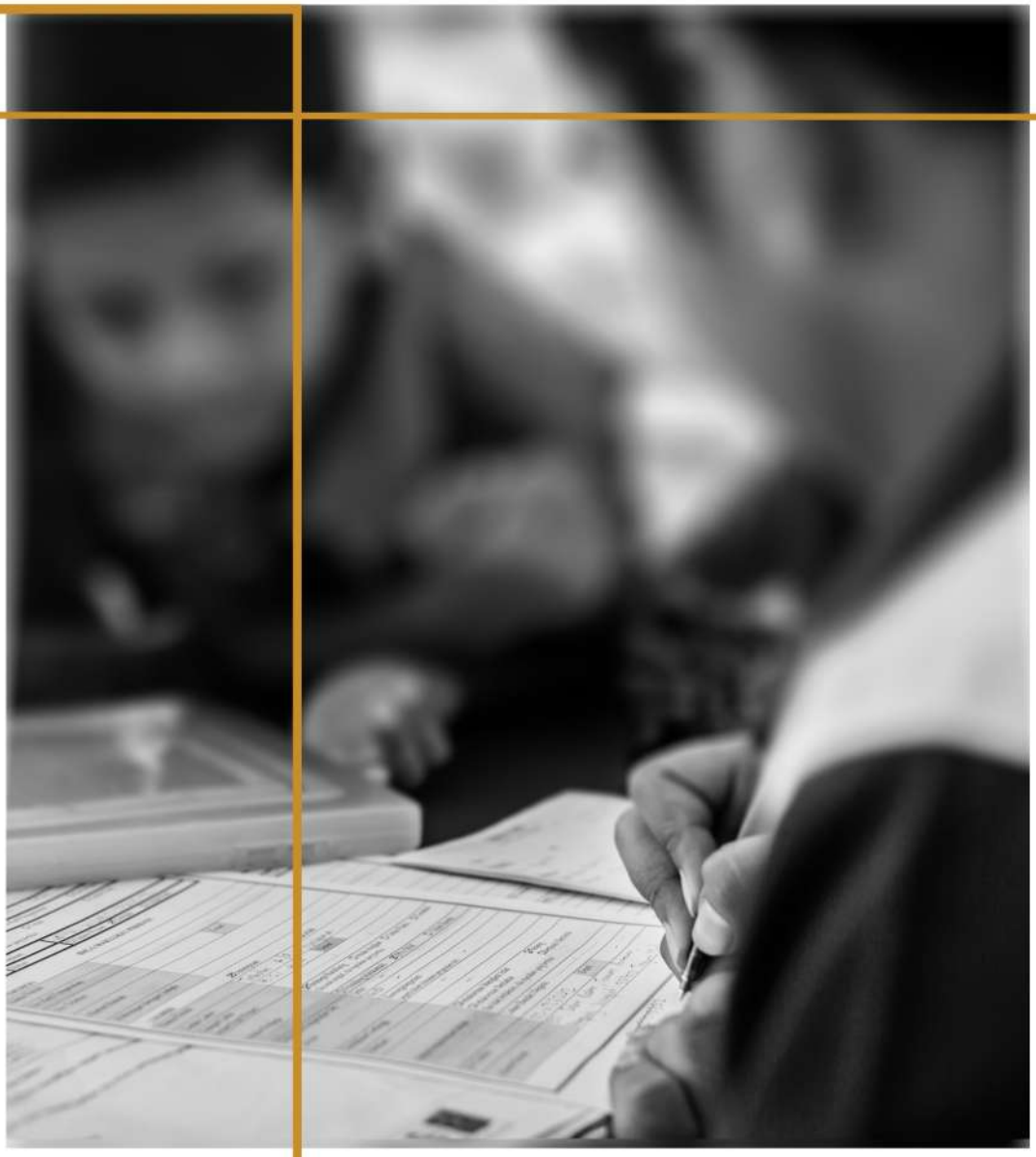
# REPORT

Stories from the field:

## Overcoming access to justice barriers through grassroots communities' participation and collective action'



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Legal empowerment is firmly rooted in fundamental human rights, as outlined in international human rights law, specifically Article 1, Article 10 and Article 15 of the Universal Declaration of Human Rights. This connection between human rights and legal empowerment is emphasized by organizations working extensively on legal empowerment such as CLEP, which asserts that human rights principles should guide legal empowerment process, which is especially crucial in the context of institutional and legal reforms, as well as social policies aimed at reshaping the relationship between the government and its citizens at both the national and local levels (CLEP, 2008)..... 55
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# List of Abbreviations

| | |
|---|---|
| MLA (ADUN) | State Legislative Assembly Member |
| BC | Birth Certificate |
| CBPL | Community-Based Paralegal |
| CSO | Civil Society Organization |
| DHRRA | Development of Human Resources for Rural Areas Malaysia |
| EPF(KWSP) | Employee Provident Fund |
| IC | Identity Card |
| JKM | Department of Social Welfare |
| LE | Legal Empowerment |
| NRD (JPN) | National Registration Department |
| MOH (KKM) | Ministry of Health |
| MOHA (KDN) | Ministry of Home Affairs |
| MP | Member of Parliament |
| PL | Paralegal |
| PR | Permanent Resident |
| PPD | District Education Department |
| SDG | Sustainable Development Goals |
| SOCSO | Social Security Organization |
| SUHAKAM | Human Rights Commission of Malaysia |
| UDHR | Universal Declaration of Human Rights |
| UNHCR | United Nation High Commission for Refugees |

# SECTION 1: INTRODUCTION

## 1.1 Study Background

Statelessness represents a life of non-existence. Stateless individuals often remain hidden within the layers of the mainstream society, deprived of the basic rights and forced to bear the greatest brunt of socioeconomic decline. They frequently encounter formidable legal barriers that hinder their access to justice and the acquisition of legal identity documents, which in turn, exacerbates their marginalization and exclusion from society. Paradoxically, the very absence of legal identity that rendered these marginalized individuals stateless in the first place makes their access to justice nearly impossible. Legal empowerment, which has gained traction as a strategic approach to empower marginalized communities in recent decades, offers a sustainable solution to surmount the barriers to justice faced by the stateless communities.

In Malaysia, where statelessness is a burgeoning perennial issue, Development of Human Resources of Rural Areas (DHRRA) Malaysia has emerged as the pioneer in adopting legal empowerment approaches to empower and address the multifaceted challenges faced by stateless individuals in the country. DHRRA successfully supported and assisted over 15,000 thousand stateless individuals in accessing justice for their various predicaments. DHRRA employed a three-pronged legal empowerment approach, namely paralegal development, legal reform initiatives and strategic litigation in achieving this.

This study, titled ‘Stories from the field: Overcoming access to justice barriers through grassroots communities' participation and collective action', comprises 3 Action Research with each focusing on one of the 3 key legal empowerment approaches of DHHRA. By examining these approaches, the research aims to shed light on the experiences and outcomes of legal empowerment approaches implemented by DHRRA and contribute to the understanding of how these strategies can increase access to justice for stateless persons in Malaysia. This study is part of a larger study conducted by Alternative Law Groups (ALG), with the support of the International Development Research Centre (IDRC).

## 1.2 Objectives

The study is part of multi-country research project conducted in parallel in the Philippines, Malaysia, Thailand and Indonesia. It aims to generate knowledge and evidence on empowering and strengthening grassroots communities’ participation and collective action in addressing access to justice issues.

The specific objectives of the multi-country studies are:
1. To understand the significance of the role of grassroots communities in addressing gaps in access to justice.
2. To study the impact of the developmental law practice and its link between grassroots empowerment and effecting justice system reforms.
3. To highlight best practices/model of empowering the grassroots for justice systems reforms and bridging the gap in access to justice.

## 1.3 Methodology

The research is qualitative in nature and employs an action research methodology, which involves a collaborative and iterative process of inquiry and intervention. It draws on DHRRA's legal empowerment experiences and grassroots stories, with a specific focus on statelessness in Malaysia. The study comprises three action research studies, each focusing on one of the three key legal empowerments approaches i.e., paralegal development, policy reform initiatives and strategic litigation, employed by DHRRA Malaysia.

### 1.3.1 Research Questions

The research seeks to answer a set of research questions that correspond to each of the three Action Research studies as detailed below.

i. Action Research on Paralegal Development
- What are the different models or methods of developing paralegals (PLs)?
    - What is the extent of development and participation of women paralegals in these models?
    - What are the most effective and innovative strategies in developing community paralegals?
- What are the impacts of community paralegals in improving the ability of marginalized groups to obtain justice?
- What are the challenges and contributing factors to strengthening and sustaining community paralegals?
    - How did the current health crisis affect this approach?
    - What are the innovative approaches to developing paralegals during the pandemic?
- What are the effective forms of partnerships that contribute to this approach (e.g. legal resource NGOs-CSOs-community based paralegals)?

ii. Action Research on Policy Reform Initiatives
- What are the significant policy reform initiatives that improved/enabled ensure access to justice in the country?
- How does this legal empowerment approach strengthen the grassroots communities' participation in policy reform advocacy?
    - Can grassroots communities have any direct engagement in the legislative processes?
    - What is the participation of grassroots communities in the enforcement of policy reforms that leads to the improvement of the policies?
    - How can grassroots communities participate or engage in judicial and executive policy reform processes?
    - What are the challenges and limitations of grassroots participation in this approach?
- What are the significant recommendations on justice system reforms to ensure access to justice for the marginalized?
- What are examples, if any, of actual reforms in judicial, executive/administrative, and legislative branch that helped enhanced access to justice for the marginalized and the protection of their rights

iii. Action Research on Strategic Litigation

- What are the impacts of strategic litigation or public interest litigation in bridging the gap on access to justice in relation to policy reforms, empowering the grassroots, and resolving justice problems?
- Impact of strategic litigation on women and gender justice issues.
- How do grassroots communities participate in strategic litigation?
- What are the gaps/limitations of strategic litigation in addressing access to justice gaps and grassroots participation?
- What are the best practices on strategic litigation that promotes grassroots empowerment and participation?
- From the case studies, what are the contributing factors, which promote effective strategic litigation?

1.3.2 Data Gathering Scheme

Each of the three action research studies is based on a combination of desk research, key informant interviews (KIIs), focus group discussions (FGDs), and validations. Members of the stateless communities from the key participants of the study. Critical case sampling, which involves selecting participants who are highly informative and relevant to the research study, was used for selection of participants. A total of 45 participants were reached out through 7 focus group discussions and 11 key informant interviews, carried through the entirety of the study, comprising of 31 female participants and 14 male participants.

The participants of the focus group discussions represent members of stateless communities with exposure and involvement in DHRRA's legal empowerment work including stateless individuals who were supported by DHRRA's paralegals to access justice, community-based paralegals, grassroots women leaders and community who are involved in policy reform advocacy on statelessness, and pro-bono lawyers who are involved in strategic litigations. To gather deeper insights and perspectives on the effectiveness and impact of the legal empowerment approaches, KIIs were conducted with key stakeholders, including representatives of local CSO partner, the Malaysian Bar Council, women paralegal leader, parents of stateless children, community leaders, Commissioner of the Malaysian Human Rights Commission (SUHAKAM), Executive Director of DHRRA as well the Project Coordinator of DHRRA's paralegal initiative. The study did not involve any participants under the age of 18 (minor); instead, the parents of stateless children were engaged to gather insights into the challenges faced by stateless children.

To reduce barriers to participation, all the focus group discussions and key informant interviews were conducted online on Zoom and Google Meet platforms. Given the multi-ethnic composition of the research participants, English, Bahasa Malaysia and Tamil were used according to the language and cultural nuances of individual participants, with a combination of two or all three languages used in a single discussion at times.

A total of 8 validation discussions were also carried to verify and validate the findings and recommendations generated throughout the research process. A comprehensive desk research was carried out through reviewing of existing literature, policies, and legal frameworks related to each legal empowerment approach.

The research is carried out in compliance with the International Development Research Centre (IDRC) ethical standards to protect the participants' safety, rights, well-being, and dignity. The researchers were orientated on research methods, with an emphasis on ethical conduct during data gathering. The principles of voluntary participation and confidentiality were ensured by providing detailed information to the participants about the research purpose, data collection procedure, benefits, risks before obtaining their informed consent. A 5-member Standards Committee was established to address any participant complaints or concerns related to the data collection process, any misconduct on the part of the researchers/facilitators, or any other related matters.

## 1.4 Analysis

A two-pronged approach was carried out in data analysis: thematic analysis and semiotic analysis. The thematic analysis was conducted in several stages, beginning with assigning of initial codes to significant segments identified within the data gathered through key informant interviews and focus group discussions with study participants. The coded segments were thoroughly examined to identify patterns and trends, and several data were re-coded during the second stage of the analysis. The third stage involved grouping together of codes with similar patterns into potential themes in line with the research questions. Finally, the themes were further refined, defined and named, and supported with examples from the data. Microsoft Word and Excel were used as the primary tools for organizing and analysing the qualitative data.

In addition, as a second level of analysis, we also carried out a semiotic analysis of selected texts to examine and gain deeper insights on how words and expression were used by different groups of participants to convey their meaning and messages. Some of the specific areas where the semiotic analysis was applied included in exploring variation in understanding of justice and access to justice, the conceptualization of community-based paralegals and the distinctions between policy change and policy reform. Through this analysis, we hope to shed light on the diverse perspectives within the study on these central thematic areas.

## 1.5 Limitations and Challenges

While the study aims to provide a comprehensive and in-depth view of the effectiveness of legal empowerment in improving access to justice for stateless people in Malaysia, researchers encountered several challenges that may have led to gaps in findings. One significant challenge was recruiting participants, particularly stateless persons, which resulted in lower number of participants in focus groups discussions with the community. Furthermore, a significant number of participants who had confirmed their participation did not attend the discussion on the scheduled day.

Though the study was planned to capture gender balanced perspectives on the discussion topics, female research participants displayed greater willingness to participate in the study, with fewer incidents of withdrawal after confirming their participation, or leaving in the middle of discussions compared to their male counterparts. Nevertheless, the male participants actively and vocally contributed to all the discussions, helping to the bridge the gap in gender-balanced viewpoints to a considerable extent.

Another limitation arose when attempting to attribute positive outcomes or developments in Malaysian policy landscape to DHRRA's legal empowerment efforts. DHRRA collaborates closely with various stakeholders particularly local CSOs, both established and unorganized, in advocating for the rights of stateless communities in Malaysia. As such, any positive outcomes are attributed to the collective efforts of all involved stakeholders. Consequently, the study also captures the legal empowerment work and experiences of DHRRA's partner community organizations.

While the study participants include community leaders working with stateless communities in Sabah, due to the vast differences in the context of statelessness between East and West Malaysia as well as DHRRA's limited direct involvement in working with stateless communities in Sabah and Sarawak, the study's discussions will primarily focus on in-situ[1] stateless communities in West Malaysia, who constitute DHRRA's primary target group.

## 1.6 Structure of the Study

The study is organized and presented in seven distinct sections, each serving a specific purpose and contributing to the overall structure of the report:

Section 1 explores the study background, outlining the study objectives, the research process, and the analytical approach employed, as well as addressing the limitations and challenges faced during the research process.

Section 2 provides an overview of the statelessness issue in Malaysia and derives insights from DHRRA's work and experiences on legal empowerment.

In Section 3, the concept of justice and its accessibility, particularly for stateless individuals in Malaysia, are explored. This section further identifies and examines the legal issues and hurdles faced by stateless people in their pursuit of justice.

Sections 4, 5, and 6 explore specific action research initiatives within the thematic areas of legal empowerment: paralegal development, policy reform initiatives, and strategic litigation. Each section includes detailed findings and insights related to paralegal development, policy reform, and strategic litigation, respectively.

Section 7 summarizes the key findings from the study and offers recommendations based on the study's findings.

This structure allows for a comprehensive examination of each legal empowerment approach while also providing a holistic understanding of the collective impact of these approaches in increasing access to justice for stateless persons in Malaysia.

[1] In situ stateless people refers to people who are stateless in their 'own country', often their country of birth, and do not have significant ties to other countries. Their statelessness is primarily perpetuated by discriminatory laws or practices that target specific communities. (Source: European Network on Statelessness. (2021, September). The Statelessness Index, Thematic Breifing https://index.statelessness.eu/sites/default/files/ENS-Statelessness_determination_and_protection_in_Europe-Sep_2021.pdf)

This study aims to contribute to the knowledge and understanding of effective legal empowerment strategies for overcoming access to justice barriers and promoting legal empowerment in Malaysia. The findings of this study can inform policy and practice, as well as inspire further research and initiatives aimed at enhancing access to justice for vulnerable communities.

# SECTION 2: STATELESSNESS IN MALAYSIA

## 2.1 Overview of Statelessness in Malaysia

The 1954 Convention relating to the Status of Stateless Persons defines a stateless person as someone who is not recognized as a national by any country under its laws (United Nations High Commissioner for Refugees, 1954). This definition is now accepted as customary international law and, thus, is applicable to Malaysia, even though the country has yet to ratify the convention.

Statelessness is a perennial and burgeoning issue in Malaysia, rooted in various factors including historical migration patterns, complicated and discriminatory nationality law and polices, and legal and administrative barriers among others. Despite housing diverse groups of stateless people, their existence in the country is still denied by the Malaysian Government. Albeit several changes in the Government in recent years, the Malaysian policy makers have maintained a consistence stance in not recognizing stateless persons in the country. A case in point is the Home Ministry's statement on 7 June 2023, asserting that there are no stateless individuals in Malaysia because they lack valid travel documents, which are a prerequisite for entry into the country (Malay Mail, 2023). The Ministry justified its stance by referring to the term 'stateless', which denotes individuals without citizenship from any country.

Briefly in 2019, there appeared to be heightened commitment from the government to address statelessness as expressed by former Home Affairs Minister Muhyiddin Yassin during his address at the United Nations in Geneva. In his speech, he acknowledged not only the presence of a large number of stateless people in the country but also the discrimination, stigmatization, and precarious living conditions the marginalized group is subjected to (Malaysiakini, 2019). However, this commitment did not manifest in policies or measures when he assumed office as Malaysia's 8$^{th}$ Prime Minister in February 2020.

Currently, there is zero official data on stateless persons in Malaysia. The statistics on the Current Population Estimates for Malaysia in 2023, released by the Department of Statistics Malaysia (DOSM), show that the composition of citizen population in Malaysia has decreased from 92.4 per cent (2022) to 91.1 per cent in 2023. This decline is attributed to the increase in the composition of the non-citizen population from 7.6 per cent to 8.9 per cent during the same period (Department of Statistics Malaysia, 2023). However, there was no breakdown of the composition of the non-citizen population, which underscores the absence of government data on the extent of statelessness in the country. More concerning is the fact that the National Registration Department which is the primary government agency dealing with citizenship matters, does not have records on stateless individuals, as claimed by the Home Ministry on 15 June 2023 (Malay Mail, 2023).

In the absence of official data, a review of the existing sporadic non-governmental data becomes necessary to gain insight into the severity of the issue. Currently, the prevailing data cited on statelessness is the UNHCR's estimate of 111,298 stateless persons under its mandate (UNICEF, n.d.). The majority of those covered under this figure are forcibly displaced persons, including Rohingya persons residing in West Malaysia. To date, the magnitude of statelessness in East Malaysia remains unmapped.

While the extent of statelessness in the country remains a subject of debate, there is no denying that it is a pervasive issue that affects diverse ethnicities and communities nationwide. A growing concern in recent years is the increasing number of stateless children in the country. In 2016, through written reply to a question raised in the parliament the then Deputy Prime Minister and Home Minister Ahmad Zahid Hamidi revealed that there are 290,437 children in Malaysia who are below the age of 18, born in Malaysia but are not given Malaysian citizenship (Malaysiakini, 2016) while refraining from using the term 'stateless'.

## 2.2 DHRRA's Role in Addressing Statelessness in Malaysia

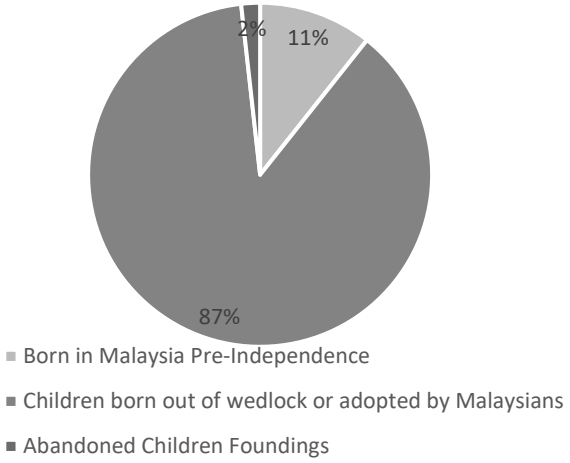
DHRRA Malaysia, established in 2006 under the Societies Act of Malaysia 1966, is a voluntary non-profit and non-political organization. Over the years, DHRRA has been instrumental in fostering resilient and self-sustaining community through grassroots development initiatives across West Malaysia, focusing primarily on vulnerable and marginalize communities. Empowerment of the vulnerable communities in all aspects of life is at the foundation of DHRRA's mission and vision which guide the organization's efforts to reduce vulnerability, marginalization, discrimination and economic exclusion in Malaysia.

DHRRA's involvement with the stateless population dates back to 2003, when the organization encountered a significant number of stateless individuals while conducting community development initiatives, through the establishment of 10 community centres dedicated to the empowerment of Indian Women in West Malaysia. In 2005, during a conference on "the Role of Indian Women in Community and Family Development', DHRRA shared that at least 20,000 Indian women do not possess proper legal document based on the cases received through the community centres. Subsequently, DHRRA initiated paralegal support to address documentation challenges faced by the community on a case-by-cases basis. While this this approach successfully assisted over 7000 stateless individuals to submit citizenship application at the National Registration Department (NRD) between 2006 and 2013 (UNHCR, 2023), it also revealed a recurring pattern of statelessness among members of the Tamil community born before Malaysia's independence on 31 August 1957. The persistence of statelessness in this group, despite their entitlement to citizenship under Article 14 (1) of the Federal constitution, prompted DHRRA to move beyond ad-hoc case handling and seek a holistic and sustainable solution to the issue of statelessness within the Indian-Tamil community. However, this effort was curtailed by the absence of baseline data on statelessness in Malaysia, which is crucial for advocacy efforts and influencing policymakers on the issue.

The partnership with UNHCR in April 2014 to implement a mapping and registration project aimed at gathering accurate baseline data on stateless persons of Indian descent in four states (Kedah, Perak, Negeri Sembilan, Selangor) in West Malaysia provided an opportune opportunity for DHRRA to do a comprehensive situation analysis of the systematic, structural as well as social barriers preventing this group of people from accessing citizenship. The exercise not only resulted in the identification and registration of 13076 stateless persons, marking the first time ever a specific number was assigned to reflect the gravity of statelessness in the country, but also led to subsequent advocacy and policy recommendations based on the gathered evidence. These efforts resulted in the simplification of administrative procedures in citizenship applications and in the adoption of policy changes which has helped many stateless persons to acquire Malaysian nationality (UNHCR,2023).

While the mapping component of the project ended in 2015, paralegals continue to serve as a bridge between the community and government institutions, offering a flexible and accessible means of accessing justice. They leverage their knowledge of law, mediation, education, planning, and advocacy to find practical solutions for stateless applicants. The ongoing efforts to identify and register stateless persons in West Malaysia beyond the mapping project have resulted in DHRRA identifying a cumulative of over 16,000 genuinely stateless persons in Peninsular Malaysia from 2016 to June 2023. An estimated 7,000 of them have successfully gained Malaysian citizenship, while the remaining 9,392 are still stateless (Boo S, 2023) The majority of those who remain stateless in DHRRA's database are abandoned children or foundlings. This situation differs from what DHRRA encountered during the mapping exercise when 47% of the total registered population were Permanent Residency holders but were not considered Malaysian citizens (DHRRA, 2017). This reflects the alarming increase in childhood statelessness in the country.

Figure 1: Percentage of Currently Stateless Persons in DHRRA's Database




*Source: DHRRA Malaysia, 2023*

Over the years, DHRRA has also come to realize that statelessness is not unique to Indian-Tamil community but cuts across Malaysian society affecting people of all ethnicities and socio-economic backgrounds. As a result, support and services are now made available to all those affected by statelessness in West Malaysia. However, the organization's reach in East Malaysia remains limited to exchange of best practices and technical support, due to resource constraints.

A review of DHRRA's work reveals that the organization employs a holistic approach in addressing statelessness which aligns with UNHCR's four-pillar approach to an effective response to statelessness i.e., identification, prevention, and reduction of statelessness; and protection of stateless persons. DHRRA's legal empowerment approaches play a central role in achieving the objective of each of the pillars, as illustrated in the figure below.

