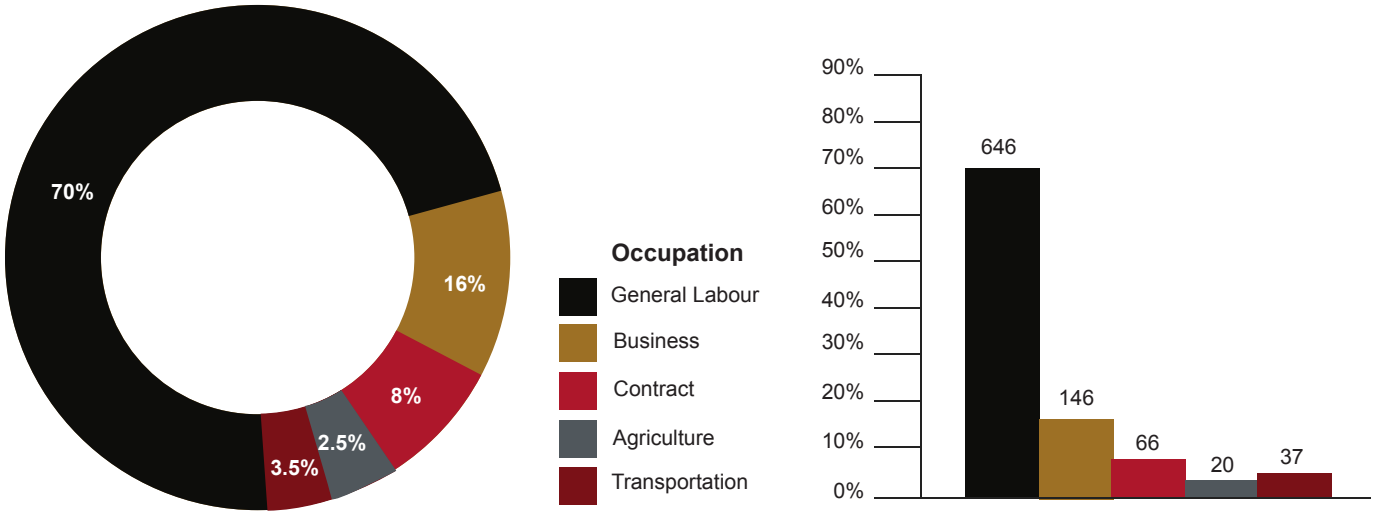
According to DHRRA's population figures, the stateless persons in West Malaysia are severely affected by unemployment. 84% of the adult population, 4,607 persons, within the age group of 18-64, is unemployed. The remaining 752 persons mostly work as general labourers without any kind of job or income security. This renders them vulnerable to impoverishment, affecting their entire household.

- 20 children (below the age of 18) in early marriage;
- 84% unemployment rate;
- 83% of the registered population over the age 15 have not attended school and 11% have primary level education;
- 1,766 (38%) children do not have any kind of documentation and 2,781 (59%) children hold red birth certificates.

Building social capacity is necessary for social mobility, and social mobility is in turn fundamental for economic stability. DHRRA planned to set up programmes targeting socio-economic integration of stateless and formerly stateless persons that were assisted through its legal aid services, but has not managed to obtain supplemental funding to do that.

Such programmes include transit schools and centers to assist stateless and formerly stateless people who have had limited access to education or employment opportunities. These centers aim to provide basic schooling and vocational training in order to equip them with a high level skill set and thus increase their access to the labour market.

Employment Breakdown (Ages 18-64)



Education Level by Age and Gender

Age Group	Primary Education		Secondary Education		Certificate		Diploma		Degree & above		Did not attend school	
15 - 19	19	22	68	46	1	0	0	1	0	0	169	156
20 - 24	19	23	27	46	0	0	3	1	0	0	192	157
25 - 34	30	42	28	25	1	1	1	1	2	2	283	252
35 - 44	27	39	09	10	0	0	0	0	0	0	195	220
45 - 54	55	53	14	06	1	0	1	0	0	0	262	309
55 - 59	45	64	11	06	0	0	0	0	0	0	247	445
60+	150	298	51	63	0	0	1	0	0	1	1178	2517
TOTAL	**345**	**541**	**208**	**202**	**3**	**1**	**6**	**4**	**2**	**3**	**2526**	**4056**

ADDRESSING STATELESSNESS THROUGH COOPERATIVE EFFORTS

ADVOCACY

DHRRA systematically and consistently raises statelessness issues with government authorities through workshops and regular dialogue. Since June 2014, DHRRA has facilitated 14 roundtable discussions and held 32 workshops with several Members of Parliament, local NRD offices, other relevant line ministry officials, and civil society members across all the states in West Malaysia. These events aimed to reach a common understanding on law and policy reforms over Malaysia's nationality and other relevant legislation, policies and practices that lead to statelessness.

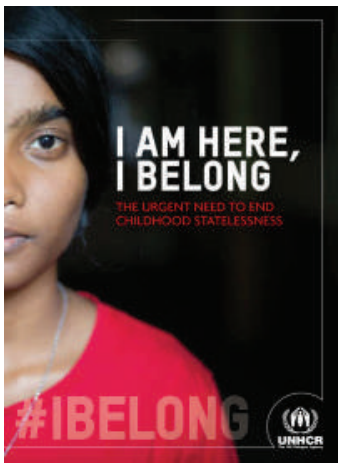
KNOWLEDGE SHARING

Since 2014, there has been a growing momentum within civil society, academia, and government stakeholders to explore ways to promote and ensure birth registration for the prevention of statelessness. DHRRA collaborates with other civil society organizations and academic institutions to create a multidimensional advocacy network on statelessness. This mainly involves sharing DHRRA's technical and operational support for information campaigns or emerging assistance programmes in East Malaysia which aim to identify stateless populations and help persons at risk to avail themselves of documentation procedures.

Several law faculties have shown an interest in covering statelessness as a subject in the university's curriculum. Joining UNHCR at various university lectures on nationality and statelessness, DHRRA shares its knowledge with and engages the youth who look for ways to contribute to the collaborative efforts in addressing statelessness in Malaysia. These include pro bono legal aid for stateless applicants by setting up legal aid clinics at law departments, education campaign with the use of the Teacher's Toolkit targeting elementary school students, and youth information sharing platforms with formerly stateless youth.

CHANGING NARRATIVES ON STATELESSNESS

Young generations are driven by passion, empathy, and change. To overcome negative perceptions toward stateless persons, DHRRA tries to reach out to a variety of audiences, including younger generations to raise debates on belonging, identity, and inclusion. DHRRA, through further cooperation with UNHCR, engaged in two youth initiatives in 2016: dialogue platforms with formerly stateless youth and nation-wide primary school awareness campaign.



"I am Here, I Belong: The Urgent Need to End Childhood Statelessness" was published in November 2015 on the first anniversary of UNHCR's "I Belong Campaign to End Statelessness by 2024". The report highlights the impact of statelessness on children and youth in seven countries, including Malaysia. Despite some recent awareness-raising gains to show the human face of this issue, little is known on what it means for a child to be stateless. DHRRA's involvement in the production of this report, and its launch in Malaysia is its continued commitment to engage a variety of audiences, including younger audiences in understanding and addressing statelessness in Malaysia.

A UCSI Scholar at a Workshop on Statelessness sharing their experience in understanding and addressing statelessness through the Journey to Belong Awareness Campaign with their peers at the Faculty of Law, Universiti Kebangsaan Malaysia (UKM), Bangi.

Photo by Andrew Mackinnon, 2016

Nanthini Romalo, Project Director of DHRRA Malaysia, presenting at a plenary session at DHRRA's Workshop on Documentation and Statelessness in Perak, Malaysia.

Photo by Saravanan M. Sinapan, 2015

DHRRA sharing its experience on community mobilization, client engagement,case management and advocacy at the Practitione Roundtable in Kota Kinabalu, Sabah State.

Photo by Saravanan M. Sinapan, 2016

DHRRA facilitated a dialogue with a formerly stateless youth, Mogana Thiaggu, at the Journey to Belong: An Awareness Programme on Statelessness event at UCSI University, Cheras.

Photo by WaiLiang Ng, Ting Ting, 2016

5 GOALS TO ADDRESS STATELESSNESS

GOAL 1

ADVOCATE FOR POLICY IMPROVEMENTS IN RESPECT OF CITIZENSHIP BY NATURALIZATION AND REGISTRATION AND AUTOMATIC ACQUISITION PROCEDURES AND PROCESSES.

DHRRA will prioritize facilitating dialogues on a number of fronts, ranging from building awareness in the legal community to involving non-traditional actors such as academics and law students. DHRRA will also maintain support for efforts to build up jurisprudence on statelessness in Malaysia through the lawyers' committee it has established in 2015 and closely monitor the progress made with the outcome of cases filed at the courts.

GOAL 2

ADVOCATE FOR POLICY REFORM TO REMOVE GENDER DISCRIMINATION FROM THE CONSTITUTION.

There are some provisions in the constitution that would require law reform with regards to gender discrimination. The Constitution does not allow mothers to transfer nationality to their children born outside Malaysia on the same basis as fathers.

Even though there are discretionary registration provisions that the parents can use to register the child as Malaysian citizens and this is not one of the primary causes of statelessness in Malaysia, this may result in children being born stateless if the father is unable to confer nationality on his children.

Similarly, some provisions in the constitution do not allow men to transfer nationality to their children if the child is born out of a legally recognized marriage. This can create statelessness where children cannot acquire nationality from their mothers.

GOAL 3

ISSUE DOCUMENTATION TO THOSE WITH ENTITLEMENT TO IT (WEST MALAYSIA).

DHRRA will maintain community-based paralegal services to follow up on applications submitted to NRD since the roll out of the project in June 2014 and provide legal assistance for any potential new applicants that may register with DHRRA.

GOAL 4

SUPPORT THE EFFORTS TO IMPROVE QUANTITATIVE AND QUALITATIVE DATA ON STATELESSNESS (EAST MALAYSIA).

UNHCR launched the Global #IBelong Campaign in November 2014. The campaign aims to end Statelessness by 2024. This is an ambitious goal particularly because identification of statelessness is a major challenge. DHRRA will work towards identification of stateless people outside peninsular Malaysia where there is insufficient information available on the size of the population, the causes of their statelessness, and their protection concerns. This will be an important step in building an advocacy strategy aimed at resolving their situation.

GOAL 5

DESIGN AND DELIVER EFFECTIVE SOCIAL DEVELOPMENT AND INTEGRATION PROGRAMMES TARGETING STATELESS PEOPLE.

There is an explicit link between the importance of nationality and the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Cooperative efforts between the civil society and the government have put the issue of statelessness firmly on the national development agenda. DHRRA will work with private sector organizations, UN Country Team members, and development agencies to ensure that stateless people are not left behind in Malaysia's continued development.

GOAL 1

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SUPPORT THE EFFORTS TO IMPROVE QUANTITATIVE AND QUALITATIVE DATA ON STATELESSNESS IN EAST MALAYSIA.

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DESIGN AND DELIVER EFFECTIVE SOCIAL DEVELOPMENT AND INTEGRATION PROGRAMMES TARGETING STATELESS PEOPLE.

DHRRA MALAYSIA

Building Better Communities