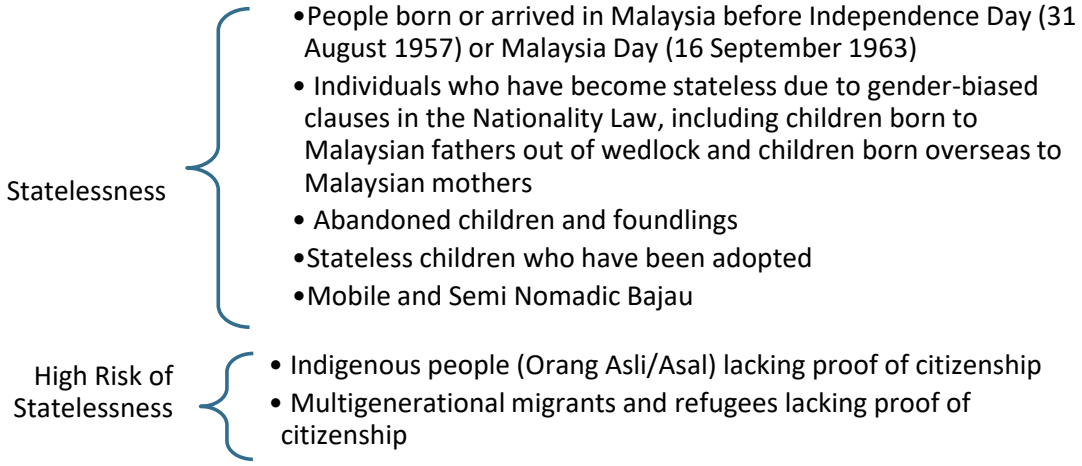
Figure 2: Four-Pillar Approach

| Four-Pillars to an Effective Response to Statelessness | | | |
|---|---|---|---|
| Identification:<br><br>Mapping exercise carried out through engagement of Community-Based Paralegals | Protection<br><br>Raising awareness to prevent situation that may lead to statelessnes and advocate for policy reform to prevent new cases of statelessness. | Prevention<br><br>Legal representation, policy advocacy for changes in nationality law and administrtative process and procedures to acquire citizenship. | Reduction<br><br>Assist stateless individuals to obtain legal documents, and create access to education for stateless chilren by helping them to enrol in schools. |

### 2.2.1 Categorizing Statelessness

There is no single, definite root cause for statelessness in Malaysia. Through the observations and findings of the mapping and registration exercise, DHRRA identified distinct patterns of statelessness, each linked to a unique underlying cause. Consequently, DHRRA classified stateless individuals in Malaysia into seven main categories based on specific factors contributing to their statelessness (DHRRA, 2019).

Figure 3: Categories of Statelessness




*Source: Understanding Statelessness in Malaysia, DHRRA Malaysia, 2019*

Similar categorizations were also done by the Human Rights Commission of Malaysia (SUHAKAM) through a study conducted on "Human Rights and Statelessness in Peninsular Malaysia" whereby 8 categories of stateless populations were identified as target populations of the study (Nungsari, 2023). This includes persons with long-standing residence since pre-independence and their descendants, abandoned children born in Malaysia, adopted children in Malaysia, children born out of wedlock or before a marriage was registered, children born

outside of Malaysia to a Malaysian mother and a non-Malaysian father, indigenous persons, stateless refugees, and undocumented persons who do not fit any of the other categories.

These categorizations underscore the multifaceted nature of statelessness in Malaysia and the various elements contributing to this intricate issue.

## 2.3 DHRRA's Legal Empowerment Approaches

Legal empowerment gained recognition as a strategic approach to empower marginalized communities with the publication of a study by the Asia Foundation commissioned by the Asian Development Bank in 2001, and subsequent adoption of the concept by the Commission on Legal Empowerment of the Poor (CLEP). The Asia Foundation report defines legal empowerment as "the use of law to increase the control that disadvantaged populations exercise over their lives" (Golub S, 2010). While there are many other definitions, they all share a prevailing emphasis on empowering the poor to use the law to control decisions and processes that affect their lives. The 'use of law' encompassed in legal empowerment extends beyond legislation and court rulings, to include the myriad of regulations, ordinances, processes, agreements and traditional justice systems that form the law for disadvantaged individuals (Golub, 2010).

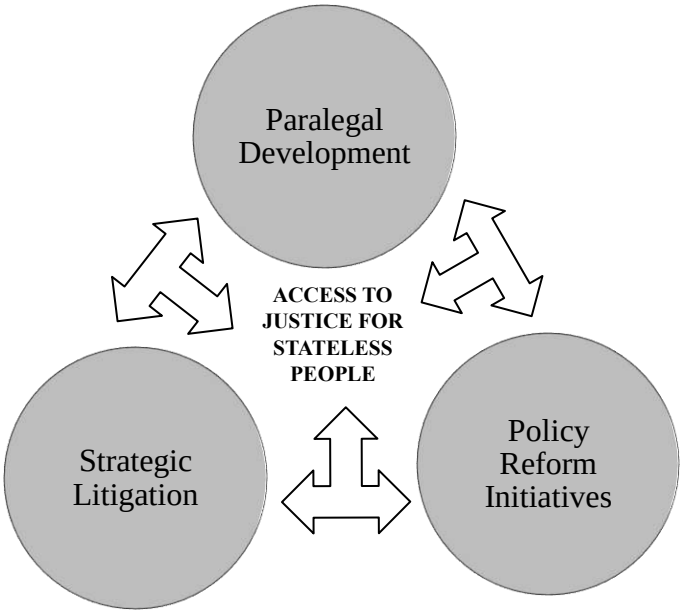
While the profile of legal empowerment was elevated in the early 21st century, NGOs and community organizations worldwide have been undertaking legal empowerment initiatives for decades under various labels such as legal services for the disadvantaged, social justice, social accountability and women's empowerment, among others. This is true in the case of DHRRA, whose involvement in legal empowerment can be traced back to its early years of formation, beginning with socio-economic empowerment of women and youth with the aim of building their resiliency in taking charge of their lives.

The mapping exercise undertaken by DHHRA in 2014 marked the organization's initial embrace of the term 'legal empowerment' and its significances. This shift occurred after witnessing the effectiveness of the community-based paralegal approach in breaking down barriers to access to justice for stateless people. In addition to assisting the communities to acquire nationality, this effort also established an evidence base for the organization to work towards a sustainable solution in enhancing access to justice for stateless people in Malaysia through policy reform initiatives and strategic litigation.

### 2.3.1 Intersection of Key Legal Empowerment Approaches

The interrelation among the three key legal empowerment approaches employed by DHRRA in achieving the shared goal of promoting access to justice for stateless people in Malaysia, is depicted in Figure. 3.

Figure 4: DHRRA's Key Legal Empowerment Approaches




**Intersection of paralegal services and policy reform**: DHRRA's paralegals are selected from individuals within the stateless community, who serve as the primary point of contact for their communities. Working at the grassroots level, these paralegals identify legal problems and issues affecting the community. The information and insights gathered by these paralegals form the evidence base for DHRRA's policy reform initiatives. The paralegals are also actively involved in advocating for changes in laws, regulations, and policies at national, state and local levels by sharing the experiences and needs of the communities they serve.

**Intersection of paralegal services and strategic litigation**: When attempts to obtain citizenship through the submission of applications fail, DHRRA turns to strategic litigation as a final recourse. Paralegals play a multifaceted role in this approach, identifying cases with the potential to set legal precedents and guiding the community through the litigation process. They work in collaboration with pro-bono lawyers, particularly in cases that cannot be resolved at the NRD level and cases involving the legal adoption of stateless children.

**Intersection of strategic litigation and policy reform:** Through its policy reform initiatives, such as raising public awareness on legal issues that have been brought to court, DHRRA establishes a stronger legal foundation for addressing citizenship issues through litigation.

DHRRA's key empowerment approaches are further elaborated in Section 4, 5 and 6 of this report. These sections provide more detailed information on these approaches.

## 2.4 Women and Legal Empowerment in Malaysia

Statelessness does not discriminate. Men and women are both affected by the issue, but greater challenges and inequality are faced by stateless women. In the Malaysian context, gender discriminatory clauses in the national law remain a key contributing factor to statelessness in the country. A child born to a stateless father will still be able to acquire the mother's citizenship, even if the child is born out of wedlock, unless the mother herself is stateless. This is because the nationality of a child born out of wedlock in Malaysia depends on the nationality status of the mother. Therefore, stateless women perpetuate the cycle of statelessness by passing on their stateless or undetermined citizenship status to their children. A female child born to a stateless mother in Malaysia becomes trapped in the vicious cycle of statelessness. The challenges in accessing healthcare without a legal identity document put stateless women and girls at a higher risk of reproductive health problems as well as life-threatening risks arising from child birth complications. Without access to education, stateless women and girls would be further left behind in Malaysia's male dominated society (International IDEA,2002).

A review of DHRRA's legal empowerment efforts reveals that the organization recognizes the importance of legal empowerment of women and girls in Malaysia. This empowerment enables them to make independent decisions in various aspects of their lives and reduces their vulnerability to violence, exploitation and poverty. DHRRA's legal empowerment emphasizes on women-targeted activities such as legal literacy training programs organized with women grassroots CSOs and women political leaders, aimed at enhancing political participation of women.

The significance of empowering women to empower other women is also evident in DHRRA's paralegal initiatives. According to DHRRA's Paralegal Project Coordinator, the majority of the DHRRA's paralegals are women. Whilst the discussions with the community reveal that gender does not influence their preference of paralegals to assist with their documentation and stateless issues, the engagement of female paralegals is still crucial in serving female community members, some of whom may feel more comfortable speaking to the women (OSF,2018).

Women also constitute the majority of community leaders engaged as paralegals by DHRRA through the project "Empowering Community Paralegals in Engaging Government Agencies to Address Statelessness caused by Gender Inequality Practices", initiated with the support of the Commonwealth Foundation. This initiative provides a safe platform for stateless women and girls to voice their concern and needs to the policy makers and other stakeholders. The focus group discussion with grassroots women leaders additionally reveals that most of them are actively engage with relevant policymakers and government agencies in advocating for the rights of stateless individuals in Malaysia.

# SECTION 3: ACCESS TO JUSTICE FOR STATELESS PEOPLE IN MALAYSIA

## 3.1 Notion of Justice

The discussion on access to justice for stateless people in Malaysia, necessitates conceptualization of justice itself. Since ancient times, various philosophers have attributed different interpretations and meanings to justice, which originates from the Latin word 'jus', connotating right or law. However, interpreting justice remains a daunting task due to its subjective nature, where what one person perceives as justice maybe not be justice for others.

In this study, we explored how different groups of people perceive the notion of justice. While some participants reiterated the subjective nature of justice, and the fact that some people may not even know what justice means, others shared their own interpretations of the term. One participation from the Focus Group Discussion with grassroots women leaders, stated, *"For me 'justice' is everything available to everybody who is residing in a country"*[2].

Another participant from a Focus Group Discussion with the community also emphasized on the availability of justice to all the people in Malaysia, saying*, 'Justice means, for me, equal rights for every people in Malaysia, doesn't matter the background, skin color or whatever for example like education'*[3].

It is evident that the participants attribute the concept of justice to their own experiences, implying that justice comprises rights that should be extended to stateless communities as members of the Malaysian society."

While there were diverse views on what constitutes justice, some common themes emerged across the study participants. These themes included access to basic rights right for all, fairness and equality, which align with existing literature on justice such as John Rawl's Theory of Justice. John Rawls propagates the notion of 'justice as fairness'(Parnami, 2019), asserting that in a just society, every member is ensured equal fundamental rights and opportunities, with efforts made to reduce socioeconomic inequalities in favor of the most marginalized individuals.

## 3.2 Access to Justice

In the absence of a commonly accepted definition, the Organisation for Economic Co-operation and Development (OECD) broadly defines access to justice as "the ability of people to obtain just resolution of justiciable problems and enforce their rights, in compliance with human rights standards, if necessary, through impartial formal or informal institutions of justice and with appropriate legal support" (OECD, 2019).

The UN Commission on the Legal Empowerment of the Poor (CLEP) underscores the significance of access to justice by emphasizing that legal empowerment of the poor will not be possible if they are denied access to well-functioning legal system (CLEP,2008). According to the Commission, legal empowerment framework comprises four pillars: access to justice and

[2] Participant of FGD with Grassroots Women Leaders (ID: FGD.WomenLeaders.11082023.PR)
[3] Participant of FGD with Community (ID.FGD.Community.01092023.PR)

the rule of law, property rights, labour rights and business rights (CLEP, 2008). Among these pillars, access to justice holds central importance as it guarantees all the other rights. Access to justice is also recognized as an integral component of the SDGs, with a specific target i.e., Target 16.3 dedicated to promoting the rule of law at the national and international levels and ensuring equal access to justice for all.

A review of access to justice in Malaysia shows that legal recognition of the right to access to justice in the country is still not well-defined, though constitutional scholars typically rely on Article 5 and Article 8 of the Federal Constitution to assert this right (Faridah Abdul Jalil, 2015). Article 8(1) stipulates that all individuals are equal before the law and entitled to equal protection, while Article 5(3) ensures that everyone possesses the right to legal representation within the court system. Despite this constitutional framework, access to justice remains uneven in the country.

In the 2022 World Justice Project (WJP) Rule of Law Index[4], Malaysia saw a 1.7 decline in the overall rule of law score, leading to a drop of one position to 55$^{th}$ among 140 countries (Murugiah, 2022). Adherence to the rule of law decreased in 61% countries worldwide, including Malaysia, despite the world's recovery from the COVID-19 pandemic.

From the grassroots' perspective, there is widespread agreement among participants that there is either an absence or a severe lack of access to justice for stateless people in Malaysia. The following are some notable insights from the study participants on the ground reality of access to justice for the Malaysian stateless individuals.

> *Justice means that everyone has the same thing, nothing lacking, there is no advantage or disadvantages. I mean, if they are stateless, if they are human beings living anywhere, justice means they are equal to each other, nothing should be lacking. The stateless lack recognition in terms of citizenship, so here we need to ensure that justice is fair* [5].
>
> *In my opinion about access to justice, number one, they do not have access to further studies. Secondly, they do not have access to work as a citizen, and freedom to be independent and to work, and then to open bank account, and to join Association or socialize, even to get married legally. So, I think that is really really serious and the authorities are depriving them of being a dignified person as a human being*[6].
>
> *My opinion regarding access to justice for stateless people in Malaysia, there is still a lack of equality, and it's very challenging. Justice for stateless people in Malaysia is indeed difficult. Even if they have been residing here for 20 or 15 years, it is still challenging to receive justice and equality like everyone else*[7].

It's worth noting that their definition of access to justice goes beyond mere access to legal services; it encompasses various elements that enable a stateless person to live a dignified life, including access to healthcare, education, employment opportunity, legal marriage registration, citizenship, safety and more. This comprehensive perspective on access to justice diverges from

[4] WJP Rule of Law index provides impartial information on how the rule of law is experienced in everyday life in 140 countries around the world.
[5] Participant of FGD with Community Leaders. (ID: FGD.CBPL.07082023.PL)
[6] Participant of FGD with Grassroots Women Leaders (ID: FGD.WomenLeaders.11082023.PR)
[7] Participant of FGD with Community Leaders. (ID: FGD.CBPL.07082023.PL)

the traditional notion, which equates it solely with access to courts. This holistic view is also shared by many, including OECD which states, 'Access to justice extends beyond formal process to informal dispute resolution and, ultimately, to social justice and the distribution of welfare, resources and opportunity' (OECD, 2019).

Hence, for the purpose of this research, access to justice will be studied at a broader level, looking beyond access to legal services, to include other aspects that enable a stateless person to live a dignified, as perceived by the study participants.

## 3.3 Legal Issues faced by Stateless People in Malaysia

Stateless people in Malaysia encounter various legal issues that impede their access to justice. These legal challenges create barriers to accessing justice by denying stateless people their basic rights, subjecting them to discrimination and abuse, and preventing them from seeking or obtaining legal remedies. This study explores the legal issues faced by stateless people in Malaysia as experienced or witnessed by study participants, substantiated with data from DHRRA's case files.

### 1. Lack of Legal Recognition

Officially, Malaysia does not recognize the existence of stateless people in Malaysia. This can be seen from the absence of official data or statistics available regarding the number or status of stateless people in Malaysia. A study conducted by Kanageswary et al. in 2022, reveals that Malaysian national law has not adopted the internationally accepted definition of statelessness as contained in Article 1of the 1954 Convention Relating to the Status of Stateless Persons, and there is no specific mention of legal definition for stateless individuals or children in any publicly accessible Malaysian laws or policies, (Kanageswary. Tie & Mohd Yusoff, 2022). This absence of a legal definition poses significant challenges in identification process, particularly in addressing statelessness and providing protection for stateless individuals. Often, the stateless individuals are categorized alongside other individuals who do not hold Malaysian identification documents under the broad category of 'non-citizen'.

Stateless people also lack legal recognition and protection from the Malaysian government, primarily because Malaysia has not ratified 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 safeguards vulnerable groups such as the 1951 Convention relating to the Status of Refugees. This sidelines the specific needs of stateless individuals and impedes efforts to develop targeted solutions to address their situation.

### 2. Challenges in Acquiring Citizenship

The current Malaysian nationality law, embedded in the Federal Constitution, is founded on a combination of jus soli and jus sanguinis principles. It offers three pathways through which an individual may acquire Malaysian citizenship: automatic acquisition through operation of law, registration or naturalization. However, these pathways are fraught with obstacles, including gaps in nationality law, strict and unclear administrative procedures, and complex citizenship application processes which not only impede citizenship application of individuals who do not fulfill the requirements and falls in the between the cracks of law but also often render them

stateless. The detailed findings in this area are discussed in Section 5: Policy Reform Initiatives of this report.

3. Lack of access to marriage registration

Access to marriage registration and statelessness in Malaysia have a reciprocal cause-and-effect relationship. On one hand, children born out of legal marriages cannot acquire Malaysian nationality despite being born in Malaysia to a Malaysian father. On the other hand, individuals without valid identity documents face challenges registering their marriages. The prevalence of children becoming stateless due to these circumstances increased notably when the Law Reform (Marriage & Divorce) Act 1976 took effect on March 1, 1982. This law, applicable only to non-Muslims, rendered unregistered customary or cultural marriages, as well as those conducted according to Chinese or Hindu rites after March 1, 1982, invalid.

Until 2021, the National Registration Department (NRD) required couples to provide identification documents such as MyKad, MyPR, MyKAS, or passports to register their marriages. In 2021, NRD Director General Ruslin Jusoh rectified this flawed procedural requirement by issuing a circular allowing couples to use their birth certificates or adoption certificates for marriage registration. However, as Deputy Entrepreneur Development and Cooperatives Minister Saraswathy Kandasami noted during a public forum titled 'Malaysians without ICs and Statelessness' in September 2023, this long-standing flawed procedure had rendered more than 10,000 babies stateless and contributed to generational statelessness (Vinothaa, 2023). While the Deputy Minister emphasized the present administration's political will to address the issue, there remains a question of how many grassroots individuals are aware that MyKad is no longer a mandatory requirement for marriage registration.

4. Lack of access to health care

Stateless people do not have access to subsidized health care or social security schemes in Malaysia, as they do not have valid documents to prove their eligibility. Presently, stateless individuals are required to pay the Foreigners' Rate for public healthcare services in Malaysia. Although UNHCR cardholders are eligible for a 50% discount on the foreigners' rate, this benefit does not extend to the stateless community, including stateless children. They also face challenges in accessing private health care, such as high costs, lack of transportation, or fear of arrest. Consequently, seeking medical treatment becomes an additional financial burden for stateless individuals and their families. The prohibitively high treatment costs have the potential to deter stateless individuals from seeking healthcare for their medical needs. The ordeal of seeking treatment without an identity document was shared by a mother of a stateless child during a focus group discussion.

> *Actually, we have submitted all documents for my son. But until now they are saying his citizenship is in process. Recently something happened. My son and I was riding on a motorbike, a car driver caused accident. When they hit, my son's face was badly injured. And knee was swollen. What we did is, we took him to Clinic. Mostly, they won't treat children in Clinics, they said 'we won't take x-ray for under 5 years old; you go directly to KKM at Batu 14. When they said that, at that time my son was bukan warganegara (non-citizen) because his IC was still under process, because we got him through adoption. After adoption, they changed our names in the Birth Certificate but they have not changed the citizenship until now. Because of that, they kept x-ray in pending and he started to cry a lot. They didn't do dressing or anything. They just kept him in waiting*

> *because he is not a citizen, he is a foreigner. I said, even if he is a foreigner, we are willing to pay, start the treatment first, take the x-ray. They said 'no, go and register first'. After running around here and there which took about 30 minutes. Because he does not a citizenship and saying that he is a foreigner, they made us run around here and there*[8].

At the height of the COVID-19 pandemic, a circular released by the Ministry of Health on January 29, 2020, outlined that foreign nationals (including stateless individuals) who contract Covid-19 or have close contact with coronavirus patients are exempt from outpatient fees, as well as fees related to registration, examination, treatment, and hospitalization at government healthcare facilities (CodeBlue,2020). However, DHRRA's on-the-ground observations indicated that stateless individuals were still hesitant to undergo COVID-19 testing or seek treatment at government facilities (DHRRA,2020). This hesitancy stems from their fear of potential arrest due to lacking legal identity documents, despite government assurances that no arrests will occur. This situation presents challenges in accurately assessing the extent of COVID-19 spread within the stateless community in the country.

5. Lack of access to education

Access to education remain a challenge for stateless children in Malaysia. Layers of hurdles lay in stateless children's path to pursue education. A levy fee of RM120 for primary school and RM240 for secondary school, respectively continue to be imposed on stateless children born to Malaysian parents to enrol in government school. They are also forced to shoulder all other school expenses including purchase of text books. Proof of pending citizenship application at the National Registration Department is required for such enrolments. Even after overcoming the initial hurdles, sitting for public examination becomes impossible for children without valid identity documents. Most higher education institutions in Malaysia do not accept stateless and undocumented student, which puts an abrupt end to the affected children's pursuit of tertiary education and a secure future. Stateless children are also not entitled to government loan including from the Perbadanan Tabung Pendidikan Tinggi Nasional (National Higher Education Fund Corporation). Apart from that, stateless children enrolled in education institutions also often become victims of discrimination and stigmatization due to their stateless status. This becomes an added burden for stateless children who are already facing various psychosocial challenges in their lives due to their stateless status.

6. Lack of Access to Employment Opportunities

Stateless individuals in Malaysia do not have the right to legal employment. The absence of proper documentation and legal status prevents them from fulfilling essential employment requirements, such as opening a bank account for salary deposits and registering with entities like the Employee Provident Fund and the Social Security Organization (SOCSO). Consequently, they face a disadvantage when competing for job opportunities. Additionally, their limited access to formal education restricts their career prospects. Due to the lack of job opportunities, a significant number of stateless persons rely on daily wage odd jobs given their stateless status. These individuals bear the greatest brunt of the COVID-19 pandemic which obstruct them from carrying out their jobs or income generating activities. The following sharing of a community-based paralegal shed lights on adversity faced by employers in recruiting stateless people:

[8] Participant of FGD with Community (ID: FGD.Community.26082023.PL)

> *"If they (the stateless individuals) are above 21 years old, they must search for jobs. Because of financial constraints, only one in fifty parents will send them to further their studies, by working hard. Others have to look for job opportunities. Before pandemic, they (stateless individuals) were working at least in the stalls or as cashiers in shops. After pandemic, JPN as well as Immigration have tightened the rules. None of them has job opportunities. The laws were against them. Like now they are saying the minimum wages should be RM1500, there should be SOCSO deduction, EPF deduction, if you do not do all these we will sue you. When they threaten the employers, there are two scenarios, there are also foreigners who are overstaying and working but because the issues are there, the stateless people are bearing the brunt.[9]"*

In addition, stateless people in Malaysia also lack legal protection and are vulnerable to exploitation: Stateless people are often subject to various forms of exploitation, including human trafficking, forced labor, and sexual exploitation. Their lack of legal status and protection leaves them vulnerable to abuse and exploitation by employers, traffickers, and other criminal elements

7. Risk of arrest, deportation or detention

The Malaysian Immigration Act 1959/63 does not make a distinction between the varied groups of people who are present without valid documentation in the country. This puts stateless people at the same risk of arrest, detention and deportation as undocumented migrants. The key differences is that stateless individuals lack a country of origin to be deported, potentially leading to indefinite detention. An example of this was the mass operations carried out by the Malaysian authorities to detain illegal immigrants during the Movement Control Order in July 2020, in what the Malaysian government claimed was a part of efforts to contain the spread of Covid-19 by weeding out undocumented foreigners, without clear criteria for distinguishing them from stateless individuals.

[9] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)

# SECTION 4: PARALEGAL DEVELOPMENT

## 4.1 Introduction

When DHRRA initially encountered documentation and stateless problems within the community it serves, the organization was unprepared for the scale of the issue. As the pioneer organization working with in-situ stateless communities, DHRRA encountered several limitations in addressing the legal issues and meeting the legal needs of these communities. The introduction of community-based paralegals into its existing efforts has proven to be a practical and successful solution in overcoming barriers to access to justice for stateless individuals in Malaysia. This section explores DHRRA's experience in embracing paralegal development as a primary aspect its legal empowerment approach in overcoming access to justice barriers for and through the involvement of stateless communities.

## 4.2 Conceptualization of Community-Based Paralegals

At present there is no universally accepted definition for paralegals. The most widely recognized definition corresponds with Namati's description of paralegals: 'Paralegals (also known as "barefoot lawyers") are individuals trained in basic law and in skills such as mediation, organizing, education, and advocacy and dedicated to legal empowerment by helping people to know, use, and shape the law'(Namati). This definition encapsulates the essence or legal empowerment, which involves empowering disadvantaged members of society to understand, utilize and influence the law to control decisions and processes that affect their lives. The term 'community-based' distinguishes them from the traditional notion of paralegals who primarily serve supportive functions to advocates, simultaneously emphasizing that the paralegals are members of the communities they serve, rather than separate from them.

Whilst the concept of paralegals is not unfamiliar in the Malaysian legal landscape, community-based paralegals remain a relatively unexplored and little-known domain, especially in the context of statelessness. The study reveals that the participating community-based paralegals themselves do not typically refer to themselves as 'paralegals'. This term is also not familiar to the community, and they prefer to use other names to refer to the community-based paralegals. For example, they may refer to them as DHHRA's officers or staff, as shared by one of DHRRA's paralegals. This difference in terminology understanding is also observed between educated community members and those residing in rural areas.

> *Because we help them, they are calling us 'sir'. Sometimes they call my name. In my name card, my name is stated, so they will use my name. They do not understand the term 'paralegal', they only know that we are helping them in terms of documentation. But those who are a bit educated who are facing citizenship issue, they understand what paralegals are. But the ones in the village, they would not understand what is paralegal.*[10]

The study also reveals that despite the lack of familiarity with the terminology, the participating paralegals demonstrate comprehensive understanding of their role in legal empowerment within the community they serve. Similarly, the communities are aware of the role of paralegals in addressing their legal issues. This will be further explored in subsequent sections.

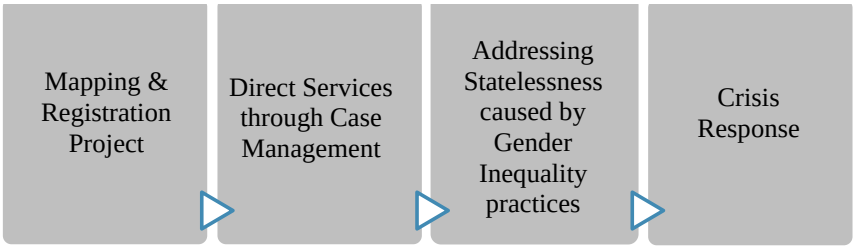
[10] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)

## 4.3 DHRRA's Community-Based Paralegal Approach

### 4.3.1 Categorization of Community-Based Paralegals

A review of DHRRA's legal empowerment work shows that the community-based paralegal engagement by the organization can be categorized into 4 major clusters of activities based on defined objectives, as depicted in Figure 5.

Figure 5: Categorization of DHRRA's Community Based Paralegals




**Mapping and Registration Project:** Prior to being officially registered as a non-profit in 2006, DHRRA was actively engaged in empowerment of women with a specific focus on Tamil women in rural areas, particularly through the establishment of 10 Community Centres[11] in the states of Perak, Selangor and Johor in West Malaysia (DHRRA,2013). A direct service approach involving a three-prong strategy: problem solving, raising awareness and capacity building was adopted to empower the community and promote effective community development. During this period, DHRRA recognized the effectiveness of training local community leaders as paralegals who could act as a valuable resources and support for their communities in addressing various issues they face.

Building on this experience, DHRRA initiated a large-scale mapping, registration and paralegal aid project in West Malaysia, spanning from June 2014 to end of 2015, with technical support of UNHCR. The primary goal was to gain a comprehensive understanding of the extent of statelessness, its underlying causes and its consequences, marking a crucial step toward addressing this issue. Approximately 64 volunteers from local communities were selected and equipped with paralegal knowledge and skills to carry out registration activities. Mobile teams, each consisting of 11 volunteers, were established in various districts to map the settlements scattered across vast palm oil plantations in four 4 states in West Malaysia and to register stateless individuals.

Through these dedicated efforts, a total of 12,350 stateless people successfully registered with the paralegals. In addition to assisting individual applicants, the community-based paralegals played a vital role in the project by conducting door-to-door community outreach, organizing community meetings, and educating their community members on nationality law and application procedures. The paralegals also guide the children through the enrolment procedures in government schools and help them to catch up with their peers. By the end of

[11] The Community Centre for Empowerment of Women initiative spanned from 2003 until April 2006, during which period 14950 individuals were successfully reached out.

2016, DHRRA paralegals assisted 264 stateless children in enrolling in primary and secondary school. More importantly, the paralegal identified the administrative or legal measures needed to find a solution for the stateless individuals. The mapping project proved that legal empowerment through community-based paralegals is an immediate way for communities to acquire or confirm their nationality.

**Direct Service through Case Management:** DHRRA's initial legal empowerment work was primarily focused on providing direct services and addressing the specific needs of community members on a case-by-case basis. While, achieving a holistic solution through individual case management may not always be possible, DHRRA recognized the importance of such efforts in building the trust and ensuring sustainable engagement with the community. Therefore, following the completion of the mapping project at the end of 2015, DHHRA continued to engage paralegals on permanent and voluntary basis to support the stateless communities. Cases of a more complex cases, particularly those necessitating legal resolution in court, are referred to DHRRA's team of pro bono lawyers. A call centre, which remains functional to date, was also established to provide free legal advice to these communities.

**Addressing statelessness caused by gender inequality:** In 2020, DHRRA initiated a project entitled "Empowering Community Paralegals in Engaging Government Agencies to Address Statelessness caused by Gender Inequality Practices", supported by the Commonwealth Foundation. The project's primary objectives include empowering community paralegals to participate in state-wise Monitoring Committees. These committees identify and examine the impact of gender-inequality in nationality policies, monitor the government's implementation of these policies, and provide evidence-based recommendations to address gender inequality in access to nationality.

This initiative builds upon the success of the mapping project and extends its reach to include all ethnic groups in Malaysia. The project expands the role envisioned for community paralegals in Malaysia, incorporating policy engagement to enhance civic engagement in policymaking and government accountability. Through the project, 120 community members were identified and trained as paralegals. Their roles encompass gathering ground-level data, monitoring administrative policies and engaging with government agencies. Community-based paralegals also play a critical role in supporting individuals facing challenges to due gender inequality in nationality law and practices, and assisting to monitor the process and progress of their applications.

**Crisis Response**: This is a crucial area where DHRRA involves paralegals to support stateless communities. Examples of such crises include the COVID-19 pandemic and the flash flood that struck the country in December 2021. Paralegals played an integral role in assisting communities in navigating through these challenging situations. Owing to the trust they have built within the community; paralegals are the community's initial point of contact during crises. They also serve as a vital link between DHRRA and the affected communities, ensuring that support and aid reach those in need in a timely and efficient manner. Paralegals also form the back bone of COVIDCAREMY, a crisis response initiative launched by DHRRA in March 2020. Their role is particularly significant in reaching communities in hard-to-reach areas.

### 4.3.2 Community-Based Paralegal Model

DHRRA's community based paralegal model is driven by the specific needs of the communities it serves. The initiative originated from the recognition of a service gap in providing legal support to marginalized communities facing citizenship and documentation challenges, particularly the Indian-Tamil communities in rural areas. As stated early, while initially the paralegals were engaged to provide direct services, the gravity of communities affected by statelessness issues necessitated the development and implementation of a structured paralegal program. The structured program includes key components such as identification and selection of paralegals, training of paralegals based on pre-tested modules, planning and execution of outreach interventions in collaboration with the paralegals, monitoring of paralegals activities at the community level, following up on cases referred by paralegals, and ensuring continuous support is available for paralegals to carry out their work effectively.

#### 4.3.2.1 Identification of Paralegals

In the context of community-based paralegals, DHRRA defines 'community' as the broader social group within which the stateless individuals exist and function as a society. Over the years, DHRRA has forged strong connections with grassroots CSOs and community leaders through various community development initiatives. These individuals often are the first point of contact for stateless individuals. DHRRA's community paralegals are chosen from this established network of people who have close ties to the stateless community. This approach enables the paralegals to provide the required assistance, overcome the language and cultural barriers, address literacy issues and enhance the acceptance of legal support by beneficiaries. The number of paralegals assigned to specific areas varies based on the prevalence of statelessness within those communities. Priority is given to individuals with prior social work experience and at least high school education qualification in recruitment of paralegals, as highlighted by DHRRA Paralegal Project Coordinator:

> *Our paralegal program is based on cases. In which area there are more cases, sometimes we find more cases in the same district, then we put 3 to 4 paralegals there. Some districts the cases are very low then we find one or two people will be enough for there. After that, how we plan paralegal program is basic they should have minimum 'SPM' qualifications because they are related to government department and all that. Another thing is, they should have existing experience in social work, we will look at if they have knowledge about the issues. From there we will identify them*[12].

#### 4.3.2.2 Paralegal Training

DHRRA has structured training programs to equip paralegals with the knowledge and skills to effectively carry their roles. Typically, paralegals undergo a comprehensive and interactive training session spanning three days. The foundational module used in the paralegal training for community leaders, women and youth through DHRRA's community centres provides the basis for the development of a specialized paralegal module focusing on statelessness. The foundational module covers a wide range of topics relating to the Federal Constitution and Malaysian legal system. It includes insights into the Malaysian court system, Criminal Law, Juvenile Law, Employment Law, Consumer Law and Protection, and Family law, and more.

[12] KII with DHRRA's Paralegal Project Coordinator (KII.DHRRA.17072023.PL)

The current module used by DHRRA is designed to equip the paralegals with the knowledge and skills required to support stateless and undocumented individuals within their community. It comprehensively addresses laws and procedures related to acquisition of Malaysian citizenship, including:

- Citizenship Law and Policies
- Categories of Statelessness
- JPN Process and Procedures
- Family Law (Domestic Violence, Divorce, Marriage Registration, Birth Registration)
- Syariah Law (Domestic Violence, Custodial Rights, Adoption, Maintenance of Illegitimate child)

The modules are developed through a sequence of consultations with experts in the areas covered by each module. They are further refined and reviewed, incorporating the feedback received from the participants, as well as addressing the problems and issues identified during the training process. Additionally, resource persons, including representative of government agencies such as the National Registration Department, are engaged to provide the paralegals with an enhanced understanding of the procedures, policies and laws pertaining to statelessness.

In addition, paralegals receive training in basic counselling techniques, including active listening, empathy and trust building. They also acquire skills for effective engagement with the community and with the authorities. Aside from the initial 3-day training, refresher training and monitoring sessions are organized with the paralegals, as shared by DHRRA Paralegal Project Coordinator:

> *During the 3 days training we will explain about the issue, about the laws of our country, then about JPN law, JPN procedures and JPN forms. JPN is under KDN. How citizenship is related to KDN, even though we submit application in JPN but the decision maker is KDN. These are the procedures we will explain. Then in terms of application forms, there are many types of application. There is IC, BC, citizenship, so what we will do is we will explain how to handle each form. Because if they have all the documents, the people can go to JPN directly without anybody's help. It is because they did not complete the checklist, they cannot submit any application. Then, we will explain to the paralegals that if we do not have this evidence, we have to find other evidence, and will teach what replacement can be made. After they completed that, we will introduce them to all the districts, how the paralegals can communicate with the JPN officers in their own districts. Then after 2 to 3 months, we will have another training to see what outcome has been produced by the paralegals, are they submitting the cases or not, do they have the correct documents, from there we will start the monitoring session*[13].

4.3.2.3 Impact of Paralegal Training

The study reveals various ways in which paralegals have benefitted from the paralegal trainings organized by DHRRA. One paralegal, who currently heads an NGO dealing with stateless issues in the state of Kedah, credits his success in starting the NGO to the training and advice imparted by DHRRA. In particular, he shared how DHRRA encourages paralegals and builds their confidence to take on more independent roles in dealing with cases on their own.

[13] KII with DHRRA's Paralegal Project Coordinator (KII.DHRRA.17072023.PL)

> *I have learnt a lot. From the beginning, DHRRA Malaysia team has been giving basic updates. Later they organized trainings, from there only we came to know the amount of problems the community is facing. We have learnt a lot from the training. Solo performance, which means that not only through DHRRA Malaysia, DHRRA Malaysia also encourages and build our self confidence that individuals can deal with a case and answers all questions all by themselves through the trainings. When Mr. S speaks, he will share a lot of examples. Until now those are useful for me in certain areas. Because, I am running a private NGO now, through it we handle cases like red IC, welfare, but red ICs are very rare now…I am the leader for that NGO too, so if we can run it, it is because of these trainings. DHRRA Malaysia is the one who thought us how to deal with government agencies, how to talk, how to go and what kind of assistances can be obtained from there, how to create rapport with government officers, for that I would be grateful forever*[14].

Another participant's sharing reveals that the training does not only prepare paralegals to deal with the documentation issues. It also equips them with the knowledge and skills to address the various legal issues faced by the community, such as lack of access to education and healthcare. She reiterates the statement of DHRRA's Paralegal Project Coordinator that the paralegals are also trained on the processes and procedures of the various government agencies such as the National Registration Department and the Education Department, and the ways to engage with not only the authorities but also with the community themselves.

> *At beginning, we will attend the training without knowing anything, like how to handle the community. Because each person has their own characteristic. Some may speak harshly because they maybe frustrated, that it has been so many years and I still have not got citizenship, haven't got Birth Certificate, so they will behave a bit harsh with us. So, that will be there, how to handle them, after that like mentioned, DHRRA does not deal with documentation issues only, we will also look at children's education issues, right to education, and then their health. Sometimes they will not be accepted into hospitals because they have no documents at all. We will look at ways to get the children into the hospital, because in critical situation we must admit them. At that time when they have no documents, how to admit, how to guide children to enrol into schools, all these were taught to us in the training. Because, to enrol into school, they will not give the approval immediately after they go there, there are pink form for that, there are procedures to be followed for that, we have to wait for one month, there are procedures like this, so all these are taught to us through the training*[15].

#### 4.3.2.4 Case Management System

In addition to the training, a case management system was devised to ensure the quality of advice and assistance provided by the paralegals. This includes a registration form that enable systematic collection of data necessary to assist in initiating of legal assistance and submitting nationality applications to the authorities. During the extensive mapping project, a central statelessness database was developed. This allowed paralegals to upload details of applicants interviewed during outreach. The database, which is still functional, facilitates the monitoring and follow-up of cases, and allows periodic situation analysis of the initiative. DHRRA also

[14] Participant of FGD with CBPL (ID:FGD.CBPL.14082023.PL)
[15] Participant of FGD with CBPL (ID:FGD.CBPL.14082023.PL)

have a referral system in place, where paralegals can refer individuals in need of counselling to certified in-house counsellors and direct more complex cases to DHRRA's pro-bono legal team.

## 4.3 Impact of Paralegals in Improving Stateless Communities' Access to Justice

Access to justice is about ensuring all individuals, especially the poor and marginalized communities, have the opportunity to seek and obtain a fair and equitable solution for their legal issues. Concurrently, neglecting the needs of the communities would result in injustice and impede the goal of achieving access to justice for all in line with Target 16.3 of the SDGs. Creating a more just society hinges on the efforts taken to address the specific needs and challenges faced by these communities. In the context of statelessness in Malaysia, it is critical to address the legal issues faced by the stateless individuals as discussed in Section 3 of this report. The study found that the research participants have experienced improved access to justice through the paralegal support received in addressing various legal issues faced by them, as detailed below.

### 1. Improved Access to Citizenship

According to DHRRA's Paralegal Project Coordinator, the primary responsibility of paralegals is to facilitate citizenship applications.[16] The study reveals that paralegals consistently support individuals throughout the citizenship application process, even assisting in resubmitting rejected applications. The extent of assistance provided to the community varies depending on individual factors, such as literacy level, language skills and awareness and knowledge of the citizenship application procedures. Typically, the paralegals accompany individuals to the respective National Registration office, help them complete the appropriate form, meet with the designated officer and submit the completed application forms, as explained by a female paralegal leader:

> "To change it (red IC to blue IC) there are procedures, so we will guide them. There cases will be from various sections like 15A, we will take forms for all that, fill up, apply and submit. We will also bring them along. We will bring the relevant person; we will meet the officer and make submission."[17]

These services rendered by DHRRA's paralegals in facilitating citizenship applications align with the definition of 'accompaniment' contained in the Community-based Practitioner's Guide: Documenting Citizenship and Other Forms of Legal Identity (OSF, 2018), which also highlights DHRRA Community-Based Paralegal Model. According to the guide, accompaniment, also known as 'navigating authorities, refers to 'the process of guiding clients step-by-step as they engage with the often-complex web of state bureaucracy that makes up a country's civil documentation and identification systems'(OSF,2018). Through accompaniment, paralegals not only build the confidence of the community to pursue their citizenship application, they are also able to bridge any communication or language barriers faced by the community.

In addition, upon submission, paralegals monitor the progress of the status of the application, either via online or by personally visiting the relevant NRD office. For cases that cannot be

[16] KII with DHRRA's Paralegal Project Coordinator (KII.DHRRA.17072023.PL)
[17] KII with Woman Paralegal Leader (ID: KII.WomanPL.25082023.PL)

resolved at the NRD level, paralegals make referral to DHRRA's probono legal team. While some cases end in rejection, many individuals obtain citizenship through paralegal support, as exemplified by the case of a 23-year-old former stateless participant:

> Actually, I was stateless. I would say I was stateless. I submit my application through DHRRA as well and I just got my citizenship and my IC last month and I'm 23 years old this year. I submitted my application through DHRRA in 2018[18].

## 2. Increased Access to Birth Registration

The Births and Deaths Registration Act 1957 mandates the National Registration Department to register and provide birth certificates to all children born in Malaysia, regardless of their parents' nationality status. (The Star Online, 2014) Birth Certificate is an essential document, serving as a prerequisite for obtaining other forms of identification in Malaysia. The absence of birth registration creates challenges for children in proving their nationality and connection to Malaysia. However, not all parents are aware of the importance of the birth certificate. DHRRA's experience shows that some delay registering their children's birth until they reach school age and need a Birth Certificate for enrolment in government schools. In such cases, the paralegals provide support in applying for late birth registration of the child. Another issue that impedes the registration of birth of a child is the absence of legal marriage registration between the biological parents. This is prevalence among stateless mothers who could not register their marriage, and hence at risk of passing on statelessness to their children. One of the study participants, a stateless mother, escaped similar fate, as she was assisted by the paralegals to register her marriage and subsequently register and obtain Birth Certificate for her child.

> *The problem was, I was not able to register (marriage) legally. So, only through DHRRA Malaysia I was able to register and was able to get Birth Certificate for my baby. Since my husband is a Malaysian, my baby is also a Malaysian now… When I went to register my marriage in JPN, the officers there told me that I could not register using my Birth Cert. After that, I never tried anything else. And later, when I went through DHRRA Malaysia, the brother there helped…Through them, they put application for registration. When the baby was already 8 months only, I was able to register*[19].

## 3. Increased Access to Education

As previously discussed, various factors impede stateless children's access to education. To facilitate this access, paralegals must navigate through a series of challenges which are addressed in stages. This process often include engagement with authorities, including the Education Department and the National Education Department.

A significant milestone was accomplished by the paralegals in creating access to education for stateless children through DHRRA's mapping and registration project. Some positive developments were noted during this period which include the government expediting the issuance of birth registration and nationality documentation for children of schooling age registered with DHRRA.

[18] Participant of FGD with Community (ID: FGD.Community.18082023.PL
[19] Participant of FGD with Community (ID: FGD.Community.26082023.PL)

Among other responsibilities, the paralegals guided these children through the enrolment procedures in Government schools, help them catch up with their peers, assisted them in filling out the required forms at the State Education Department, and obtained verification letters from the village head. Through the initiative, over 4,703 stateless children were registered with DHRRA. By the end of 2016, DHRRA paralegals successful aided 264 stateless children in enrolling in government primary and secondary school.

> *Then from 2015 to 2016 we went from door to door. DHRRA identified paralegals in 4 states and send them from door to door. So, when we were sent from door to door, we saw a lot of issues there. We have seen 3 generations not having Birth Certificate, we have also seen parents who has neglected registering their children's birth, there were many children who did not go to school, at that time because many children did not have identification documents, many children's education life was affected. These are the problems we faced at that time. After that, to the best of our ability, we submitted application for nearly all the children, we sent many children to schools during that time*[20].

The support rendered to stateless student to enrol in public school is also shared by a community leader who undertakes the role of paralegal in her community:

> *While they are in primary school, we work hard to help these stateless children obtain their Birth Certificates. If their mothers are Malaysian, we provide 100% assistance until these children obtain their Birth Certificates. Then, we will proceed to obtain their Identification Cards (IC), and they will be able to continue to secondary school*[21].

*Another participant shared a detailed account of the support provided in enrolling stateless children in government schools:*

> *First, when we ask at the school, they will ask us to go to PPD for children without Birth certificate. So, if the parents are foreigners, we have to bring all their documents, and meet them, and they will give approval, whether can or cannot. If cannot, they must go back to their country, and bring their marriage registration or if the child was born overseas, the child's birth certificate, all that must be brought back. Only if all that are there, they will give letter to enrol in school. After that we have to go and see the headmaster, and through them only we can register the child*[22].

To enhance the parents' and community's understanding on the enrolment procedure and process, DHRRA published a handbook in 2019 outlining the application guidelines and other aspects of access to education for stateless children, entitled 'Buku Panduan:Memartabatkan Kepentingan Pendidikan bagi Kanak-Kanak tanpa Kewarganegaraan', which was shared by the paralegals with the community (DHRRA, 2019).

### 4. Enhanced Legal Knowledge/Awareness

Lack of awareness on the importance of marriage registration for obtaining birth certificate for children, and limited knowledge of citizenship application procedures are some of the barriers

[20] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)
[21] Participant of FGD with Community Leaders (ID: FGD.CL.07082023.PL)
[22] Participant of FGD with Community, sharing during Validation discussion (ID: VD.Community.16092023.PL)

that expose individuals to the risk of statelessness in Malaysia. Furthermore, there are various distinct categories of citizenship applications, each with its own application form and requirements. But, not all community members are aware of the specific requirements, often resulting in the need to resubmit the applications until they meet the criteria set by the National Registration Department. DHRRA's paralegal play an integral in raising awareness and guiding community members through the citizenship application process, as emphasised by a father of three stateless children who is assisted by the paralegals to submit the children's citizenship applications.

> *At present what the paralegals are doing, is really helpful for people who don't know the procedure, what, where to submit, what documents you need and with the help of DHRRA, I managed to get all these documents done.*[23]

Similar observation is also made by a female paralegal leader:

> *They will tell my father has red IC, my grandmother has red IC. Some people will think it's enough that we have IC. That's the only way they think. But, some do not even know what's the red IC for and what's the blue IC for. Only when we inform them, they came to know that it needs to be changed.*[24]

She further shared her observation that community members often hesitate to attend awareness sessions, but readily participate in skills development sessions such as cooking and baking classes. Consequently, DHRRA integrates awareness sessions into the skill building sessions organized with the community, which enabled the paralegals to reach out to the community.

> *We will share about what will happen if the child is born out of wedlock. We will tell them to go home and check. We will teach them all that. And they will understand that. Because, sometimes when we say this is what we want to teach, many people will not come. As community leaders, we will accept is as paralegal trainings and will come because we want the training. But grassroots people they won't come if we call them like that. They will come only when we say we are organizing some program, when we share this kind of things when they come, they will be shocked, 'does the law contain all these,' they will ask. So many people are like that. Now, they have registered marriage legally, they have written will, they would have made KWSP (Employee Provident Fund) nomination. Because, at that time they do not nominate, many people will not make KWSP nomination. Many people had gone and made nomination after we told them."*[25]

## 5. Increased Access to Health

Access to healthcare is one of the critical issues faced by stateless communities in Malaysia. While the cost of treatment of private health care is too high and not affordable for them, to seek treatment at government health facilities, stateless individuals had to navigate through bureaucratic procedures, starting with registration process which requires a valid identity document. Even if they manage to overcome this initial hurdle, settling their medical bill, which are charged at foreigner rates, pose a significant challenge. In such situations, DHRRA's paralegal steps in acquiring the necessary supporting documents to facilitate registration and

[23] Participant of FGD with Community (ID: FGD.Community.26082023.PL)
[24] KII with Woman Paralegal Leader (ID: KII.WomanPL.25082023.PL)
[25] KII with Woman Paralegal Leader (ID: KII.WomanPL.25082023.PL)

negotiate with the Social Department at the respective hospital for exemption or fees discount, as explained by DHRRA Paralegal Project Coordinator.

> *In terms of health care, if stateless people met with accident or are sick, if they go private the charges are high. They have to pay high level. That's one. Then, they go to government hospital, at the initial registration, people get fed-up and emotional because of the questions asked to them. "you came from foreign countries'. Because, they are born here, they know their mother and everything. But there is no proof. But the question made them stressed. That's one. Another thing is, even if they managed to get registered, they have to pay even it is government hospital. Everything must pay. That's a difficult thing. In such situations, because if paralegals start to collect some details of biological mothers and family tree. When paralegals have started that, then during the registration time, if they people from the estate and could not understand then the paralegals will talk to the registration department in the hospital. After bill is issued, in the government there is a 'Social Department', it is in every hospital. So, there the paralegals will make appeal for exemption and discounted price.*[26]

## 6. Improved Access to Financial Support

A significant number of stateless people in Malaysia come from the underprivileged segments of the society, making them highly vulnerable to socio-economic challenges including the impact of COVID-19 pandemic as well. At present, stateless community in Malaysia are excluded from various economic and welfare schemes. This exclusion was especially evident during the pandemic, when stateless people were not able to access and benefit from government's support and aid such as the Prihatin Rakyat Economic Stimulus Package. This package included a one-off cash payment for the lower-income B40 and middle-income M40 groups to help Malaysian cope financially during the COVID-19 outbreak. Malaysian identification document is crucial for accessing governmental support and aid.

The study found that at times paralegals continue to extend support to stateless individual even after they have obtained their citizenship. One paralegal shared her experience of accompanying and guiding underprivileged former stateless individuals to access welfare assistance:

> *We have helped to change red IC*[27] *hold by many old grandmothers to blue IC*[28]*. So, when I meet them even nowadays, they will say 'it's because of you, this year I am able to eat after getting my IC.' Many grandmothers never received any help from the government. So, after I got their IC changed, I will take them to get all the help like from the welfare, I will accompany them and help them to apply for aid like BR1M (Bantuan Rakyat 1 Malaysia). So, because of that, even when I meet them now, they will tell me about that*[29].

[26] KII with DHRRA's Paralegal Project Coordinator (KII.DHRRA.17072023.PL)
[27] MyPR (commonly known as Red IC) is an identity card or personal identification document issued to residents of Malaysia with permanent resident status. (DHRRA, 2022)
[28] 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. (DHRRA, 2022)
[29] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)

Financial constraints also prevent stateless individuals from proceeding with their citizenship application, as shared by another community-based paralegal. He further elaborated on his experience of working together with DHRRA to ensure the individuals have the financial means to visit NRD offices to submit their applications.

> *They (men) might have been affected financially, they might not have received their salary, so they can't tell that I will not able to do something or to be something due to their circumstances. On the other hand, women they will directly ask 'I need financial help, can you help me with financial aid." So, accordingly we will provide them financial assistance and bring them to JPN. Whatever we can do, we will do for them through DHRRA Malaysia.*[30]

In addition, recognizing the challenges faced by stateless people in getting employed, paralegals also helped in searching for job opportunities for the stateless individuals as shared by a participant:

> *So, if need job when they are above 18 years old, we will help because for them to get them jobs they need IC, they need bank account. But we will help search for employers who could pay salary in cash for them to sustain their livelihood. That is what we do on the ground.*[31]

## 4.4 Engagement with Authorities

DHRRA has long recognized the importance of collaboration with all key stakeholders, particularly with government authorities at local, state and federal level, in addressing and resolving statelessness in Malaysia. Consequently, as one of the key steps in the induction of new paralegals, DHRRA ensures that the paralegals visit all the NRD offices within their designated districts. This initial step aimed to established connection with the responsible officers and gain insights into their requirements. These engagements proved advantageous in the subsequent interaction when the paralegals followed up on the cases with the officials.

> *After they completed that (paralegal trainings), we will introduce them to all the districts, how the paralegals can communicate with the JPN officers in their own districts.*[32]

The study shows that the community paralegals themselves acknowledge the significance of establishing and maintaining positive relationship with authorities. One community-based paralegal highlighted the various authorities he engaged including NRD officers, MLA, MP and temple president in seeking their support in addressing community issues.

> *We always maintain a good rapport with JPN because some application (form) must be given by JPN. That is usually decided by JPN staff. Sometimes, the JPN staff will help us, they will tell us which documents to be attached, for example for Daftar Lewat (Late registration) to attach school documents. We also have a clear rapport with the ADUN (MLA) and YB (MP) there. When the community require their signature, we can call the YB, ADUN or temple president and explain that they require their signature and*

[30] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)
[31] Participant of FGD with Community Leaders (ID: FGD.CL.07082023.PL)
[32] KII with DHRRA's Paralegal Project Coordinator (KII.DHRRA.17072023.PL)

> *they will sign. We also need to know about the law and documents that are required. If we have good rapport with them, it will be easier to work with them.*[33]

Another participant pointed out that this rapport is particularly crucial when collaborating with government agencies like NRD where close collaboration has enabled paralegals to streamline documentation requirements and improve chances of successful applications.

> *I have direct contact with them and will go see them. I go to JPN, I go to KDN. In Manjung JPN I have a good support. I will first consult with JPN, and will follow up based on what they say. So, many (applications) have become successful in that way.*[34]

### 4.4.1 Engagement Strategy

Paralegals adopt a multifaceted approach to engage with authorities and policy makers, which includes proactive contact initiation, appointment setting, and direct consultation. Similar to community engagement, building trust of the authorities forms a crucial aspect of establishing strong foundation for future collaboration. In this regard, the paralegals introduce themselves and DHRRA during the initial meeting. They inform the authorities about their roles and in addressing statelessness and express their willingness to collaborate and share any pertinent information related to their jurisdiction. This approach has been successfully practiced by a paralegal who has been working with DHRRA for almost a decade.

> *The first time we go there, we introduce ourselves to them, and about the organization we are representing, and that I am working in this category statelessness, if you have any information relating to this if there are any rules, I will inform it to the community. If not, I will introduce directly to the ADUN, YB or temple presidents that I am from this organization, and I need this help from you, because the community are hesitant to ask, can you help me, and they will say ok.*[35]

To establish contact with relevant policy makers or authorities, paralegal often participate in programs that assemble key stakeholders involved in the issue of statelessness. Alternatively, prior appointments are arranged through submission of official letters as detailed by a paralegal:

> *Sometimes, we meet some ADUNs through our program. Some, we meet by sending official letter. Sometimes we will call and seek appointment, and see them on those days.*[36]

The paralegals' engagement strategy extends to direct consultation with government agencies, including the NRD, Education Department, and Welfare Department at district and state levels. They actively seek guidance and support from these agencies in addressing the issues and needs of stateless individuals. In certain instances, direct engagement with community leaders, such as village heads become essential. These individual often possess valuable information regarding stateless cases within their communities. Additionally, paralegals also maintain open channels of communication with school headmasters to identify and assist undocumented children. These ongoing direct engagements continue to yield positive outcomes, asserted a community-based paralegal:

[33] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)
[34] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)
[35] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)
[36] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)

> *When we go certain places, there will be MIC (Malaysian Indian Congress) leaders and ketua kampung (village head), when we want to find out about certain, they are the ones we have to ask whether the cases are there or not. We even have contacts with the ADUNs here. Sometimes we meet headmasters directly to find out if there are undocumented children in the school, we have those engagement until today."*[37]

4.4.2 Challenges in Engaging with Authorities

Whilst engaging with authorities is a vital aspect of addressing the legal challenges faced by stateless individuals, this process is not without its challenges. Some of the key obstacles encountered when paralegals engage with authorities that surfaced during the study include bureaucratic complexities, lack of awareness among officials, no response from authorities, and non-recognition of unestablished or smaller CSOs.

1. Bureaucracy: Engaging with authorities can be a complex endeavour due to bureaucratic processes and red tape. The study participants noted that different officers within the same authority or agency may provide inconsistent information or instructions. This makes navigating and understanding established procedures a challenge. This inconsistency also can complicate matters and create difficulties in communication and cooperation, as shared by a study participant:

> *The third one, is the authority we engage with each day, may be officer A will say like this today, Office B like that tomorrow. But in reality, there is a fixed procedure. So, on our part it is clear, but when we deal with, I mean bureaucracy or red tapes complicates the matter, and makes it difficult.*[38]

2. Lack of Awareness: The study participants observed that some high-ranking leaders may not fully comprehend the distinction between refugees and stateless individuals. They also lack understanding on the current citizenship application procedures and process, leading to misconceptions about document submission and citizenship approval process. Often, unrealistic expectations are placed upon the paralegals by community leaders in solving the citizenship issues within their community. In such situation, awareness building about the relevant rules and regulations becomes essential to clarify misunderstandings, as narrated by a participant:

> *Sometimes, it is their awareness. Like what I said just now, they believe that refugees and stateless are the same. Even some big leaders are not aware about how to submit a document, what's the duration, they do not know anything about all that. Only when we submitted, then only they too wanted the application to be approved. But, that is not what the rules says, right? There are rules that this will take 2 years, this will take 6 months, we have to explain these rules to them first, why it is getting late.*[39]

3. No Action/No Response: Study participants also shared frustration that despite their efforts to assist stateless individuals, there are instances where their actions do not get any response or results in action from the relevant authorities. The lack or responsiveness can leave stateless

[37] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)
[38] Participant of FGD with Community Leader (ID: FGD.CL.07082023.PL)
[39] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)

people in a risky situation, with no resolution in sight. Such is the challenges encountered by a study participant who works with children of Sabah origin:

> *Actually, I met the stateless people and asked for all their documents and then we take statements, and explain to them. And there are those whose children are in school, but all the feedback do not have any action from the government. Because, all at Pasir Gudang are Sabahans. They say Sabahans you have to go back to Sabah and do in Sabah. So, of course, these children will not go back to Sabah by spending a lot of money, they prefer staying here without any documents. Their excuse is, Sabah case is special. All the Sabahans must go back to Sabah and do in Sabah. We can't do anything here, that's what they said* [40].

4. Non-Recognition of CSOs: DHRRA's paralegal team consists of community leaders heading or running their own NGOs, usually smaller and non-registered entities. These paralegals may struggle to garner attention and cooperation from government officials, leading to challenges in extending assistance to stateless individuals. A participant believes larger organizations like DHRRA are better equipped to provide authorized and support letters to smaller organizations, which can facilitate engagement and collaboration with government agencies:

> *Let's say, I am going to help a stateless, I will use my NGO, I do not use DHRRA's NGO. But when we go to government, bringing the stateless, we do not get any response from the government because our NGO is not big, our NGO is just near our community. So, the government will not give as a glance. So, support from DHRRA, for example, DHRRA giving authorized letter, it will be ok.*[41]

4.4.3 Other Challenges faced by DHRRA Paralegals

DHRRA's paralegals also faced additional challenges that prevents them from carrying out their roles effectively. Understanding and overcoming these hurdles are crucial that ensure paralegals are able to effectively provide legal supports to stateless communities.

**1. Providing beyond legal support**

Majority of the community members seek paralegal support to address their citizenship. However, in the course of helping them, the paralegals may encounter a wide range of legal concerns within the community. Paralegals play a crucial role in supporting and assisting the community to address their diverse needs, which may include complex problem such as financial matters. This expanded role places additional responsibility and challenges on their paralegals, as explained by DHRRA's Paralegal Project Coordinator:

> *Paralegal does not take care of the citizenship registration process only. The paralegal is responsible to take care issues such as education, health care, even by police. Whatever things, after the stateless people meet the paralegal, they are the ones who will help them. For stateless people, paralegals is like a "God" for them. Whatever it is, they will communicate with them. So, that will be a big challenge for paralegal because*

[40] Participant of FGD with Community Leaders (ID: FGD.CL.07082023.PL)
[41] Participant of FGD with Community Leaders (ID: FGD.CL.07082023.PL)

*in addition to legal situation, the paralegals have to handle other issues such as financial matters."*[42]

## 2. Client Management

Paralegals have to deal with different types of community members who have different expectations and behaviours. The lack of awareness of the community on the citizenship application process leads to unrealistic expectation such as speedy resolution of cases. The client management that is incorporated in the paralegal training is crucial for paralegals in handling clients effectively as attested by a participant:

> *The people who come to meet us, some of them are very humble, some of them are very rude. Like I share about the Birth Certificate issue, they will kept inquiring, and they will scold. In case they have passed the documents to us, whenever they met a YB or someone they will tell that they have passed it to DHRRA but there is no reply till now. But they do not know that in order to make a proper submission we need to provide all documents like letter from the hospital, surat sumpah, (letter of oath) that need to obtained then only we can print and apply. For us it is stressful. Let say they are giving us a responsibility, if within one week of handing over the responsibility they will go and tell someone else that they have submitted but did not receive yet. That the Birth Certificate has not been issued yet. They are also people who scold. If there is a problem between husband and wife, we will help the wife, husband could not bear that, he will fight with us. Basically, I am a bit courageous, I will ask them to sit and talk to them calmly*[43].

## 3. Dealing with Disputes

Study participants also shared instances where they are caught in existing dispute between applicants and the government officials, especially while accompanying them to the government offices. Navigating the disputes and mediating a solution that benefits both parties without comprising the citizenship application can be challenging for the paralegals as experienced by one of DHRRA's paralegal:

> *Mostly what happens is that sometimes when we go and see they (the applicants) would have already registered. And when we accompany the registered person to the JPN, there might be some existing dispute between them and the officers. Sometimes we get into trouble while trying to settle the dispute, both usually we will be on the part of the officer. But they would not understand that, they would not be aware of some legal issues, they will frankly share their general opinions, for example when the JPN officers inform that the application is at the Minister's office, they will argue with the officers that the minister is not signing. So, we have to properly explain and what are the issues involved, why they are delaying, we have to explain the process and calm them down. At times we might not certain things, the officers will inform us and will ask us to settle the problems for the clients. Those kinds of issues have been challenging. Our people do not understand, that the challenge mostly*[44].

[42] KII with DHRRA's Paralegal Project Coordinator (KII.DHRRA.17072023.PL)
[43] KII with Woman Paralegal Leader (ID: KII.WomanPL.25082023.PL)
[44] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)

### 3. Lack of Knowledge and Awareness

Citizenship application is an evolving process in Malaysia, with frequent changes in policies and administrative processes. The paralegals also have to deal with different categories of citizenship application, not all of which will be familiar to them, particularly new paralegals. Sometimes, despite information being shared during the paralegal training, years or months of exposure is required for a paralegal to truly comprehend the modus operandi of NRD and the citizenship application process. This may prove a challenge for newly recruited paralegals, as reflected through the sharing of a participant, sometimes

> *We ourselves may lack knowledge or are not sure of the procedure, because not all the same cases and problems come all the time. The first case might be like this, the next will be like that. So, the knowledge and awareness of the activists in the field is very important. And that is the challenge, we have to always read and refer the right person, have to go up and down offices to get confirmation. We cannot get the answers immediately when the cases come. Maybe we will ask them to wait for a while until we get confirmation. Because we do not do the same thing repeatedly, that is the first challenge, knowledge and awareness*[45].

### 4. Lack of Uniform Understanding

Inconsistencies in the understanding of procedures and process among the various NRD officers in different districts within a state can create confusion and difficulties for both the paralegals and the community. The absence of uniform understanding results in unnecessary hurdles and uncertainties that impede citizenship applications. This glaring concern which was identified by DHRRA through its mapping project, was re-echoed by a study participant.

> *To me the bigger issue is the lack of a uniform understanding. That means mean a child seeking education uh it's something in Johor, in Johor we have 10 districts, right? So each district will have its own education unit for instance education or say police services or say Hospital Services or say JPN. I notice each district depending on the officers uh they will have a different understanding of it. And therefore, some people are given the run around unnecessarily. Now if you had a uniform understanding, you will be uniformly advised properly me-lah. So the fact that you're this District says this then you go to HQ you say something else and then later you found out actually you could have gotten certain services and all it creates an uncertainty and it creates this... see, NGOs also we want you to be empowered that means we give you the advice then you go there and do the thing yourself. But in such some situations we end up having to accompany the person needing the service to there because communication is a breakdown, understanding of the service is a breakdown sometimes there's a bit of prejudice-lah, sometimes not always so did I answer your question? You say what are the issues right? Prejudice is an issue, a lack of a uniform understanding by all service providers. Service providers I'm talking about government departments is an issue and sometimes even within Johor State and different districts say differently to the person at the counter who comes to the counter"*[46].

[45] Participant of FGD with Community Leaders (ID: FGD.CL.07082023.PL)
[46] KII with Community Leader (ID: KII.CommunityLeader.11082023.PL)

## 4.5 Needs of Stateless Community During Crisis

The study also examined the impact of crisis on access to justice for stateless people by exploring whether there was a shift in the needs and priorities of the stateless community during crisis and the roles played by paralegals in addressing these changes.

The common observation among the participants is that while the fundamental needs of the stateless community remained largely unchanged pre and post pandemic, the COVID-pandemic exacerbated the existing issues and challenges faced by this marginalize group, as succinctly pointed out by a community leader:

> *What I feel is that the situation is the same. Even before the pandemic there are people without jobs, there are people without houses, when during the pandemic the outsiders came and had them, NGOs helped them a lot, the government helped them a lot. But after the pandemic the same situation, still there are jobless, still there are few going and working, there are a lot of people not working, their living situations are the same. So, there's not much change*[47].

Several key factors contributed to the exacerbation of challenges faced by the stateless community during and after the pandemic as discussed below.

**Shift to Online Mode**: The pandemic forced a significant shift toward online processes, including government services and applications. This transition posed substantial difficulties for stateless individuals, largely because they do not possess legal identification information such as MyKad number, which is a prerequisite for accessing online platforms. This created barriers in accessing essential services and submitting necessary applications, which could be further exacerbated by lack of access to digital resources or unfamiliarity with online platforms. The challenges faced by stateless individuals arising from this shift is shared by DHRRA's Paralegal Project Coordinator:

> *Before pandemic, everything was done by manual or physical. After pandemic, for 2 to 3 years it was very tough because even appointment you have to do online. So, application is also done online. This cannot be accessed by all stateless people. Certain people can, put those who are really underprivileged cannot. Another thing is, because all the application has been made compulsory to be done online, some cases cannot fulfil that requirement. No matter what you type, you have to use your name. Even when IC number is asked, have to use name. They do not have anything. All these were very challenging during the pandemic*[48].

**No Access to Government Aid:** Government support and aid during pandemic were often facilitated through online registration using MyKad (national identity card). Stateless individuals lacking these documents faced significant obstacles in accessing crucial assistance as shared by two study participants:

> *Even during pandemic, all the bantuan (aid), government support was done online. How it happened is, they registered using their IC. But for stateless people, nobody*

[47] Participant of FGD with Community Leaders (ID: FGD.CL.07082023.PL)
[48] KII with DHRRA's Paralegal Project Coordinator (KII.DHRRA.17072023.PL)

*provided. No matter whom they seek help from, 'send IC number, send IC number,' This is how they responded*[49].

*They won't layan (attend to) a non-Malaysian, right. For sure right then, number two even a Malaysian, you need to be a blue IC holder to access any basic services including poor poverty allowances, bit of food allocation budget*[50].

**No Job Opportunity:** The pandemic exacerbated the challenges of finding employment, particularly for stateless individuals. According to a community-based paralegal, the stringent regulations and heightened enforcement by government agencies such as NRD and Immigration created significant barriers for stateless individuals, especially among the youth, in securing employment:

*Before pandemic, the stateless individuals were working at least in the stalls or as cashiers in shops. After pandemic, JPN as well as Immigration have tightened the rules, none of them has job opportunities, the laws were against them. Like now they are saying the min wages should be Rm1500, there should be SOCSO deduction, EPF deduction, if you do not do all these, we will sue you. When they threaten the employers, there are two scenarios, there are also foreigners who are overstaying and working but because the issues are there, the stateless people are bearing the brunt*[51].

**No Access to Treatment:** A stateless mother revealed the obstacles she faced in accessing healthcare during the pandemic, primarily due to the requirement for identity card for registration. She recounted instances of being denied treatment even in government hospitals. This denial of access to treatment further compounded the challenges faced by stateless individuals, leaving them with limited options for seeking necessary treatment or medication, which is evident from the experience of a participating stateless individual:

*During pandemic, there were rules, so without IC we cannot make appointment. Even in government hospital, without IC I cannot register, they told me. I mean when I have fever or do not well and I go to hospital or clinic, they told me that verification can only be done with IC, without IC cannot register. "Go and check in normal clinic,' they said. When I do not have money in hand, how can I go and check in normal clinic, sister? So, these all was the problems I faced during the pandemic. Even when I showed my rejection letter, they said they cannot accept that. If not, when I check in government clinic, for one check-up it will be RM40, RM50 at that time. There are separate charges for the medicine. Separate charges for doctor. Even when I tried to find job, they said they can't hire if there is no IC. So, during pandemic it is very difficult, as far as I know*[52].

### 4.5.1 The Role of PL in Crisis Response

The study underscores the vital role played by the paralegals in providing essential legal support and assistance to individuals and communities grappling with the challenges brought about by both the COVID-19 pandemic and the devastating flood crisis that struck the country in 2022.

[49] KII with DHRRA's Paralegal Project Coordinator (KII.DHRRA.17072023.PL)
[50] KII with Community Leader (ID: KII.CommunityLeader.11082023.PL)
[51] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)
[52] Participant of FGD with Community (ID: FGD.Community.26082023.PL)

The paralegal's contribution extended well beyond legal support, as they actively engaged with affected communities to address the various challenges arising from the crisis. Even in the face of movement restriction imposed during the pandemic, the paralegals remain tirelessly committed to DHRRA COVIDCAREMY crisis response initiative.

**Provision of Grocery Aid and Basic Needs:** One crucial aspects of paralegal support during crisis involved ensuring that the most basic needs of the affected communities were met. Paralegals played an important role in facilitating access to essentials such as medicine and groceries. They often acted as intermediaries between DHRRA and the affected communities, making sure that their immediate needs were addressed promptly and effectively, as explained by DHRRA's Paralegal Project Coordinator, "the paralegals will help meet their basic needs like medicine and grocery. Those who are willing to help, or agencies who are providing assistance, paralegals will communicate on behalf of the stateless people".

**Renewal of Missing Documents**: During the flood crisis, many individuals lost their identity documents which prompted DHRRA to engage with relevant government agencies such as the NRD and the Home Ministry to request for renewal of missing documents without imposing any fees or charges on the affected people. The government agreed to this arrangement and subsequently the paralegals assisted individuals in the registration process to obtain their documents. This support was extended to anyone who had lost their documents and not limited to stateless individuals alone, as shared by DHRRA's Paralegal Project Coordinator

> *We did not do this solely for stateless people, anyone who lost their documents in the flood or missing, the paralegal will assist them. But before that, we at the HQ (DHRRA) write a letter to KDN, JPN to request renewal of missing documents to be done without payment for these people. Then, the government agreed as well. For that registration, the paralegal helped them*[53].

**Facilitate Citizenship Application:** With the shift of NRD's application process to online mode, paralegals took on the responsibility of scheduling appointments on behalf of the stateless individuals. They accompanied these individuals to their appointments, providing crucial support throughout the application process, which would have otherwise been challenging for stateless people who do not hold identity document which is a vital to set online appointment.

> *Because JPN's application was shifted online, so the paralegal makes appointments for the stateless people under their account, accompany them to the appointment, they were providing this kind of supports*[54].

**Vaccination Support:** Many stateless people were left in a limbo during the pandemic without access to information on vaccination process and procedures. The paralegals were on hand to provide guidance, information and answer questions posed by the community. While the government's policy stipulated that those with birth certificates could receive vaccinations, this information did not always reach the stateless community. A study participant shared on how the paralegals bridged this gap by informing and educating the community on the vaccination process and requirements as well as about vaccination centres that provides vaccine to stateless people, which they could access.

[53] KII with DHRRA's Paralegal Project Coordinator (KII.DHRRA.17072023.PL)
[54] KII with DHRRA's Paralegal Project Coordinator (KII.DHRRA.17072023.PL)

> *Some stateless people asked about where to get the vaccination and what are the procedures. But at that time, the government said if you have BC as evidence, you can get vaccinated. There was no problem in that. But the community was not aware about it, but when they call us, we will give them the update. Because some vaccination centres give vaccine to people who do not have documents at all, like foreign workers, but the community had documents. The information did not reach the community*[55].

**Outreach:** Paralegals recognized the importance of maintaining contact with stateless community during crisis and address their evolving needs. Various approaches were employed by the paralegals to ensure continuous engagement with the community. These include encouraging the community to follow DHRRA's social media platforms, such as Facebook and Instagram. Private WhatsApp status updates were another avenue used for disseminating information. According to a participating paralegal, these channels enable the community to stay informed about available resources and reach out for assistance.

> *How we keep in touch with the stateless people is we ask them to follow our FB and keep updated with our posting. We will also share our websites with them. We will keep updating our FB, Instagram and all that. We will also put private WhatsApp status. From looking at all these, the community will reach out to us saying that they do not have food*[56].

## 4.6 Conclusion

The study reveals that the adoption of the Legal Empowerment (LE) through Community-Based Paralegal (CBPL) approach by DHRRA has significantly improved access to justice for stateless individuals in Malaysia. Specifically, it has led to increased legal awareness, empowerment, and protection among this population. The evidence base generated through grassroots interventions by paralegals plays a crucial role in strengthening policy advocacy for sustainable solutions to address barriers to access to justice for stateless individuals.

It is also evident from the study that the effectiveness of CBPL to carry out their role is contingent upon the support of all stakeholders, particularly the community themselves. The support of all stakeholders can be enhanced by building trust, fostering collaboration, and facilitating communication among and with them.

As emphasized in the Community-based Practitioner's Guide: Documenting Citizenship and Other Forms of Legal Identity, empowerment should be the guiding principle for actions undertaken by paralegals where paralegals should refrain from performing tasks that community are capable of handling independently. Instead, the community should be legally empowered with extensive information and assistance to enable them to independently address and resolve their own problems or issues, which will contribute to the long-term sustainability of the legal empowerment within the community. This is evident from the study where paralegals trained by DHRRA, are now imparting the knowledge and skills learnt to the community. This enables the community members to help each other in addressing their issues, as shared by the study participants:

[55] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)
[56] Participant of FGD with CBPL (ID: FGD.CBPL.14082023.PL)

> *I create a team, they are from the stateless community that I have helped, so before this many cases they did not know how to register the birth of their children because the child was born at home and so on. So, I will teach them, so after that those who are facing similar problem I will ask them to refer to the people whom I had taught before. So, if they face any problem they will refer directly to me. Because we are short of staff so I will use community as the 'ambassador' to help me indirectly. Because most of the people in Chow Kit are foreigners are from rural areas, and they are not aware of the procedure, they have zero knowledge about this*[57].

The importance of empowering and involving the stateless community in addressing their issues and concerns is also acknowledged by another participant who is currently assisting three stateless children in applying for Malaysian citizenship with the assistance of DHRRA's paralegal:

> *We cannot be just putting everything on DHRRA and we are not doing anything, it's not fair. If we were to leave everything for the NGO to do then we won't know what we are supposed to do. So, I feel that whoever facing this kind of situation we must do our homework, find out, go to JPN or where it is necessary then at least you know that this is what it is supposed to be done and this is what DHRRA are going to help us if we have the same concern. If not it is going to be 'I'll be waiting for you, I'll be waiting for you' and nothing happens and you get very frustrated disappointed why they are not doing it fast*[58].

Finally, it's important to note that while the legal empowerment through paralegal development provides an ad-hoc or case-by- case solution, the efforts of the paralegals will reach a stalemate without the political will of the policymakers in making the necessary policy changes to ensure access to justice for all**.**

[57] Participant of FGD with Community Leaders, as shared during the validation discussion (ID: VD.CommunityLeader.13092023.PL)
[58] Participant of FGD with Community Leaders, as shared during the validation discussion (ID: VD.Community.16092023.PL)

# SECTION 5: POLICY REFORM INITIATIVES

## 5.1 Introduction

In its initial years of formation, DHRRA adopted a 3-pronged approach to direct service, which included problem solving, raising awareness and capacity building to address statelessness and documentation issues within the community it serves. However, the extensive mapping and registration exercise carried out in 2014 exposed the gravity of statelessness within Indian-Tamil community. This revelation led to the recognition that the issue could not be resolved solely through the provision of direct services. Resolving statelessness requires addressing not only its effects, but also its root causes, making a strategy to tackle these roots causes crucial. DHRRA has since employed multifaceted policy reform approaches to raise awareness among the public and policy makers, and advocate for policy reform in this regard. This section explores the effectiveness of policy reforms initiatives as one of DHRRA's key legal empowerment approaches in breaking access to justice barriers for stateless people in Malaysia.

## 5.2 Policy Reform and Access to Justice

Cerna (2013) underscores the importance of distinguishing between 'policy change' and 'policy reform', drawing upon earlier literatures that define policy change as incremental shifts in existing structure or the introduction of new and innovative policies (Bennett and Howlett, 1992, as cited by Cerna 2013) and policy reform as a major policy change, that may or may not generate change. The OECD analyst further highlights that 'policy change goes hand in hand with policy implementation' and thus, mere 'passing of policies does not guarantee success on the ground if policies are not implemented well' (Cerna, 2013). This argument rings true in the context of statelessness in Malaysia, where government agencies, primarily the Home Ministry, have announced policies that, in practice, have not led to meaningful changes in addressing statelessness issues. To address statelessness effectively, a major policy change in the form of policy reform of the nationality law is necessary.

While policy reform is essential to ensure access to justice for stateless people in Malaysia, the Commission on Legal Empowerment of the Poor (CLEP, 2008, pg.18) cautioned that 'reforms that that are imposed, no matter how well intended, rarely take root in society' (CLEP, 2008, pg.18) and that to be recognised as relevant and legitimate by a broad majority of people, laws must be anchored in existing values, customs, and structures, and also be consistent with international human-rights obligations, particularly in the context of legal empowerment, which aims to give voice to the poor and reinforce their rights. This underscores the importance of community participation in policy reforms efforts in ensuring that these conditions are met, and that the reform aligns with community's needs.

## 5.3 Legal and Policy Development on Access to Justice for Stateless People in Malaysia

A discussion on policy reform initiatives on statelessness necessitates a review of legal and policy developments regarding access to justice for stateless people in Malaysia. While there is a wealth of literature offering comprehensive insight and analyses on the topic, see for example SUHAKAM's Human Rights and Statelessness in Peninsular Malaysia report (Nungsari, 2023), this study aims to provide an overview of legal and policy landscape in

Malaysia, with a focus on developments observed by DHRRA, which have a direct implication for the organization's policy reform initiatives in the context of statelessness

### 5.3.1 Historical Overview of Malaysian Citizenship Law

Malaysia's citizenship law went through several complex stages of development in the nation's attempt to unite its diverse ethnic groups. Choo Chin Low comprehensively documented these changes in a report titled "Report on Citizenship Law: Malaysia and Singapore", categorizing them into five phases of citizenship development corresponding to constitutional changes: pre-war Malaya[59], 'post-1946 following the establishment of the Malayan union, post-1948 following the establishment of the Federation of Malaya, post-1957 following the country's independence and post 1963 after the formation of Malaysia' (Chin Low, 2017, pg.2)

In the beginning of 19th century, the country witnessed a large arrival of Chinese and Indian immigrants who were brought to work in Malaya's rubber and tin mining industries by the British. By 1947, immigrants made up 50.2% (Chin Low, 2017, pg.5) of the Malaya's population. Whilst the British attempted to grant citizenship to all locally-born immigrant children through the Malayan Union, but this faced opposition and was later abolished.

On February 1, 1948, the Federation of Malaya was formed. Subsequently, birthright citizenship was replaced with double jus soli citizenship where second-generation immigrants were granted federal citizenship if both parents were born and lived in the Federation continuously for at least fifteen years[60]. This was changed to delayed jus soli in September 1952, where local-born children became subjects of a Malay ruler if one parent was born in the Federation of Malaya (Chin Low, 2017). However, jus soli citizenship continued to be applicable to Malays and aborigines born in the Federation.

Jus soli citizenship for non-Malays was only granted on the eve of independence to promote unity among the multi-ethnic community for nation-building. However, this birthright principle was further altered in the Constitution (Amendment) Act 1962, starting from October 1, 1962, birthright citizenship is no longer applicable in the country. A child born in the Federation had to have genuine ties to the Federation with at least one parent being a citizen or permanent resident to acquire citizenship by operation of law. Chin Low argues that 'this aimed to exclude children born to persons who had no right to reside in the country and 'who had no attachment' from the automatic acquisition of citizenship by birth'. (Chin Low, 2017, pg. 16)

The present Malaysian nationality law, enshrined in the Federal Constitution, is based on the combination of jus soli and jus sanguinis principles. It offers three ways to acquire Malaysian citizenship: automatic acquisition through operation of law, registration or naturalization. However, as explained in detail in Section 3 of the report, these pathways are fraught with obstacles, including gaps in nationality law, strict and unclear administrative procedures, and complex citizenship application processes which not only impede citizenship application of individuals who do not fulfill the requirements and falls in the between the cracks of law but also often render them stateless.

[59] Malaysia was known as Malaya and later as Federation of Malaysia before officially named as Malaysia on 16 September 1963

[60] Federation of Malaya Agreement, 1948, art. 124(1)(e)

### 5.3.2 Policy Developments in relation to Access to Justice for Stateless People

The study reveals that the Malaysian government has displayed significant commitment in addressing statelessness and documentation issues in the country over the years. However, many seemingly positive policy announcements do not translate into effective and sustainable implementation. This often correlates with changes in the country's political landscape.

One impactful measure undertaken by the government was the 'My Daftar Campaign' launched in 2011, which aimed to identify and assist undocumented persons through mobile registration campaigns. This campaign was overseen by the Special Implementation Task Force (SITF), established 2010 under the Cabinet Committee on the Indian Community (Prime-Minister's Office), in coordination with the Ministry of Home Affairs and the National Registration Department. STIF's primary objective was to ensure that Malaysian Indians could access federal government's services, programs and projects in a just, fair and equitable manner. This notable milestone resulted in more than 7000 stateless individuals being issued with birth certificates and national identity cards.

Between 2016 and 2017, DHRRA submitted recommendations for addressing statelessness in Malaysia to the representatives from the Prime Minister's Office and the Minister of Health. Subsequently, the Prime Minister's Office published the Malaysian Indian Blueprint (MIB) in 2017, which serves as a national blueprint for resolving various human rights issues faced by the Indian Community. The MIB commits the Malaysian Government to resolving statelessness and documentation issues within five years of implementation, which remains an unattainable target. In July 2022, the Malaysian Indian Consultative Council (ICC) was formed and tasked with revisiting the key performance indicators (KPIs) and timelines of the MIB's implementation, which was claimed to be disrupted by the Covid-19 pandemic (Free Malaysia Today, 2022).

Following the launch of MIB, Mega My Daftar Campaign was carried out in 2017, as a follow up to the My Daftar campaign. This initiative was developed in collaboration with political parties, CSOs and individuals. Through the Mega Daftar Campaign, 2000 individuals obtained documentary proof of citizenship and legal status, with 1504 stateless individuals successfully acquiring Malaysian citizenship.

Further development was observed in May 2018, when the newly elected Pakatan Harapan government announced that addressing statelessness would be one of its key priorities within 100 days of its administration. As part of this commitment, the 7$^{th}$ Malaysian Prime Minister's announced in August 2018 that stateless senior permanent residents would be granted Malaysian citizenship, if they met specific criteria. These criteria included being a red IC holder aged 60 and above, based in Malaysia for at least 12 years, and passing a Bahasa Malaysia competency test, among others. However, there was no change in status quo for those under the age of 60, with citizenship being granted only to those born in Malaysia with at least one Malaysian parent. Following the announcement, NRD progressively approved citizenship applications of pre-independence stateless people holding BC issued in Malaysia as proof of birth, with citizenship granted to 1641 persons out of 3853 senior permanent residents who submitted applications.

The country also witnessed some positive development with regards to access to education for stateless children during this period. In December 2018, the Government expanded 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, had access to education, subject to certain conditions. In 2019, the Government initiated a pilot project to facilitate enrolment of stateless and undocumented children in Government schools in Perak state. Since the beginning of 2019, 2635 children without valid documents were enrolled in Government schools under the "Zero Reject Policy", without providing proof of existing citizenship application. However, this policy was reversed by the government in November 2020, citing the Education Regulations 1998 and Education Act 1996. As an alternative, the stateless children were offered enrolment in alternative education centres or private schools (Nungsari, 2023).

Another significant development was the closed-door dialogue held by the former Home Minister, Tan Sri Muhyiddin Yassin with a group of stateless people and their families from the Stateless Children Family Support Group (SCFSG) in July 2019 (Malaysiakini, 2019). This dialogue, initiated by Charles Santiago, the then Klang MP, with the participation of DHRRA, provided an opportunity for the stateless community to bring their concerns to the attention of the Minister. Further progress was witnessed in July 2019, when the Minister announced about the review of the standard operating procedures (SOP) for citizenship applications (New Straits Times, 2019). The new SOP which was expected to cut the processing time for each application to one year and provide reasons for rejections of applications to enable successful resubmission of the application, has yet to materialize to date.

In a groundbreaking development, on 7 October 2019, Malaysia expressed its first international commitment to addressing statelessness within the country. This commitment was 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 on Statelessness in Geneva (Malay Mail,2019). Malaysia expressed its commitment to promoting civil registration, especially through its National Registration Departments' outreach programmes in rural and remote areas. This commitment too remained unfilled.

At the time of the study, plans were underway for amendments to specific provisions of the citizenship Law. Among the amendments which could have significant implications for stateless individuals as well as those who are at risk of statelessness are: removing the applicability of Section 19B of Part III of Second Schedule to the Federal Constitution to provisions relating to the conferment of citizenship rights by operation of law; deleting the words "permanently resident" in section 1(a); and repealing Section 1(e), both of Part II of the Second Schedule to the Federal Constitution. These proposed amendments have drawn criticism as they could potentially remove existing safeguards against statelessness present within the Federal Constitution, specifically the removal of Section 19B, Section 1(a), and Section 1(e) could deny automatic citizenship to foundlings, children separated from parents with no proof of parentage, and children born to stateless parents, increasing their risk to statelessness.

## 5.4 Existing Legal and Institutional Barriers to Access to Justice for Stateless People in Malaysia

The study exposes numerous institutional barriers that hinders stateless individuals in Malaysia from accessing justice, particularly concerning their rights to citizenship. The challenges in obtaining citizenship, which include gaps in nationality law and the administrative process and procedures of NRD and the Home Ministry, are consistent with the findings of DHRRA, which

were made public through the policy recommendations aimed at addressing statelessness in 2017, as well as through the publication of two series of awareness handbook in 2019: 'Awareness Handbook: Understanding Statelessness in Malaysia' and 'Resolution Handbook: Resolving Statelessness in Malaysia'. What is even more concerning is that these challenges persist despite nearly a decade-long gap between the study's findings and DHRRA's observations and experience in assisting stateless individuals through the extensive mapping exercise carried out in 2014.

### 5.4.1 Gaps in Nationality Law

Gaps in nationality law has given rise to various categories of statelessness in Malaysia, including individuals born or arrived in Malaysia before Independence Day or Malaysia Day, individuals who have become stateless due to gender-biased clauses in the nationality law, abandoned children and foundlings who could not prove a genuine link to the country and stateless children who have been adopted.

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. Since many of these individuals did not register their marriages and births of their children due to the lack of awareness of the importance of legal documents, or have lost proof of arrival or birth during workers displacement in the plantations or estates, they faced difficulties in obtaining citizenship under Article 16 (with Birth Certificate) and Article 19 (without Birth Certificate).

Gender unequal provisions in the nationality law serve as one of the primary drivers of statelessness in the country. According to the Federal Constitution, Malaysian men cannot transfer nationality to their children if the child is born out of a legally recognized marriage (Section 17, Second Schedule, Part II). Instead, children born in Malaysia to unmarried couples inherit their mother's nationality, provided the mother holds a citizenship and can pass it on to the child. Additionally, the Federal Constitution also does not allow Malaysian mothers with foreign spouses to transfer nationality to their children born outside Malaysia unlike Malaysian fathers in similar circumstances. While plans are underway to amend the nationality law to allow Malaysian mothers to confer citizenship to their overseas-born children, there is currently no solution for Malaysian fathers to do the same for their out-of-wedlock children. This has led to frustration and disappointment among groups affected by the provision as expressed by a grandmother of a stateless child and a father of a stateless child who participated in the study:

> *I feel rather depressed when I hear about this Malaysian mother with foreign fathers and their children going to be given citizenship to make it easier for them to gain citizenship. Now what about those children, we in our group are all of Malaysian fathers and foreign mothers. What is the discrepancies here between the two? If a Malaysian mother with a foreign father the child is automatically given for Malaysian citizenship*[61].

> *I have a son who was deemed stateless, through no fault of his…This is due to my wife is a foreigner and due to late marriage, we couldn't get a marriage certificate done in time before he was born. So, he was deemed as bukan warganegara (non-citizen) in his*

[61] Participant of FGD with Community Leaders (ID: FGD-CommunityLeader.25082023.PR)

> *birth certificate. But when I checked Sec (Article) 1(a), it says if either parent is a Malaysian, citizenship can be given. But through my findings like research and everything then I discovered that the Section 17 Part Three of Second Schedule which says (the child will be deemed) illegitimate (born out of wedlock)*[62].

Section 19 (B), Part III of Second Schedule of the Federal Constitution, provides a safeguard against statelessness for foundlings or abandoned children by recognizing them as nationals of Malaysia. This provision, in conjunction with Section 1(e) of Part II of the Second Schedule, acknowledges that children born in Malaysia, regardless of their status qualify for Malaysian citizenship by operation of law. However, this rule applies only to children born in Malaysia, specifically to newborns. This path to citizenship for abandoned children is limited as without any information about their biological parents, foundlings cannot provide the evidence to meet the requirements for citizenship by operation of law. Moreover, there are concerning proposed amendments to remove the words "permanently resident" in Section 1(a) and repeal Section 1(e), both of Part II of the Second Schedule to the Federal Constitution, which could potentially expose abandoned children to a higher risk of statelessness.

Although the 1952 Adoption Act addresses property rights[63] and birth certificates[64] for adopted children, it lacks provision addressing transfer of citizenship. This presents challenges for stateless children adopted from welfare homes in acquiring citizenship. However, Section 9 (1) of the 1952 Adoption Act equates the legal status of an adopted child with that of a biological child in nationality law, which offers a safeguard for adopted children's right to a nationality (Nungsari,2023; see also MahWengKwai & Associates,2013).

However, the NRD lacks administrative guidelines and procedures to implement these provisions. Instead, in common practice, the NRD registers the adoption order of a child with unknown parentage, but adopted by Malaysian parents, as "bukan warganegara" (non-citizen) as shared by a former stateless participant:

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[62] Participant of FGD with Community Leaders (ID: FGD-CommunityLeader.25082023.PR)

[63] Section 9 of the Adoption Act 1952:
(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock;
(2) Where, at any time after the making of an adoption order, the adopter or the adopted child or any other person dies intestate in respect of any movable or immovable property, that property shall devolve in all respects as if the adopted child were the child of the adopter born in lawful wedlock and were not the child of any other person.

[64] Section 25A of the Adoption Act 1952:
(1) In respect of the Certificate of Birth referred to in paragraph 25(2) (b) , every adoption order shall contain a direction (a) to the Registrar-General that the word "adopted", "adopter" or "adoptive" or any word to like effect shall not appear in the Certificate …"
(5) The Certificate of Birth issued under this Act pursuant to an adoption order shall replace the Certificate of Birth of the child issued under the Births and Deaths Registration Act 1957, and shall for all purposes be known as the Certificate of Birth of the child."
(6) Notwithstanding anything to the contrary in any written law, the Certificate of Birth under this Act, if given under the hand of the Registrar-General or any person authorized by him, shall be received without further or other proof as evidence of the facts and particulars relating to the birth of the child in respect of whom the Certificate of Birth was issued.

> *Even now I have my citizenship already which means I am a citizen but in my adoption certificate like I'm holding right now is actually 'belum ditentukan' (has not be determined). And I asked this question I asked that day after I get my citizenship whether I can change it to 'warganegara' (Citizen) or no, I was told that I actually cannot because they need every proof like even I get my IC there is a specific number there like zero two I guess is stated that you get your IC because you apply your citizenship.[65]"*

Article 14(b) of the Federal Constitution allows for adopted stateless children to potentially acquire the nationality of one of their adoptive parents. However, practical obstacles arise as NRD exercises discretionary conferral of citizenship under Article 15A for adopted children.

Article 15A of the Federal Constitution grants special power to the Home Minitser to register children under twenty-one years of age as Malaysian citizens. While this provision is not applicable to individuals over 21 years old, DHRRA's experience has shown that in some cases, the NRD officers did not provide 15A forms to applicant who are 18 years old or older (DHRRA,2022). This gap in administrative procedures results in individuals aged 18 to 20 not being able to apply for citizenship, even though the age limit for the application is above 21 years old. These concerns were also highlighted by three study participants:

> *So far, the bigger problem that we face here are those who are above 21 years of age. Because in the federal constitution if you are more than 21, the only possibility is section 19. and that has got to come from KDN. Even to get Borang 15 (A) have to go to KDN, if you go to JPN cannot get, even if they walk into JPN.[66]*

> *There is existing law for a stateless person to apply for citizenship under 15A. Although I think it's a good article to have to allow access to citizenship but I think the effects of when it gets rejected for some other than to reapply again but once you've hit the age limit, what can a stateless person do after that? So, I think that's the big question of when they reach 21 and above. For all the stateless children who are now adults, are there even any laws and policies to help them get citizenship?[67].*

> *It is unfair. I mean why should a child wait for a citizenship, and it's all in the hands of one person in the country. I mean it's rather ridiculous. So, you just pray and hope every day that this person sign your documents and you are approved. I mean there should be an SOP as to whether the child is entitled or not entitled, fair and square[68].*

### 5.4.2 Gaps in Administrative Procedures of NRD and Ministry of Home Affairs

The National Registration Department, which comes under the purview of the Ministry of Home Affairs, plays a central role in managing the citizenship application process and issuing of identification documents to eligible individuals in Malaysia. The NRD is responsible for registration of all births, deaths, adoptions, marriages and divorces involving Malaysians or taking place in Malaysia, in compliance with Regulation 3 of the National Registration Regulations 1990 (Amendment 2007). Both the study as well and an examination of relevant

[65] Shared during validation discussion by a participant of FGD with community (ID: VD.Community.16092023.PL)
[66] Participant of FGD with Community Leaders (ID: FGD.CL.07082023.PL)
[67] Participant of FGD with Grassroots Women Leaders (ID: FGD.WomenLeaders.11082023.PR)
[68] Participant of FGD with Community Leaders (ID: FGD-CommunityLeader.25082023.PR)

literature reveal that gaps in administrative procedures of the NRD and the MOHA serves as primary obstacles to citizenship acquisition in Malaysia.

Several significant gaps in the administrative procedures of the NRD, identified by DHRRA while assisting stateless individuals to acquire legal documentations through its community based paralegal initiative, were also echoed by study participants:

- Long processing period: Currently, there is no fixed timeline for citizenship decisions in Malaysia. DHRRA' experience reveals that processing time varies on a case-by-case basis, with some applications taking more than 4 years. Several participants expressed frustration over repeatedly hearing that their application is 'in process'. One participant shared that her citizenship application was approved after nearly 6 years of waiting. Unfortunately, not all applications are successful, and many applicants wait for years, only to face rejection. The frustration of the long waiting period is expressed by a study participant:

  *This was the only application I made. I waited from 25th January 2015 until recently (2023). There was no other application. Even if you want to get a car loan you don't have to wait so long. Only the commonly used word 'sedang diproses' (still in process)*[69].

- Lack of Transparency: Another common frustration is the absence of reasons provided by NRD for rejecting nationality applications. Applicants often receive a written response stating that their application is 'not successful'. While they are encouraged to reapply, the lack of clarity regarding the reasons for approval or rejection leaves them uncertain about how to improve future applications. Moreover, repeated rejections and re-applications mean that children applying under Article 15A may reach the age of 21, making them ineligible for citizenship application under the provision. The lack of transparency in citizenship application process is also shared by a former stateless participant, who further emphasized that current law could significantly aid stateless individuals if properly applied:

  *And also, we know in JPN they have got an investigation department, So if the person that you think like mencurigakan (suspicious) go investigate them. Not just let them hanging, 'permohonan masih diprocess,' (application is in process). Waiting for four or five years or six years or ten years, and then at the end of the day they get a letter 'permohonan di tolak' (application is rejected), without any reasons. So, actually the law nowadays is helping a lot of stateless if they apply*[70]

  DHRRA's Executive Director also highlighted the lack of transparency of the government in making public SOPs relating to citizenship application, which further impedes policy advocacy efforts in creating access to justice for stateless individuals:

  *We have started focusing on the angle that KDN requires institutionally reform. KDN itself as an institution has a lot of problem because there's so much of power vested in them. So, we are really focusing on that processes and that how certain things being amended which means that none of the SOPs are available for public or for us to*

[69] Participant of FGD with Community Leaders (ID: FGD-CommunityLeader.25082023.PR)
[70] Participant of FGD with Community (ID.FGD.Community.01092023.PR)

*assess, whether it's the right thing to do. So, we don't really don't know who gets to decide the SOP which is very problematic. And so we're trying to focus on those angles because we think that is the root cause of it. The law is very broad and has ability to protect children in such situations but the law, the procedure making process is where is very problematic*[71].

- Inconsistent procedures at district and state-level NRD offices: At present, there are no standardized administrative procedures across various levels of NRD offices to ensure uniform treatment of all applicants. Both DHRRA Malaysia's interactions and those of study participants with NRD offices at the different levels have revealed disparities in procedures. These include variation in requirements, such as the need for "penyokong" (supporter) to be physically present during the application, a requirement that is not consistently enforced across all levels of NRD offices (DHRRA, 2022). A study participant raises question on why such inconsistencies exist within a single government agency:

  *I think this also was also mentioned by one of the ladies here about the registration of birth, now this is the thing about JPN I'm not trying to criticize them but they have a sort of inconsistencies in between areas. For example, JPN Tapah, they do not want they will not accept any birth registration if their parents are not married regardless of race or religion. Whereas if you go to Kampar, Kampar JPN will give registrations. So you see this is the gap, why this inconsistencies? Why one is, I mean they are the same government agency, so why one will not issue birth certificate whereas the other one will issue birth certificate."*[72]

## 5.5 Malaysia's International Obligations in Addressing Statelessness

Legal empowerment is firmly rooted in fundamental human rights, as outlined in international human rights law, specifically Article 1, Article 10 and Article 15 of the Universal Declaration of Human Rights[73]. This connection between human rights and legal empowerment is emphasized by organizations working extensively on legal empowerment such as CLEP, which asserts that human rights principles should guide legal empowerment process, which is especially crucial in the context of institutional and legal reforms, as well as social policies aimed at reshaping the relationship between the government and its citizens at both the national and local levels (CLEP, 2008).

Despite being home to a significant size of stateless population, Malaysia's commitment to addressing statelessness through international human rights treaties is not evident. The country has not ratified essential international human right treaties related to statelessness, including the 1954 Convention relating to the status of Stateless Persons, the 1961 Convention of the

[71] KII with DHRRA's Executive Director D (ID: KII.DHRRAED.21082023.PR)
[72] Participant of FGD with Grassroots women leaders (ID: FGD.WomenLeaders.11082023.PR)
[73] Universal Declaration of Human Rights (UDHR):
Article 1- All human beings are born free and equal in dignity and rights.
Article 10 - Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
Article 15 - (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Reduction of Statelessness, the 1951 Convention relating to the Status of Refugees, among others.

At present, Malaysia is party to only three core human rights instruments: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRDP). However, Malaysia has replaced reservations on certain provisions of these instruments that recognize the right to a nationality and equal nationality rights between women and men. These reservations affect Article 7 (name and nationality) of CRC, Article 9(2) (nationality of children) of CEDAW and Article 18 (freedom of movement and nationality) of CRDP.

In a joint submission to the Human Rights Council during the 31st Session of the Universal Periodic Review, DHRRA along with other local and regional organizations working on statelessness, including Voice of the Children, Yayasan Chow Kit, the Global Campaign for Equal Nationality Rights, the Statelessness Network Asia Pacific, and the Institute on Statelessness and Inclusion (the Institute) emphasized Malaysia's obligations as a member state of the United Nations to promote human rights and fundamental freedoms for all (DHRRA et al, 2018). The joint submission also raised concerns about Malaysia' limited implementation of its international obligations, reservations to treaties, and non-ratification of key human rights instruments, suggesting that the right to nationality is not a priority for the country.

Similar concern was also highlighted by one participant with specific reference to Malaysia's membership in the United Nation Human Rights Councils for the 2022-2024 term:

> *Access to justice involves many things, access to safety, access to health, access to education. If these 3 things are not there then Malaysia should not be as member state of UN HR Council*[74].

## 5.6 DHRRA's Policy Reform Initiatives

The prevailing institutional barriers to access to justice for stateless people in Malaysia underscore the monumental challenges in policy reforms to overcome them. A change cannot be accomplished by individual efforts alone, as stressed by DHRRA, 'Ending statelessness requires a higher intensity of collaboration between a wide range of actors including the stateless people themselves' (DHRRA, 2019, pg.3). Therefore, DHRRA's advocacy efforts to find durable solutions for stateless persons in Malaysia are through collaborative efforts with all key stakeholders, particularly the stateless community themselves.

The key goal of DHRRA's policy reform efforts is to ensure that no child is born stateless in Malaysia by contributing to the attainment of the Sustainable Development Goals (SDGs) 2030, especially Target 16.9 (Provide legal identity for all), as reflected through this strong message: *'If nationality policies and laws are causing stateless persons being born in Malaysia and/or to either one Malaysia parents. It is the responsibility of the Government and its policy makers to amend policies and reform law to ensure no child is excluded. Indeed, it is about 'political will'* (DHRRA, 2009, pg.12).

[74] Participant of FGD with Community Leaders (ID:FGD-CommunityLeader.25082023.PR)

DHRRA employs evidence-based advocacy strategy by translating evidence gathered from community engagement and intervention into strong advocacy tools to represent voices of the grassroots, with an emphasis on collaboration with all key stakeholders. The organization acknowledges that, "Ending statelessness requires a higher intensity of collaboration between a wide range of actors including the stateless people themselves" (DHRRA, 2019).

### 5.6.1 Areas of Policy Advocacy

Statelessness encompasses a wide range of issues, necessitating targeted advocacy strategies. DHRRA has prioritized several key areas of policy advocacy in recent years:

- Access to education for stateless children: DHRRA is dedicated to ensuring that stateless children have access to public education system, text books, and online education platforms, particularly during the pandemic when there was shift to online learning. The organization collaborates with other CSOs and private sectors to achieve this goal. For instance, during the pandemic, DHRRA initiated "Bridging the Digital Access" campaign to provide digital devices to underprivileged children.

- Addressing the gaps in nationality law, policy and administrative procedures that contribute to statelessness: DHRRA actively submits policy recommendations to the Malaysian Government, proposing areas for improvement within the current legal framework. These recommendations aim to contribute to a sustainable solution to the issue of statelessness in the country.

- Reform of gender inequality provisions in nationality law: DHRRA continues to advocate for reforms to the Malaysian nationality law, particularly concerning the denial of Malaysian fathers' rights to confer nationality to their children born out of wedlock.

- Review of proposed amendments to nationality law: DHRRA plays an active role in advocating for the review of recently proposed amendments to Malaysian nationality law. Working in collaboration with other local CSOs, DHRRA offers feedback and suggestions to ensure that the amendments are in line with international human rights standards and best practices, and serves the best interest stateless individuals, particularly stateless children.

### 5.6.2 Targeted Policy Reform

A review of DHRRA's policy reform initiatives shows that the organization employs a targeted approach in advocating for resolution of statelessness in Malaysia. These can be inferred from the objectives around which the DHRRA's policy reform efforts are built:

i. To enhance the role and involvement of the community and public in advocacy efforts on statelessness and documentation issues
ii. To sensitize and influence policymakers and political leaders on the need to reform policies and procedures contributing to statelessness in Malaysia
iii. To facilitate collective advocacy efforts towards addressing statelessness in Malaysia

These objectives guide DHRRA's efforts, which target four key stakeholder groups: policymakers, local and regional CSOs, public and the stateless community themselves. This strategic approach is illustrated in Figure 6:

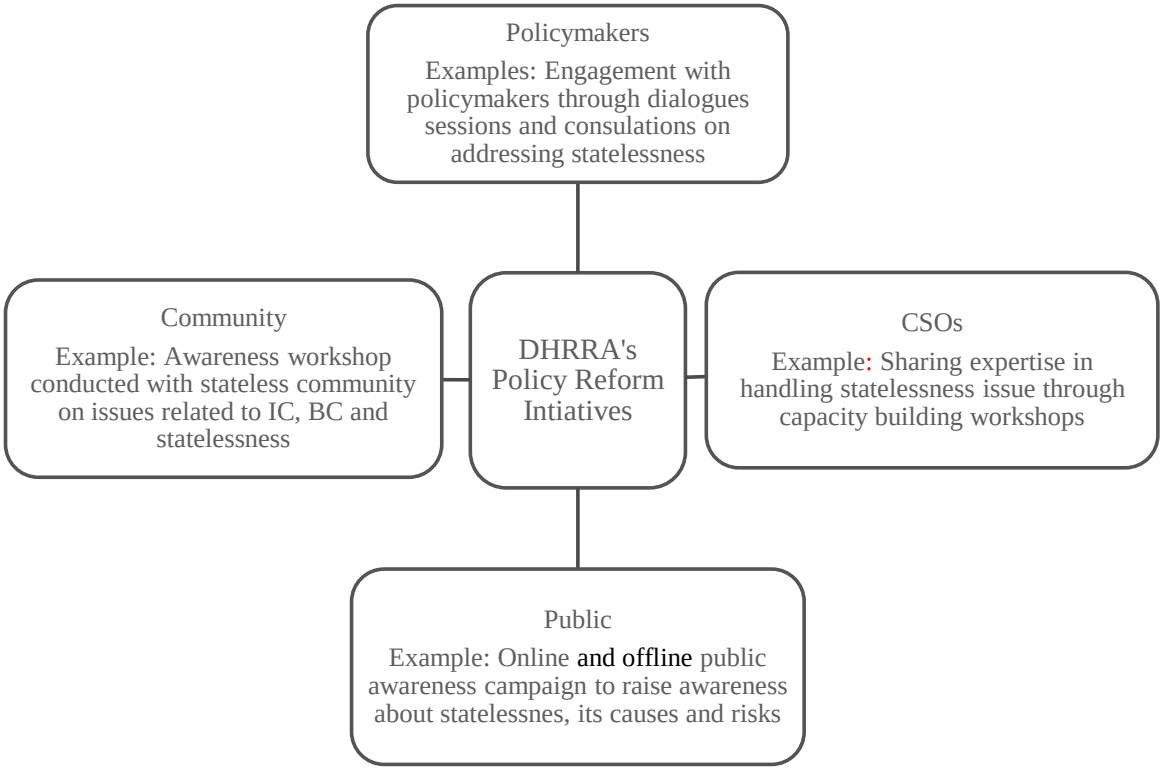


Figure 6: DHRRA's Targeted Policy Reform

In short, DHRRA engages in policy advocacy by influencing policymakers, raising public awareness, and involving the community in the advocacy efforts. DHRRA also works closely with local CSOs in advocating for the rights of stateless individuals in Malaysia. It is an active member of the Malaysian CSO-SDG Alliance, an informal grouping of civil society organisations CSO) committed to the effective implementation of the SDGs in Malaysia. Through this initiative, DHRRA continues to pursue its goal of contributing to the attainment of national SDGs, particularly in pursuit of Target 16.9 (Legal Identity for All by 2030), and the overarching SDG aspiration of 'leaving no one behind'.

In addition, the media plays a crucial role as a strategic partner in advancing DHRRA's policy reform initiatives. DHRRA regularly issues press statements and appears in national radio and TV talk shows to raise awareness about statelessness.

### 5.6.4 DHRRA's Policy Reform Initiatives Outcomes

DHRRA's policy advocacy efforts have encountered significant challenges primarily due to the frequent changes in the political front of the country, hindering the progress and continuity of the advocacy work. Despite these constraints, DHRRA has achieved significant outcomes from its policy reform efforts. Many of these outcomes were most evident during the initial years, following the successful completion of the mapping and registration project.

During this period, there were notable improvements in DHRRA's working relationship with the NRD offices. DHRRA fostered close cooperation with local NRD offices and the government, resulting in:

- shortened processing time for NRD searches related to previous applications and birth registration records for cases referred by DHRRA; and
- increased collaboration between NRD state offices and DHRRA paralegals in processing the nationality applications, leading to greater transparency in decision making and cooperation to expedite the application process.

Furthermore, the mapping project highlighted the challenges faced by generational in-situ stateless individuals within the Malaysian Tamil community. This project served as a precursor for subsequent measures by the Government, including My Daftar and Mega My Daftar registration campaign carried out in 2011 and 2017 respectively. Subsequently, Malaysian Indian Blueprint (MIB) was launched in 2017, committing the Malaysian Government to resolving statelessness and documentation issues within five years of implementation.

However, it is important to note that these outcomes have not proven to be sustainable. Many of the positive policy announcements and developments came to stalemate with changes in government, forcing CSOs like DHRRA to restart their efforts. One such example is the review of the standard operating procedures (SOP) for citizenship applications announced by the then Home Minister, Tan Sri Muhyiddin Yassin in July 2019, which did not culminate in sustainable implementation, resulting in DHRRA having to follow up on the progress and advocate for implementation with his predecessors, Dato Seri' Hamzah Zainudin, who served as the Home Minister from March 2020 until November 2022, and the incumbent Home Minister, Datuk Seri Saifuddin Nasution.

While minimal progress has been achieved in terms of policy development, one of the most significant achievements of DHRRA's policy reform efforts has taken place at the community level. More members of stateless community have been empowered to advocate for their rights and needs, facilitating their participation and consultation in policymaking.

Community leaders, local CSOs and grassroots organizations have been trained and supported to voice their concerns and demands to the relevant authorities and agencies, with many pursuing their own initiatives to assist and support stateless people in their community. The following statements from the participants highlight the benefits gained through involvement in DHRRA's advocacy efforts.

> *I think, all of our members who are involved in this plight of statelessness and fight for statelessness are aware of whatever idea about statelessness and everything, thanks to DHRRA. DHRRA is our key resources, whenever we have any confusions regarding status or regarding what is it about and everything, DHRRA basically is our key resources"* [75].

> *I think I can speak on behalf of my members also those who have participated, we have learned a lot from DHRRA especially on the legal methods and the process of dealing with JPN... The workshop was really I think mind-blowing I mean when you gather us in a workshop and all that we are able to compare notes and I felt that we are not alone*[76].

[75] KII with Community Leader (ID: KII.Community Leader. 25072023.PR)
[76] Participant of FGD with women leaders (ID: FGD.WomenLeaders.11082023.PR)

> *My first encounter with DHRRA was when I was a town councillor. This was a Town Councillor seminar for women in Perak, it was in 2018… And they (DHRRA) have helped me a lot in in terms of my work with stateless persons in Tapah, Perak…and I'm so thankful because then only it helps me, 'oh there's a way to handle this'. Otherwise, I feel so alone* [77].

## 5.7 Importance of Stateless Communities' Participation in Policy Reform Advocacy

The study explores the importance of the stateless communities' participations in policy reform efforts from the perspective of the participants. These insights demonstrate how inclusion and involvement of the stateless individuals can enhance the understanding, foster trust and ultimately drive forward the policy reform.

### 1. Changing the Narrative

Stateless bring a alternate perspective and genuineness to advocacy efforts. By sharing their lived-in experiences, they can shed light on the challenges stateless people face and influence public perceptions and understanding, as exemplified by the following quote of a participant:

> *With the involvement of the community who are experiencing this, it somehow changes the narrative a little bit. For example, I think what Family Frontiers did was so cool because of their loud voices. I think this is because the children are experiencing the same problem as what Family Frontiers' children have been experiencing. With the advancement of technology, where communications are much more better nowadays and with all the campaigns that they've done, it reaches a lot of people. And now people realize 'oh this is there. There is this kind of situations and disturbance allegedly in need of citizenship'. The strong voice and strong advocacy of stateless community are very important in in pushing this kind of reform* [78].

### 2. Better Understanding of the Needs of the Community

Involving stateless individuals in advocacy efforts allows for an in-depth understanding of their specific needs and concerns. Stateless individuals can offer insights that others many not have, leading to more informed and effective advocacy strategies. A participant cited DHRRA's practice of hiring stateless individuals to support this point.

> I love what DHRRA is doing. They're always involving stateless person to work with them, whereas I know some like J, she is stateless, she is working with DHRRA. So, if this kind of person in your organization, the stateless people will be more comfortable to speak with you. That is why some of the stateless people came to me because they say, 'you are stateless, so you might understand us'[79].

### 3. Build Community Trust and Support

[77] Participant of FGD with women leaders (ID: FGD.WomenLeaders.11082023.PR)
[78] KII with Community Leader (ID: KII.community Leader. 25072023.PR)
[79] Participant of FGD with community (ID.FGD.Community.01092023.PR)

When stateless individuals actively participate in policy advocacy, they gain a better understanding of their own strengths and the issues being advocated for. This knowledge, in turn, enable them to organize and mobilize their communities and facilitate community support for the advocacy efforts, as illustrated by the following quote of DHRRA's Executive Director:

> In terms of their participation, when you put them in meetings, they get to know their strengths, they get to know what's happening. And then, when they go back to the community, they're able to organize a community together for the same purposes. They're able to organize communities together (as) their language is more trusted versus my language to the community. And what happens is that from having one person support, suddenly I have 101 people who is behind me[80].

### 5.7.1 DHRRA's Succes Story

The following success story shared by DHRRA's Executive Director further highlights the significant impact of stateless community participation in advocacy efforts. It underlines the snowball effect of gradual empowerment of stateless individuals, enabling them to discover their strengths and capabilities through participation in advocacy efforts. This empowerment enables them to empower and organize their community, leading to the involvement of more community member and contributing to collective efforts in policy reform on enhancing access to justice for stateless individuals in Malaysia.

> *Some of the success stories that I feel is when you bring stateless persons to meetings.* They get to know the kind of situation that stakeholders are in. For example, now they would understand that this is what we are seeking for *with the government and the government comes up with security reasons, different narratives. So when they are there and when they are given a false narrative which means when the government supports negative, the people like the community themselves are able to speak. So that's something that actually admire is when you bring them and expose them from meetings, they don't necessarily speak for the first or second of third meeting but when there is a threat to the opposition they actually speak up at the right time. And that's been really helpful. And in terms of how we strengthen them it's definitely exposing them again and again... But I think it's important to recognize that a stateless person despite having the strength they have a lifelong trauma and that is very difficult to overcome and so I think it's like when you put them there without being too pushy and etc., they do very well and they're able to guide a lot of people. And I think in terms of their participation themselves is when you like I told you when you put them in meetings, they get to know their strengths, they get to know what's happening and then when they go back to the community, they're able to organize a community together. For the same purposes. And when they're able to organize communities together, their language is more trusted versus my language to the community, and when they are gathered when I tell that you know there is a threat to our work they're able to very well like that. And what that happens is I from having one person support that have invested in suddenly I have 101 people that is behind me. So I would say that has been the success stories in all cases, whether it's WhatsApp or through the workshops or whether it's just bringing them and sharing things*[81].

[80] KII with DHRRA's Executive Director D (ID: KII.DHRRAED.21082023.PR)
[81] KII with DHRRA's Executive Director D (ID: KII.DHRRAED.21082023.PR)

### 5.7.2 Challenges of Stateless Communities' Participation in Policy Reform

The study reveals that stateless communities face numerous challenges that impede their participation in policy reform efforts. These challenges, as expressed the study participants, include:

**1. Lack of Understanding of their own Statelessness**

Stateless individuals may lack awareness of their own statelessness and its implications on their lives. Generational statelessness, in particular, can lead people to believe that their situation is normal. Education and awareness-building efforts are crucial to help them understand statelessness and the need to work towards a change.

As one participant shared:

> *Sometime…we learned from our children that they thought it's okay to live like that, because that is how their parents live. And this is because the incident of statelessness faced by these children are not first or second generation. Basically, they are the third generation and they saw that their family living like this, life continue and go on (for them). So, they think this is the live everybody lives. It is important for us to discuss with the children on what happened if they don't have this, what will be the implications in their life. That is among the things that we do in order to ensure that the stateless individual understand what they are experiencing. I think it's very important for them to understand first, that something is wrong, somewhere, and it's need to be fixed rather than thought on that 'Oh, no, this is the life'* [82].

**2. Fear of Consequences**

Stateless people often fear negative consequences if they speak out about their statelessness. This is particular true for those with pending citizenship application. They fear that their action may jeopardize their application. This fear may lead to them isolate themselves and avoid engaging in advocacy efforts. The genuine fear that some stateless individuals have about the potential risks associated with advocating for their rights was articulated by a participant:

> Like I say the citizenship issue is a very sensitive issue. If I voice out too much it might jeopardize my son's application. It might invite the police to come to my knocking my doors at 4am. That's how Malaysia works[83].

**3. Lack of Awareness**

In some situations, stateless individuals may want to advocate for their rights, but lack the knowledge and resources to do so effectively. They may be unaware of the available platforms and support systems that can help them address their statelessness. This concern was shared by a participant who further emphasized the need for accessible platforms and information to empower stateless individuals to advocate for their rights:

[82] KII with Community Leader (ID: KII.community Leader. 25072023.PR)
[83] Participant of FGD with Community Leaders (ID: FGD-CommunityLeader.25082023.PR)

> *I feel that for many of the stateless, it's not that they don't want the voice out. Many do not know how to voice out and where to voice out. There should be a platform where such people can seek help and voice their sufferings, their issues, their agony, Instead of many losing their lives aimlessly like that. There are so many who have already taken their lives due to statelessness. These are all unnecessary happenings. If only each and every one is given the knowledge of how to overcome statelessness as it is. In Malaysia, I think we haven't come to that yet. We are not at that stage where people will know how to overcome statelessness, and how to prevent, things like that* [84].

The lack of awareness is further compounded by prevailing misconceptions and wrong information surrounding the issue of statelessness in Malaysia, as narrated by another participant:

> *I found this kid by the roadside, who didn't go to school was selling kerepek (chips) during schooling time, I asked the kid 'what are you doing. why are you not schooling?'. Then she said she got no Birth Cert, her parent is working on it. I gave my phone number I said 'ask your parent to call me immediately'. Luckily the parent called. So I went and visited them. I said 'what happened? Your kid is nine years old, why is she not going to school?' You know what she said, she is afraid to go to the JPN (NRD). Apparently, some people if the first child is anak luar nikah (born out of wedlock), the rest all won't get document (birth certificate) too. We see this not only in the remote areas, people living in the city also will have this kind of mindset* [85].

### 4. Stigma and Xenophobia, and Security Concerns

Stateless individuals in Malaysia continue to face stigmatization and xenophobia, particularly in regions with a history of migration and statelessness issues like the state of Sabah. This stigma can make it difficult for them to advocate for their rights without encountering resistance from local population. The following participant's account highlights the challenges stateless individuals face due to stigmatization and xenophobia:

> *There are a lot of documentation scandals in Sabah. And then people basically call them (the stateless) foreigners in Sabah. Because of that when you talk about giving them access to documentation or even when you say documentation to them, they really think it's citizenship when documentation and citizenship are two different things. That's why the people don't understand. They are selfish but they're fearful in some ways when it comes to this. Because for them, 'then there'll be less of us and more of them'. That's always that xenophobia that exists when you're talking about citizenship and statelessness in Sabah. And then in the case of the Bajau Laut Community, who are like truly stateless, there is stigma on those communities as well. People look at them differently, and have a negative signal: These are just fishermen, or they don't go to school, they don't look like us, they stay on the water, they're not like our land people*[86].

The sense of insecurity among the local population is further heightened by the Malaysian government's perspective on stateless people as a security concern. During his address at the United Nation Human Rights Council (UNHCR) on the issue in Geneva, the then Home

[84] Participant of FGD with Community Leaders (ID: FGD-CommunityLeader.25082023.PR)
[85] Participant of FGD with grassroots women leaders (ID: FGD.WomenLeaders.11082023.PR)
[86] Participant of FGD with grassroots women leaders (ID: FGD.WomenLeaders.11082023.PR)

Minister, Tan Sri Muhyiddin Yassin argued that statelessness is not solely a socio-economic issue but also has security implications for Malaysia and the broader region (Malay Mail 2019). This standpoint not only distorts the realities faced by stateless individuals, but also amplifies the anxieties experienced by Malaysian families dealing with the challenges of statelessness as highlighted by DHRRA and other members of the Malaysian Citizenship Rights Alliance, thorough a press statement released on 30 August 2023 (Malay Mail, 2023).

These challenges demonstrate that stateless communities often face significant barriers to participating in policy advocacy efforts. Addressing these challenges requires a multi-faceted approach that includes education, awareness building, protection from risks and combating stigma and xenophobia associated with statelessness to enable stateless individuals to advocate for their rights effectively.

## 5.8 Best Practices in Policy Reform Strategy

Effective policy reform strategies are essential for addressing justice barriers for stateless people and advocating for change. Drawing from experiences and recommendations of the participations, the study identifies successful approaches to effectively drive policy reform efforts. These insights provide valuable guidance on how to navigate the challenges associated with statelessness and promote sustainable change through policy advocacy.

**Story Sharing:** Sharing of stories and lived-in experience through social media has proven to be an effective and cost-efficient strategy for reaching a wide audience. By constantly sharing personal experiences related to issues faced by stateless people, organizations can create sustainable awareness and engage with a larger community, as shared by a former stateless person, who now advocates actively on statelessness:

> *We constantly share story, we constantly share story in our social media and social media reach is beyond what we can imagine...I think constant stories, constant sharing of experiences is one of the much sustainable strategies going forward because it's cheap but it reaches a very large audience*[87].

**Collaboration:** Other participants highlighted that collaborating with experienced organizations like DHRRA can be highly beneficial in handling complex cases and addressing policy issues effectively, particularly for a newly formed or unestablished CSOs. It is important to recognize that not all individuals and organizations have expertise in every aspect of dealing with an issue. Partnering with experts in specific areas can enhance the impact of policy reform efforts. The following statement of a participant underscores the idea that collaborating with organizations like DHRRA, which has developed expertise in working on statelessness, can enhance the impact of addressing stateless cases:

> *Collaborating with a group, for example DHRRA, I am focusing on DHRRA, I do not know any other NGOs who was successful in handling cases because I always engage with only DHRRA...can work alone, but it depends on the ability of the individual, whether he is able to handle this case in his own capacity or not, because there are individuals who have strong engagement with a few agencies. That cannot be denied. But, if me, I refer collaborating with those who are expert, we don't have to be expert in all information or way of work, we might lack expertise in certain areas, but DHRRA*

[87] KII with Community Leader (ID: KII.community Leader. 25072023.PR)

> *might have the expertise. So, I always refer to DHRRA because it makes things easier and they have lawyers who are very informative and proactive in solving stateless cases. This is my opinion.*[88].

**Localize:** As one participant observed, making the issue relatable and easy to understand for the public is crucial for generating support and increasing their involvement in advocacy efforts. By breaking down a complex policy matter and providing accurate information, organizations can empower people to grasp the issue and share it within their own circles or community.

> *One thing that we're doing now is trying to give them the right information and to localize the issue to make them understand it a bit easier, I think when people can understand, that's when people share. So I think. like all of us here, once we really understood the issue is when we start advocating and spreading around our circles. We have to really tone down the language and the stories to touch and to get empathy from the local people*[89].

**Media Coverage:** Going public with press statements and media coverage can shed light on the challenges faced by the stateless individuals and draw attention to policy efforts for change. For example, frequent issuance of press statements can keep the issue in the public eye and maintain pressure on authorities as shown by a participant's experience:

> *We've been called by KDN (Home Ministry) after our members strongly went public with press statements the Citizenship amendment that the Government is doing, the reform and how it will affect more children and more life of the stateless people. That's among the things that we do. We came out with, I think, twice press statements going against the injustice to stateless people. And then we have few advocacy videos on what happened to stateless people and everything*[90].

**Voice of Community:** Encouraging affected individuals to speak up individually and collectively for themselves is a powerful advocacy strategy engaged by study participants to empower stateless individuals to advocate for their right. A former stateless participant underscores the importance of empowering and educating stateless people to use social media platforms to voice out their concerns and draw the attention of the media, public and policymakers:

> *Encourage them (stateless people) to speak up by their own because at the end of the day their own voice is much more stronger than other people's voice for them. Nowadays, we have a lot of platforms that people can speak up like social media: Facebook, Instagram, Twitter, TikTok. You can just write some articles in Twitter and then the media will pick up. We just need to encourage them to have the courage to speak up*[91].

[88] FGD with Community Leader (ID: FGD-CommunityLeader.25082023.PR)
[89] Participant of FGD with grassroots women leaders (ID: FGD.WomenLeaders.11082023.PR)
[90] KII with Community Leader (ID: KII.community Leader. 25072023.PR)
[91] Participant of FGD with community (ID.FGD.Community.01092023.PR)

## 5.9 Conclusion

DHRRA's Policy Reform initiatives are focused on improving various aspects of access to justice, including access to citizenship, health and education. DHRRA has also collaborated with other organizations and advocates to raise awareness and lobby for policy changes that can address the root causes of statelessness and gender discrimination in the nationality law.

While DHRRA advocates for policy changes, it held on to the stance that statelessness can be prevented through better implementation of existing provisions of nationality law. The current framework for the acquisition of citizenship contained in Malaysia's Federal Constitution can resolve statelessness through legal remedy at the courts for cases that cannot be resolved at NRD level. Hence, the organization takes a strong stance and advocacy against the proposed amendments to nationality law, which threatens to remove existing safeguards on statelessness.

DHRRA and study participants' experiences show that policy reform initiatives is an effective LE approach in improving access to justice for stateless people. However, the sustainability of the outcomes of such initiatives are contingent on political will and political stability of the country.

While sustainable policy change is a challenge to attain, DHRRA's experience shows that policy reform initiatives is an effective tool to empower and enhance inclusion of stateless community and the public in breaking the barriers and ensuring access to justice for all.

# SECTION 6: ACTION RESEARCH ON STRATEGIC LITIGATION

## 6.1 Introduction

Strategic litigation is an important pillar of DHRRA's initiative. Litigation presents a dual opportunity to draw awareness to statelessness and to build jurisprudence on statelessness referencing 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. Litigation is considered strategic because DHRRA identifies, selects and brings to court specific cases targeting states or public officials for violations of the rights to citizenship. Its aims could include one or more of the following:

- Raising awareness on citizenship and stateless issues and advocating for societal change.
- Highlighting weaknesses and gaps in laws or policies, demonstrating the need for reform.
- Opening new legal avenues and testing legal provisions and instruments that could be used by others.
- Ensuring laws are correctly enforced.
- Securing remedies for violations or harm suffered from non-acquisition of citizenship rights.

Therefore, legal action with the aim to set legal precedent and reform policy is one way to reduce and eventually eradicate statelessness. DHRRA holds a regular dialogue with its lawyer's Committee, which continues to litigate to enforce constitutional provisions relating to nationality and statelessness.

DHRRA pro bono lawyers provide much needed legal support for stateless applicants who require remedy at the court in order to acquire or confirm nationality. These are cases that cannot be resolved at the NRD level by community-based paralegals and 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, DHRRA'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 (The Malay Mail, 2022).

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 in the best interest of the child to inherit Malaysian citizenship through his/her father (CLI Bulletin, 2018).

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 out 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.

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-year-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. (The Star, 2019)

## 6.2 Impact of Strategic litigation on Access to Justice for Stateless People in Malaysia

There is clear indication among participants that strategic litigation has made a significant impact to improve access to justice on women and gender justice issues for stateless people in Malaysia. This could be illustrated by 2 case studies in which litigants were successful in obtaining justice via strategic litigation in the following parts.

## Case Study 1: Case of Madhuvita Janjara Augustin (Reported in Current Law Journal, Malaysia)[92]

## MADHUVITA JANJARA AUGUSTIN (SUING THROUGH NEXT FRIEND, MARGARET LOUISA TAN) v. AUGUSTIN LOURDSAMY & ORS [2018] 4 CLJ 758

This is a case of interest or relevance to the study that DHRAA has worked on using strategic litigation to achieve justice.

Madhuvita Janjara Augustin is a girl born on 28 November 2005 at the Tengku Ampuan Rahimah Hospital at Klang. Her birth was duly reported to the authorities on 1 December 2005. Her mother, Margaret Louisa Tan, holds a passport issued by the Government of Papua New Guinea. Her father is a Malaysian citizen, born in Selangor. Her parents only married on 23 January 2006 after Madhuvita was born. They could not marry any earlier as her mother's divorce from her former husband had yet to be finalised. Her parents were not aware that her birth was not registered until they wanted to enrol Madhuvita for primary education at a local school. Her birth was then registered on 18 April 2011 and according to the details entered in the birth certificate issued to her by the Registrar of Births and Deaths, Madhuvita was not a citizen of Malaysia.

Her father, Augustin, subsequently applied for citizenship for the appellant under art. 15A of the Federal Constitution. By letter dated 16 January 2013, the Home Ministry advised her father that the application was unsuccessful. Her father then applied before the High Court for, amongst others, an order that she be re-registered by the Registrar of Births and Deaths, with the status of 'Malaysian citizen.'

The High Court refused the application on the basis that the child did not fulfil both conditions prescribed in art. 14(1)(b) read with s. 1(a) of Part II of the Second Schedule. Although the appellant fulfilled the first condition in that she was born in the Federation, she did not meet the second condition. The second condition required at least one of her parents to be, at the time of her birth, a Malaysian citizen or was ordinarily resident in the Federation. This second condition was not met because her parents were not lawfully married to each other at the time of her birth. The child was born out of wedlock.

Relying on the decision in Foo Toon Aik v. Ketua Pendaftar Kelahiran dan Kematian, Malaysia[93], The High Court Judge held that the child was only entitled to citizenship where her parents were lawfully married to each other at the time of her birth. In other words, the word "parent" was read as necessarily inferring "lawful parents". Since the appellant's parents were not married to each other at the material time of her birth, the child did not qualify under the terms of the Federal Constitution. For the same reasons, the child would not qualify under art. 15(2). The High Court judge further found that the child was not without citizenship. According to Her Ladyship, the appellant was actually entitled to citizenship under the laws of Papua New Guinea as her mother is a citizen; and that the child ought to apply for her citizenship in Papua

[92] CLJ Bulletin (2018) 10 May MADHUVITA JANJARA AUGUSTIN (SUING THROUGH NEXT FRIEND, MARGARET LOUISA TAN) v. AUGUSTIN LOURDSAMY & ORS [2018] 4 CLJ 758. Available at: https://bulletin.cljprime.com/?CLJBulletin;2018;19;b;#COTW211 [Accessed 23 August 2023]

[93] [2012] 4 CLJ 613; [2012] 9 MLJ 573 and Chin Kooi Nah (Suing By Herself And As Next Of Kin To Chin Jia Nee, An Infant) v. Pendaftar Besar Kelahiran Dan Kematian, Malaysia [2016] 1 CLJ 736; [2016] 7 MLJ 717

New Guinea. The decision of the High Court was to reject the application of the citizenship of Madhuvita.

The decision of the High Court was then appealed at the Court of Appeal, in which 3 Court of Appeal Judges, namely Tengku Maimun Tuan Mat JCA, Kamardin Hashim JCA and Mary Lim JCA overturned the decision of the High Court Judge. After considering the submissions of both learned counsel, all 3 Court of Appeal Judges found unanimously merits in the child's application and unanimously allowed the appeal.

In the interpretation of the word 'parent', the Court of Appeal clarified that the term "parents" is not qualified in any manner or form in Art. 14. It is not qualified by the word "lawful", "natural", "biological", "adopted" or even "surrogate", or any other description or adjective. It simply refers to the capacity of "parents". Hence, on a prima facie level, the term "parents" must bear its ordinary commonsense meaning. The Merriam-Webster Dictionary defines the term 'parent' as one that begets or brings forth offspring; or a person who brings up and cares for another and that includes a foster parent. The Collins Dictionary defines "parent" as a father or mother or a person acting as a father or mother. Even Black's Law Dictionary, 10th edn, Thomson Reuters defines 'parent' not just as the 'lawful father or mother of someone' but goes on to state that:

> … the term commonly includes (1) either the natural father or the natural mother of a child, (2) either the adoptive father or the adoptive mother of a child, (3) a child's putative blood parent who has expressly acknowledged paternity, and (4) an individual or agency whose status as guardian has been established by judicial decree …

The child is rendered legitimate by the subsequent marriage of her parents and that legitimation is from the date of the registration of marriage, that is, from 23 January 2006. The Court of Appeal decided that the High Court judge was erroneous and therefore the Madhuvita has properly made her claim for citizenship and that this is an appropriate and suitable case for the grant of the declaratory order for citizenship to Madhuvita.

As encouraged by Mr. Augustin, he expressed that parents who are facing similar problem should not lose hope. As long as parents/guardians are supported financially in working with the legal advisor provided by DHRRA, there is a good possibility that strategic litigation is a useful instrument to achieve justice for the grassroot community.

**Case Study 2 : Case of G (Reported in The Malay Mail Newspaper, Malaysia)[94]**
**G (An adopted stateless child)**

This is another case of interest or relevance to the study that DHRAA has worked on using strategic litigation to achieve justice.

A married Malaysian couple were told by a friend in 1999 that there was a newborn baby in Taj Hospital that could be adopted, and they then decided to adopt the child, known as G. The first birth certificate that was issued to G and stated the adoptive parents to be the biological parents. When the child turned 12 in 2011 and was applying for her MyKad, the National Registration Department (NRD) had interviewed the adoptive parents who said that G had not been formally adopted. The NRD had also then issued a new birth certificate that indicated "information not obtained" on G's biological parents.

The NRD's director-general Datuk Ruslin Jusoh in a court document said the NRD had doubted G to be the adoptive parents' biological child due to the difference in skin colour, and that the adoptive parents had then told the NRD that they did not know G's origin and they had obtained G via an intermediary that dealt with the private hospital where the child was born and had paid some money to the intermediary.

G's adoptive parents in a court document explained that they had made a small payment to the intermediary to be channeled for the biological mother's medical costs as they did not know who the biological parents were. In the court, the judges were also shown notes taken down during the NRD's 2011 interview of the adoptive parents which showed they did not know where the intermediary was.

After having been told by the NRD on the formal adoption process, the adoptive parents initiated the process and subsequently in 2014 obtained an adoption order from the Teluk Intan Sessions Court. Following the official adoption, the NRD in the same year issued a new birth certificate that stated G's status to be "non-citizen".

The adoptive parents said they had tried to find information about G's biological parents but were unsuccessful in doing so, and noted that the Taj Hospital where the child was born had closed down and was no longer in existence. According to them, G had lived in Malaysia her whole life and had never acquired the citizenship of any other country.

The adoptive parents said G as a non-citizen could not open a bank account, obtain a driving license, could not travel out of the country or obtain a degree, further listing other difficulties faced by non-citizens that are stateless including not being able to apply for jobs, not being able to purchase insurance policies or property, to register their marriages and to be treated at public hospitals. The adoptive parents had on January 9, 2015 applied to the NRD for G to be a Malaysian citizen under Article 15A of the Federal Constitution, but this was rejected three years later on March 30, 2018 without any reason given.

[94] The Malay Mail (2022) 15 March Court declares woman abandoned at birth in KL to be a Malaysian citizen, orders new birth certificate. Available at: https://www.malaymail.com/news/malaysia/2022/03/15/court-declares-woman-abandoned-at-birth-in-kl-to-be-a-malaysian-citizen-ord/2047548 [Accessed 15 Aug 2023]

The adoptive parents again applied on May 28, 2018 under Article 15A for G's citizenship, but there has yet to be any reply as it was still under the home minister's consideration. According to the adoptive parents, they were always told that the application was still being processed each time when they enquired about its status.

Article 15A provides that the federal government may register anyone under the age of 21 as a Malaysian citizen, "in such special circumstances as it thinks fit". This means that the Article 15A route has an age limit and time was running out for G, with the first application for G made in the year when she was aged 16, and rejected in the year when she was aged 19. The second attempt was made in the year when she would turn 19.

On September 30, 2019, the adoptive parents and G filed a lawsuit via an originating summons against the Registrar-General of Births and Deaths Malaysia, seeking four court orders including for G to be declared and registered as a Malaysian citizen with a new birth certificate to reflect Malaysian citizenship status.

After the High Court ruled against G and her adoptive parents on June 2, 2020, they then filed an appeal on June 22, 2020 to the Court of Appeal.

During the hearing at the Court of Appeal, G's lawyer Ranee argued on several legal points while also highlighting the G's plight of having been denied recognition as a Malaysian citizen for years.

*"She has been waiting since the age of 12, she has been waiting for 10 years for her citizenship to be approved so she can have some resemblance of life,"* Ranee said, while listing a number of things that G currently cannot do due to her non-citizenship status.

Ranee argued that making G wait longer to be recognised as a Malaysian citizen would be detrimental to her and would also not be in line with the United Nations Convention on the Rights of the Child which states that the best interest of a child is of paramount importance. "*So this child is already in a very terrible state, she's really suffering and to deny citizenship, it will be a really big injustice to her. And she's turning to this honourable court for mercy and for justice, My Lord. This child didn't do anything wrong, My Lord,*" she had argued.

The Court of Appeal Judge, Datuk Seri Kamaludin Md Said, who was chairing the three-judge panel, and fellow Court of Appeal judge Datuk S. Nantha Balan were in favour of declaring the woman as a Malaysian citizen, after finding that the facts of her case matched those of babies abandoned at birth.

In allowing the appeal by G in her citizenship bid, judge Nantha Balan read out the three orders granted in her favour. The first order is a declaration that G is a citizen of Malaysia by operation of law, by virtue of her birth within the federation of Malaysia, pursuant to Article 14(1)(b), Section 1(a) of Part II of Second Schedule of the Federal Constitution, read together with Section 19B of Part III of the Second Schedule of the Federal Constitution".

In other words, the first court order granted was to declare that G is entitled to Malaysian citizenship due to her birth in Malaysia and due to her fulfilling the conditions for citizenship under those three provisions in the Federal Constitution. The second order granted was a certiorari order to quash the Registrar-General of Births and Deaths Malaysia's decision in

issuing and signing a birth certificate to G which had registered her to be a non-citizen instead of as a citizen of Malaysia. The third and final court order granted by the Court of Appeal today was a mandamus order to direct the Registrar-General of Births and Deaths Malaysia to "reissue birth certificate" of G to "register her as a citizen of Malaysia".

As mentioned by Ms. Ranee, the Pro Bono lawyer who defended G, parents/guardians who are facing similar problem should be determined and maintain a positive mindset. As long as parents/guardians are supported financially in working with the legal paralegal and legal advisor by DHRRA, there is a good possibility that strategic litigation is a useful instrument to achieve justice for the grassroot community.

## 6.3 Limitations of Strategic Litigation in Addressing Access to Justice Gaps

There are limitations shared among participants in accessing justice for stateless people in Malaysia, but some limitations were addressed through financial support of relevant stakeholders, mental health support, interest groups communities, media campaign and maintaining good rapport with authorities.

### 1. Financial support

On the challenge of financial support, getting financial resources for strategic litigation activities is challenging as most institutions are often reluctant to provide financial support.

Below is one of the views expressed by a Community Leader:

> *So again, financial support is one of the main challenges, because earlier before when we started, we were fortunate to have some financial resources from various organisations*[95].

In addition, although some cases are litigated by lawyers on a pro bono basis, but not all cases could be litigated without legal fees payable, as illustrated by one of the participants as follows:

> *Yeah, definitely. Because some lawyers and some of us, we do some pro bono cases, but others are for people who can actually afford, but a lot of them also cannot afford. So uh, depending on pro bono lawyers, challenges are time and cost and also the mental strain that they have to go through*[96].

### 2. Mental and well-being support

On the gap of mental and well-being issues, DHRRA also has a team of professionals in giving consultation for psychosocial for the litigants and community who seek support. DHRRA Malaysia has been actively involved in supporting and helping marginalized communities in Malaysia to deal with emotional and mental health problems since 2007. Up to now, DHRRA have provided counseling, as well as emotional, stress and conflict management support to nearly 50,000 member of affected communities from various walks of life and backgrounds. Community members are able to seek free counseling through our Community Call Center, referrals, outreach program via mobile community unit, media and online request. DHRRA

[95] Participant of FGD: Pro-bono Lawyers (ID:FGD.Pro-bono Lawyers.07092023.SL)
[96] Participant of KII: Bar Council Lawyer (ID:KII.Bar Council.04092023.SL)

have a team of qualified multilingual psychological counselors providing assistance in English, Tamil and Bahasa Malaysia. These experts provide the counseling through face-to-face session, tele-conversation, call-back, online session and group-counseling as per the seekers' convenience. The cases include depression, discordant couples, parent-child relationship issues, domestic violence, addiction, interpersonal communication, divorce, etc. Experts also provide follow-up-assistance and make necessary referrals on case-to-case basis. In-house certified counsellors also provide psychosocial counselling to everyone reaching out for mental health support, at no cost.

### 3. Supporting advocacy campaign on legal awareness

In order to reduce the social stigma of the stateless communities, DHRRA organizes a range of programs and activities to raise awareness of the issues affecting the vulnerable, marginalized and stateless communities in Malaysia. The thematic essence of awareness initiatives is to make community and policy makers aware of an issue as the first step to change: which includes dissemination of information, social media engagement, and other suitable local, national, regional and global campaigns, as illustrated by the views of the participants as follows:

> *Whereby before even joining DHRRA, I've been doing a lot of like community work, social work and et cetera. So, of course social media has always been a very engaging platform, a platform where we used to*[97].

> *There are over 2000 articles in the media on the issue right and that I think came about. I think we were very strategic in the way we have what is called a multi-pronged approach. So in the way we approach the media*[98].

### 4. Maintaining good rapport with authorities

Having a good report with the authorities also is essential to facilitate the achievement of justice through strategic litigation. Some officials are more familiar and have empathy for citizenship acquisition. For example, the processing time using some SOPs could be reduced if some officers are familiar with some participants, as indicated by one of the Community Leaders:

> *Because even if you go like to the state JPN, they will refer you to Putrajaya or they'll refer you to another state JPN which every JPN ironically has different SOP's. Need to maintain a good working relationship…*[99]

Nevertheless, another view demonstrated that issues with official are still a rather sticky one when it comes to registration of citizenship at NRD through court order obtained from strategic litigation:

> *To be honest, we haven't found a solution. Today is some of the clients are OK to go through the process sometimes as a lawyer we get more annoyed rather than the clients. They are OK to wait*[100].

[97] Participant of FGD: Pro-bono Lawyers (ID: FGD.Pro-bono Lawyers.07092023.SL)
[98] Participant of KII: CSO Partner (ID: KII. Partner CSO.11082023.SL)
[99] Participant of FGD: Pro-bono Lawyers (ID: FGD.Pro-bono Lawyers.07092023.SL)
[100] Participant of KII: Bar Council Lawyer (ID:KII.Bar Council.04092023.SL)

## 6.4 Best practices in Strategic Litigation

Litigation that is "strategic" is rooted in a conscious process of working through advocacy objectives and the means to accomplish them, of which litigation is often but one. Ideally, from the best practices perspective, such a process involves lawyers and many other actors, considers the political and social context within which the advocacy takes place, takes a long view, and deploys the full range of tools available.

Such an approach can create value regardless of the judicial outcome, in part because it may include the options to delay litigation, to accept a friendly settlement, or not to litigate at all, and to use court-centered action in concert with other social-change agents, such as direct conversation with governments, social media advocacy campaign and legal education.

Indeed, to a certain extent, inaction can be a good legal strategy. Choosing not to litigate can, for example, conserve resources, focus energies on more productive paths to change, protect complainants when retaliation for filing seems imminent, or stall for time until a more favorable jurisdiction opens up or a more knowledgeable or progressive judge becomes available to hear the case (Goldstone, 2018). Some observers believe that legal action is often "most successful when it works as an unfulfilled threat." Lawyers confirm that, when backed up by the actuality of litigation when needed, the judicious threat to sue is often far more effective in securing government compliance than regularly going to court. Education justice litigator and report (Skelton & Tshehla, 2008) author Ann Skelton describes the phenomenon of strategic inaction:

> "A case we [at the Centre for Child Law] chose not to bring was an effort to prohibit corporal punishment in the home. A bill to this effect had failed in Parliament. We knew that, if we failed in court, we would fail not just for South Africa, but for Africa as a whole. Because everyone is watching what everyone else is doing. So, we did not bring the case, because four judges left the Constitutional Court at once. Three of them we thought would have been with us, and we did not really know the new judges. But our feeling was that the new judges might be more conservative on family issues. (Although in the end, our fears have not been fully realized.) So, we refrained from bringing this case in order not to create a negative precedent…. We are still working to address corporal punishment in the home, but we don't believe litigation is the way to go. First we have an opportunity to work with Parliament. Maybe in a few years we will have to go to court."

Strategic litigation does not exist in a vacuum. The actions of courts are "just one of many different types of resources and constraints that shape the terms of power struggles among contending groups." Conversation, advocacy, research, media campaigns, legislative and administrative lobbying, strategic alliances, even the arts, have all proven to be useful tools of social change. As a lever for social change, litigation operates in a complicated relationship with these other tools. On the one hand, activists often observe that ligation, because of its risk, cost, and limitations, should generally be deployed after other attempts to find a remedy have failed. Much scholarship "emphasizes that litigation and other official legal actions are most often and effectively utilized as a secondary or supplementary political strategy in social movement struggles". On the other hand, litigation is generally most effective when combined with other strategic approaches—most importantly media campaigns, advocacy, and attempts to modify legislative or administrative actions. In a robust strategy, litigation and other tools reinforce each other either as serial activities or as part of a complex network supporting positive change.

Litigating exemplifies the rule of law in action; the process of litigating can therefore be seen as a contribution to public discourse in and of itself. In many societies, the very demonstration of law's capacity to resolve disputes and vindicate rights through the courts carries political significance. In support of this demonstrative function DHRRA consciously uses litigation in order to "demythologize law"—to bridge the gap between the grand aspirations of the Constitution and people's lived experiences on the issue of statelessness and acquisition of rights as citizens.

Material results on conferment of citizenship are often a major goal of strategic litigation, certainly for the client. But it is a judgment's measurable but indirect changes to government policy, laws, or institutions that can have the greatest impact on the largest number of people. Truly far-reaching change often requires enabling policies, jurisprudence, institutions (including the judiciary itself), and legislation to translate the benefits of a judicial decision to the lives of those not directly involved in the legal case. In short, changes achieved in these areas often offer the most visible evidence that the ambitious objectives of strategic litigation are (or are not) being fulfilled. These instrumental impacts are among the most difficult to achieve. This is in part because they are typically beyond the authority of the court to demand. Instead, they are the purview of entirely different branches of government. The executive controls many policy decisions, for example, and the legislature controls legislation. This division helps explain why strategic human rights litigation is often so ineffective: the courts have no control over the branches of government responsible for implementing court orders. Moreover, global experience suggests that complainants and litigators often overlook instrumental remedies when crafting their legal strategies.

Nevertheless, it is clear that strategic litigation matters, and is capable of generating impacts. However, it is equally clear that understanding those impacts requires a multi-dimensional model that looks beyond material impacts (conferment of citizenship) to account for changes in jurisprudence and institutional practice (Cohn & Kremnitzer, 2005) , and even changes in attitude and discourse. The pursuit of change through strategic litigation can be accelerated or retarded by a host of factors, including the interactions among litigators, plaintiffs, and activists, and the iterative use of courts to build momentum toward social change over time. Finally, the impacts of strategic litigation—and even the question of whether specific litigation should be considered strategic—are often understood only in retrospect.

## 6.5 Conclusion

The study reveals that the adoption of the legal empowerment through strategic litigation approach by DHRRA has significantly improved access to justice for stateless individuals in Malaysia. Specifically, it has led to increased legal awareness, empowerment, and protection among this population. The evidence base generated here shows strategic litigation plays a crucial role in strengthening policy advocacy for sustainable solutions to address barriers to access to justice for stateless individuals.

It is also evident from the study that the effectiveness of strategic litigation is contingent upon the support of all stakeholders, particularly the community themselves. The support of all stakeholders can be enhanced by building trust, fostering collaboration, and facilitating communication among and with them.

However, while the legal empowerment through strategic litigation approach provides an ad-hoc or case-by- case solution, the efforts of the grassroot community and legal professions are undermined due to:

(a) the lack of setting of precedence by the Federal Court;
(b) the political will of the policymakers in making the necessary policy changes to ensure access to justice for all;
(c) the lack of compliance of court order

These lessons should encourage both champions and detractors of strategic litigation to rethink. Needless to say, there is a broad array of appropriate roles for strategic litigation to play. The research consistently suggested that there is demonstrable value in lawyers' listening to, learning from, and collaborating with clients and their broader constituencies, as well as in drawing upon non-legal expertise. This suggests a need for humility about the essential but limited contribution of strategic litigation to the struggle for social change in the field of statelessness phenomena in this country.

# SECTION 7: CONCLUSION AND RECOMMENDATIONS

The absence of legal identity, a prerequisite for legal empowerment, renders access to justice almost impossible for stateless people in Malaysia. This situation also exposes the stateless community to various challenges, including lack of access to education and healthcare, which form additional layers of barriers for stateless people to access justice. Therefore, an effective access to justice solutions must encompass initiatives that address the various challenges faced by the stateless people.

DHRRA's legal empowerment strategies, as demonstrated in this study serve as an exemplary effort in achieving this. DHRRA has successfully employed the three key legal empowerment approaches (paralegal development, policy reform and strategic litigation) to enhance access to justice for stateless people in Malaysia.

The study, which comprises three distinct action research, offers a comprehensive analysis of the legal empowerment approaches employed by DHRRA to enhance access to justice for stateless individuals in Malaysia. The action research on paralegal development emphasizes the significance of community involvement and empowerment in addressing the issues faced by stateless individuals. Community-based paralegals trained by DHRRA diligently pass on the knowledge and skills to the community, enhancing the long-term sustainability of legal empowerment within the community.

The policy reform approach adopted by DHRRA plays a crucial role in strengthening policy advocacy to address legal and institutional barriers to access to justice for stateless individuals in Malaysia. A recurring concern, however, is the continuous deficit in the political will of policymakers in driving necessary policy changes to ensure access to justice for the stateless persons. This presents a key challenge to legal empowerment through policy reform initiatives that impedes durable solutions.

The action research on strategic litigation reveals the significant impact of legal empowerment through strategic litigation in increasing access to justice for stateless people. However, an effective and sustainable solution through this approach is hampered by the lack of legal precedent, political will and court order compliance.

These collective insights from the study highlight that while these key legal empowerment approaches can offer case-specific solutions on their own, achieving a comprehensive solution to ensure access to justice for the stateless community necessitates an integrated approach that incorporates all the 3 legal empowerment strategies as demonstrated by DHRRA's experience. At the same time, it is important to acknowledge that sustainability of the outcomes of the integrated legal empowerment approach is contingent on various factors, primary among them being the facilitation of community participation in the process and political will of policymakers to initiate changes that are in the best interests of the community and the Malaysian society as a whole.

## 7.1 Recommendation for Enhancing Access to Justice for Stateless People in Malaysia

The following recommendations, drawn from valuable insights shared by the study participants actively engaged in DHRRA's legal empowerment approaches, constitute a critical component of the research. These recommendations emphasize the pressing need to enhance access to justice for stateless individuals in the country. They reflect the experiences and perspectives of the participants who have either been directly impacted by statelessness or are actively working to effect positive change in the lives of stateless individuals within their community. It is imperative that careful consideration is given to these insights as they provide a roadmap for policymakers, government agencies, stateless communities, pubic and other key stakeholders to ensure access to justice for all is guaranteed in Malaysia.

1. Provide Temporary ID for Stateless People

One participant profoundly expressed, "I don't see any logic and fairness to the stateless person for not getting ID because the refugees are having their ID under UNHCR. But these persons who are born and bred their entire lives in Malaysia, they are not getting any ID"[101]. This sentiment highlights the glaring disparity faced by stateless persons who are born and lived their entire lives in Malaysia without legal identification. Issuance of temporary ID would enable these individuals to access essential rights and services such as KWSP and SOCSO, which could secure them their livelihood. As another participant emphasized, "It doesn't matter if they're going to be citizen or not but you must give somebody identification if they are born in Malaysia because they need identification to study, to go for training, and when to go for work"[102]. However, as pointed out by several participants during the validation discussion, it is important to note that this recommendation is not necessarily tied to citizenship but rather to access the basic rights to live a dignified life.

2. Policy Reform from the Perspective of the Community

All policy reforms in Malaysia must include the lens of the most marginalized members of society. Ensuring that policy changes serve the best interests of the most marginalized will ultimately benefit the entire nation. "If the policy serves their best interest, that will mean that it will serve the best interest of the whole nation"[103] shared a participant. Therefore, policymakers should prioritize inclusivity and equitable outcomes in their decisions, considering the impact on the vulnerable. On the same note, one participant expressed the importance of communicating with the stateless people in a language they are comfortable with to encourage them to actively participate in advocating for their needs.

3. Create a Safe Environment for Stateless People to Speak Up

Stateless individuals often fear speaking out due to concerns about repercussions or jeopardizing their applications. To encourage them to share their experiences and needs, it is imperatives to create a safe environment for them. As one participant emphasized, assurance is key. They must be assured that speaking out will not negatively impact their legal status or applications. Building trust in the process is vital to empower stateless individuals to voice their concerns. Promoting self-advocacy by encouraging stateless individuals to use their own voices

[101] Participant of FGD with Grassroots Women Leaders (ID: FGD.WomenLeaders.11082023.PR)
[102] Participant of FGD with Grassroots Women Leaders (ID: FGD.WomenLeaders.11082023.PR)
[103] KII with Community Leader (ID: KII.community Leader. 25072023.PR)

is essential as emphasized by a participant, "Encourage them to speak up by their own because at the end of the day their own voice is much stronger than other people's voice for them"[104]. He further suggested optimization of platforms like social media, such as Facebook, Instagram, and Twitter to help them share their stories and raise awareness.

Adding on to the same, another participant observed that many stateless individuals are hesitant to share their stories due to the stigma and discrimination associated with statelessness. Ensuring their safety and well-being should be a priority when engaging them in advocacy efforts: "*In terms of how stateless people have participated, we want their stories to be heard. But most importantly, only if they are comfortable and if there is no risk opposed to them because there's a lot of stigma related to why there are stateless*."[105]

4. Promote Collective Action

Collective action is a powerful tool in advocating for the rights of stateless individuals. As one participant noted, individual efforts may go unnoticed, but a coordinated group of CSOs can amplify their voices and influence change: *"If one day I wrote in my Facebook things that I experience, people might not pick up, authority might not pick up. But having a group of coordinated like CSOs or organizations, or collective that fight together with you on your rights would really ensure that your voice is much louder, and we are heard more"*[106]. Collaborative efforts create a louder and more impactful message, increasing the likelihood of being heard by both the public and the authorities.

5. Better Enforcement

Effective enforcement of policies and regulations is essential in addressing and overcoming issues related to statelessness. Problems stemming from inadequate enforcement, such as misuse of power and communication breakdowns, can lead to errors and injustices. As one participant pointed out, strengthening enforcement mechanisms and ensuring their consistent application is crucial to prevent such issues: "*I believe that policy reform is very much needed for to us to handle the stateless person, because the problem now is just that. The problem is centered on policies that the government is putting on us, and that is the issue here…Of course you must have better enforcement, if you have problem with enforcement that's why there tends to be miscommunication there, salahguna kuasa (misuse of power), salahguna kad (misuse of identity card), things like that. So I believe that policy reform is very much needed."*[107]

6. Political Will

While legal frameworks can provide solutions, the lack of political will to address statelessness in Malaysia remains a significant barrier. It is important for policymakers to recognize the importance of this issue, even if stateless individuals cannot vote, and do not have the ability to influence the political landscape. A commitment to change, no matter how small the initial steps may be, can pave the way for more significant reforms in the future. Statelessness affects a significant portion of Malaysia's population, and political will is, therefore, essential in

[104] Participant of FGD with community (ID.FGD.Community.01092023.PR)
[105] KII with DHRRA's Executive Director
[106] KII with Community Leader (ID: KII.community Leader. 25072023.PR)
[107] Participant of FGD with Grassroots Women Leaders (ID: FGD.WomenLeaders.11082023.PR)

driving change, as has been advocated by DHRRA over the years. The following quote of DHRRA's President (DHRRA,2022) encapsulates this crucial point:

> *The experience over the last couple of years in Malaysia showed that a lot can be achieved in this area (addressing statelessness). Through strong cooperation with the Government and stakeholders, DHRRA intends to build on the political will of the Government of Malaysia. In reference to the Malaysian Federal Constitution, there are sufficient safeguards to address statelessness, indeed political will and concerted action by governments are key to resolving statelessness.*

7. Create Awareness Among the Public

Many people, including politicians, are unaware of the gravity of statelessness. To address this knowledge gap, public awareness campaigns should be initiated. The term "stateless" needs to be highlighted and explained to the general population, as one participant[108] noted their own ignorance of the issue until it personally affected them. Introducing education about statelessness in schools, possibly at the primary level, is highly recommended to ensure future generations are well-informed and empathetic towards the stateless individuals.

[108] Participant of FGD with Community Leaders (FGD-CommunityLeader.25082023.PR)

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# Appendix A

ACTION RESEARCH ON PARALEGAL DEVELOPMENT – GUIDE QUESTIONS FOR FGD

Introduction

- Introduction of research team and participant(s)
- Provide an overview of the search, its objectives, methods, and output

Setting the Premise

1. What does justice mean to you?
2. What is your opinion about access to justice for stateless people in Malaysia?
3. What are the challenges that stateless people face in seeking justice in Malaysia?
4. What are some of the most common legal issues faced by stateless people in your community? How do paralegals help to address them?

FGD 1 (Community):

1. Have you received any assistance or support from DHRRA's paralegals. If so, what kind?

2. How do you reach out to paralegals when you need help. Have you faced any challenges in doing so?

4. Have paralegals made a difference in improving your access to justice? Could you share a personal experience?

5. In what ways can community paralegals better serve stateless people in your community? Is there anything that they could do better? Could you highlight good practices/ innovative methods/ approaches that you have experienced through the work with the paralegals or you would like to recommend?

5. In your experience, does gender play a role in how male and female paralegals interact with the community? Are there any gender preferences among the community in regards to specific legal issues, such as domestic violence or sexual and reproductive health? Any success stories / particular challenges in working with female paralegals in improving access to justice?

6. How have your needs and priorities changed during the pandemic? What support did you receive from the paralegals to meet these needs?

7. How can you (community members) support the work of paralegals in your community?

FGD 2 & FGD 3 (Community Based Paralegals)

1. How did you become involved in DHRRA's Paralegal program?

2. Can you share what you learnt from the paralegal trainings organized by DHRRA?

3. Does gender affect the types of cases that male and female paralegals work on in your community?

4. What specific programs/actions (together with the methods employed) have you taken as a community paralegal to improve the ability of stateless people to access justice?

5. What challenges have you faced in your work as a community paralegal? How did you overcome them? How did the involvement of women paralegals contribute to the success/ overcoming related challenges?

6. What support do you need to continue your work as a community paralegal? (Probes for discussion: How can DHRRA provide support? How can community members and organizations support the work of community paralegals?)

7. How have the needs and priorities of stateless people changed due to the pandemic?

8. How do you engage with local government officials and law enforcement agencies to advocate for the rights of stateless people?

# Appendix B

ACTION RESEARCH ON PARALEGAL DEVELOPMENT – GUIDE QUESTIONS FOR KII

Introduction

- Introduction of research team and participant(s)
- Provide an overview of the search, its objectives, methods, and outputs

Setting the Premise

1. What does justice mean to you?
2. What is your opinion about access to justice for stateless people in Malaysia?
3. What are some of the challenges that stateless people face in seeking justice?
4. What role does Paralegal play in addressing these challenges?

KII 1 (Community Leader)

1. Have you ever worked with community paralegals in the past. If so, could you share your experience with us?

2. How did you learn about DHRRA's paralegal initiative and become involved with it?

3. As a community leader, what steps do you take to support paralegals in their efforts to provide access to justice for stateless people in your community?

4. What role do paralegals play in educating stateless individuals in your community about their legal rights and empowering them to take action?

5. Could you provide some examples of stateless individuals in your community who have benefited from the work of community paralegals. In what ways have they benefited?

6. Are women paralegals involved in assisting in your community? Can you provide examples of their participation and contributions?

7. How do you monitor and evaluate the progress and impact of the DHRRA's paralegal program in your community? What can be improved to better serve the community?

8. How have the legal needs and priorities of the community changed during the pandemic?

9. How has the pandemic affected the ability of community paralegals to support and assist stateless persons in your community to access justice?

KII 2 (Woman Paralegal Leader)

1. How did you learn about DHRRA's paralegal initiative and become involved with it?

2. What is your role as a Paralegal Leader? What qualities do you believe are important for a paralegal leader to possess in supporting community paralegals?

3. How do you support and empower community paralegals in their roles? Can you provide examples of how you have personally mentored and guided community paralegals?

4. What are some of the challenges that you face in carrying out your work? How do you overcome these challenges?

5. Can you share success stories of paralegals you have worked with and highlight your role in supporting their achievements?

6. What role do you play as a paralegal in educating stateless communities about their legal rights and empowering them to take action?

7. How do you evaluate the performance and impact of your work as a paralegal? How do you use the feedback for improvement?

8. How has the pandemic crisis affected your ability to support and assist the communities to access justice?

9. How do you engage with local government officials and law enforcement agencies to advocate for the rights of their communities?

KII 3 (Project Manager/Coordinator)

1. What approach(es) does DHRRA use in paralegal development?

2. What innovative approaches does DHRRA use to train community paralegals? How effective are they?

3. How does DHRRA promote gender equality in paralegal development?

4. What impact does community paralegals have on improving access to justice for stateless people? Can you provide examples of successful outcomes? How does DHRRA monitor and evaluate the impact of community paralegal programs?

5. What are the best practices learned and incorporated by DHRRA in developing and sustaining effective community paralegal programs?

6. How has the demand for legal services from the stateless community changed during the pandemic?

7. How does DHRRA adapt the community paralegal program during the pandemic, floods, and other crises?

8. What impact has the pandemic had on the sustainability and funding of DHRRA's community paralegal program? What lessons have been learned that could be applied to the development and implementation of community paralegal programs in the future?

# Appendix C

ACTION RESEARCH ON POLICY REFORM INITIATIVE: Guide Questions for FGD

Introduction

- Introduction of research team and participant(s)
- Provide an overview of the search, its objectives, methods, and outputs

Setting the Premise

1. What does justice mean to you?
2. What is your opinion about access to justice for stateless people in Malaysia?
3. What are some of the challenges that stateless people face in seeking justice?
4. What are specific issues or current gaps in law or policies that directly affect stateless people in Malaysia?

FGD

1. Have you personally experienced or witnessed instances where existing laws or policies have negatively affected stateless individuals? If so, can you provide examples?

2. Are you familiar with any recent changes in the laws or policies that are meant to help stateless people in Malaysia? What issues related to statelessness have these changes tried to address? How do these changes impact you or stateless individuals in your community?

3. Are you aware of DHRRA's work in advocating for the rights of stateless individuals in Malaysia? Have they carried out any initiatives or campaigns in your community? Have you personally been involved in DHRRA's policy advocacy efforts? If so, could you share your experience?

4. Have you participated in any activities or events organized by DHRRA where you learned about legal issues? If yes, what were they, and how have you benefited from those activities or events?

5. Have you been involved in any advocacy efforts or campaigns related to gender equality and access to justice in Malaysia? Can you provide an overview of your involvement and experience in advocating for gender equality in access to justice, particularly in relation to citizenship issues?

6. Can you share examples of information, education, and communication (IED) advocacy materials that were shared to promote gender equality in access to justice? Were these materials distributed and made accessible to you/your community? Did you notice any changes or effects in your community as a result of sharing or distributing these materials?

7. Have you engaged with government agencies or Members of Parliament (MPs) to raise awareness about the issues faced by stateless individuals in your community? If so, what has been the response thus far?

8. Have you engaged in any policy advocacy efforts related to gender equality and access to justice with government officials or parliamentarians? What specific issues and policies have been proposed, amended, scrapped, or passed as a result of these engagements? What were the outcomes or challenges experienced during these advocacy efforts?

9. What specific changes or improvements would you like to see in the law to better protect the rights and well-being of stateless people in Malaysia? What additional changes or measures do you believe should be implemented to improve stateless people's access to justice in Malaysia?

10. How can more people in your community be encouraged to voice their concerns and advocate for the changes they wish to see through law or policy? How can the voices and experiences of women be strengthened in advocating for change in citizenship law/ policy reforms?

# Appendix D

ACTION RESEARCH ON POLICY REFORM INITIATIVES: Guide Questions for KII

Introduction

- Introduction of research team and participant(s)
- Provide an overview of the search, its objectives, methods, and outputs

Setting the Premise

1. What does justice mean to you?
2. What is your opinion about access to justice for stateless people in Malaysia?
3. What are some of the challenges that stateless people face in seeking justice?
4. What are some of the gaps in the current legal framework and delivery of legal services for stateless people? How can they be addressed through policy reform initiatives?

KII

1. What recent policy reform initiatives have been undertaken to address the legal needs of stateless individuals?

2. What are the legal issues affecting stateless individuals in Malaysia? How have these policy reform initiatives specifically addressed the legal issues affecting stateless individuals?

3. How has DHRRA been involved in your organization's policy reform initiatives? (Inquire about collaborative efforts) (FGD 1 and FGD 2)

4. How has the stateless community participated in advocating for and implementing these policy reform initiatives? What impact does grassroots involvement in policy reform advocacy have on the development and implementation of legal reform measures? What strategies are employed to sustain community participation in long-term policy reform advocacy?

5. What were the key advocacy messages relating to access to justice?

6. How were media and social media utilized to engage stateless communities and in advocating for and implementing these policy reform initiatives?

7. How would you describe the current state of gender equality in access to justice for stateless people in Malaysia? Can you provide an overview of your (your organization's) involvement and experience in advocating for gender equality in access to justice, particularly in relation to citizenship issues? What specific advocacy strategies were employed to advance gender equality in access to justice, specifically in the context of citizenship? How effective were these strategies in influencing policy discussions and reforms?)

8. Can you share some success stories and best practices regarding strengthening stateless community participation in policy reform advocacy?

9. What role do paralegals play in facilitating grassroots participation in policy reform advocacy? (FGD 3)

10. Can you provide examples of international and regional engagements (collaborative efforts, initiatives etc.) that enhance access to justice for stateless people?

11. What are some of the key recommendations put forth your organization to enhance access to justice for stateless people? How have policymakers and other stakeholders received these recommendations? What progress has been made in their implementation?

12. What role do civil society organizations and other stakeholders play in monitoring the implementation of these recommendations?

# Appendix E

ACTION RESEARCH ON STRATEGIC LITIGATION: GUIDE QUESTION FOR FGD

Introduction

- Introduction of research team and participant(s)
- Provide an overview of the search, its objectives, methods, and outputs

Setting the Premise

1. What is your opinion about access to justice for stateless people in Malaysia?
2. What are some of the challenges that stateless people face in seeking justice?
3. Have you or anyone you know had problems getting legal help when needed?

FGD

1. Have you ever filed a legal case to obtain citizenship for you or your child(ren)? Did you file it on your own or with the support of lawyers?

2. What led you to make the decision to initiate legal proceedings?

3. How did you become aware of the procedures for filing a lawsuit? Whom did you seek assistance from? From whom or where did you acquire knowledge about this particular approach?

4. What was your level of involvement in preparing for the case?

5. How long has the case been ongoing? Has a verdict or decision been reached? If so, what was the outcome?

6. Could you share your personal experience with the case? Were there any challenges or limitations you faced, such as financial constraints, distance or mobility issues, language barriers, understanding the complexities of the issues or legal procedures, or concerns about safety? How were these obstacles overcome, if at all?

7. What were the factors that contributed to your success or defeat in the case? Are there any future steps to be taken?

8. Based on your personal experience, what are your thoughts on access to justice in Malaysia? Was it a straightforward or challenging process?

9. Do you have any suggestions or recommendations based on your experience?

# Appendix F

ACTION RESEARCH ON STRATEGIC LITIGATION: GUIDE QUESTION FOR KII

Introduction

- Introduction of research team and participant(s)
- Provide an overview of the search, its objectives, methods, and outputs

Setting the Premise

1. What does justice mean to you?
2. What is your opinion about access to justice for stateless people in Malaysia?
3. What are some of the challenges that stateless people face in seeking justice?
4. In your experience, how has strategic litigation helped to bridge the gap on access to justice for stateless community in Malaysia?

KII

1. Can you describe any specific cases or examples where strategic litigation has made a significant impact on stateless individuals' access to justice?

2. What are some examples of strategic litigation cases that have advanced women's rights and gender justice?

3. What challenges do women face when engaging in strategic litigation and how can these be addressed?

4. What are some of the challenges and limitations of using strategic litigation to bridge the gap on access to justice?

5. How can strategic litigation be used to promote systemic change and policy reform to improve access to justice? (To explore any innovative mechanisms as well and best practices)

6. What motivates stateless community to participate in strategic litigation? How do they benefit from engaging in this type of legal action? What are the challenges that grassroots communities face when participating in strategic litigation, and how do they overcome these challenges?

7. How does DHRRA identify and select cases that are suitable for strategic litigation? What criteria are used in this process?

8. How do grassroots communities collaborate with lawyers and legal organizations in strategic litigation, and what are the benefits and risks of these partnerships?

9. What are the ethical considerations involved in stateless people participation in strategic litigation? How are these addressed?

10. What resources and support are needed to empower grassroots communities and civil society organizations to engage in strategic litigation on access to justice issues related to statelessness?

11. What role does legal education and legal empowerment play in promoting grassroots participation in strategic litigation on access to justice issues?